



Arizona Administrative REGISTER

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From the Publisher

ABOUT THIS PUBLICATION

The paper copy of the *Administrative Register* (A.A.R.) is the official publication for rules and rulemaking activity in the state of Arizona.

Rulemaking is defined in Arizona Revised Statutes known as the Arizona Administrative Procedure Act (APA), A.R.S. Title 41, Chapter 6, Articles 1 through 10.

The Office of the Secretary of State does not interpret or enforce rules published in the *Arizona Administrative Register* or *Code*. Questions should be directed to the state agency responsible for the promulgation of the rule as provided in its published filing.

The *Register* is cited by volume and page number. Volumes are published by calendar year with issues published weekly. Page numbering continues in each weekly issue.

In addition, the *Register* contains the full text of the Governor's Executive Orders and Proclamations of general applicability, summaries of Attorney General opinions, notices of rules terminated by the agency, and the Governor's appointments of state officials and members of state boards and commissions.

ABOUT RULES

Rules can be: made (all new text); amended (rules on file, changing text); repealed (removing text); or renumbered (moving rules to a different Section number). Rules activity published in the *Register* includes: proposed, final, emergency, expedited, and exempt rules as defined in the APA.

Rulemakings initiated under the APA as effective on and after January 1, 1995, include the full text of the rule in the *Register*. New rules in this publication (whether proposed or made) are denoted with underlining; repealed text is stricken.

WHERE IS A "CLEAN" COPY OF THE FINAL OR EXEMPT RULE PUBLISHED IN THE REGISTER?

The *Arizona Administrative Code* (A.A.C.) contains the codified text of rules. The A.A.C. contains rules promulgated and filed by state agencies that have been approved by the Attorney General or the Governor's Regulatory Review Council. The *Code* also contains rules exempt from the rulemaking process.

The printed *Code* is the official publication of a rule in the A.A.C., and is prima facie evidence of the making, amendment, or repeal of that rule as provided by A.R.S. § 41-1012. Paper copies of rules are available by full Chapter or by subscription. The *Code* is posted online for free.

LEGAL CITATIONS AND FILING NUMBERS

On the cover: Each agency is assigned a Chapter in the *Arizona Administrative Code* under a specific Title. Titles represent broad subject areas. The Title number is listed first; with the acronym A.A.C., which stands for the *Arizona Administrative Code*; following the Chapter number and Agency name, then program name. For example, the Secretary of State has rules on rulemaking in Title 1, Chapter 1 of the *Arizona Administrative Code*. The citation for this chapter is 1 A.A.C. 1, Secretary of State, Rules and Rulemaking

Every document filed in the office is assigned a file number. This number, enclosed in brackets, is located at the top right of the published documents in the *Register*. The original filed document is available for 10 cents a page.

Arizona Administrative REGISTER

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This publication is available online for
free at www.azsos.gov.

ADMINISTRATIVE CODE
A price list for the *Arizona
Administrative Code* is available
online. You may also request a paper
price list by mail. To purchase a paper
Chapter, contact us at
(602) 364-3223.

PUBLICATION DEADLINES
Publication dates are published in the
back of the *Register*. These dates
include file submittal dates with a
three-week turnaround from filing to
published document.

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Participate in the Process

Look for the Agency Notice

Review (inspect) notices published in the *Arizona Administrative Register*. Many agencies maintain stakeholder lists and would be glad to inform you when they proposed changes to rules. Check an agency's website and its newsletters for news about notices and meetings.

Feel like a change should be made to a rule and an agency has not proposed changes? You can petition an agency to make, amend, or repeal a rule. The agency must respond to the petition. (See A.R.S. § 41-1033)

Attend a public hearing/meeting

Attend a public meeting that is being conducted by the agency on a Notice of Proposed Rulemaking. Public meetings may be listed in the Preamble of a Notice of Proposed Rulemaking or they may be published separately in the *Register*. Be prepared to speak, attend the meeting, and make an oral comment.

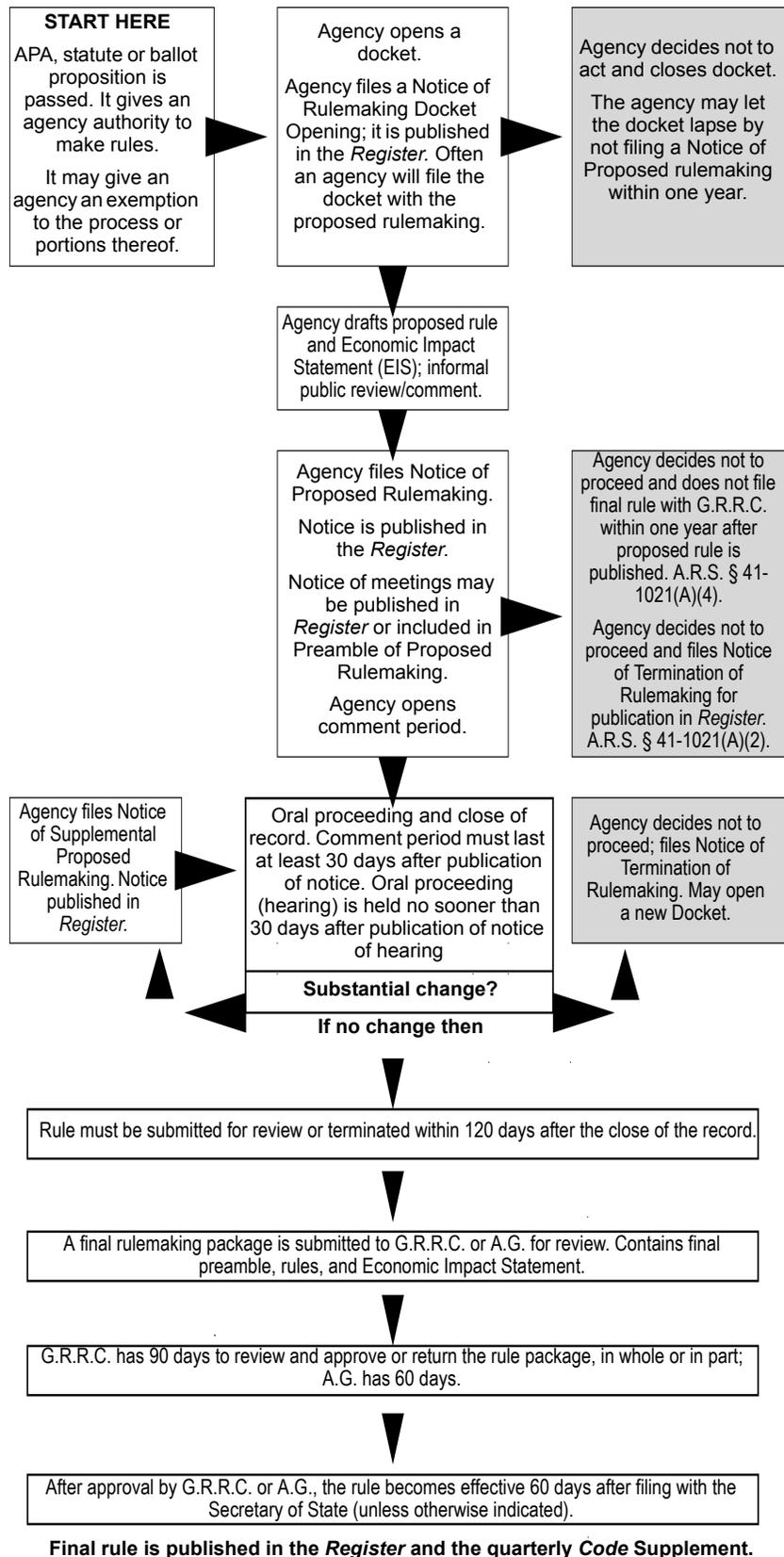
An agency may not have a public meeting scheduled on the Notice of Proposed Rulemaking. If not, you may request that the agency schedule a proceeding. This request must be put in writing within 30 days after the published Notice of Proposed Rulemaking.

Write the agency

Put your comments in writing to the agency. In order for the agency to consider your comments, the agency must receive them by the close of record. The comment must be received within the 30-day comment timeframe following the *Register* publication of the Notice of Proposed Rulemaking.

You can also submit to the Governor's Regulatory Review Council written comments that are relevant to the Council's power to review a given rule (A.R.S. § 41-1052). The Council reviews the rule at the end of the rulemaking process and before the rules are filed with the Secretary of State.

Arizona Regular Rulemaking Process



Definitions

Arizona Administrative Code (A.A.C.): Official rules codified and published by the Secretary of State's Office. Available online at www.azsos.gov.

Arizona Administrative Register (A.A.R.): The official publication that includes filed documents pertaining to Arizona rulemaking. Available online at www.azsos.gov.

Administrative Procedure Act (APA): A.R.S. Title 41, Chapter 6, Articles 1 through 10. Available online at www.azleg.gov.

Arizona Revised Statutes (A.R.S.): The statutes are made by the Arizona State Legislature during a legislative session. They are compiled by Legislative Council, with the official publication codified by Thomson West. Citations to statutes include Titles which represent broad subject areas. The Title number is followed by the Section number. For example, A.R.S. § 41-1001 is the definitions Section of Title 41 of the Arizona Administrative Procedures Act. The "§" symbol simply means "section." Available online at www.azleg.gov.

Chapter: A division in the codification of the *Code* designating a state agency or, for a large agency, a major program.

Close of Record: The close of the public record for a proposed rulemaking is the date an agency chooses as the last date it will accept public comments, either written or oral.

Code of Federal Regulations (CFR): The *Code of Federal Regulations* is a codification of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government.

Docket: A public file for each rulemaking containing materials related to the proceedings of that rulemaking. The docket file is established and maintained by an agency from the time it begins to consider making a rule until the rulemaking is finished. The agency provides public notice of the docket by filing a Notice of Rulemaking Docket Opening with the Office for publication in the *Register*.

Economic, Small Business, and Consumer Impact Statement (EIS): The EIS identifies the impact of the rule on private and public employment, on small businesses, and on consumers. It includes an analysis of the probable costs and benefits of the rule. An agency includes a brief summary of the EIS in its preamble. The EIS is not published in the *Register* but is available from the agency promulgating the rule. The EIS is also filed with the rulemaking package.

Governor's Regulatory Review (G.R.R.C.): Reviews and approves rules to ensure that they are necessary and to avoid unnecessary duplication and adverse impact on the public. G.R.R.C. also assesses whether the rules are clear, concise, understandable, legal, consistent with legislative intent, and whether the benefits of a rule outweigh the cost.

Incorporated by Reference: An agency may incorporate by reference standards or other publications. These standards are available from the state agency with references on where to order the standard or review it online.

Federal Register (FR): The *Federal Register* is a legal newspaper published every business day by the National Archives and Records Administration (NARA). It contains federal agency regulations; proposed rules and notices; and executive orders, proclamations, and other presidential documents.

Session Laws or "Laws": When an agency references a law that has not yet been codified into the Arizona Revised Statutes, use the word "Laws" is followed by the year the law was passed by the Legislature, followed by the Chapter number using the abbreviation "Ch.," and the specific Section number using the Section symbol (§). For example, Laws 1995, Ch. 6, § 2. Session laws are available at www.azleg.gov.

United States Code (U.S.C.): The Code is a consolidation and codification by subject matter of the general and permanent laws of the United States. The Code does not include regulations issued by executive branch agencies, decisions of the federal courts, treaties, or laws enacted by state or local governments.

Acronyms

A.A.C. – *Arizona Administrative Code*

A.A.R. – *Arizona Administrative Register*

APA – *Administrative Procedure Act*

A.R.S. – *Arizona Revised Statutes*

CFR – *Code of Federal Regulations*

EIS – *Economic, Small Business, and Consumer Impact Statement*

FR – *Federal Register*

G.R.R.C. – *Governor's Regulatory Review Council*

U.S.C. – *United States Code*

About Preambles

The Preamble is the part of a rulemaking package that contains information about the rulemaking and provides agency justification and regulatory intent.

It includes reference to the specific statutes authorizing the agency to make the rule, an explanation of the rule, reasons for proposing the rule, and the preliminary Economic Impact Statement.

The information in the Preamble differs between rulemaking notices used and the stage of the rulemaking.



NOTICES OF PROPOSED RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Proposed Rulemakings.

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same *Register* issue.

When an agency files a Notice of Proposed Rulemaking under the Administrative Procedure Act (APA), the notice is published in the *Register* within three weeks of filing. See the publication schedule in the back of each issue of the *Register* for more information.

Under the APA, an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule (A.R.S. §§ 41-1013 and 41-1022).

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency that promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #10 for the close of record and information related to public hearings and oral comments.

NOTICE OF PROPOSED RULEMAKING

TITLE 10. LAW

CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION

[R17-199]

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R10-4-101 | Amend |
| R10-4-102 | Amend |
| R10-4-103 | Amend |
| R10-4-104 | Amend |
| R10-4-106 | Amend |
| R10-4-107 | Amend |
| R10-4-108 | Amend |
| R10-4-109 | Amend |
| R10-4-110 | Amend |
| R10-4-201 | Amend |
| R10-4-202 | Amend |
| R10-4-203 | Amend |
| R10-4-204 | Amend |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statute: A.R.S. § 41-2405(A)(8)
 Implementing statute: A.R.S. § 41-2407
 - 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
 Notice of Rulemaking Docket Opening: 23 A.A.R. 1640, June 16, 2017
 - 4. The agency's contact person who can answer questions about the rulemaking:**
 Name: Larry Grubbs, Program Manager
 Address: Arizona Criminal Justice Commission
 1110 W. Washington St., Ste. 230
 Phoenix, AZ 85007
 Telephone: (602) 364-1154
 Fax: (602) 364-1175
 E-mail: lgrubbs@azcjc.gov
 Web site: www.azcjc.gov
 - 5. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**
 The current rules were made in a rulemaking that went into effect in February 2013. Experience using the rules and feedback from stakeholders indicate that changes are needed to make the rules more effective in achieving their goals. This rulemaking makes the necessary changes.



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

None

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

Not applicable

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

The amount of funds available to provide compensation awards or assistance to crime victims is not increased as a result of this rulemaking. However, the total amount that can be claimed for various compensation benefit expenses is increased. Availability of compensation benefits to certain eligible individuals has also expanded. The following changes may have some economic impact:

- Adding fee expenses as an eligible expense under transportation costs;
- Simplifying work loss benefit calculation to a single weekly maximum;
- Allowing the Commission to approve payment rate schedules for program benefit cost categories; and
- Increasing transportation cost maximum amount to \$2,000.

9. **The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:**

Name: Larry Grubbs, Program Manager
 Address: Arizona Criminal Justice Commission
 1110 W. Washington St., Ste. 230
 Phoenix, AZ 85007
 Telephone: (602) 364-1154
 Fax: (602) 364-1175
 E-mail: lgrubbs@azcjc.gov
 Web site: www.azcjc.gov

10. **The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

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

Date: Thursday, December 7, 2017
 Time: 9:30 a.m.
 Location: 1110 W. Washington, Suite 250
 Phoenix, AZ 85007

11. **All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

None

a. **Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

The rules require no permit.

b. **Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

The Federal Crime Victims Fund (the Fund) was established by the Victims of Crime Act (VOCA) of 1984. The Fund is financed by fines and penalties paid by convicted federal offenders. The Fund provides grant funding to the states for use in implementing state victim assistance and victim compensation programs. A state does not receive funding unless the state meets certain minimal criteria. Arizona receives funds under this act.

c. **Whether a person submitted an analysis to the agency that compares the rule's impact of the competitive-ness of business in this state to the impact on business in other states:**

No analysis was submitted.

12. **A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

None

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

TITLE 10. LAW

CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION

ARTICLE 1. CRIME VICTIM COMPENSATION PROGRAM

| | |
|------------|----------------------------|
| Section | |
| R10-4-101. | Definitions |
| R10-4-102. | Administration of the Fund |
| R10-4-103. | Statewide Operation |



| | |
|------------|--|
| R10-4-104. | Operational Unit Requirements |
| R10-4-106. | Prerequisites for a Compensation Award |
| R10-4-107. | Submitting a Claim |
| R10-4-108. | Compensation Award Criteria |
| R10-4-109. | Hearing; Request for Rehearing |
| R10-4-110. | State-level Claim Review |

ARTICLE 2. CRIME VICTIM ASSISTANCE PROGRAM

Section

| | |
|------------|--------------------------------|
| R10-4-201. | Definitions |
| R10-4-202. | Administration of the Fund |
| R10-4-203. | Grant Eligibility Requirements |
| R10-4-204. | Services |

ARTICLE 1. CRIME VICTIM COMPENSATION PROGRAM

R10-4-101. Definitions

In this Article:

1. "Board" means the Crime Victim Compensation Board of an operational unit.
2. "Claim" means an application for compensation submitted under this Article.
3. "Claimant" means a natural person who files a claim.
4. "Collateral source" means a source of compensation for economic loss that a claimant received or is accessible to and obtainable by the claimant or that is payable to or on behalf of the victim. Collateral source includes the following sources of compensation:
 - a. The perpetrator or a third party responsible for the perpetrator's actions;
 - b. The United States government or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states, unless:
 - i. The law providing for the compensation makes the compensation excess or secondary to benefits under this Article, or
 - ii. The compensation is made with federal funds granted under 42 U.S.C. 10602;
 - c. Social Security, Medicare, or Arizona Health Care Cost Containment System payments;
 - d. State-required, insurance for a temporary, non-occupational disability;
 - e. Worker's compensation insurance;
 - f. Wage continuation program of any employer;
 - g. Insurance proceeds payable to cover a specific compensable cost due to criminally injurious conduct ~~or an act of international terrorism~~;
 - h. A contract providing for prepaid hospital and other health care services or disability benefits; and
 - i. A gift, devise, or bequest to cover a specific compensable cost.
5. "Commission" means the Arizona Criminal Justice Commission, as established by A.R.S. § 41-2404.
6. "Compensable cost" means an economic loss for which a compensation award is allowed under this Article.
7. "Compensation award" means a payment made to a claimant under the standards at R10-4-108.
8. "Crime scene cleanup expense" means the reasonable and customary cost for:
 - a. Removing or attempting to remove bodily fluids, dirt, stains, and other debris that result from criminally injurious conduct ~~or act of international terrorism~~ occurring within a residence or the surrounding curtilage;
 - b. Repairing or replacing exterior doors, locks, or windows damaged as a direct result of criminally injurious conduct ~~or act of international terrorism~~ occurring within a residence or the surrounding curtilage.
9. "Criminally injurious conduct" means conduct that:
 - a. Constitutes a crime as defined by state or federal law regardless of whether the perpetrator of the conduct is apprehended, charged, or convicted;
 - b. Poses a substantial threat of physical injury, mental distress, or death; and
 - c. Is punishable by fine, imprisonment, or death, or would be punishable but the perpetrator of the conduct lacked the capacity to commit the crime under applicable laws.
10. "Derivative victim" means:
 - a. The spouse, child, parent, stepparent, stepchild, sibling, grandparent, grandchild, or guardian of a victim who died as a result of criminally injurious conduct ~~or an act of international terrorism~~;
 - b. A child born to a victim after the victim's death;
 - c. A person living in the household of a victim who died as a result of criminally injurious conduct ~~or act of international terrorism~~, in a relationship determined by the Board to be substantially similar to a relationship listed in subsection (10)(a);
 - d. A member of the victim's family who witnessed the criminally injurious conduct ~~or act of international terrorism~~ or who discovered the scene of the criminally injurious conduct ~~or act of international terrorism~~;
 - e. A natural person who is not related to the victim but who witnessed the criminally injurious conduct ~~or act of international terrorism~~ or discovered the scene of the criminally injurious conduct ~~or act of international terrorism~~; or
 - f. A natural person whose own mental health counseling and care or presence during the victim's mental health counseling and care is ~~required~~ recommended for the successful treatment of the victim.
11. "Durable medical equipment" means an appliance, apparatus, device, or product that:
 - a. Is medically necessary to treat an injury or condition resulting from criminally injurious conduct ~~or an act of international terrorism~~;
 - b. Improves the function of an injured body part or delays deterioration of a patient's physical condition;



- c. Is primarily and customarily used to serve a medical purpose rather than primarily for transportation, comfort, or convenience; and
- d. Provides the medically appropriate level of performance and quality for the medical injury or condition present.
- 12. "Economic loss" means financial detriment resulting from medical expense, mental health counseling and care expense, crime scene cleanup expense, funeral expense, or work loss.
- 13. "Fund" means ~~the Victim Compensation and Assistance Fund established by A.R.S. § 41-2407~~ all State, Federal, and jurisdiction financial resources dedicated to the compensation program through statute, this chapter, or federal grant award.
- 14. "Funeral expense" means a reasonable and customary cost, such as those listed on the Statement of Funeral Goods and Services Selected required under A.A.C. R4-12-307, incurred as a direct result of a victim's funeral, cremation, Native American ceremony, or burial.
- 15. "Good cause" means a reason that the Board determines is substantial enough to afford a legal excuse.
- 16. "Inactive claim" means a claim for which no compensation award is made for 12 consecutive months.
- 17. "Incident of criminally injurious conduct" means all criminal actions that are related to or dependent upon each other regardless of the time involved in perpetrating the actions, number of persons perpetrating the actions, or the number of crimes with which the perpetrator is or could be charged.
- ~~18. "International terrorism" has the meaning prescribed in 18 U.S.C. 2331.~~
- ~~19-18.~~ "Jurisdiction" means any county in this state.
- ~~20-19.~~ "Medical expense" means a reasonable and customary cost for medical care provided to a victim due to a physical injury, mental health condition, or medical condition that is a direct result of criminally injurious conduct ~~or an act of international terrorism.~~
- ~~21-20.~~ "Mental distress" means a substantial disorder of emotional processes, thought, or cognition that impairs judgment, behavior, or ability to cope with the ordinary demands of life.
- ~~22-21.~~ "Mental health counseling and care expense" means a reasonable and customary cost to assess, diagnose, and treat a victim's or derivative victim's mental distress resulting from criminally injurious conduct ~~or an act of international terrorism.~~
- ~~23-22.~~ "Minimum wage standard" means the uniform minimum wage payable in Arizona under federal or state law, whichever is greater.
- ~~24-23.~~ "Operational unit" means a public or private agency authorized by the Commission to receive, evaluate, and present to the Board a claim.
- ~~25-24.~~ "Program" means the Crime Victim Compensation Program.
- ~~26-25.~~ "Proximate cause" means an event sufficiently related to criminally injurious conduct ~~or act of international terrorism~~ to be held the cause of the criminally injurious conduct ~~or act of international terrorism.~~
- ~~27-26.~~ "Reasonable and customary" means the normal charge within a specific geographic area for a specific service by a provider of a particular level of experience or expertise.
- ~~28-27.~~ "Resident" means a natural person who is domiciled in Arizona or is in Arizona for other than a temporary or transitory purpose.
- ~~29-28.~~ "Subrogation" means the substitution of the state or an operational unit in place of a claimant to enforce a lawful claim against a collateral source to recover any part of a compensation award made to the claimant using funds of the state or operational unit.
- ~~30-29.~~ "Total and permanent disability" means a physical or mental condition that the Board finds is a proximate result of criminally injurious conduct ~~or act of international terrorism~~ and:
 - a. Produces a significant and sustained reduction in the victim's former mental or physical abilities dramatically altering the victim's ability to interact with others and carry on normal functions of life;
 - b. Lessens the victim's ability to work to a material degree; or
 - c. Causes a physical or neurophysical impairment from which no fundamental or marked improvement in the victim's crime-related condition can reasonably be expected.
- ~~31-30.~~ "Transportation costs" means a travel expense that may be reimbursed to a claimant as follows:
 - a. Mileage, calculated at the rate established by:
 - i. The operational unit, or
 - ii. The state if the operational unit has not established a mileage rate;
 - b. Fare or fee expenses; and
 - c. Vehicle rental at the cost specified in the rental agreement.
- ~~32-31.~~ "Victim" means a natural person who suffers a physical injury or medical condition, mental distress, or death as a direct result of:
 - a. Criminally injurious conduct,
 - ~~b. An act of international terrorism,~~
 - ~~e. b.~~ The person's good faith effort to prevent criminally injurious conduct ~~or an act of international terrorism,~~ or
 - ~~d. c.~~ The person's good faith effort to apprehend a person suspected of engaging in criminally injurious conduct ~~or an act of international terrorism.~~
- ~~33-32.~~ "Work loss" means a reduction in income from:
 - a. Work that a victim or derivative victim would have performed if the victim had not been a victim; and
 - b. Social Security or Supplemental Security Income that a victim would have received or from which a derivative victim would have ~~benefitted~~ benefitted if the victim had not been killed.

R10-4-102. Administration of the Fund

- A. The Commission shall ~~deposit~~ include in the Fund all funds ~~received under A.R.S. § 12-116.01 and any other funds~~ received for compensating a claimant under this Chapter.
- B. The Commission shall designate one operational unit for a jurisdiction or jurisdictions to receive an allocation from the Fund each state fiscal year.



- C. The Commission shall distribute a portion of the Fund to each operational unit for expenditure by the Board. The Commission shall distribute the funds using ~~a an allocation formula that approved by the Commission, determines annually using:~~
- ~~1. A base amount for each operational unit;~~
 - ~~2. An analysis of the prior year's claim activity;~~
 - ~~3. The share of population of each jurisdiction; and~~
 - ~~4. The share of crime of each jurisdiction.~~
- D. The Commission shall reserve the lesser of \$50,000 or 10 percent of the Fund to be used in the event of an unforeseen increase of victimization that causes an operational unit for a particular jurisdiction to lack the funds needed to provide compensation.
- E. If there is an unforeseen increase in victimization in a particular jurisdiction, the Commission shall designate an additional operational unit to accept claims from that jurisdiction or make a compensation award based on the criteria established by R10-4-108.
- F. If, at the end of a fiscal year, an operational unit has unexpended funds received from the Commission, the operational unit shall return the funds to the Commission within 90 days after the end of the fiscal year. The Commission shall deposit the returned funds in the Fund for use in the next fiscal year.
- G. Funds collected by an operational unit through subrogation or restitution may be retained by the operational unit to the extent authorized by the Commission and shall be used to pay compensation awards based on the criteria established by R10-4-108.
- ~~H. An operational unit that receives additional funds for victim compensation shall submit a quarterly, written report to the Commission. The operational unit shall include in the report the amount of additional funds received and distributed to compensate victims or claimants. The Commission shall use the information in the written report to apply for federal matching funds. If matching funds are received, the Commission shall forward the matching funds to the appropriate operational unit.~~
- ~~H.H.~~ An operational unit shall use funds to pay administrative costs only to the extent authorized by the Commission.
- I. An operational unit shall pay approved compensation program benefit expenses using benefit category cost rate schedules approved by the Commission. If the Commission has not approved a cost rate schedule for a benefit category, or if an eligible benefit cost is not covered by the approved rate schedule, the operational unit may negotiate a reasonable and customary cost with the service provider for the approved benefit expense.

R10-4-103. Statewide Operation

For any jurisdiction not served by an operational unit, the Commission shall operate a program in accordance with this Article, designate another operational unit as described in R10-4-104, or provide for a program by contract.

R10-4-104. Operational Unit Requirements

- A. To be designated by the Commission as an operational unit for a jurisdiction, a public or private agency shall submit to the Commission a written request for designation.
- B. The Commission shall designate a public or private agency as the operational unit for a jurisdiction or jurisdictions:
1. Only if the public or private agency agrees not to:
 - a. Use Commission funds or federal funds to supplant funds otherwise available to compensate a victim or claimant;
 - b. Make a distinction between a resident and a non-resident in evaluating a claim; and
 - c. Make a distinction in evaluating a claim relating to a federal crime that occurs in Arizona and one relating to a state crime; and
 2. Only if the public or private agency agrees to:
 - a. Forward to the Board a claim relating to an incident of criminally injurious conduct ~~or an act of international terrorism~~ occurring in the public or private agency's jurisdiction or jurisdictions;
 - b. Forward to the Board a claim made by or on behalf of a resident of the public or private agency's jurisdiction or jurisdictions who is a victim or derivative victim of an incident of criminally injurious conduct ~~or an act of international terrorism~~ occurring in another state, the District of Columbia, Puerto Rico, or any other possession or territory of the United States that does not have a crime victim compensation program that meets the requirements of 42 U.S.C. 10602(b);
 - c. Forward to the Board a claim made by or on behalf of a resident of the public or private agency's jurisdiction or jurisdictions who is a victim or derivative victim of an incident of criminally injurious conduct ~~or an act of international terrorism~~ occurring outside of the United States in an area without ~~a an accessible~~ crime compensation program;
 - d. Notify the Commission of any change in the public or private agency's program procedures or program policies before the change takes effect and if the change is material, obtain written approval from the Commission before instituting the change;
 - e. ~~Submit a written quarterly financial and program activity reports to the Commission, on a form provided in a format required by the Commission, and at a frequency established annually by the Commission; and provide detailed information regarding the expenditure of funds received from the Commission and those required as a match for funds received from the Commission;~~
 - f. Provide an application form to a claimant;
 - g. Comply with all civil rights requirements;
 - h. Ensure that each claim is investigated and substantiated before forwarding the claim to the Board for a compensation award; ~~and~~
 - i. Monitor a compensation award to ensure that amounts paid are consistent with this Article.
- C. If more than one agency requests to be designated by the Commission as an operational unit for a jurisdiction, the Commission shall designate the agency that it determines is better able to evaluate claims and manage the expenditure of public funds. The Commission shall give preference to a public agency if both a public and private agency request designation.

R10-4-106. Prerequisites for a Compensation Award

- A. The Board shall make a compensation award only if it determines that:
1. ~~Criminally injurious conduct or an act of international terrorism.~~



- a. Occurred in Arizona; or
- b. Occurred outside of Arizona in an area without ~~a~~ an accessible crime compensation program and affected a resident;
- 2. The criminally injurious conduct ~~or act of international terrorism~~ directly resulted in the victim’s physical injury, mental distress, medical condition, or death;
- 3. The victim of the criminally injurious conduct ~~or act of international terrorism~~ or a person who submits a claim regarding criminally injurious conduct ~~or an act of international terrorism~~ was not:
 - a. The perpetrator, an accomplice of the perpetrator, or a person who encouraged or in any way participated in or facilitated the criminally injurious conduct ~~or act of international terrorism~~ that ~~directly resulted in the victim’s physical injury, mental distress, medical condition, or death~~ is the subject of the claim;
 - b. ~~Serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough at the time of the criminally injurious conductor act of international terrorism that directly resulted in the victim’s physical injury, mental distress, medical condition, or death; At the time of the criminally injurious conduct that is the subject of the claim:~~
 - i. Serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough; or
 - ii. Incarcerated in any detention facility awaiting criminal sentencing or disposition.
 - c. ~~Escaped from serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough at the time of the criminally injurious conductor act of international terrorism that directly resulted in the victim’s physical injury, mental distress, medical condition, or death; At the time of claim submission to the operational unit for a jurisdiction:~~
 - i. Escaped from serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough;
 - ii. Convicted of a federal crime and delinquent in paying a fine, monetary penalty, or restitution imposed for the offense if the U.S. Attorney General and the Director of the Administrative Office of the U.S. Courts have issued a written determination that the entities administering federal victim compensation programs have access to an accurate and efficient criminal debt payment tracking system; or
 - iii. Convicted of a state crime and delinquent in paying a fine, monetary penalty, or restitution imposed for the crime if the delinquency is identified by the Arizona Administrative Office of the Courts or the Clerk of the Superior Court.
 - d. Wanted in Arizona on an active warrant, if warrant status is discovered anytime following submission of the claim.
- 4. The criminally injurious conduct ~~or act of international terrorism~~ was reported to an appropriate law enforcement authority within 72 hours after its discovery;
- 5. The victim, derivative victim, or claimant cooperated with law enforcement agencies;
- 6. The victim, derivative victim, or claimant incurred economic loss as a direct result of the criminally injurious conduct ~~or act of international terrorism~~ that is not compensable by a collateral source; and
- 7. A claim, as described in R10-4-107, was submitted to the operational unit within two years after discovery of the criminally injurious conduct ~~or act of international terrorism~~.
- B. The Board shall extend the time limits under subsections (A)(4) and (A)(7) if the Board determines there is good cause for a delay.
- C. If a victim died as a result of criminally injurious conduct ~~or act of international terrorism~~, the ~~requirement~~ requirements under ~~subsection (A)(3)(e) subsections (A)(3)(c)(ii), (A)(3)(c)(iii), and (A)(3)(d)~~ is are waived for the deceased victim. Expenses incurred by the deceased victim and eligible claimants may be covered.
- D. If the Board determines that a compensation award does not solely benefit a claimant who is delinquent under ~~subsection (A)(3)(e) subsections (A)(3)(c)(ii) and (A)(3)(c)(iii)~~, the ~~requirement~~ requirements under ~~subsection (A)(3)(e) subsections (A)(3)(c)(ii) and (A)(3)(c)(iii)~~ may be waived for:
 - 1. A claimant who is the parent or legal guardian of a minor victim of criminally injurious ~~conduct or an act of international terrorism~~; or
 - 2. A compensation award for expenses under R10-4-108(C)(3).

R10-4-107. Submitting a Claim

- A. If the prerequisites in R10-4-106 are met, a natural person is eligible to submit a claim if the person is:
 - 1. A victim;
 - 2. A derivative victim;
 - 3. A person authorized to act on behalf of a victim or a deceased victim’s dependent; or
 - 4. A person who assumed an obligation for or paid an expense directly related to a victim’s economic loss.
- B. If a person is eligible under subsection (A) to submit a claim regarding more than one incident of criminally injurious conduct ~~or act of international terrorism~~, the person shall submit a separate claim regarding each incident of criminally injurious conduct ~~or act of international terrorism~~.
- C. If more than one person is eligible under subsection (A) to submit a claim regarding an incident of criminally injurious conduct ~~or act of international terrorism~~, each person shall submit a separate claim.
- D. To apply for a compensation award, a person who is eligible under subsection (A) shall submit a claim, using a form that is available from the Commission, to the operational unit for the jurisdiction in which the incident of criminally injurious conduct occurred or to the operational unit for the jurisdiction in which a victim lives if the incident of criminally injurious conduct ~~is an act of international terrorism or~~ occurred in an area without ~~a~~ an accessible victim compensation program. The claimant shall provide the following:
 - 1. About the victim:
 - a. Full name,
 - b. Residential address,
 - c. Gender,
 - d. Date of birth,
 - e. Residential and work telephone numbers,
 - f. Statement of whether the victim is deceased,
 - g. Ethnicity,
 - h. Statement of whether the victim is a resident, and



- i. Statement of whether the victim is disabled;
 2. About the claimant if the claimant is not the victim:
 - a. Full name;
 - b. Residential address;
 - c. Gender;
 - d. Date of birth;
 - e. Residential and work telephone numbers;
 - f. Relationship to the victim; and
 - g. If there are multiple victims or derivative victims of an incident of criminally injurious conductor act of international terrorism, the name, residential address, and date of birth of each, and for derivative victims, the relationship to the victim;
 3. About the crime:
 - a. Type of crime;
 - b. Statement of whether the crime was related to domestic violence;
 - c. Statement of whether the crime was a federal crime;
 - d. Date on which crime was committed;
 - e. Date on which crime was reported to law enforcement authorities;
 - f. Name of law enforcement agency to which the crime was reported;
 - g. Name of law enforcement officer to whom the crime was reported;
 - h. Law enforcement report number;
 - i. Location of crime;
 - j. Name of perpetrator, if known; and
 - k. Brief description of the crime and resulting injuries;
 4. About a civil lawsuit:
 - a. Statement of whether the claimant has or will file a civil lawsuit related to the crime; and
 - b. If the answer to subsection (D)(4)(a) is yes, the name, address, and telephone number of the claimant's attorney;
 5. About benefits from collateral sources:
 - a. List of the benefits the claimant has received since the incident of criminally injurious conductor act of international terrorism or is entitled to receive; and
 - b. For each benefit identified:
 - i. Type of benefit,
 - ii. Contact address and telephone number; and
 - iii. Claimant's identification or policy number;
 6. About the economic loss for which compensation is requested:
 - a. Medical expenses. A statement of whether the claim includes medical expenses and if so, the name, address, telephone number, account number, and date of service for each provider;
 - b. Mental health counseling and care expenses. A statement of whether the claim includes mental health counseling and care expenses and if so, the name, address, telephone number, account number, and date of service for each provider;
 - c. Work loss expenses. A statement of whether the claim includes work loss expenses and if so, the date on which the claimant was first unable to work, date on which the claimant returned to work, total time lost from work, hourly rate of pay, number of hours worked each week, number of hours worked each day, name, address, and telephone number of employer, and name of supervisor;
 - d. Funeral expenses. A statement of whether the claim includes funeral expenses and if so, the name, address, and telephone number of the provider and the amount paid; and
 - e. Crime scene cleanup expenses. A statement of whether the claim includes crime scene cleanup expenses and if so, the name, address, and telephone number of the provider and the amount paid;
 - f. Transportation costs. A statement of whether the claim includes transportation costs and if so, the reason for travel as listed under R10-4-108(C)(6) and if mileage is claimed, the date and mileage of each trip; and
 7. The claimant's dated signature:
 - a. Certifying that the claimant is eligible to submit a claim and that the information provided is true and correct to the best of the claimant's knowledge;
 - b. Subrogating to the state and operational unit the claimant's right to receive benefits from a collateral source;
 - c. Authorizing the release of confidential information necessary to administer the claim; and
 - d. Authorizing the release to the Program of protected health information that relates to care provided as a result of the criminally injurious conductor act of international terrorism and is necessary to verify the claim.
- E. A claimant shall ~~attach~~ submit the following in addition to the claim form submitted under subsection (D):
 1. A copy of all bills, contracts, receipts, and insurance statements relating to each expense claimed under subsection (D)(6); ~~and~~
 2. If work loss expenses are claimed, a signed statement on official letterhead:
 - a. From the claimant's employer verifying the information provided under subsection (D)(6)(c); and
 - b. If applicable, from the physician or mental health care provider indicating the claimant:
 - i. Was unable to work as a result of being a victim or derivative victim, the length of time the claimant was unable to work, and the date on which the claimant was or will be able to return to work; or
 - ii. Is totally and permanently disabled.
 3. Any documentation required by the operational unit to fully investigate and substantiate claimant eligibility and all claim expense requests.



R10-4-108. Compensation Award Criteria

- A. The Board shall meet at least every 60 days to decide, based on the findings made by the operational unit, the eligibility of the claimant, whether to make a compensation award, and ~~if so,~~ the terms and amount of the any compensation award. The Board shall make a decision within 60 days after the operational unit receives a complete and actionable claim under R10-4-107 unless good cause for delay exists. The Board shall inform the claimant in writing within 10 business days of the Board's decision.
- B. The Board shall not make a compensation award unless it determines that the prerequisites in R10-4-106 are met.
- C. The Board shall make a compensation award only for the following:
 - 1. Reasonable and customary medical expenses due to the victim's physical injury, medical condition, mental health condition, or death.
 - a. The Board shall include the following as a medical expense:
 - i. Repair of damage to a victim's prosthetic device, eyeglasses or other corrective lenses, or a dental device; and
 - ii. Durable medical equipment required for treatment of the victim.
 - b. The Board shall not include as a medical expense ~~a charge for a private room in a hospital, clinic, convalescent home, nursing care facility, or other institution that provides medical services unless the Board determines that the private room is medically necessary;~~
 - i. A charge for a private room in a hospital, clinic, convalescent home, nursing care facility, or other institution that provides medical services unless the Board determines that the private room is medically necessary; and
 - ii. Any drug, substance, or chemical included under Schedule I of the Federal Controlled Substances Act 21 U.S.C. § 812(c).
 - 2. Reasonable and customary work loss expenses for:
 - a. A victim whose ability to work is reduced due to physical injury, mental distress, or medical condition resulting from the ~~criminally injurious conduct or act of international terrorism;~~
 - b. ~~A victim or derivative victim to make a medical or mental health counseling and care visit or attend a court proceeding directly related to the criminally injurious conduct or act of international terrorism;~~
 - b. A victim or derivative victim to:
 - i. Make a medical or mental health counseling and care visit; or
 - ii. Attend a criminal court proceeding, clemency hearing, parole hearing, or execution directly related to the criminally injurious conduct.
 - c. A derivative victim listed in R10-4-101(10)(a) through (c) if the Board determines the death resulted in a loss of support from the victim to the derivative victim;
 - d. ~~A parent or guardian of a minor victim to transport or accompany the minor victim to a medical or mental health counseling and care visit or court proceeding directly related to the criminally injurious conduct or act of international terrorism;~~
 - d. A parent or guardian of a minor victim to transport or accompany the minor victim to:
 - i. A medical or mental health counseling and care visit; or
 - ii. A criminal court proceeding, clemency hearing, parole hearing, or execution directly related to the criminally injurious conduct.
 - e. A derivative victim to make funeral arrangements for a deceased victim, or tend to the affairs of a deceased victim ~~if the derivative victim made the funeral arrangements or tended to the affairs of the deceased victim;~~ or
 - f. A family member or guardian or a person living in the victim's household in a relationship similar to those listed in R10-4-101(10)(a) to provide non-skilled nursing care for the victim that is required medically necessary as a result of the ~~criminally injurious conduct or act of international terrorism;~~
 - 3. Reasonable and customary funeral expenses. ~~Expenses~~ Personal attendee expenses for clothing, travel, lodging, food, or per diem to attend a victim's funeral, Native American ceremony, or burial are not reasonable and customary funeral expenses and shall not be included in a claim for a compensation award;
 - 4. Reasonable and customary mental health counseling and care expenses due to a victim's or derivative victim's mental distress resulting from the ~~criminally injurious conduct or act of international terrorism~~ if:
 - a. The mental health counseling and care is provided by an individual who:
 - i. Is licensed for independent practice by the Board of Behavioral Health Examiners,
 - ii. Is a behavioral health professional as defined at A.A.C. R9-20-101, or
 - ~~iii. Is a behavioral health technician as defined at A.A.C. R9-20-101 and employed by an agency licensed by the Department of Health Services; or~~
 - iv. Is authorized to perform mental health counseling and care by the laws of a federally recognized tribe; and
 - b. The mental health counseling and care expenses do not include a charge for a private room in a hospital, clinic, convalescent home, nursing care facility, or any other institution that provides medical services unless the Board determines that the private room is medically necessary;
 - 5. Reasonable and customary crime scene cleanup expenses due to a victim's homicide, aggravated assault, or sexual assault; and
 - 6. Reasonable and customary transportation costs related to:
 - a. Obtaining medical care as defined in subsection (C)(1),
 - b. Obtaining mental health counseling and care as defined in subsection (C)(4),
 - c. ~~Attending~~ A victim or derivative victim attending a criminal court proceeding, clemency hearing, parole hearing, or execution directly related to the incident of criminally injurious conduct ~~or act of international terrorism that is the subject of the claim,~~
 - d. The victim obtaining a medical forensic examination or participating in a medical forensic interview, and
 - e. Responding to a substantiated threat to the safety or well-being of the victim or a derivative victim listed in R10-4-101(10)(d).
- D. The Board shall not make a compensation award to a claimant that exceeds:



1. Twenty-five thousand dollars for all economic loss submitted under a claim as a result of an incident of criminally injurious conduct ~~or act of international terrorism~~;
2. The amount available to the operational unit and not committed to other compensation awards at the time the Board makes the compensation award determination;
3. For medical expenses for a victim, the maximum amount specified in subsections (D)(1) and (D)(2).
4. ~~3.~~ For work loss expenses:
 - a. Work loss expenses under subsections (C)(2)(a), ~~and (C)(2)(e)~~ (C)(2)(b), (C)(2)(d), (C)(2)(e), and (C)(2)(f), are limited to an amount per calendar week equal to 40 hours at the current minimum wage and the maximum amount specified in subsections (D)(1) and (D)(2),
 - b. ~~Work loss expenses under subsections (C)(2)(b) and (C)(2)(d) are limited to an amount per calendar month equal to 40 hours at the current minimum wage and the maximum amount specified in subsections (D)(1) and (D)(2); Loss of support under subsection (C)(2)(c) may be awarded to the maximum allowed under subsections (D)(1) and (D)(2) in a lump sum or periodic payments;~~
 - e. ~~Work loss expenses under subsection (C)(2)(e) are limited to an amount equal to 24 hours at the current minimum wage, and~~
 - d. ~~Work loss expenses under subsection (C)(2)(f) are limited to an amount equal to 160 hours at the current minimum wage;~~
5. ~~4.~~ For mental health counseling and care expenses, \$5,000 per victim or derivative victim;
6. ~~5.~~ For funeral expenses, \$10,000;
7. ~~6.~~ For crime scene cleanup expenses, \$2,000 for cleanup provided by a professional service, of which \$500 may be for crime scene cleanup not provided by a professional service to include only repair or cleanup material costs for one-time use items; and
8. ~~7.~~ For transportation costs, ~~\$1,500~~ \$2,000 per victim or derivative victim paid as reimbursement of actual transportation expenses.
- E. If the Board determines a victim is totally and permanently disabled, the Board may expedite a compensation award for the victim. The Board shall determine the amount of the expedited compensation award to the maximum allowed under subsection (D) and determine whether to provide the amount awarded in a lump sum or periodic payments.
- F. The Board shall deny or reduce a compensation award to a claimant if:
 1. The victim or claimant has recouped or is eligible to recoup the economic loss from ~~a~~ an obtainable and accessible collateral source, ~~including except if the Board determines that use of a collateral source, excluding benefits from a federal or federally financed program, to pay for mental health counseling and care expenses is not in the best interest of the victim or derivative victim, the Board shall not deny or reduce a compensation award for the mental health counseling and care expenses;~~
 2. The Board determines that the victim or claimant earned income from substitute work or unreasonably failed to perform available substitute work; or
 3. The Board determines that the ~~victim's physical injury, medical condition, mental distress, or death~~ incident of criminally injurious conduct that is the subject of the claim was due in substantial part to the victim's:
 - a. Negligence,
 - b. Intentional unlawful conduct that was the proximate cause of the incident of criminally injurious conduct ~~or act of international terrorism~~, or
 - c. Conduct intended to provoke or aggravate that was the proximate cause of the incident of criminally injurious conduct ~~or act of international terrorism~~.
- G. The Board shall deny or reduce a compensation award under subsection (F)(3) in proportion to the degree to which the Board determines the victim is responsible for the ~~victim's physical injury, medical condition, mental distress, or death~~ incident of criminally injurious conduct that is the subject of the claim.
- H. The Board shall deny a compensation award to a claimant if:
 1. The Board determines that the victim or claimant did not cooperate fully with the appropriate law enforcement agency and the failure to cooperate fully was not due to a substantial ~~health~~ medical, mental health, or safety risk. The Board shall use the following criteria to determine whether failure to cooperate fully with law enforcement warrants that a claim be denied:
 - a. The victim or claimant failed to assist in the prosecution of a person who engaged in the criminally injurious conduct ~~or act of international terrorism~~ or failed to appear as a witness for the prosecution;
 - b. The victim or claimant delayed assisting in the prosecution of a suspect and as a result, the suspect of the criminally injurious conduct ~~or act of international terrorism~~ escaped prosecution or the prosecution of the suspect was negatively affected; or
 - c. A law enforcement authority indicates to the Board that the victim or claimant delayed giving information pertaining to the criminally injurious conduct ~~or act of international terrorism~~, failed to appear when requested without good cause, gave false or misleading information, or attempted to avoid law enforcement authorities; ~~or~~.
 2. The Board determines that the victim or claimant knowingly made a false or misleading statement on the claim or in writing on supporting documents submitted to the Board or operational unit.
- I. If there are insufficient funds to make a compensation award, the Board may:
 1. Deny the claim,
 2. Make a partial award and reconsider the claim later during the fiscal year, or
 3. Extend the claim into a subsequent fiscal year.
- J. The Board shall not make a compensation award to pay attorney's fees incurred by a victim or claimant.
- K. The operational unit, in its discretion, may pay a compensation award directly to a claimant or to a provider.
- ~~L.~~ The operational unit may close an inactive claim:
 1. ~~Five years after the claim is submitted for an adult victim or derivative victim except in a homicide case;~~
 2. ~~Ten years after the claim is submitted for a minor victim or derivative victim except in a homicide case; and~~
 3. ~~Fifteen years after the claim is submitted for a homicide victim or derivative victim.~~



R10-4-109. Hearing; Request for Rehearing

- A. If the prerequisites in R10-4-106 are met, the Board shall conduct a hearing regarding a claim submitted under this Article.
- B. The Board shall provide a claimant with at least 10 business days’ notice of a hearing or rehearing.
- C. The Board shall provide written notice of its decision to the claimant within 10 business days after a hearing or rehearing.
- D. The Board shall serve notice of a compensation-award denial or reduction by personal delivery or certified mail to the last known residence or place of business of the person being served. Service is complete upon personal delivery or five days after mailing by certified mail.
- E. The ~~Board~~ operational unit may request a rehearing of a decision by the Board at any time and for any reason under this Article.
- F. A claimant who is aggrieved by a decision of the Board made at a hearing may request a rehearing of the decision within 30 days after the Board serves notice of the decision. A claimant shall request a rehearing in writing and specify the grounds for the request.
- G. A claimant may amend a request for a rehearing of a Board decision at any time before it is ruled on by the Board.
- H. The Board may require additional written explanation of an issue raised in a request for rehearing of a Board decision and may provide for oral argument.
- I. The Board shall grant a rehearing for any of the following reasons materially affecting a claimant’s rights:
 - 1. Irregularity in the proceedings of the Board or its operational unit or any order or abuse of discretion that deprived the claimant of a fair Board decision;
 - 2. Misconduct of the Board, the operational unit, or staff of the operational unit;
 - 3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original Board meeting;
 - 4. Error in the admission or rejection of evidence or other error of law occurring at the Board meeting; and
 - 5. The decision is not justified by the evidence or is contrary to law.
- J. When a rehearing is granted, the Board shall ensure that the rehearing covers only the matters specified under subsection (I) that materially affect a claimant’s rights.
- K. The Board may affirm or modify a decision on all or part of the issues for any of the reasons listed in subsection (I). An order modifying a decision shall specify with particularity the grounds for the order.

R10-4-110. State-level Claim Review

- A. A claimant who is aggrieved by a decision of a Board made at a rehearing under R10-4-109 may request a state-level claim review of the decision within 30 days after the Board serves notice of the decision. The claimant shall request a state-level claim review in writing, specify the grounds for the request, and submit the request directly to the Commission.
- B. The State Claim Review Panel shall serve as the decision-making body for state-level claim reviews. The State Claim Review Panel shall consist of the following members:
 - 1. The Arizona Criminal Justice Commission Crime Victim Services Program Manager,
 - 2. A representative of the Office of the Attorney General, and
 - 3. A Board chair from an operational unit that is not the operational unit that originally heard the claim being reviewed.
- C. The State Claim Review Panel shall meet as needed to hear claimant requests for a state-level claim review. The State Claim Review Panel shall complete a state-level claim review within 30 days after receiving the written request required under subsection (A).
- D. A claimant may amend a request for a state-level claim review of a Board decision at any time before it is ruled on by the State Claim Review Panel.
- E. When a state-level claim review is granted, the State Claim Review Panel shall ensure that the review:
 - 1. Considers only evidence previously presented to the Board, and
 - 2. Decides only whether the Board’s decision was consistent with the standards in this Article.
- F. The State Claim Review Panel may affirm or overturn a decision made by a Board.
- G. A decision by the State Claim Review Panel is final. If the Panel overturns a decision made by a Board related to:
 - 1. Eligibility, the operational unit where the claim originated shall proceed with any further action related to the claim; or
 - 2. An economic loss, the operational unit where the claim originated shall pay the economic loss using compensation funds available to the operational unit.
- H. The State Claim Review Panel shall provide written notice of the Panel’s decision to the claimant and the operational unit that originally heard the claim within 10 business days after the state-level claim review.

ARTICLE 2. CRIME VICTIM ASSISTANCE PROGRAM

R10-4-201. Definitions

In this Article:

- 1. “Commission” means the Arizona Criminal Justice Commission, established by A.R.S. § 41-2404.
- 2. “Crime” means conduct, completed or preparatory, committed in Arizona, that is a misdemeanor or felony under state law regardless of whether the perpetrator of the conduct is convicted. Conduct arising out of owning, maintaining, or operating a motor vehicle, aircraft, or water vehicle is not a crime unless the person engaged in the conduct acts intentionally, knowingly, recklessly, or with criminal negligence, to cause physical injury, threat of physical injury, or death.
- 3. “Financial support from other sources” means that at least ~~one-fourth~~ one-fifth of the budget for a victim assistance program is from sources, including in-kind contributions, other than the Fund.
- 4. “Fund” means the Victim Compensation and Assistance Fund established by A.R.S. § 41-2407.
- 5. “Immediate family” means spouse, child, stepchild, parent, stepparent, sibling, stepbrother, stepsister, grandparent, grandchild, or guardian.
- 6. “In-kind contribution” means a non-cash ~~donation~~ source of program support to which a cash value can be given.
- 7. “Subrogation” means the substitution of the state or a victim assistance program in the place of a victim to enforce a lawful claim against a third party to recover the cost of services to the victim paid for with financial support from the Fund or other sources.



8. “Substantial financial support from other sources” means that at least half of the financial support to a victim assistance program is from sources, not including in-kind contributions, other than the Fund.
9. “Victim” means a natural person against whom a crime is perpetrated and the victim’s immediate family.

R10-4-202. Administration of the Fund

- A. The Commission shall deposit in the Fund all funds received ~~under A.R.S. § 31-467.06(B) and 31-411(F) and any other funds received~~ for victim assistance under this Chapter.
- B. The Commission shall make distributions from the Fund through a competitive grant process that complies with A.R.S. § 41-2701 et seq. and ensures statewide distribution when possible and effective and efficient use of the funds.
- C. At least six weeks before an application for a grant from the Fund is due, the Commission shall make a grant application form and instructions available on its web site, which is www.azcjc.gov.
- D. To apply for a grant from the Fund, an authorized official of a public agency or private nonprofit organization that operates a program that meets the standards in R10-4-203 shall complete and submit to the Commission the application form referenced in subsection (C).
- E. The Commission’s grant period coincides with the state’s fiscal year. If funds received from the Commission are unexpended at the end of the grant period, the public agency or private nonprofit organization that received the funds shall return them to the Commission within 30 days after receiving a written request from the Commission. The Commission shall redeposit the unexpended funds in the Fund for use in the next fiscal year.

R10-4-203. Grant Eligibility Requirements

- ~~A.~~ A non-criminal justice governmental agency or private nonprofit organization may apply for and receive a grant from the Commission only if the non-criminal justice governmental agency or private nonprofit organization is approved by a prosecuting attorney’s office or law enforcement agency.
- ~~B.~~ A public agency or private nonprofit organization ~~qualified under subsection (A)~~ may apply for and receive a grant from the Commission if, in addition to the other requirements in this Section, the public agency or private nonprofit organization operates a program project that:
1. Provides services described in R10-4-204 ~~to benefitting victims or addressing victimization~~;
 2. Does not use Commission funds or federal funds to supplant funds otherwise available to the program project for victim assistance;
 3. Uses volunteers effectively and efficiently to provide ~~victim~~ services;
 4. Promotes coordinated public and private efforts to assist victims or address victimization within the community served;
 5. ~~Assists a victim in seeking available victim compensation benefits~~ Increases awareness of, and facilitates access to, available victim compensation benefits; and
 6. Complies with all applicable civil rights laws.
- ~~C.~~ To receive a grant from the Commission, a public agency or private nonprofit organization that operates a ~~program that has existed for at least three years~~ project shall demonstrate to the Commission that the program project:
1. Has ~~substantial financial support from a source other than the Fund~~ financial support from other sources; and
 2. Has a history of providing effective services ~~to victims in accordance with section (A)~~. The Commission shall determine whether the ~~program’s victim project’s~~ services are effective based on:
 - a. ~~The length of time the program has provided victim services~~ Evidence-based outcomes demonstrating project services are benefitting victims or addressing victimization, and
 - b. Whether data indicate program results are achieved in a cost-effective manner.
- ~~D.~~ To receive a grant from the Commission, a public agency or private nonprofit organization that operates a ~~program that has existed for fewer than three years~~ shall demonstrate to the Commission that the ~~program~~:
1. Has ~~financial support from a source other than the Fund~~; and
 2. Is ~~designed to meet a currently unmet need for a specific victim service~~.
- ~~E.~~ C. To receive a grant from the Commission, a public agency or private nonprofit organization shall agree to:
1. Submit to the Commission ~~quarterly~~ quarterly financial reports, on a form provided by the Commission, at a frequency established by the Commission, containing detailed expenditures of funds received from the Commission and matching funds;
 2. ~~Submit an annual report~~ Report project activity to the Commission, on a form provided by the Commission, at a frequency established annually by the Commission, and provide the following information:
 - a. Number of victims served during the reporting period, by type of crime;
 - b. Type of services provided;
 - c. Number of times each service was provided;
 - d. Ethnic background, age, and sex of each victim served;
 - e. Type of assistance provided to victims in obtaining victim compensation;
 - f. Number of times each type of assistance was provided; and
 - g. A narrative assessment of the impact of Commission funds on the program.

R10-4-204. Services

- A. A public agency or private nonprofit organization that receives a grant from the Commission shall ensure that the funds are used to provide only the following victim services or services addressing victimization:
1. Crisis intervention services to meet the urgent emotional or physical needs of a victim. ~~Crisis intervention services may include a 24-hour hotline for counseling or referrals for a victim;~~
 2. Emergency services ~~including such as~~:
 - a. Temporary shelter or relocation for a victim who cannot safely remain in current lodgings;



- b. ~~Petty cash~~ Emergency financial assistance for immediate needs related to transportation, food, shelter, and other necessities; and
- c. Temporary repairs ~~such as to doors, locks, and windows damaged as a result of a crime to prevent the home or apartment from being re-burglarized immediately~~ further victimization;
- 3. Support services, including such as:
 - a. ~~Counseling~~ Assistance dealing with the effects of victimization;
 - b. Assistance dealing with other social services and criminal justice agencies;
 - c. Assistance in replacing, or obtaining the return of property kept as evidence;
 - d. Assistance in dealing with the victim's landlord or employer; and
 - e. Referral to other sources of assistance as needed;
- 4. Court-related services, including such as:
 - a. Direct services or ~~petty cash~~ financial assistance that helps a victim participate in criminal justice proceedings, ~~including transportation to court, such as~~ child care, meals, and parking expenses; and
 - b. Advocate services ~~including such as~~ escorting a victim to criminal justice-related interviews, court proceedings, and assistance in accessing temporary protection services; and
- 5. Notification services, including notifying a victim: such as those found in A.R.S Title 13, Chapter 40, Crime Victims' Rights.
 - a- ~~Of significant developments in the investigation or adjudication of the case;~~
 - b- ~~That a court proceeding, for which the victim has been subpoenaed, has been canceled or rescheduled; and~~
 - e- ~~Of the final disposition of the case.~~
- B. A public agency or private nonprofit organization that receives a grant from the Commission may use the funds to ~~provide:~~
 - 1. ~~Training~~ Provide training for salaried or volunteer staff of ~~criminal justice, social services, mental health, or related agencies, agencies who provide direct services to directly benefitting victims; and~~
 - 2. ~~Printing and distributing brochures or similar announcements~~ Produce educational or outreach materials describing the ~~direct services available, how to obtain program assistance, and volunteer opportunities; and~~
 - 3. Provide training or services focused on preventing initial victimization or further victimization connected to violent crime.
- C. A public agency or private nonprofit organization that receives a grant from the Commission shall ensure that funds are not used for the following:
 - 1. ~~Crime~~ Broad crime prevention efforts, other than those aimed at providing specific ~~emergency help after an individual is victimized~~ services addressing victimization;
 - 2. General public relations programs;
 - 3. Advocacy for a particular legislative or administrative reform;
 - 4. General criminal justice agency improvement; or
 - 5. A ~~program~~ project in which victims are not the primary beneficiaries, or a project not directly addressing victimization;
 - 6. ~~Management training or training for persons who do not provide direct services to a victim; or~~
 - 7. ~~Victim Compensation provided under this Chapter.~~

NOTICE OF PROPOSED RULEMAKING
TITLE 17. TRANSPORTATION
CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES

[R17-179]

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R17-4-501 | Amend |
| R17-4-507 | Repeal |
| R17-4-508 | Amend |
| R17-4-701 | Amend |
| R17-4-702 | Amend |
| R17-4-705 | Amend |
| R17-4-706 | Amend |
| R17-4-707 | Amend |
| R17-4-709 | Amend |
| R17-4-710 | Amend |
| R17-4-712 | Amend |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statutes: A.R.S. §§ 28-366 and 28-5204
 Implementing statutes: A.R.S. §§ 28-3103, 28-3159(A)(3), and 28-3223
 - 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rules:**
 Notice of Rulemaking Docket Opening: 23 A.A.R. 2864, October 13, 2017 (*in this issue*)
 - 4. The agency's contact person who can answer questions about the rulemaking:**
 Name: Candace Olson, Rules Analyst



Address: Government Relations and Policy Development Office
Department of Transportation
206 S. 17th Ave., Mail Drop 140A
Phoenix, AZ 85007

Telephone: (602) 712-4534

E-mail: COlson2@azdot.gov

Web site: <http://www.azdot.gov/about/GovernmentRelations>

5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The Arizona Department of Transportation (ADOT), in partnership with the Arizona Department of Public Safety (DPS), is engaged in rulemaking to incorporate parts of the 2016 edition of the *Code of Federal Regulations* in 17 A.A.C. Chapter 5, Article 2. Both ADOT and DPS rely on federal monies that require the adoption of Federal Motor Carrier Safety and Hazardous Materials Regulations. The incorporation of these parts of the *Code of Federal Regulations* impacts ADOT's rules concerning commercial driver license (CDL) physical qualifications and hazardous materials endorsements (HMEs). ADOT engages in this rulemaking to ensure its rules are consistent and current with federal regulations, including the requirement that a CDL medical exam be performed by only medical examiners listed on the National Registry of Certified Medical Examiners, requiring a medical examiner's certificate be carried for only 15 days after issuance, and incorporating the 2016 version of 49 CFR 1572 for the HMEs.

In addition to updating the federal regulation reference in 17 A.A.C, Chapter 4, Article 7, ADOT is removing unnecessary requirements in R17-4-712 since verification of the U.S. Transportation Security Administration (TSA) approval occurs at time of credential issuance and all transfer applicants will have existing TSA approval and is reformatting subsection (B) to accurately depict the current process of verifying the TSA approval before issuing the CDL with an HME.

ADOT is also repealing R17-4-507; this rule is unnecessary since it is duplicative of language found under A.R.S. §§ 28-3158, 28-3165, and 28-3166.

Additional changes include removing definitions that are not used, updating terminology, ensuring verbiage concerning administrative hearings is consistent, and making minor technical changes to ensure conformity to the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State.

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

ADOT did not review or rely on any study relevant to the rules.

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

Not applicable

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

ADOT anticipates that the economic impact of these rules is minimal and does not expect this rulemaking to create a significant increase in costs or benefits to the agency or to applicants for a CDL or HME since the rulemaking is generally to update information to be consistent with current federal regulations and current program practices. There are no new fees associated with this rulemaking and costs imposed for the HME have decreased from the substantial costs originally needed to get the program implemented. The fee for the TSA HME Security Threat Assessment has decreased from \$94 to \$86.50.

The benefits of this rulemaking include increased public safety, clarity, concise, understandability, and reduction of possibility of confusion for an agency, business, or person. In addition, this rulemaking will keep the state consistent with federal regulations which allows the state to be eligible for federal funds. DPS administers and enforces the Federal Motor Carrier Safety Assistance Program (MCSAP) throughout the State of Arizona. For FY 2017, DPS is able to apply for an estimated \$10,000,000 in total federal funding from FMCSA.

As of July 1, 2017, there are 106,413 CDL holders, 2,010 CDL holders with a HME, and 14,547 CDL holders with dual endorsement of tank and hazardous materials. As of September 7, 2017, there are 19,632 valid (excluded were any credentials that were cancelled, suspended, revoked, expired, marked for deletion, disqualified, and those that indicate the credential holder is deceased) CDL holders who have successfully completed the required TSA HME Security Threat Assessment. There are 189 applicants who did not successfully complete the required TSA HME Security Threat Assessment.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Candace Olson, Rules Analyst

Address: Government Relations and Policy Development Office
Department of Transportation
206 S. 17th Ave., Mail Drop 140A
Phoenix, AZ 85007

Telephone: (602) 712-4534

E-mail: COlson2@azdot.gov

Web site: <http://www.azdot.gov/about/GovernmentRelations>

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

Written comments on the proposed rulemaking should be directed to the person listed in item 4. All comments must be received by



the close of public record at 5:00 p.m. on November 14, 2017. ADOT has scheduled the following oral proceeding for public comments:

- Date: November 14, 2017
- Time: 2:30 p.m.
- Location: 206 S. 17th Ave., Rm. 107
Phoenix, AZ 85007
- Nature: Oral Proceeding/Public Hearing

Pursuant to Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act (ADA), ADOT does not discriminate on the basis of race, color, national origin, age, gender, disability, or limited English proficient. Persons that require a reasonable accommodation based on language or disability should contact ADOT Civil Rights at (602) 712-8946 or civilrightsoffice@azdot.gov. Requests should be made as early as possible to ensure the state has an opportunity to address the accommodation.

Personas que requieren asistencia o una adaptación razonable por habilidad limitada en inglés o discapacidad deben ponerse en contacto con la Oficina de Derechos Civiles de ADOT al (602) 712-8946 or civilrightsoffice@azdot.gov. Las solicitudes deben hacerse tan pronto como sea posible para asegurar que el estado tiene la oportunidad de abordar el alojamiento.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

There are no other matters prescribed by statute applicable to ADOT or to any specific rule or class of rules.

a. Whether the rules require a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

These rules concern certain requirements for applicants of a CDL or HME. A CDL and HME are general permits since the activities and practices authorized by them are substantially similar in nature for all holders. These rules though do not require the issuance of the CDL or HME; that requirement is under 17 A.A.C. Chapter 5, Article 2.

b. Whether a federal law is applicable to the subject of the rules, whether the rules are more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal regulations in 49 CFR 383, 390, 391, and 1572 are applicable to the rules. These rules are in accordance with those federal regulations and are not more stringent.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted to ADOT.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

In R17-4-702: 49 CFR 1572, revised as of October 1, 2016

13. The full text of the rules follows:

**TITLE 17. TRANSPORTATION
CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES**

ARTICLE 5. SAFETY

- Section
- R17-4-501. Definitions
- R17-4-507. ~~Driver License Identification Number~~ Repealed
- R17-4-508. Commercial Driver License Physical Qualifications

ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENT

- Section
- R17-4-701. Definitions
- R17-4-702. Scope
- R17-4-705. Required Testing
- R17-4-706. Fees
- R17-4-707. 60-Day Notice to Apply
- R17-4-709. Determination of Security Threat
- R17-4-710. Requests for Administrative Hearing
- R17-4-712. Transfer Applicant

ARTICLE 5. SAFETY

R17-4-501. Definitions

In addition to the definitions provided under A.R.S. §§ 28-101, 28-3001, 28-3005, and 32-1601, in this Article, unless otherwise specified:

“Adaptation” means a modification of or addition to the standard operating controls or equipment of a motor vehicle.

“Applicant” or “licensee” means a person:



Applying for an Arizona driver license or driver license renewal, or

Required by the Division to complete an examination successfully or to obtain an evaluation.

“Application” means the Division form required to be completed by or for an applicant for a driver license or driver license renewal.

~~“Arizona Driver License Manual” or “manual” means the reference booklet for applicants, issued by the Division, containing non-technical explanations of the Arizona motor vehicle laws.~~

“Aura” means a sensation experienced before the onset of a neurological disorder.

“Commercial ~~Driver License~~ driver license physical qualifications” means driver medical qualification standards for a person licensed in class A, B, or C to operate a commercial vehicle as prescribed under 49 CFR 391, incorporated by reference under R17-5-202 and R17-5-204.

“Director” means the Division Director or the Division Director’s designee.

“Disqualifying medical condition” means a visual, physical, or psychological condition, including substance abuse, that impairs functional ability.

“Division” means the Arizona Department of Transportation, Motor Vehicle Division.

“Evaluation” means a medical assessment of an applicant or licensee by a specialist as defined below to determine whether a disqualifying medical condition exists.

“Examination” means testing or evaluating an applicant’s or licensee’s:

Ability to read and understand official traffic control devices,

Knowledge of safe driving practices and the traffic laws of this state, and

Functional ability.

“Functional ability” means the ability to operate safely a motor vehicle of the type permitted by an Arizona driver license class or endorsement.

~~“Identification number” means a distinguishing number assigned by the Division to a person for a license or instruction permit.~~

“Licensee” means a person issued a driver license by this state.

“Licensing action” means an action by the Division to:

Issue, deny, suspend, revoke, cancel, or restrict a driver license; or

Require an examination or evaluation of an applicant or licensee.

“Medical code” means a system of numerals or letters indicating the licensee suffers from some type of adverse medical condition.

“Medical screening questions and certification” means the questions and certification on the application.

“Neurological disorder” means a malfunction or disease of the nervous system.

“Seizure” means a neurological disorder characterized by a sudden alteration in consciousness, sensation, motor control, or behavior, due to an abnormal electrical discharge in the brain.

“Specialist” means:

A physician who is a surgeon or a psychiatrist;

A physician whose practice is limited to a particular anatomical or physiological area or function of the human body, patients with a specific age range; or

A psychologist.

“Substance abuse” means:

Use of alcohol in a manner that makes the user an alcoholic as defined in A.R.S. § 36-2021, or

Use of controlled substance in a manner that makes the user a drug dependent person as defined in A.R.S. § 36-2501.

“Substance abuse counselor” is defined in A.R.S. § 28-3005.

“Substance abuse evaluation” means an assessment by a physician, specialist, or certified substance abuse counselor to determine whether the use of alcohol or a drug impairs functional ability.

“Successful completion of an examination” means an applicant or licensee:

Establishes the visual, physical, and psychological ability to operate a motor vehicle safely, or

Achieves a score of at least 80% on any required tests.

R17-4-507. ~~Driver License Identification Number Repealed~~

~~**A.** The Division shall assign an identification number to each person who receives a driver license, nonoperating identification license, or instruction permit. The Division shall place a person’s identification number on the person’s license, nonoperating identification, or instruction permit.~~

~~**B.** The Division shall not use a person’s Social Security Number as the person’s identification number unless:~~

~~1. The person’s current driver license or nonoperating identification license has a Social Security Number as the identification number, or~~

~~2. The person requests that the person’s Social Security Number be used as the identification number.~~

R17-4-508. Commercial Driver License Physical Qualifications

A. Requirements.

1. A ~~Commercial Driver License~~ commercial driver license applicant shall submit ~~to the Division~~ a U.S. Department of Transportation medical ~~examination form~~ examiner’s certificate, available online from the Federal Motor Carrier Safety Administration at <https://www.fmcsa.dot.gov>, completed as prescribed under 49 CFR 391.43; to the Department

a. Except as provided in subsection (A)(1)(c) of this Section, ~~the medical examiner’s certificate must be completed by a professional licensed to practice by the federal government, any state, or U.S. territory with one of the following credentials: medical examiner who is listed on the current National Registry of Certified Medical Examiners, a list of certified medical examiners is available on the National Registry website at <https://nationalregistry.fmcsa.dot.gov>.~~

~~i. Medical Doctor;~~

~~ii. Doctor of Osteopathy;~~

~~iii. Doctor of Chiropractic;~~



- iv. Nurse Practitioner, or
- v. Physician Assistant, and
- b. ~~Upon The medical examiner's certificate must be completed upon the applicant's initial application and at the time of each 24 month renewal upon or prior to expiration of the applicant's current medical examiner's certificate.~~
- c. An optometrist, licensed to practice by the federal government, any state, or U.S. territory, may perform the medical examination as it pertains to visual acuity, field of vision, and the ability to recognize colors as specified in 49 CFR ~~391.43(b)(10)~~ 391.41(b)(10).
- 2. As prescribed under 49 CFR ~~391.41(a)~~ 391.41(a)(2), a licensee who possesses a ~~Commercial Driver License~~ commercial driver license shall keep an original or photographic copy of the licensee's current medical ~~examination form~~ examiner's certificate required under subsection (A)(1) available for law enforcement inspection upon request ~~for no more than 15 days after the date it was issued as valid proof of medical certification.~~
- 3. A licensee who possesses a ~~Commercial Driver License~~ commercial driver license shall notify the ~~Division~~ Department of a physical condition that develops or worsens causing noncompliance with the ~~Commercial Driver License~~ commercial driver license physical qualifications as soon as the licensee's medical condition allows.
- B. ~~Commercial Driver License~~ driver license suspension and revocation notification procedure. To notify a licensee of any ~~Commercial Driver License~~ commercial driver license suspension and revocation under subsection (C), the ~~Division~~ Department shall simultaneously mail two notices within 15 days after a medical ~~examination form's~~ examiner's certificate's due or actual submission date to the licensee's address of record that:
 - 1. Suspends the licensee's ~~Commercial Driver License~~ commercial driver license beginning on the notice's date; and
 - 2. Revokes the licensee's ~~Commercial Driver License~~ commercial driver license 15 days after the date of the suspension notice issued under subsection (B)(1).
- C. Noncompliance actions.
 - 1. Initial application denial. If an applicant's initial medical ~~examination form~~ examiner's certificate required under subsection (A)(1) shows that the applicant does not comply with the ~~Commercial Driver License~~ commercial driver license physical qualifications, the ~~Division~~ Department shall immediately mail the ~~Commercial Driver License~~ commercial driver license denial notification to the applicant's address of record.
 - 2. ~~Twenty-four month renewal~~ Renewal suspension and revocation. If a renewing ~~Commercial Driver~~ commercial driver licensee submits:
 - a. No medical ~~examination form~~ examiner's certificate required under subsection (A)(1) or a form indicating noncompliance with ~~Commercial Driver License~~ commercial driver license physical qualifications, the ~~Division~~ Department shall follow the suspension and revocation notification procedure prescribed under subsection (B).
 - b. An incomplete medical ~~examination form~~ examiner's certificate required under subsection (A)(1), the ~~Division~~ Department shall immediately return the incomplete form with a letter requesting that the licensee provide missing information to the ~~Division~~ Department within 45 days after the date of the ~~Division's~~ Department's letter. The ~~Division~~ Department shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return requested information in the time-frame prescribed in this subsection.
 - e. ~~A medical examination form required under subsection (A)(1) that indicates the licensee's blood pressure is greater than 140 systolic or 90 diastolic, the Division Department shall mail notice to the licensee requiring three additional blood pressure evaluations:~~
 - i. ~~Made on three different days,~~
 - ii. ~~Performed by a qualified professional as prescribed under subsection (A)(1)(a), and~~
 - iii. ~~Returned to the Division Department within 90 days after the Division's Department's written notification. The Division Department shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return requested information prescribed under this subsection.~~
 - d. ~~A medical examination form required under subsection (A)(1) that indicates the licensee's blood pressure is greater than 180 systolic or 110 diastolic, the Division Department shall follow the suspension and revocation notification procedure prescribed under subsection (B).~~
- D. A ~~Commercial Driver License~~ commercial driver license that remains revoked for longer than 12 months expires. The holder of an expired ~~Commercial Driver License~~ commercial driver license may obtain a new ~~Commercial Driver License~~ commercial driver license by successfully completing all ~~Commercial Driver License~~ commercial driver license original-application written, vision, and ~~demonstration-skill~~ skills testing and submitting the medical ~~examination form~~ examiner's certificate prescribed under subsection (A)(1).
- E. Administrative hearing. A person who is denied a ~~Commercial Driver License~~ commercial driver license or whose ~~Commercial Driver License~~ commercial driver license is suspended or revoked under this Section may request a hearing ~~according to the procedure from the Department as~~ prescribed under 17 A.A.C. 1, Article 5. The hearing is held in accordance with the procedures ~~as~~ prescribed under A.A.C. R17-1-501 through R17-1-511 and R17-1-513 A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5.

ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENT

R17-4-701. Definitions

In addition to the definitions contained in 49 CFR ~~4572.3~~ 1572, the following words and phrases apply to this Article:

- 1. "Applicant" means an individual who applies to obtain an original or renewal HME.
- 2. "Department" has the same meaning as defined under A.R.S. § 28-101.
- 3. "CDL" means ~~Commercial Driver License~~ commercial driver license.
- 4. "HME" means Hazardous Materials Endorsement.
- 4. "Transfer applicant" means an individual with an existing HME issued by another state, applying to the state of Arizona for an HME.



5. "TSA" means the U.S. Transportation Security Administration.
6. "Security Threat Assessment" means a check by TSA that includes a fingerprint-based criminal history records check, an intelligence-related background check, and final disposition.

R17-4-702. Scope

This Article applies to commercial drivers who are applying for an original, ~~HME or to renew renewal~~, or transfer of an ~~existing~~ HME, in accordance with 49 CFR Part 1572 (November 24, 2004) incorporated by reference, on file with the Arizona Department of Transportation and available from the U.S. Government Printing Office's web page at www.gpo.gov. This incorporation by reference contains no future additions or amendments. The Department incorporates by reference 49 CFR 1572, revised as of October 1, 2016, and no later amendments or editions. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at <http://www.ofr.gov> or <https://www.gpo.gov/fdsys> and ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>. The International Standard Book Number is 9780160935534.

R17-4-705. Required Testing

- A. Original and renewal applicants shall successfully complete the testing requirements under A.R.S. § 28-3223.
- B. A transfer applicant with an existing HME shall be required to comply with HME knowledge test requirements under A.R.S. § 28-3223, and pay any applicable fee under R17-4-706.

R17-4-706. Fees

All applicants and transfer applicants shall pay all applicable fees ~~shall be paid~~ as prescribed by:

1. TSA for a Security Threat Assessment, and
2. A.R.S. § 28-3002.

R17-4-707. 60-Day Notice to Apply

- A. The ~~Division~~ Department shall notify an existing HME holder 60 days prior to expiration of a Security Threat Assessment and the corresponding HME that a new Security Threat Assessment shall be successfully passed in order to retain the HME.
- B. Upon expiration of the ~~Division's Department's~~ 60 Day Notice to Apply, the ~~Division~~ Department shall cancel the Arizona ~~Driver License~~ driver license privileges of an applicant who fails to apply for a Security Threat Assessment and fails to remove the HME.

R17-4-709. Determination of Security Threat

Upon notification by TSA that an applicant has failed to successfully pass the Security Threat Assessment:

1. For an original applicant:
 - a. The ~~Division~~ Department will deny the request for an HME; and
 - b. If otherwise qualified, the applicant may apply for a CDL without an HME.
2. For a renewal applicant:
 - a. The ~~Division~~ Department shall immediately cancel the HME.
 - b. The ~~Division~~ Department will notify an HME applicant with a Notice of Action that the applicant has 15 days from the notice date to have the HME removed.
 - c. The applicant shall visit a ~~designated~~ CDL office for removal of the HME.
 - d. If the applicant fails to comply with the ~~Division's Department's~~ Notice of Action, the ~~Division~~ Department shall cancel the applicant's Arizona ~~Driver License~~ driver license privilege.
 - e. Upon removal of an HME by the ~~Division~~ Department under this Section, an applicant, if otherwise qualified, may continue to hold a CDL.

R17-4-710. Requests for Administrative Hearing

- A. ~~The Division shall not accept a request for hearing for failure to qualify for an HME failing to pass.~~ In the event an applicant has failed to successfully complete the Security Threat Assessment or failed to receive a Determination of No Security Threat, the applicant shall may make an appeal directly through TSA, but cannot request an administrative hearing from the Department.
- B. An applicant whose Arizona ~~driving~~ driver license privileges have been canceled under R17-4-707 or R17-4-709 may request an administrative hearing from the Department as prescribed under 17 A.A.C. 1, Article 5. The hearing is held in accordance with the procedures as prescribed under A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5.

R17-4-712. Transfer Applicant

- A. Applicability. A transfer applicant shall comply with the provisions of this Article except otherwise required by this Section.
- B. Existing TSA approval. Upon application by a transfer applicant who has successfully passed a Security Threat Assessment prior to application in Arizona, the Department shall:
 1. Upon application by a transfer applicant who has an existing HME and who has successfully passed a STA prior to application in Arizona, the Division shall: Verify the TSA approval of a Determination of No Security Threat;
 - ~~a-2. Issue a five-year an~~ Arizona CDL with an HME; and
 - b. Validate the CDL with an HME upon verification of TSA approval, and the transfer applicant shall not be required to return to a designated CDL office unless otherwise required; and
 - ~~e-3. Consider an applicant who has been subject to any action under R17-4-708(B) an original applicant and shall require the~~ applicant to undergo a new STA Security Threat Assessment and testing requirements under R17-4-705.
 2. ~~The Division shall not require that a transfer applicant who has received STA approval undergo an additional STA prior to expiration of existing TSA approval, unless required under federal or state law or these rules;~~
 3. ~~If the Division is unsuccessful in verifying successful completion of STA, the Division shall immediately cancel the HME, and require that the applicant return to designated CDL office to have HME removed from license.~~



- 4. ~~The Division shall mail to the transfer applicant a Notice of Action that the applicant has 15 days from the notice date to visit a designated CDL office to have the HME removed.~~
- ~~C. No existing TSA approval:~~
 - 1. ~~Upon application by a transfer applicant with an existing HME, who has not undergone a STA prior to application in Arizona, the Division shall:~~
 - a. ~~Require that the transfer applicant successfully undergo a STA; and~~
 - b. ~~Upon verification of successful completion of STA, issue an Arizona CDL with an HME.~~
 - 2. ~~If a transfer applicant fails to successfully complete a STA or the Division is unsuccessful in verifying successful completion of STA, the Division shall deny the application for HME.~~
 - 3. ~~If the applicant fails to comply with the Division's Notice of Action, the Division shall cancel the applicant's Arizona Driver License privilege.~~
- ~~D. CDL eligibility. The Division may grant an application for a CDL, if an applicant is otherwise qualified to hold CDL.~~

NOTICE OF PROPOSED RULEMAKING
TITLE 17. TRANSPORTATION
CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS

[R17-180]

PREAMBLE

1. **Article, Part, or Section Affected (as applicable)** **Rulemaking Action**

| | |
|-----------|-------|
| R17-5-202 | Amend |
| R17-5-203 | Amend |
| R17-5-205 | Amend |
| R17-5-206 | Amend |
| R17-5-208 | Amend |
| R17-5-209 | Amend |
| R17-5-212 | Amend |
2. **Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statutes: A.R.S. §§ 28-366, 28-962, 28-2169, and 28-5204
 Implementing statutes: A.R.S. §§ 28-3223, 28-5201, 28-5235, 28-5237, and 28-5238
3. **Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rules:**
 Notice of Rulemaking Docket Opening: 23 A.A.R. 2865, October 13, 2017 (*in this issue*)
4. **The agency's contact person who can answer questions about the rulemaking:**
 Name: Candace Olson, Rules Analyst
 Address: Government Relations and Policy Development Office
 Department of Transportation
 206 S. 17th Ave., Mail Drop 140A
 Phoenix, AZ 85007
 Telephone: (602) 712-4534
 E-mail: COlson2@azdot.gov
 Web site: <http://www.azdot.gov/about/GovernmentRelations>
5. **An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**
 The Arizona Department of Transportation (ADOT), in partnership with the Arizona Department of Public Safety (DPS), engages in this rulemaking to incorporate parts of the 2016 edition of the *Code of Federal Regulations* and 82 FR 5292, January 17, 2017. The United States Department of Transportation (USDOT) requires that states adopt Federal Motor Carrier Safety and Hazardous Materials Regulations to ensure eligibility for federal enforcement grants. Both ADOT and DPS rely on these federal monies to fund numerous enforcement positions.
 The Federal Motor Carrier Safety Administration (FMCSA) is creating a new electronic on-line Unified Registration System which will streamline the registration process and serve as a clearinghouse and depository of information on, and identification of those who register with FMCSA. The 2016 edition of the *Code of Federal Regulations* included language requiring the use of this system, but in 82 FR 5292, January 17, 2017, FMCSA suspended certain sections in parts 385 and 390 that required the use of this new system and created new sections that required the previous procedures and forms that were in place before the on-line system. The resulting regulatory changes require amendments to part 390, so the Department needs to amend R17-5-203 to be consistent with the regulations and ensure the inclusion of motor carriers conducting intrastate commerce in a commercial motor vehicle, except intrastate farm vehicles.
 Subsections to R17-5-205 need to be removed since they were early adoption of amendments from 78 FR 17875, March 25, 2013, and these regulations have now been codified into part 383. ADOT is also making a change to R17-5-205(C) to include "limited-term" as an applicable word that may be added to the face of a commercial learner's permit (CLP) or commercial driver license (CDL) due to the implementation of the Arizona Voluntary Travel ID in accordance with 6 CFR 37. Additionally, ADOT is adding



a clarification statement to R17-5-205(D) to indicate that while some third party testers may be exempt from the bond requirement under A.R.S. Title 28, Chapter 13, the providers are still responsible for all associated costs for re-testing due to examination fraud.

Timely updates are critical to FMCSA's compliance and enforcement program, so FMCSA implemented an enforcement provision that states the penalties for operating applicable entities operating without a USDOT Registration and an active USDOT Number in part 392, so an amendment is necessary to R17-5-206 to ensure the inclusion of motor carriers conducting intrastate commerce in a commercial motor vehicle, except intrastate farm vehicles.

R17-5-208(B) is being amended to clarify that there is not just one type of application for the Intrastate Medical Waiver but instead will be an applicable application based upon the type of medical condition the intrastate driver has.

R17-5-212 is being amended to remove information that is already contained in state statutes and adding and reordering information to clarify the current process with the complaint and the order to show cause.

In addition, clarifying and technical changes have been made to ensure consistent and correct language is used. Changes are also made to ensure conformity to the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State.

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

ADOT did not review or rely on any study relevant to the rules.

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

Not applicable

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

DPS administers and enforces the Federal Motor Carrier Safety Assistance Program (MCSAP) throughout the State of Arizona under these rules. The primary cost bearers in relation to these rules are DPS, ADOT, counties, municipal law enforcement agencies electing to enforce the provisions locally, and privately contracted consultant trainers of law enforcement personnel.

DPS incurs moderate to substantial costs (more than \$10,000) annually for program administration as well as a not readily quantifiable portion of officer salaries for hazardous materials transportation program enforcement. Business entities bear minimal to moderate costs (under \$100,000) in possible federal registration fees, inspection fees, insurance, and equipment to remain in compliance with the rules. However, these costs arise from the federal law rather than from this rulemaking. Minimal administrative costs are borne by independent consultant trainers who educate law enforcement and business entities on rule compliance.

ADOT is statutorily required to administer the driver licensing and medical evaluation activities required of commercial motor vehicle drivers under A.R.S. Title 28 and these rules. ADOT does not expect this rulemaking to create a significant increase or decrease in costs or benefits to the agency since the rulemaking is generally intended to incorporate by reference an updated version of the Federal Motor Carrier Safety and Hazardous Materials Regulations that the agency currently has in place. Administrative costs for ADOT should be minimal to moderate.

FMCSA extends annually to DPS a substantial grant under MCSAP for state law enforcement of motor carrier safety and hazardous materials programs. MCSAP funds are distributed chiefly to DPS but may also be sub-allocated to county and municipal enforcement agencies upon application to underwrite local enforcement costs.

Local enforcement cost estimates are difficult to quantify as they are contingent upon whether officers are dedicated to motor carrier and hazardous materials provision enforcement or incorporate motor carrier/hazardous materials enforcement together with other duties. Accordingly, local law enforcement electing to engage in motor carrier and hazardous materials provision enforcement could stand to benefit substantially in cost defrayal through receipt of MCSAP fund allocation by application to DPS, the primary recipient of the MCSAP federal grant monies. For FY 2017, DPS is able to apply for an estimated \$10,000,000 in total federal funding from FMCSA.

To maintain compliance with the provisions of these rules, motor carriers will likely incur moderate costs in the form of equipment, maintenance, insurance, and inspection fees. However, costs arise from the federal law rather than from this rulemaking. There are no new fees associated with this rulemaking. If a motor carrier is found to be noncompliant with provisions of these rules, costs of sanctions under A.R.S. § 28-5238 could range from \$1,000 to \$25,000 per citation and the possible loss of a CDL as prescribed under A.R.S. § 28-5238. Benefits to motor carriers remaining in compliance with these rules include increased safety, lower financial responsibility premiums, the opportunity to increase profit margin through better customer service, and more expedient administrative processing by law enforcement.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Candace Olson, Rules Analyst
Address: Government Relations and Policy Development Office
Department of Transportation
206 S. 17th Ave., Mail Drop 140A
Phoenix, AZ 85007
Telephone: (602) 712-4534
E-mail: COlson2@azdot.gov
Web site: <http://www.azdot.gov/about/GovernmentRelations>



10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

Written comments on the proposed rulemaking should be directed to the person listed in item 4. All comments must be received by the close of public record at 5:00 p.m. on November 14, 2017. ADOT has scheduled the following oral proceeding for public comments:

- Date: November 14, 2017
- Time: 2:30 p.m.
- Location: 206 S. 17th Ave., Rm. 107
Phoenix, AZ 85007
- Nature: Oral Proceeding/Public Hearing

Pursuant to Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act (ADA), ADOT does not discriminate on the basis of race, color, national origin, age, gender, disability, or limited English proficient. Persons that require a reasonable accommodation based on language or disability should contact ADOT Civil Rights at (602) 712-8946 or civilrightsoffice@azdot.gov. Requests should be made as early as possible to ensure the state has an opportunity to address the accommodation.

Personas que requieren asistencia o una adaptación razonable por habilidad limitada en inglés o discapacidad deben ponerse en contacto con la Oficina de Derechos Civiles de ADOT al (602) 712-8946 or civilrightsoffice@azdot.gov. Las solicitudes deben hacerse tan pronto como sea posible para asegurar que el estado tiene la oportunidad de abordar el alojamiento.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

There are no other matters prescribed by statute applicable to ADOT or to any specific rule or class of rules.

a. Whether the rules require a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

These rules incorporate by reference federal regulations, which are consistent with state statutes, the requirements of a CLP, CDL, and endorsements. In addition, R17-5-208 provides for the issuance of an Intrastate Medical Waiver, and in keeping with state statute, requires applicable drivers to have a CLP or CDL and endorsements. These are general permits since the activities and practices authorized by them are substantially similar in nature for all holders.

b. Whether a federal law is applicable to the subject of the rules, whether the rules are more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal regulations in 49 CFR 40, 107, 171, 172, 173, 177, 178, 180, 379, 382, 383, 385, 390, 391, 392, 393, 395, 396, 397, and 399 are applicable to the rules. R17-5-205(E)(2) amends 49 CFR 383.153(e) by removing the exception for a nondomiciled CLP or CDL holder who is domiciled in a foreign jurisdiction for providing the holder's social security number (SSN) on the application. Pursuant to Laws 2013, Chapter 128, the exemption for the SSN of nonresident CDL applicants was removed from A.R.S. § 28-3158, which also reclassified nonresident CDL as nondomiciled CDL. This change authorizes ADOT to require all CLP and CDL holders to provide their SSNs. This amendment is consistent with other federal laws (42 U.S.C. 405 and 42 U.S.C. 666) that require states to obtain SSNs and the statutory requirement of A.R.S. § 28-3158.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted to ADOT.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

In R17-5-202:

49 CFR 40, 379, 382, 383, 385 (except 385.301, 385.303, 385.305, 385.329, 385.405, 385.409, 385.419, 385.421, 385.603, 385.607, 385.609, and 385.713), 390 (except 390.3, 390.5, 390.19, 390.21, 390.40, and subpart E), 391, 392, 393, 395, 396, 397, and 399, revised as of October 1, 2016; and

49 CFR 385.301T, 385.303T, 385.305T, 385.329T, 385.405T, 385.409T, 385.419T, 385.421T, 385.603T, 385.607T, 385.609T, 385.713T, 390.3T, 390.5T, 390.19T, 390.21T, 390.40T, and 390.200T, as published in 82 FR 5292, January 17, 2017

In R17-5-209: 49 CFR 107, 171, 172, 173, 177, 178, and 180, revised as of October 1, 2016

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION
CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS

ARTICLE 2. MOTOR CARRIERS

Section

- R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability
- R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General
- R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties



- R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles
 R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision
 R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability
 R17-5-212. Motor Carrier Safety: Hearing Procedure

ARTICLE 2. MOTOR CARRIERS

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

- A. The Department incorporates by reference 49 CFR 40, 379, 382, 383, 385 ~~(except 385.301, 385.303, 385.305, 385.329, 385.405, 385.409, 385.419, 385.421, 385.603, 385.607, 385.609, and 385.713)~~, 390 ~~(except 390.3, 390.5, 390.19, 390.21, 390.40, and subpart E)~~, 391, 392, 393, 395, 396, 397, and 399, revised as of October 1, ~~2012~~ 2016, and no later amendments or editions, as amended under this Article. The Department incorporates by reference 49 CFR 385.301T, 385.303T, 385.305T, 385.329T, 385.405T, 385.409T, 385.419T, 385.421T, 385.603T, 385.607T, 385.609T, 385.713T, 390.3T, 390.5T, 390.19T, 390.21T, 390.40T, and 390.200T, as published in 82 FR 5292, January 17, 2017, and no later amendments or editions, as amended under this Article. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is ~~available from printed and distributed by~~ the U.S. Government ~~Printing~~ Publishing Office, P.O. Box 979050, St. Louis, Missouri MO 63197-9000. The incorporated material can be viewed online at <http://www.ofr.gov> or <https://www.gpo.gov/fdsys> and ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>. The International Standard Book Numbers are [9780160935459](http://www.gpo.gov/fdsys) for 49 CFR 40 and [9780160935497](http://www.gpo.gov/fdsys) for 49 CFR 379, 382, 383, 385, 390, 391, 392, 393, 395, 396, 397, and 399.
- B. The sections of 49 CFR incorporated under subsection (A) apply as amended under this Article to all intrastate and interstate motor carriers operating in Arizona and persons operating a commercial motor vehicle, except as provided under subsection (C).
- C. The intrastate operator of a tow truck with a gross vehicle weight rating of 26,000 pounds or less is exempt from the requirements of 49 CFR 390 through 399, except that the driver is subject to the physical qualifications and examination requirements of 49 CFR 391, subpart E.

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General

- A. 49 CFR ~~390.3~~ 390.3T, General applicability. Paragraph (a) is amended to read:
 Regulations incorporated in this ~~section~~ subchapter are applicable to all motor carriers operating in Arizona and any vehicle owned or operated by the state, a political subdivision, or a state public authority that is used to transport a hazardous material in an amount requiring the vehicle to be placarded as prescribed under R17-5-209.
- B. 49 CFR ~~390.5~~ 390.5T, Definitions. The definitions listed under 49 CFR ~~390.5~~ 390.5T are amended as follows:
 “Commercial Motor Vehicle” or “CMV” has the same meaning as prescribed under A.R.S. § 28-5201.
 “Shipper” has the same meaning as prescribed under A.R.S. § 28-5201.
 “Special agent” means an officer or agent of the Department, the Department of Public Safety, or a political subdivision, who is trained and certified by the Department of Public Safety to enforce Arizona’s Motor Carrier Safety requirements.
 “State” means a state of the United States or the District of Columbia.
 “Tow truck,” as used in the definition of emergency under 49 CFR 390.5, has the same meaning as prescribed under A.A.C. R13-3-701.
- C. 49 CFR ~~390.19~~ 390.19T, Motor carrier, ~~hazardous material shipper, and intermodal equipment provider~~ identification reports for certain Mexico-domiciled motor carriers. Paragraph (a)(1) is amended to read:
 A U.S.-, Canada-, Mexico-, or non-North America-domiciled motor carrier conducting operations in interstate commerce or in intrastate commerce in a CMV, except for intrastate commerce in a farm vehicle as defined under A.R.S. § 28-2514, must file a Motor Carrier Identification Report, Form MCS-150.
- D. 49 CFR 390.23, Relief from regulations.
 1. Paragraph (a)(2), Local emergencies, is amended by adding:
 When a local emergency exists that justifies an exemption from parts 390 through 399 of this chapter, a motor carrier may request the exemption by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, Arizona AZ 85005. The Arizona Department of Public Safety may grant the exemption with or without restrictions as necessary to provide vital service to the public.
 2. Paragraph (a)(2)(i)(A) is amended to read:
 An emergency has been declared by a federal, state or local government official having authority to declare an emergency; or an emergency situation exists under A.R.S. § 28-5234(B); or
- E. 49 CFR 390.25, Extension of relief from regulations - emergencies, is amended by adding:
 A motor carrier seeking to extend a period of relief from these regulations may request the extension by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, Arizona AZ 85005. The Arizona Department of Public Safety may grant the extension with any restrictions it considers necessary to provide vital service to the public.

R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver’s License Standards; Requirements and Penalties

- A. 49 CFR 383.5, Definitions. The definitions listed under 49 CFR 383.5 are amended as follows:
 “Commercial motor vehicle” or “CMV” has the same meaning as prescribed under A.R.S. § 28-3001.
 “Conviction” has the same meaning as prescribed under A.R.S. § 28-3001.
 “Disqualification” has the same meaning as prescribed under A.R.S. § 28-3001.
 “Motor vehicle” has the same meaning as prescribed under A.R.S. § 28-101.
 “Out-of-service order” has the same meaning as prescribed under A.R.S. § 28-5241.
 “School bus” has the same meaning as prescribed under A.R.S. § 28-101.



“Tank vehicle” has the same meaning as prescribed under A.R.S. § 28-3103.

- B. 49 CFR 383.71, Driver application and certification procedures. Paragraphs (b)(1)(ii), Excepted interstate, and (b)(1)(iv), Excepted intrastate, are deleted.
- C. 49 CFR 383.73, State procedures.
 - 1. Paragraph (a)(2)(vi) is amended to read:
Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(a)(2)(v) and proof of state of domicile specified in § 383.71(a)(2)(vi). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver’s record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;
 - 2. Paragraph (b)(6) is amended to read:
Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver’s record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;
 - 3. Paragraph (c)(4) is amended to read:
If such applicant wishes to retain a hazardous materials endorsement, require compliance with standards for such endorsement specified in §§ 383.71(b)(8) and 383.141 and ensure that the driver has successfully completed a new test for such endorsement specified in § 383.121.
 - 4. Paragraphs (c)(4)(i) and (c)(4)(ii) are deleted.
 - 5. Paragraph (e)(7) is amended to read:
Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver’s record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;
 - 6. Paragraph (d)(7) is amended to read:
Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver’s record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done; and
 - 7. Paragraph (e)(5) is amended to read:
Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade, or transfer of a CDL or non-domiciled CDL, for the first time after July 8, 2011, provided a notation is made on the driver’s record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;
 - 8. Paragraph (f)(2)(ii) is amended to read:
The state must add the word “non-domiciled” to the face of the CLP or CDL, in accordance with § 383.153(c) or “limited-term” to the face of the CLP or CDL, in accordance with 6 CFR 37.21; and
 - 9. Paragraph (m), Document verification, is amended to read:
The state must require at least two persons within the driver licensing agency to participate substantively in the processing and verification of the documents involved in the licensing process for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL. The documents being processed and verified must include, at a minimum, those provided by the applicant to prove legal presence and domicile, the information filled out on the application form, and knowledge and skills test scores. This section does not require two people to process or verify each document involved in the licensing process. Exception: For offices with only one staff member, at least some of the documents must be processed or verified by a supervisor before issuance or, when a supervisor is not available, copies must be made of some of the documents involved in the licensing process and a supervisor must verify them within one business day of issuance of the CLP, non-domiciled CLP, CDL or non-domiciled CDL.
- D. 49 CFR 383.75, Third party testing. 1. Paragraph (a)(7) is amended to read: A skills test examiner who is also a skills instructor either as a part of a school, training program or otherwise is prohibited from administering a skills test to an applicant who received skills training by that skills test examiner; and 2. Paragraph (a)(8)(v) is amended to read:
Require the third party tester to initiate and maintain a bond in an amount pursuant to A.R.S. Title 28, Chapter 13 to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing of applicants for a CDL. Exception: A third party tester that is a government entity is not required to maintain a bond. A provider exempted under A.R.S. Title 28, Chapter, 13, is responsible for all costs associated with all re-testing of applicants due to examination fraud as determined by the Department.
- E. 49 CFR 383.153, Information on the CLP and CDL documents and applications.



1. Paragraph (b)(1) is amended to read: A CLP may, but is not required to, contain a digital color image or photograph or black and white laser engraved photograph.
2. Paragraph The introductory sentence in paragraph (e) is amended to read:
Before a CLP or CDL may be issued:
 - a. A driver applicant must provide the driver applicant's Social Security Number on the application of a CLP or CDL.
 - b. The state must provide the Social Security Number to the CDLIS.
 - e. The state must not display the Social Security Number on the CLP or CDL.
3. Paragraph (h) is amended to read:
~~On or after July 8, 2014 current CLP and CDL holders who do not have the standardized endorsement and restriction codes and applicants for a CLP or CDL are to be issued CLPs with the standardized codes upon initial issuance, renewal or upgrade and CDLs with the standardized codes upon initial issuance, renewal, upgrade or transfer.~~

R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles

- A.** 49 CFR 392.5, Alcohol prohibition. Paragraph (e) is amended by adding:
Drivers who violate the terms of an out-of-service order as prescribed under this section are also subject to the provisions and sanctions of A.R.S. § 28-5241.
- B.** 49 CFR 392.9b, Prohibited transportation.
1. Paragraph (a), USDOT Registration required, is amended to read:
USDOT Registration required. A commercial motor vehicle providing transportation in interstate commerce or in intrastate commerce, except for intrastate commerce in a farm vehicle as defined under A.R.S. § 28-2514 must not be operated without a USDOT Registration and an active USDOT Number.
 2. Paragraph (b), Penalties, is amended to read:
Penalties. If it is determined that the motor carrier responsible for the operation of such a vehicle is operating in violation of paragraph (a) of this section, it may be subject to penalties in accordance with 49 U.S.C. 521 for interstate commerce and A.R.S. § 28-5245 for intrastate commerce.

R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision

- A.** A person who is not physically qualified to drive a commercial motor vehicle in interstate commerce due to loss of limb, limb impairment, an insulin-dependent diabetic condition, or monocular vision, as provided under 49 CFR 391.41(b)(1), (b)(2), (b)(3), or (b)(10), but otherwise meets all other requirements under 49 CFR 391.41, may operate a commercial motor vehicle in intrastate commerce if granted an intrastate medical waiver by the Director. Application for an intrastate medical waiver shall be submitted according to subsection (B).
- B.** A driver applicant, or a driver applicant jointly with the motor carrier co-applicant that will employ the driver applicant, ~~may~~ **shall** complete and submit ~~an~~ **the applicable** intrastate medical waiver application to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona AZ 85001-2100, ~~which shall~~ **with** the following information as applicable:
1. Identify the applicant:
 - a. Name and complete address of the driver applicant;
 - b. Name and complete address of the motor carrier co-applicant;
 - c. U.S. Department of Transportation motor carrier identification number, if known; and
 - d. A description of the driver applicant's limb or visual impairment or insulin-dependent diabetic condition as applicable to the type of waiver being requested;
 2. Describe the type of operation the driver applicant will be employed to perform, including the following information (if known):
 - a. Average period of time the driver will be driving or on duty, per day;
 - b. Type of commodities or cargo to be transported;
 - c. Type of driver operation (i.e., sleeper team, relay, owner operator, etc.); and
 - d. Number of years experience operating each type of commercial motor vehicle requested in the intrastate medical waiver application and total years of experience operating all types of commercial motor vehicles;
 3. Describe the commercial motor vehicles the driver applicant intends to drive:
 - a. Truck, truck tractor, or bus make, model, and year (if known);
 - b. Drive train:
 - i. Transmission type (automatic or manual - if manual, designate number of forward speeds);
 - ii. Auxiliary transmission (if any) and number of forward speeds; and
 - iii. Rear axle (designate single speed, two-speed, or three-speed);
 - c. Type of brake system;
 - d. Steering, manual or power assisted;
 - e. Description of types of trailers (i.e., van, flatbed, cargo tank, drop frame, lowboy, or pole);
 - f. Number of semitrailers or full trailers to be towed at one time;
 - g. For commercial motor vehicles designed to transport passengers, indicate the seating capacity of the commercial motor vehicle; and
 - h. Description of any modifications made to the commercial motor vehicle for the driver applicant, attach photographs where applicable;
 4. Include a certification statement:
 - a. The driver applicant shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391 as adopted by the Department; and
 - b. In case of a co-applicant, the co-applicant motor carrier shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391 as adopted by the Department; and



- 5. Contain signature of each applicant and date signed:
 - a. The driver applicant's signature; and
 - b. The motor carrier official's signature and title if the application has a co-applicant. Depending on the motor carrier's organizational structure (corporation, partnership, or proprietorship), the signer of the application shall be an officer, partner, or the proprietor.
- C. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) or (b)(2) shall be accompanied by:
 - 1. A copy of the medical examination report and medical ~~examination~~ examiner's certificate completed pursuant to 49 CFR 391.43;
 - 2. The Department's medical waiver evaluation summary completed by either a board-qualified or board-certified psychiatrist or orthopedic surgeon. The co-applicant motor carrier or the driver applicant shall provide the psychiatrist or orthopedic surgeon with a description of the job-related tasks the driver applicant will be required to perform:
 - a. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) shall include:
 - i. An assessment of the functional capabilities of the driver as they relate to the ability of the driver to perform normal tasks associated with operating a commercial motor vehicle; and
 - ii. A statement by a board-qualified or board-certified psychiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately;
 - b. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(2) shall include:
 - i. An explanation as to how and why the impairment interferes with the ability of the applicant to perform normal tasks associated with operating a commercial motor vehicle;
 - ii. An assessment and medical opinion of whether the condition will likely remain medically stable over the lifetime of the driver applicant; and
 - iii. A statement by a board-qualified or board-certified psychiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately;
 - 3. A description of the driver applicant's prosthetic or orthotic device worn, if any; and
 - 4. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained.
- D. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(3) shall be accompanied by:
 - 1. A copy of the medical examination report and medical ~~examination~~ examiner's certificate completed pursuant to 49 CFR 391.43;
 - 2. An evaluation by a board-certified or board-eligible endocrinologist. A complete endocrinologist evaluation shall consist of:
 - a. A comprehensive evaluation of the applicant's five-year medical history and current status. The applicant shall provide the examining endocrinologist with a complete medical history as it pertains to the applicant's diabetes or its complications or both, including, the date insulin use began, all hospitalization reports, consultation notes for diagnostic examinations, special studies, follow-up reports, reports of any hypoglycemic insulin reactions within the 12 months prior to the date of application, and other reports as requested by the endocrinologist. The evaluation shall also include a review of:
 - i. Daily glucose monitoring logs, glycosylated hemoglobin (A1c) indicating a result in the range of 7% to 10%, including lab reference page performed during the last six months unless recently diagnosed;
 - ii. Insulin dosages and types, diet utilized for control, and all medications taken; and
 - iii. Examinations to detect any peripheral neuropathy or circulatory insufficiency of the extremities;
 - b. A statement that the applicant is free from insulin reactions. Insulin reactions include any severe hypoglycemic reaction, which can be a reaction that results in seizure, loss of consciousness, requiring the assistance of another person, or a period of impaired cognitive function that occurs without warning. To be eligible the applicant must not have hypoglycemia unawareness and must have had no more than one documented severe hypoglycemic reaction in the previous 12 months and must have had:
 - i. No recurrent (two or more) severe hypoglycemic reactions resulting in a loss of consciousness or seizure within the past five years;
 - ii. No recurrent severe hypoglycemic reactions requiring the assistance of another person within the past five years;
 - iii. No recurrent severe hypoglycemic reactions resulting in impaired cognitive functions that occurred without warning symptoms within the past five years; and
 - iv. A period of one year of demonstrated stability following the first period of severe hypoglycemia;
 - c. A statement prepared and signed by the examining endocrinologist whose status as board-certified or board-eligible is indicated. The signed statement shall include separate declarations indicating the following medical determinations:
 - i. The endocrinologist is familiar with the applicant's medical history for the past five years through a records review, treating the patient, or consultation with the treating physician;
 - ii. The applicant is able to safely operate a commercial motor vehicle while using insulin; and
 - iii. The applicant has been educated in diabetes, including the last education date, and its management and is informed of and understands how to individually manage and monitor the applicant's diabetes mellitus and has demonstrated the ability and willingness to properly monitor and manage the applicant's diabetes and procedures to follow if complications arise;



3. A separate signed vision evaluation report from an ophthalmologist or optometrist indicating that the applicant has been examined and does not have diabetic retinopathy and meets the vision standard of 49 CFR 391.41(b)(10), or has been issued a valid intrastate medical waiver for monocular vision. If the applicant has any evidence of diabetic retinopathy, the applicant must be examined by an ophthalmologist and submit a separate signed statement from the ophthalmologist that the applicant does not have unstable proliferative diabetic retinopathy (i.e. unstable advancing disease of blood vessels in the retina); and
 4. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained.
- E.** The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(10) shall be accompanied by:
1. A copy of the medical examination report and medical ~~examination~~ examiner's certificate completed pursuant to 49 CFR 391.43;
 2. A current vision examination report issued within the last 90 days from the date the report is received by the Department, completed by an ophthalmologist or optometrist. The report shall indicate that the applicant has distant visual acuity of at least 20/40 (Snellen), with or without a corrective lens, in one eye, and the applicant's dominant eye has a visual field of at least 70° peripheral measurement in one direction and 35° in the opposite direction of the horizontal meridian and the ability to distinguish the colors of a traffic signal or device showing standard red, green, and amber, as applicable to the type of medical waiver being requested;
 3. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained; and
 4. A statement from the employer that the driver applicant has driven the type of vehicle for which the waiver is being requested for at least two of the previous five years.
- F.** Agreement. A motor carrier that employs a driver subject to an intrastate medical waiver granted by the Director under subsection (A), whether the waiver was granted unilaterally to the driver, or to the driver and co-applicant motor carrier, shall agree to:
1. Report to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona AZ 85001-2100, in writing, any suspension, revocation, disqualification, or withdrawal of the subject driver's driver license or permit, and any accident, arrest, or conviction involving the driver within 30 days after the occurrence;
 2. Provide to the Department's Medical Review Program, on request, any documents and information pertaining to the driving activities, accidents, arrests, convictions, and driver license or permit suspensions, revocations, disqualifications, or withdrawals involving the subject driver;
 3. Evaluate the subject driver with a road test using the trailer types the motor carrier intends the driver to transport, or alternatively accept a certificate of a trailer road test from another motor carrier if the trailer types are similar, or accept the trailer road test completed during the skill performance evaluation if trailer types are similar to that of the prospective motor carrier;
 4. Evaluate the subject driver for those non-driving safety related job tasks associated with each type of trailer that will be used and any other non-driving safety related or job related tasks unique to the operations of the employing motor carrier; and
 5. Use the subject driver to operate the type of commercial motor vehicle indicated on the intrastate medical waiver only when the driver is in compliance with the conditions and limitations of the waiver.
- G.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall supply each employing motor carrier with a copy of the intrastate medical waiver.
- H.** The Department may require the driver applicant to demonstrate the driver applicant's ability to safely operate the commercial motor vehicle the driver intends to drive.
- I.** If required by the Department during the application process, a driver applicant shall have a skill performance evaluation performed by a federally-certified state commercial driver license examiner at a Department commercial driver license facility when directed.
- J.** If the Director grants an intrastate medical waiver under subsection (A) to the driver applicant, the Department shall mail to the driver applicant and co-applicant motor carrier (if applicable) written approval of the intrastate medical waiver describing the terms, conditions, and limitations of the waiver.
- K.** The intrastate medical waiver granted by the Director under subsection (A) shall identify:
1. The power unit (bus, truck, truck tractor) for which the waiver is granted; and
 2. The trailer type used in the skill performance evaluation, if applicable, without limiting the waiver to that specific trailer type.
- L.** A subject driver may use the intrastate medical waiver with other trailer types if the driver successfully completes:
1. A trailer road test administered by the motor carrier under subsection (F)(3) for each type of trailer, and
 2. A non-driving safety related or job related task evaluation administered by the motor carrier under subsection (F)(4).
- M.** The intrastate medical waiver granted by the Director under subsection (A) is:
1. Valid for a period of not more than two years from the date of issuance;
 2. Renewable 30 days prior to the expiration date; and
 3. Transferable from an original motor carrier co-applicant employer to a new motor carrier employer or to the subject driver, as a unilateral applicant if becoming self-employed, upon written notification to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona AZ 85001-2100, stating the new employer's name and the type of equipment to be driven.
- N.** An intrastate medical waiver granted by the Director under subsection (A) to a driver applicant for monocular vision under subsection (E), shall prohibit the subject driver from transporting:
1. Passengers for hire; and
 2. Reportable quantities of hazardous substances, manifested hazardous wastes, and hazardous material required to be placarded.
- O.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall have the intrastate medical waiver (or a legible copy) in the subject driver's possession while on duty.
- P.** The motor carrier employing a subject driver shall maintain a copy of the intrastate medical waiver in its driver qualification file and retain the copy in the motor carrier's file for a period of three years after the driver's employment is terminated.



- Q. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for insulin-dependent diabetes under subsection (D), must comply with the following conditions:
 1. Maintain appropriate medical supplies for glucose management while preparing for the operation of a commercial motor vehicle and during its operation. The supplies shall include the following:
 - a. A digital glucose monitor with computerized memory,
 - b. Supplies needed to obtain adequate blood samples and to measure blood glucose,
 - c. Insulin to be used as necessary, and
 - d. An amount of rapidly absorbable glucose to be used as necessary;
 2. Maintain a daily record of actual driving time to correlate with the daily glucose measurements;
 3. Monitor and maintain blood glucose levels in the range of 100 to 400 milligrams per deciliter (mg/dl) prior to and while driving.
 - a. Check glucose before starting to drive and take corrective action if necessary. If glucose is less than 100 mg/dl, take glucose or food and recheck in 30 minutes. Repeat the process until glucose is greater than 100 mg/dl. Do not drive if glucose is less than 100 mg/dl;
 - b. While driving, stop the vehicle in a safe location and check glucose every two to four hours and take appropriate action to maintain it in the range of 100 to 400 mg/dl;
 - c. Have food available at all times when driving. If glucose is less than 100 mg/dl, stop driving and eat. Recheck in 30 minutes and repeat procedure until glucose is greater than 100 mg/dl; and
 - d. If glucose is greater than 400 mg/dl, stop driving until glucose returns to the 100 to 400 mg/dl range. If more than two hours have passed since last insulin injection and eating, take additional insulin. Recheck blood glucose in 30 minutes. Do not resume driving until glucose is less than 400 mg/dl;
 4. Participate in a diabetes education program annually;
 5. Undergo the following evaluations and examinations and submit to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, ~~Arizona~~ AZ 85001-2100, within 10 days of the date of the evaluation or exam:
 - a. A quarterly evaluation completed by a board-certified or board-eligible endocrinologist. A quarterly endocrinologist evaluation shall include a review of the driver’s daily glucose logs and glucose levels (from the subject driver’s required monitoring device), a comparison of monitoring dates to the driving log to ensure that the subject driver is checking glucose levels prior to operating a commercial motor vehicle, a certifying statement indicating that the subject driver is maintaining a glucose level in the range of 100 to 400 mg/dl while driving a commercial motor vehicle, a certifying statement indicating that the subject driver is maintaining a stable insulin regimen and that the subject driver’s quarterly A1c result continues to reflect stable control, reports of any severe hypoglycemic episodes, any hypoglycemic-related hospitalization, and any treatment regimen changes since the last hypoglycemic episode;
 - b. An annual evaluation completed by a board-certified or board-eligible endocrinologist. In addition to the requirements of a quarterly endocrinologist evaluation under subsection (Q)(5)(a), an annual endocrinologist evaluation shall also include a general physical examination, an indication that the driver has continued to participate in a diabetes education program with the last education date provided, a certifying statement indicating that the driver understands how to individually manage and monitor the driver’s diabetes mellitus, an indication of the development of, or progression, or both, in diabetes complications (i.e. renal disease, cardiovascular disease, and neurological disease), a list of all medications taken and whether any of the medications may compromise the driver’s ability to operate a commercial motor vehicle, the endocrinologist’s belief that the driver has demonstrated the ability and willingness to properly manage the driver’s diabetes, and a certifying statement indicating that the driver is able to safely operate a commercial motor vehicle while using insulin;
 - c. An annual vision evaluation report, as prescribed under subsection (D)(3). If there is any evidence of diabetic retinopathy, provide annual documentation by an ophthalmologist that the driver does not have unstable proliferative diabetic retinopathy; and
 - d. An annual medical examination report and medical ~~examination~~ examiner’s certificate completed pursuant to 49 CFR 391.43. Provide copies of the endocrinologist evaluation and the vision evaluation report to the medical examiner for review; and
 6. Report the following information to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, ~~Arizona~~ AZ 85001-2100, within two days of occurrence:
 - a. All episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; and
 - b. Any involvement in an accident or any other adverse event in a commercial motor vehicle or personal vehicle, related to an episode of hypoglycemia or hyperglycemia.
- R. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for monocular vision under subsection (E), must be physically examined every year and shall submit the following to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, ~~Arizona~~ AZ 85001-2100:
 1. A vision examination report issued within the last 90 days from the date the report is received by the Department, as prescribed under subsection (E)(2); and
 2. A current medical examination report and medical ~~examination~~ examiner’s certificate completed pursuant to 49 CFR 391.43 within the past year.
- S. A driver subject to an intrastate medical waiver, or a driver subject to an intrastate medical waiver jointly with a motor carrier co-applicant, may renew an intrastate medical waiver by submitting to the Department’s Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, ~~Arizona~~ AZ 85001-2100, a new intrastate medical waiver application. The intrastate medical waiver application shall contain the following:
 1. Name and complete address of the motor carrier currently employing the applicant;
 2. Name and complete address of the subject driver;
 3. Total miles driven under the current intrastate medical waiver;



4. Number of accidents incurred while driving under the current intrastate medical waiver, including the date of each accident, number of fatalities, number of injuries, and the estimated dollar amount of any property damage;
 5. A current medical examination report and medical ~~examination~~ ~~examiner's~~ certificate completed pursuant to 49 CFR 391.43;
 6. A current medical examination or evaluation as applicable to the medical condition:
 - a. A current medical waiver evaluation summary, as prescribed under subsection (C)(2), for a driver with a loss of limb or limb impairment;
 - b. A current endocrinologist evaluation, as prescribed under subsection (D)(2), and a current vision evaluation report, as prescribed under subsection (D)(3), for a driver who is an insulin-dependent diabetic; or
 - c. A current vision examination report, as prescribed under subsection (E)(2), for a driver with monocular vision;
 7. A copy of the subject driver's current state motor vehicle driving record for the period of time the current intrastate medical waiver has been in effect;
 8. Notification of any change in the type of tractor the driver will operate;
 9. Subject driver's signature and date signed; and
 10. Motor carrier co-applicant's signature and date signed (if applicable).
- T. The Director may deny an application for the intrastate medical waiver or may grant the waiver in whole or in part and issue the waiver subject to such terms, conditions, and limitations as the Director deems consistent with the public interest.
- U. The Director may revoke an intrastate medical waiver after providing the driver subject to an intrastate medical waiver written notice of the proposed revocation and a reasonable opportunity to request a hearing pursuant to the procedure prescribed under 17 A.A.C. 1, Article 5. The Director may revoke an intrastate medical waiver if the:
1. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both provided false information in the application,
 2. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both failed to comply with the terms and conditions of the intrastate medical waiver, or
 3. Issuance of the intrastate medical waiver resulted in a lower level of safety than before the waiver was granted.
- V. If the enforcement of any provision of this Section would result in the loss or disqualification of federal funding for any state agency or program, that provision is invalid.

R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability

- A. Incorporation of federal regulations.
1. As relevant to the transportation of hazardous materials by highway, the Department incorporates by reference, as amended under this Section, the following Parts of the Federal Hazardous Materials Regulations; revised as of October 1, ~~2012~~ 2016, and no later amendments or editions, as 49 CFR - Transportation, Subtitle B - Other Regulations Relating to Transportation, Chapter I - Pipeline and Hazardous Materials Safety Administration, Department of Transportation:
 - a. Subchapter A - Hazardous Materials and Oil Transportation; Part 107 - Hazardous materials program procedures; and
 - b. Subchapter C - Hazardous Materials Regulations; Parts:
 - i. 171 - General information, regulations, and definitions;
 - ii. 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans;
 - iii. 173 - Shippers - general requirements for shipments and packagings;
 - iv. 177 - Carriage by public highway;
 - v. 178 - Specifications for packagings; and
 - vi. 180 - Continuing qualification and maintenance of packagings.
 2. The material incorporated by reference under this subsection is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is available from printed and distributed by the U.S. Government Printing Publishing Office, P.O. Box 979050, St. Louis, Missouri MO 63197-9000. The incorporated material can be viewed online at <http://www.ofr.gov> or <https://www.gpo.gov/fdsys> and ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>. The International Standard Book Numbers are 9780160935466 for 49 CFR 107, 171, 172, 173, and 177 and 9780160935473 for 49 CFR 178 and 180.
- B. Application and exceptions.
1. Application.
 - a. Regulations incorporated under subsection (A) apply as amended by subsection (C) to motor carriers, shippers, and manufacturers as defined under A.R.S. § 28-5201.
 - b. Regulations incorporated under subsection (A) also apply to any vehicle owned or operated by the state, a political subdivision, or a state public authority, used to transport a hazardous material, including hazardous substances and hazardous waste.
 2. Exceptions. An authorized emergency vehicle, as defined under A.R.S. § 28-101, is excepted from the provisions of this Section.
- C. Amendments. The following sections of the Federal Hazardous Materials Regulations, incorporated under subsection (A), are amended as follows:
1. Part 171, General information, regulations, and definitions. Section 171.8, Definitions and abbreviations. Section 171.8 is amended by revising the definitions for "Carrier," "Hazmat employer," and "Person," and adding a definition for "Highway" as follows:

"Carrier" means a person engaged in the transportation of passengers or property by highway as a common, contract, or private carrier and also includes the state, a political subdivision, and a state public authority engaged in the transportation of hazardous material."

"Hazmat employer" means a person who uses one or more employees in connection with: transporting hazardous material; causing hazardous material to be transported or shipped; or representing, marking, certifying, selling, offering, reconditioning,



testing, repairing, or modifying containers, drums, or packagings as qualified for use in the transportation of hazardous material. This term includes motor carriers, shippers, and manufacturers defined under A.R.S. § 28-5201 and includes the state, political subdivisions, and state public authorities.”

“‘Highway’ means a public highway defined under A.R.S. § 28-5201.”

“‘Person’ has the same meaning as defined under A.R.S. § 28-5201.”

- 2. Part 172, Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans. Section 172.3, Applicability. Paragraph (a)(2) is amended to read: “Each motor carrier that transports hazardous materials, and each state agency, political subdivision, and state public authority that transports hazardous material by highway.”
- 3. Part 177, Carriage by public highway.
 - a. Section 177.800, Purpose and scope of this part and responsibility for compliance and training. In paragraph (a), the phrase “by private, common, or contract carriers by motor vehicle” is amended to read, “by a motor carrier operating in Arizona, a state agency, a political subdivision, or a state public authority that transports hazardous material by highway.”
 - b. Section 177.802, Inspection. Section 177.802 is amended to read: “Records, equipment, packagings, and containers under the control of a motor carrier or other persons subject to this part, affecting safety in transportation of hazardous material by motor vehicle, must be made available for examination and inspection by an authorized representative of the Department as prescribed under A.R.S. §§ 28-5204 and 28-5231.”

R17-5-212. Motor Carrier Safety: Hearing Procedure

A. Scope.

- 1. This Section applies only to a motor carrier enforcement action under:
 - a. R17-5-201 through R17-5-209; and
 - b. A.R.S. Title 28, Chapter 14.
- 2. In an enforcement hearing involving a manufacturer, motor carrier, shipper, or driver under this Section, the Department shall follow the procedures prescribed under 17 A.A.C. 1, Article 5, except as modified under subsections (B) ~~through (I)~~ and (C).

B. Initiation of proceedings, ~~pleadings, service.~~

- 1. The Director shall initiate a hearing under this Section by:
 - a. Signing and serving a complaint in the form prescribed under subsection ~~(G)~~(C) that cites a manufacturer, motor carrier, shipper, or driver for an alleged infraction; and
 - b. ~~Serving the cited manufacturer, motor carrier, shipper, or driver with a hearing notice within 15 days after the date the complaint is signed~~ Submitting to the Department’s Executive Hearing Office a copy of the complaint and notification of the date the complaint was served.
- 2. ~~After the Director signs a complaint, the Executive Hearing Office shall act on the Director’s behalf through completion of an administrative proceeding under this Section. The date of service is the date of mailing.~~

C. Order ~~Complaint; order to show cause.~~

- 1. The complaint shall contain the following:
 - a. The Department as the designated petitioner;
 - b. The respondent’s name and the basis of fact for the complaint, including a listing of any alleged violation of Department statute or rule;
 - c. The relief sought by the Department; and
 - d. A copy of the written violation notice issued by a law enforcement agency to the respondent, if applicable.
- ~~1-2. When a complaint is served Upon receipt of a copy of the complaint, the Executive Hearing Office shall immediately issue a summons an order to show cause for a respondent to appear at an administrative hearing to explain why the Executive Hearing Office requested relief should not grant the requested relief be granted.~~
- ~~2-3. The Executive Hearing Office shall hold a hearing under this Section within 60 days after the date the complaint is served the time-frame required by statute.~~
- ~~3-4. The parties may resolve a complaint before the hearing date.

 - a. The respondent parties shall file any notice of settlement condition with the Executive Hearing Office.
 - b. Complaint settlement terminates the right of both petitioner and respondent to receive additional administrative review.~~

~~D. Service.~~

- ~~1. The Executive Hearing Office shall:

 - a. Send an order to show cause by certified mail as prescribed under A.R.S. § 28-5232(B); and
 - b. Maintain a proof of service file.~~
- ~~2. The date of service is the date of mailing.~~

~~E. Answer.~~

- ~~1. Within 15 days after service of a complaint, a respondent shall respond to the complaint by:

 - a. Filing a written answer with the Executive Hearing Office; and
 - b. Serving the Assistant Attorney General, Transportation Division, representing the Department with a copy of the answer.~~
- ~~2. A respondent’s written answer shall contain:

 - a. An admission or denial of each complaint allegation, and
 - b. A list of all defenses that the respondent intends to raise during the hearing.~~
- ~~3. In a hearing, the Executive Hearing Office shall consider any allegation not denied in the answer as an admission to the allegation.~~

~~F. Default.~~

- ~~1. The Executive Hearing Office shall find in default a respondent that fails to file an answer within 15 days after the service date of a complaint.~~
- ~~2. If the Executive Hearing Office finds a respondent in default, the Executive Hearing Office shall:~~



- a. Consider the respondent's default as an admission of all complaint allegations unless the default is cured under subsection (F)(3), and
 - b. Enter an order granting the relief requested in the Department's complaint.
3. A respondent may cure a default by following Rule 60(e) of the Arizona Rules of Civil Procedure.
- ~~G. Emergency motor carrier hearings; scope.~~
- 1. The Director shall initiate an emergency motor carrier hearing process according to R17-5-211(E) by:
 - a. Issuing a complaint and order to show cause according to the hearing scope under A.R.S. § 28-5232(C); and
 - b. Ordering immediate suspension of the registration of the motor vehicle owned or leased by the manufacturer, shipper, or motor carrier, or the driver license or driver's nonresident operating privilege, as prescribed under A.R.S. § 28-5232(A).
 - 2. The Executive Hearing Office shall set an emergency hearing date to occur within 30 days after the date on the complaint.
 - 3. The complaint and order to show cause shall contain the following:
 - a. The Department as the designated petitioner on the state's behalf;
 - b. The respondent's name and the basis of fact for the complaint, including a listing of any alleged violation of Department statute or rule;
 - e. The relief sought by the Department; and
 - d. An original copy of the written violation notice issued by a law enforcement agency that was served upon the respondent.
 - 4. At an emergency motor carrier hearing, an Executive Hearing Office administrative law judge shall determine whether the respondent:
 - a. Was operating on a public highway and the operation created a danger to the public safety;
 - b. Was responsible for the danger; and
 - e. Is responsible for preventing or remedying further danger to public safety.
 - 5. Upon a finding that the factors in subsection (G)(4) are present, the administrative law judge shall order that the motor carrier's registration and operator's driver license or driver's nonresident operating privilege suspension continue.
 - 6. If a respondent fails to appear at an emergency motor carrier hearing, any suspension previously ordered remains in effect until the respondent appears and meets all requirements under A.R.S. § 28-5232(F).
- ~~H. Upon a finding that the factors in subsection (G)(4) are present, the Director shall impose a civil penalty as prescribed under A.R.S. §§ 28-5232, 28-5237 and 28-5238.~~
- ~~I. A respondent may request judicial review of a motor carrier safety hearing as prescribed under A.R.S. § 28-5239.~~



NOTICES OF FINAL RULEMAKING

This section of the Arizona Administrative Register contains Notices of Final Rulemaking. Final rules have been through the regular rulemaking process as defined in the Administrative Procedures Act. These rules were either approved by the Governor's Regulatory Review Council or the Attorney General's Office. Certificates of Approval are on file with the Office.

The final published notice includes a preamble and

text of the rules as filed by the agency. Economic Impact Statements are not published.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the final rules should be addressed to the agency that promulgated them. Refer to Item #5 to contact the person charged with the rulemaking. The codified version of these rules will be published in the Arizona Administrative Code.

NOTICE OF FINAL RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION

CHAPTER 2. CORPORATION COMMISSION - FIXED UTILITIES

[R17-182]

PREAMBLE

| <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|--|--------------------------|
| R14-2-1201 | ReNUMBER |
| Part A | New Part |
| R14-2-A1201 | New Section |
| R14-2-A1201 | ReNUMBER |
| R14-2-A1201 | Amend |
| R14-2-1202 | ReNUMBER |
| R14-2-A1202 | New Section |
| R14-2-A1202 | ReNUMBER |
| R14-2-A1202 | Amend |
| R14-2-1203 | ReNUMBER |
| R14-2-A1203 | New Section |
| R14-2-A1203 | ReNUMBER |
| R14-2-A1203 | Amend |
| R14-2-1204 | ReNUMBER |
| R14-2-A1204 | New Section |
| R14-2-A1204 | ReNUMBER |
| R14-2-A1204 | Amend |
| R14-2-1205 | ReNUMBER |
| R14-2-A1205 | New Section |
| R14-2-A1205 | ReNUMBER |
| R14-2-A1205 | Amend |
| R14-2-1206 | ReNUMBER |
| R14-2-A1206 | New Section |
| R14-2-A1206 | ReNUMBER |
| R14-2-A1206 | Amend |
| R14-2-1207 | ReNUMBER |
| R14-2-A1207 | New Section |
| R14-2-A1207 | ReNUMBER |
| R14-2-A1207 | Amend |
| R14-2-1208 | ReNUMBER |
| R14-2-A1208 | New Section |
| R14-2-A1208 | ReNUMBER |
| R14-2-A1208 | Amend |
| R14-2-1209 | ReNUMBER |
| R14-2-A1209 | New Section |
| R14-2-A1209 | ReNUMBER |
| R14-2-A1209 | Amend |
| R14-2-1210 | ReNUMBER |
| R14-2-A1210 | New Section |
| R14-2-A1210 | ReNUMBER |
| R14-2-A1210 | Amend |
| R14-2-1211 | ReNUMBER |
| R14-2-A1211 | New Section |
| R14-2-A1211 | ReNUMBER |



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|-------------|-------------|
| R14-2-A1211 | Amend |
| R14-2-1212 | Re-number |
| R14-2-A1212 | New Section |
| R14-2-A1212 | Re-number |
| R14-2-A1212 | Amend |
| R14-2-1213 | Re-number |
| R14-2-A1213 | New Section |
| R14-2-A1213 | Re-number |
| R14-2-A1213 | Amend |
| R14-2-1214 | Re-number |
| R14-2-A1214 | New Section |
| R14-2-A1214 | Re-number |
| R14-2-A1214 | Amend |
| R14-2-1215 | Re-number |
| R14-2-A1215 | New Section |
| R14-2-A1215 | Re-number |
| R14-2-A1215 | Amend |
| R14-2-1216 | Re-number |
| R14-2-A1216 | New Section |
| R14-2-A1216 | Re-number |
| R14-2-A1216 | Amend |
| R14-2-1217 | Re-number |
| R14-2-A1217 | New Section |
| R14-2-A1217 | Re-number |
| R14-2-A1217 | Amend |
| Part B | New Part |
| R14-2-B1218 | New Section |
| R14-2-B1219 | New Section |
| R14-2-B1220 | New Section |
| R14-2-B1221 | New Section |
| R14-2-B1222 | New Section |
| R14-2-B1223 | New Section |

2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: Arizona Constitution, Article XV, § 3

Implementing statute: Arizona Constitution, Article XV, § 3.

The Arizona Corporation Commission (“Commission”) additionally has statutory authority to make the rule revisions pursuant to A.R.S. §§ 40-202, 40-203, and 40-322. Because the Commission is promulgating these rules pursuant to its exclusive and plenary ratemaking authority under Article XV, § 3, the Commission is not required to obtain Attorney General certification of this rulemaking under A.R.S. § 41-1044. *See, e.g., State ex rel. Corbin v. Arizona Corp. Comm’n*, 174 Ariz. 216, 848 P.2d 301 (Ariz. Ct. App. 1992).

3. The effective date of the rule:

September 20, 2017

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

The Commission requests an immediate effective date for these rules under A.R.S. § 41-1032(A)(3) and (4). These rules were initially adopted on an emergency basis on March 22, 2017, and became effective on March 29, 2017. The emergency rules were adopted to ensure that Arizona schools and libraries could become eligible for federal matching funds under the Federal Communication Commission’s (“FCC’s) Universal Service Fund’s Schools and Libraries Program (“E-rate Program”). The emergency rules created the E-rate Broadband Special Construction Project Matching Fund Program to provide state matching funds so Arizona schools and libraries will qualify for additional federal matching funds to assist in the deployment of broadband to their facilities. The Commission must adopt these permanent rules to replace the emergency rules for this program before the emergency rules expire on September 25, 2017. An immediate effective date will ensure that Arizona schools and libraries continue to be eligible for federal matching funds under the E-rate Program. If the permanent rules are not effective by September 25, 2017, the program in Arizona will be disrupted, and the ability of eligible Arizona schools and libraries to receive federal matching funds will be jeopardized.

The availability of these federal matching funds, and the state matching funds provided through these rules, presents a significant benefit to the public and eligible schools and libraries in Arizona, and there are no penalties associated with these rules. Additionally, the rulemaking needs to be effective immediately upon filing with the Secretary of State to ensure continued funding and to allow schools and libraries to meet federal deadlines for the E-rate program.

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in



A.R.S. § 41-1032(B):

Not applicable

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:

- Notice of Emergency Rulemaking: 23 A.A.R. 865, April 21, 2017
- Notice of Rulemaking Docket Opening: 23 A.A.R. 1906, July 14, 2017
- Notice of Proposed Rulemaking: 23 A.A.R. 1869, July 14, 2017
- Notice of Public Information: 23 A.A.R. 2121, August 4, 2017

5. The agency’s contact person who can answer questions about the rulemaking:

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 1200 W. Washington St.
 Phoenix, AZ 85007
 Telephone: (602) 542-3402
 Fax: (602) 542-4870
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Name: Pamela Genung, Public Utilities Manager, Utilities Division
 Address: Arizona Corporation Commission
 1200 W. Washington St.
 Phoenix, AZ 85007
 Telephone: (602) 542-0664
 Fax: (602) 542-2129
 E-mail: pgenung@azcc.gov
 Web site: azcc.gov

6. An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

On March 22, 2017, the Commission adopted, on an emergency basis, the rules that are the subject of this rulemaking. The emergency rules became effective on March 29, 2017. On June 13, 2017, the Commission directed its Staff to begin the regular rulemaking process to amend Title 14, Chapter 2, Article 12 of the Arizona Administrative Code, consistent with the rule changes previously made through the emergency rulemaking.

Under A.R.S. §41-1026(D), the emergency rules effective March 29, 2017, will expire in 180 days, or on September 25, 2017, unless permanent rules are adopted. The final rules herein completely repeal and replace the rules adopted through emergency rulemaking.

These final rules maintain the E-rate Broadband Special Construction Project Matching Fund Program, previously created through emergency rulemaking, which generates state matching fund through the Arizona Universal Service Fund (“AUSF”) instituted by the Commission. To develop this program, the Commission partnered with the Department of Education, the Governor’s Office, and the Arizona State Library and Archives. The program provides state matching funds to enable Arizona schools and libraries to become eligible for additional federal funds for broadband special construction projects as provided for under the FCC’s E-rate Modernization Orders. The FCC’s E-rate Modernization Orders allow qualifying schools and libraries to obtain, for a limited period of time, federal matching funds for broadband special construction projects up to a certain amount, but only if state funds are also provided. The federal program is of limited duration and expedited action must be taken by the Commission to enable the remaining Arizona schools and libraries with limited or no internet connectivity to take advantage of the program. The aggregate amount necessary to be collected through the AUSF for this program is approximately eight million dollars. If the final rules are not effective by September 25, 2017, the ability of Arizona schools and libraries to continue receiving additional funding under the federal program will be jeopardized.

The final rules, created in a new Part B to Article 12 entitled “Arizona Universal Service Support for Schools and Libraries”, include a purpose statement, definitions, steps to be taken by applicants, requirements for administration of the program and collection and disbursement of funds under the program, and provisions relating to the duration of the program and discontinuation of the program when federal E-rate program requirements terminate. The existing AUSF rules, are moved to a new Part A in Article 12 entitled “High Cost Fund”. Of those rules, only R14-2-1201 (moved to R14-2-A1201) is amended, to refer to the Part instead of the Article in which the rules are located.

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

None

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

Not applicable

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

The rules will impact customers of telecommunications service providers in Arizona, telecommunications service providers in Arizona, schools and libraries in Arizona (primarily in rural areas), students and their families, library patrons, political subdivisions that fund the capital needs of public libraries, businesses involved in construction of broadband infrastructure or provision of broadband services, the Arizona Department of Education, the Administrator of the AUSF, and the Commission.

The Arizona Department of Education may see an increase in personnel time expended due to an increase in the number of special construction project requests to be processed and reviewed, but will further its mission in ensuring that every student has access to an excellent education. The Commission also may see an increase in personnel time expended for the AUSF program. Private, business, and government customers of telecommunications service providers will experience a small increase in their monthly AUSF surcharge in order to fund the approved special construction projects, but are all expected to benefit from increased broadband connectivity for schools and libraries, which should result in enhanced educational quality and a larger and stronger workforce. The Administrator of the AUSF, Solix, Inc., will see an increase in personnel time expended for administration of the AUSF program for the duration of the E-rate Broadband Special Construction Project Matching Fund Program. Businesses involved in construction of broadband infrastructure or the provision of broadband services are likely to see an increase in business as a result of new construction projects, particularly in rural areas.

The Commission is unaware of any less intrusive or less costly alternative methods of achieving the purpose.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

The Commission made minor changes to the text of the rules to correct grammatical and typographical errors and make the rules more clear, concise, and understandable. The changes are not intended to, and the Commission believes that they do not, change in any way the scope, meaning, or impact of the rules. Thus, the Commission believes that the changes do not result in any change to the rules that would necessitate publication of a Notice of Supplemental Proposed Rulemaking as required by A.R.S. § 41-1025(A) when an agency's changes to a rule make it "substantially different" than the proposed rule.

The following minor changes were made to the text of the final rules:

The text of R14-2-1214(D), which is being renumbered along with the rest of R14-2-1214, is shown in strike-out, as it inadvertently appeared without strikeout in the NPRM;

A hyphen was added in the Section label for R14-2-A1209, which inadvertently was labeled as "R14-2A1209" in the NRPM;

In R14-2-B1219(3), the definition of "Arizona Universal Service Broadband Special Construction Project Matching Fund" was revised by replacing "Arizona Universal Service" with "E-rate," to be consistent with the name of the fund as used elsewhere in the rules;

In R14-2-B1219(3), the definition of "Discount Calculations" was revised by replacing "Calculations" with "rate" and by replacing "discount matrix, determined" with "percentage of cost coverage for an applicant, determined by the FCC for its E-rate Program," to be consistent with the terminology used in the rules;

In R14-2-B1219(3), in the definition of "Eligible provider," a comma was added after "498 ID," to correct a grammatical error;

In R14-2-B1219(3), in the definition of "E-rate Modernization Orders," a semi-colon was added after the first "(2014)," to separate the two citations;

In R14-2-B1219(3), the definitions were rearranged in alphabetical order, to be consistent with Secretary of State publication standards;

In R14-2-B1220(E), the comma after "FCC" was moved to follow "and," to correct a grammatical error;

In R14-2-B1220(F), "share" was replaced with "rate," to be consistent with the terminology used in the rules; "Applicant" should not be capitalized; and the comma after "DOE" was deleted to correct a grammatical error;

In R14-2-B1220(F)(1), "rate" was replaced with "rates," to correct a grammatical error;

In R14-2-B1220(F)(2), "60-80" was replaced with "60 and 80," to correct a grammatical error;

In R14-2-B1221(A), "FCC" was inserted before "Form 471," to be consistent with the term as defined;

In R14-2-B1221(D), a comma was inserted after "FCDL," to correct a grammatical error; and

In R14-2-B1222(C), "Sections" was deleted, to be consistent with Secretary of State rulemaking guidelines.



11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

| Written Comments on Notice of Proposed Rulemaking | |
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| Public Comment | Commission Response |
| THE RULEMAKING GENERALLY | |
| Qwest Corporation dba CenturyLink QC ("CenturyLink") understands the importance of connectivity for Arizona communities and supports the Commission's goal of promoting broadband investment, especially for rural areas. CenturyLink has invested almost \$8 billion in its Arizona network, including investment in rural areas, and believes that its investment and those of other providers are essential to reducing the connectivity gap between rural and metropolitan areas. CenturyLink is committed to making 10/1 Mbps or higher broadband service available to tens of thousands of Arizonans. CenturyLink supports adoption of permanent rules to allow Arizona to take advantage of the opportunity for supplemental federal matching funds from the FCC Universal Service Fund's Schools and Libraries Program. | The Commission acknowledges CenturyLink's support for reducing the broadband connectivity gap and its general support for the rulemaking. No change is needed as a result of this comment. |
| Cox Arizona Telcom, LLC ("Cox") strongly supports the Commission's efforts to extend broadband service to rural Arizona schools and libraries; commends the Commission for its leadership in this area; and understands the Commission's action to adopt permanent rules to add a state matching program to the AUSF to allow Arizona to receive federal funds under the FCC's Schools and Libraries Program. | The Commission acknowledges Cox's support for the rulemaking. No change is needed as a result of this comment. |
| Time Warner Cable Business LLC and Time Warner Cable Information Services (Arizona), LLC ("Time Warner") appreciates the opportunity to be involved in the rulemaking process. | The Commission acknowledges Time Warner's comment. No change is needed as a result of this comment. |
| HIGH COST FUND RULES | |
| CenturyLink noted that the rulemaking does not make any changes to the High Cost Fund rules and asserted that the continued existence, need, and application of the AUSF High Cost Fund should be reexamined in a separate proceeding. | Substantive changes to the High Cost Fund rules are outside the scope of this targeted rulemaking for the E-rate Broadband Special Construction Project Matching Fund Program ("State Matching Fund Program"). The Commission agrees that it may be appropriate to review the High Cost Fund rules and their use at a future date, but believes that such a review is not currently a high priority. No change is needed in response to this comment. |
| Cox agreed with CenturyLink's suggestion for the Commission to reexamine the AUSF High Cost Fund rules in a separate proceeding. Cox asserted that the AUSF High Cost Fund rules are no longer relevant and should be repealed because they do not effectively address the needs of Arizona's high-cost service areas and are not useful. | Substantive changes to the High Cost Fund rules are outside the scope of this targeted rulemaking for the State Matching Fund Program. The Commission agrees that it may be appropriate to review the High Cost Fund rules and their use and usefulness at a future date, but believes that such a review is not currently a high priority. No change is needed in response to this comment. |
| Arizona Telephone Company ("ATC"); Southwestern Telephone Company ("STC"); Table Top Telephone Company, Inc. ("Table Top"); Valley Telephone Cooperative ("VTC"); and Copper Valley Telephone Company ("Copper Valley") (collectively "rural companies") agreed with CenturyLink that the AUSF High Cost Fund rules should be reviewed. The rural companies asserted that the existence of or need for the AUSF High Cost Fund should not be at issue, however, and that the review should instead focus on how to expand and streamline the process to help rural local exchange carriers continue to provide reliable and cost-effective service to their customers. The rural companies stated that they serve high-cost low-customer-density areas, that the rural companies rely on federal USF funds and access charges to keep their basic local service rates affordable and to generate capital, that the federal funding has been reduced since 2011, and that the AUSF program should be expanded and access to funding streamlined to help offset the reductions in federal funding. The rural companies asserted that a rate case should not be required to receive AUSF funds and attributed the lack of participation in the High Cost Fund to the burdensome process. The rural companies asserted that the Commission should look to successful USF programs in other western states for how to design and implement a best practices AUSF program. | Substantive changes to the High Cost Fund rules are outside the scope of this targeted rulemaking for the State Matching Fund Program. The Commission agrees that it may be appropriate to review the High Cost Fund rules and the processes required therein, but believes that such a review is not currently a high priority. No change is needed in response to this comment. |
| SCOPE OF COMMISSION AUTHORITY | |
| Time Warner requested affirmation from the Commission that the Commission does not have authority over broadband. | The Commission is not, through this rulemaking, changing its position as to its authority over broadband. No change is needed in response to this comment. |
| RESTRICTIONS ON USE OF STATE MATCHING FUNDS | |



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| <p>CenturyLink asserted that state matching funds should not be provided for self-provisioning by schools and libraries, especially if the FCC or USAC provides guidance that Arizona is not required to allow state funds for self-provisioning to qualify as a source of matching funds or if the FCC clarifies or changes its rules to disallow use of federal USF funds for self-provisioning. CenturyLink suggested the following revision to R14-2-B1220(D) to address this: <u>“R14-2-B1220.D. Schools and libraries shall not qualify to use state funds for self-provisioning if the FCC disallows use of federal funds for self-provisioning. To the extent that the FCC allows federal funds for self-provisioning, schools and libraries shall comply with all of the then current requirements set forth by the FCC. Schools and libraries that elect to self-provision shall comply with all of the requirements set forth by the FCC in the Second E-rate Modernization Order.”</u></p> | <p>In the Second E-rate Modernization Order (“EMO2”), the FCC very clearly approved the use of self-construction of high-speed broadband facilities by schools and libraries for which it is the most cost-effective option and adopted safeguards to ensure that it is only funded when it is the most cost-effective option. (See EMO2 at 15555-59.) The Commission believes that it would be inappropriate and counterproductive to restrict the use of the new AUSF funds more than the FCC has restricted the use of federal E-rate Program funds and that doing so could jeopardize USAC’s approval of the Commission’s State Matching Fund Program as a source for state matching funds. If the FCC prohibits the use of federal E-rate Program funds for self-provisioning while the State Matching Fund Program is still operational, the Commission will take any appropriate action needed to allow Arizona schools and libraries to maximize their opportunity to receive federal matching funds under the E-rate Program. No change is needed in response to this comment.</p> |
| <p>Cox agreed with CenturyLink that the special construction funds should not be used for self-provisioning of broadband facilities by schools and libraries. Cox asserted that the AUSF funds should be used only for “last mile” connections from a provider’s “point of presence” to the customer site and not for “middle mile” service connecting points of presence. Cox asserted that this limitation will ensure that the funds provide the maximum benefit for schools and libraries, rather than funding construction of backbone networks for the ultimate benefit of carriers. Cox further asserted that the funds should not be used for construction where another carrier already has facilities (“overbuilding”). Cox proposed that the following two subsections be added to R14-2-B1220: <u>“G. Prohibition on overbuilding. Projects are not eligible for funding under R14-2-1218 to R14-2-1223 if another carrier has facilities in place that are already capable of providing internet access.</u> <u>H. ‘Last mile’ projects only. Only projects that construct facilities from an existing central office, fiber node, or other carrier location to the school or library location are eligible for funding under R14-2-1218 to R14-2-1223. Projects that construct facilities between a carrier’s existing central offices, fiber nodes, or other carrier locations are not eligible for funding under R14-2-1218 to R14-2-1223.”</u> Cox requested that if the Commission does not add these subsections to the permanent rules, the Commission make these limitations clear in the Commission Decision adopting final permanent rules.</p> | <p>In EMO2, the FCC very clearly approved the use of self-construction of high-speed broadband facilities by schools and libraries for which it is the most cost-effective option and adopted safeguards to ensure that it is only funded when it is the most cost-effective option. (See EMO2 at 15555-59.) In doing so, the FCC specifically addressed commenters’ concerns about overbuilding and decided that the safeguards put in place through EMO2 were more appropriate than the limitations sought by commenters. (See EMO2 at 15557.) Regarding last-mile facilities, in EMO2, the FCC provided that the “additional 10 percent in category one funding to match state funding [is for] special construction charges for last-mile facilities to support high-speed broadband.” (EMO2 at 15620.) Because the proposed rules tie eligibility to receive state matching funds to eligibility to receive federal matching funds, there is already an implicit requirement for AUSF-funded projects to meet this requirement, as codified by the FCC through EMO2. (See R14-2-B1220(B), R14-2-B1221(D).) The Commission believes that it would be inappropriate and counterproductive to restrict the use of the new AUSF funds more than the FCC has restricted the use of E-rate Program funds and that doing so could jeopardize USAC’s approval of the Commission’s State Matching Fund Program as a source for state matching funds. No change is needed in response to these comments.</p> |
| <p>Time Warner agreed with Cox that the State Matching Fund Program should be for the limited purpose of providing funds necessary to qualify for federal matching and should not be used for self-provisioning of broadband facilities or to overbuild existing facilities.</p> | <p>In EMO2, the FCC very clearly approved the use of self-construction of high-speed broadband facilities by schools and libraries for which it is the most cost-effective option and adopted safeguards to ensure that it is only funded when it is the most cost-effective option. (See EMO2 at 15555-59.) In doing so, the FCC specifically addressed commenters’ concerns about overbuilding and decided that the safeguards put in place through EMO2 were more appropriate than the limitations sought by commenters. (See EMO2 at 15557.) The Commission believes that it would be inappropriate and counterproductive to restrict the use of the new AUSF funds more than the FCC has restricted the use of E-rate Program funds and that doing so could jeopardize USAC’s approval of the Commission’s State Matching Fund Program as a source for state matching funds. No change is needed in response to these comments.</p> |
| <p>Time Warner asserted that special construction projects should be subject to challenge.</p> | <p>The Commission believes that adding another potential layer of scrutiny to special construction projects—by allowing providers to contest them—would be inappropriate and counterproductive. The FCC publishes an eligible services list each year, and each FCC Form 470 is reviewed by USAC for project eligibility. The timelines related to the federal E-rate Program (<i>i.e.</i>, the windows of opportunity for schools and libraries to file their FCC Forms) are relatively narrow. Allowing a provider to contest a project’s eligibility could result in a time-consuming obstacle that would ultimately prevent a school or library from receiving matching funds. Additionally, and importantly, an opportunity to contest implies the existence of an entity (presumably the Commission) empowered to determine whether a contested project is eligible for federal funds (because such eligibility is required to obtain state matching funds). The Commission lacks jurisdiction to determine eligibility for federal matching funds and should not attempt to assert jurisdiction to do so. The Commission rules intentionally rely upon the FCC rules for eligibility determinations, and the Commission does not believe that it would be in the public interest for the Commission to alter that reliance. No change is needed in response to this comment.</p> |
| <p>Time Warner asserted that the Commission should affirm that the Commission will not sweep the new AUSF funds into the State’s general fund.</p> | <p>The Commission intends to have the newly generated AUSF funds used in the manner contemplated by the proposed rules, not to sweep the newly generated AUSF funds into the general fund. The AUSF funds will be administered by Solix, Inc. rather than the Commission. The Commission anticipates that it would only be directly involved in deciding how any excess (over \$8 million) AUSF E-rate program funds are used, as provided in R14-2-B1222(D). No change is needed in response to this comment.</p> |
| <p>DURATION OF THE NEW STATE MATCHING FUND PROGRAM</p> | |



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| <p>R14-2-B1223(C): CenturyLink asserted that the additional matching funds from the FCC will be available for a limited period of time, found the rule language ambiguous regarding those limitations, and proposed that R14-2-B1223(C) be revised as follows to reflect that the federal matching funds program could be discontinued early and to keep telecommunications customers from paying for a broadband construction program that might be interpreted as persisting outside of federal matching funds: “R14-2-B1223(C). The E-rate Broadband Special Construction Project Matching Fund Program may shall be discontinued earlier or later than specified in subsection (B) if required by the FCC or USAC, <u>or if the federal matching funds program is discontinued earlier than currently scheduled.</u>”</p> <p>Note that CenturyLink revised its suggestions in this area at the Oral Proceeding on August 14, 2017, and no longer advocates for the above change to be made to R14-2-B1223(C).</p> | <p>The Commission agrees that it is appropriate for the duration of the State Matching Fund Program to coincide with the availability of the additional federal matching funds. The Commission does not, however, agree that the rule language is ambiguous concerning the relationship between the two. The proposed rules repeatedly refer to the existence of federal matching funds as the <i>raison d’être</i> for the State Matching Fund Program (<i>see, e.g.,</i> R14-2-B1218, the R14-2-B1219 definition of the “E-rate Broadband Special Construction Project Matching Fund,” R14-2-B1220(B), and R14-2-B1221(D)), and limit the duration of the State Matching Fund Program in R14-2-B1220(A), R14-2-B1222(D), and R14-2-B1223(A). Additionally, R14-2-B1223(C) allows for the State Matching Fund Program to be ended sooner or later if required by the FCC or USAC.</p> <p>No change is needed in response to this comment.</p> |
| <p>Cox generally agreed with CenturyLink’s comments, particularly CenturyLink’s suggestion that the rules be clarified to make it “crystal clear” that the State Matching Fund Program is for the limited purpose of providing funds necessary to qualify for federal matching and that the State Matching Fund Program be of limited duration.</p> | <p>The Commission does not believe that the rule language is ambiguous concerning the relationship between the State Matching Fund Program and the availability of the additional federal matching funds. The proposed rules repeatedly refer to the existence of federal matching funds as the <i>raison d’être</i> for the State Matching Fund Program (<i>see, e.g.,</i> R14-2-B1218, the R14-2-B1219 definition of the “E-rate Broadband Special Construction Project Matching Fund,” R14-2-B1220(B), and R14-2-B1221(D)), and limit the duration of the State Matching Fund Program in R14-2-B1220(A), R14-2-B1222(D), and R14-2-B1223(A). Additionally, R14-2-B1223(C) allows for the State Matching Fund Program to be ended sooner or later if required by the FCC or USAC.</p> <p>No change is needed in response to this comment.</p> |
| <p>Time Warner agreed with Cox that the State Matching Fund Program should be of limited duration.</p> | <p>The proposed rules limit the duration of the State Matching Fund Program in R14-2-B1220(A), R14-2-B1222(D), and R14-2-B1223(A). Additionally, R14-2-B1223(C) allows for the State Matching Fund Program to be ended sooner or later if required by the FCC or USAC.</p> <p>No change is needed in response to this comment.</p> |
| <p>Oral Comments on Notice of Proposed Rulemaking</p> | |
| <p>Public Comment</p> | <p>Commission Response</p> |
| <p>At the Oral Proceeding on August 14, 2017, CenturyLink expressed appreciation for the opportunity to offer comments and stated that it understands the reason for the rules and is in favor of the state’s being able to take advantage of the federal matching fund opportunity.</p> | <p>The Commission acknowledges the supportive comment.</p> <p>No change is needed in response to this comment.</p> |
| <p>CenturyLink stated that, after further reflection, it no longer desires to see R14-2-B1223(C) changed as described in its written comments, but instead would like to see the following change made to R14-2-B1223(A): “A. No applications for the E-rate Broadband Special Construction Project Matching Fund Program shall be accepted after the 2018 E-rate FY procurement cycle, or sooner if the matching fund program is discontinued by the FCC.” CenturyLink desires for the rules to allow for immediate termination of the new State Matching Fund Program if the FCC were to terminate the federal matching program sooner than expected, something that CenturyLink believes could happen due to changes in the federal and FCC administration. CenturyLink also stated that R14-2-B1223(C) is somewhat confusing in that it seems to limit itself to R14-2-B1223(B). However, CenturyLink now advocates for revision to be made to the language concerning the acceptance of applications under R14-2-B1223(A) rather than R14-2-B1223(C).</p> | <p>The Commission believes that CenturyLink’s concerns are adequately addressed in R14-2-B1223(C), which states that the State Matching Fund Program may be discontinued earlier than provided in R14-2-B1223(B) if required by the FCC or USAC. (R14-2-B1223(B) provides that the State Matching Fund Program shall be discontinued when all funds have been collected and all collected funds have been disbursed.) The Commission believes that the FCC’s discontinuation of its matching fund program would necessitate discontinuance of the State Matching Fund Program under R14-2-B1223(C) because no school or library would be able to obtain an FCDL from USAC establishing eligibility for federal matching funds (as required by R14-2-B1221(D) and (E) to obtain state matching funds). The Commission believes that because it would be impossible for any applicant to qualify for state matching funds, the FCC’s discontinuation of its matching fund program would equate to the FCC’s requiring discontinuance of the State Matching Fund Program for purposes of R14-2-B1223(C).</p> <p>No change is needed in response to this comment.</p> |
| <p>CenturyLink clarified its written comments concerning self-provisioning, stating that its position is not that schools and libraries cannot currently use matching funds for self-provisioning (because the FCC rules allow it), but instead is that if the FCC changes its mind and disallows the use of federal funds for self-provisioning, the state should follow suit and prohibit use of state matching funds for self-provisioning.</p> | <p>The Commission’s response to CenturyLink’s original comment, set forth above, addressed the concerns behind CenturyLink’s clarified comment as well. Because the Commission rules require a school or library to obtain an FCDL from USAC (stating that the school or library is eligible for federal matching funds) to obtain state matching funds, the Commission believes that a change in the federal rules to exclude self-provisioning from eligible services would be largely self-implementing.</p> <p>No change is needed in response to this comment.</p> |
| <p>In response to a question from Commissioner Andy Tobin regarding what should happen with AUSF funds collected under the State Matching Fund Program if the FCC discontinues the E-rate Program’s federal matching fund program, CenturyLink stated that the AUSF funds should somehow be reimbursed to ratepayers.</p> | <p>The Commission agrees that AUSF funds collected under the State Matching Fund Program that cannot be used as state matching funds should somehow be reimbursed to ratepayers and would direct Staff to determine and recommend potential methods of reimbursement if the FCC discontinues the E-rate Program’s federal matching fund program earlier than expected or the AUSF funds generated under the State Matching Fund Program cannot be used as state matching funds for any other reason.</p> <p>No change is needed in response to this comment.</p> |
| <p>CenturyLink repeated its comment regarding the need for revision of the High Cost Fund rules.</p> | <p>The Commission’s response to CenturyLink’s original comment, set forth above, adequately addresses this comment.</p> |



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| <p>Milan Eaton, the State E-rate Director for the Arizona Department of Education (“ADOE”) stated that state matching funds will only be made available if federal matching funds are approved—i.e., if USAC agrees to provide federal matching funds. Without USAC approval, no state funds will be provided. Also, if the FCC eliminates funding for self-provisioning, neither USAC nor the state will provide any matching funds for self-provisioning. ADOE believes that this should resolve carriers’ concerns.</p> | <p>The Commission appreciates ADOE’s explanation and support for the proposed State Matching Fund rules. No change is needed in response to this comment.</p> |
| <p>Mr. Eaton expressed appreciation for the Commission’s work, and the work of the Governor’s office, in cooperating to help bring broadband infrastructure to parts of Arizona that have never had the funding to bring internet to their areas.</p> | <p>The Commission acknowledges the supportive comment. No change is needed in response to this comment.</p> |
| <p>In response to a question to Staff regarding the FCC approval obtained, Mr. Eaton explained that the emergency rules were sent to USAC, who provided them to the FCC; that several conference calls took place to review the rules; and that ADOE received confirmation several weeks later that the FCC had approved the State Matching Fund Program and that the State Matching Fund Program had been posted on USAC’s website as an approved source. Mr. Eaton explained that EMO2 required that state matching funds come from only FCC-approved sources.</p> | <p>The Commission appreciates ADOE’s explanation. No change is needed in response to this comment.</p> |
| <p>In response to a question from the ALJ, Mr. Eaton confirmed that ADOE issues both letters referenced in R14-2-B1221(B).</p> | <p>The Commission appreciates ADOE’s confirmation. No change is needed in response to this comment.</p> |

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rules do not require issuance of a regulatory permit, license or agency authorization.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

The rules are no more stringent than FCC rules, found at Title 47, Chapter 1, Part 54, Subpart F of the Code of Federal Regulations.

c. Whether a person submitted an analysis to the agency that compares the rule’s impact of the competitiveness of business in this state to the impact on business in other states:

No

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

47 CFR 54.500 (October 1, 2016), adopted in R14-2-B1219(1)

47 CFR 54.5 (October 1, 2016), adopted in R14-2-B1219(3)(c)

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Notice of Emergency Rulemaking: 23 A.A.R. 865, April 21, 2017

The rules have been changed from the emergency rulemaking, as described in item 10 herein.

15. The full text of the rules follows:

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

CHAPTER 2. CORPORATION COMMISSION - FIXED UTILITIES

ARTICLE 12. ARIZONA UNIVERSAL SERVICE FUND

Section

- R14-2-1201. Definitions Renumbered
- R14-2-1202. Calculation of AUSF Support Renumbered
- R14-2-1203. Request for AUSF Support Renumbered
- R14-2-1204. Funding of the AUSF Renumbered
- R14-2-1205. Calculation of Surcharges Renumbered
- R14-2-1206. Implementation Renumbered
- R14-2-1207. Calculation of Monthly Payments and the Associated Collections Renumbered
- R14-2-1208. Monthly AUSF Disbursements Renumbered
- R14-2-1209. Procedures for Handling AUSF Rate Changes Renumbered
- R14-2-1210. Statement of Participation of All Telecommunications Service Providers in the AUSF Renumbered
- R14-2-1211. Duties and Responsibilities of the AUSF Administrator Renumbered
- R14-2-1212. Interim Administrator Renumbered
- R14-2-1213. Guidelines for Auditing the AUSF Renumbered



- R14-2-1214. ~~Enforcement of Collection of Delinquent AUSF Amounts~~ Renumbered
- R14-2-1215. ~~AUSF Annual Report~~ Renumbered
- R14-2-1216. ~~Review Process~~ Renumbered
- R14-2-1217. ~~Supersession of Existing USF Mechanism~~ Renumbered

PART A. HIGH COST FUND

Section

- ~~R14-2-1201~~ R14-2-A1201 Definitions
- ~~R14-2-1202~~ R14-2-A1202 Calculation of AUSF Support
- ~~R14-2-1203~~ R14-2-A1203 Request for AUSF Support
- ~~R14-2-1204~~ R14-2-A1204 Funding of the AUSF
- ~~R14-2-1205~~ R14-2-A1205 Calculation of Surcharges
- ~~R14-2-1206~~ R14-2-A1206 Implementation
- ~~R14-2-1207~~ R14-2-A1207 Calculation of Monthly Payments and the Associated Collections
- ~~R14-2-1208~~ R14-2-A1208 Monthly AUSF Disbursements
- ~~R14-2-1209~~ R14-2-A1209 Procedures for Handling AUSF Rate Changes
- ~~R14-2-1210~~ R14-2-A1210 Statement of Participation of All Telecommunications Service Providers in the AUSF
- ~~R14-2-1211~~ R14-2-A1211 Duties and Responsibilities of the AUSF Administrator
- ~~R14-2-1212~~ R14-2-A1212 Interim Administrator
- ~~R14-2-1213~~ R14-2-A1213 Guidelines for Auditing the AUSF
- ~~R14-2-1214~~ R14-2-A1214 Enforcement of Collection of Delinquent AUSF Amounts
- ~~R14-2-1215~~ R14-2-A1215 AUSF Annual Report
- ~~R14-2-1216~~ R14-2-A1216 Review Process
- ~~R14-2-1217~~ R14-2-A1217 Supersession of Existing USF Mechanism

PART B. ARIZONA UNIVERSAL SERVICE SUPPORT FOR SCHOOLS AND LIBRARIES

Section

- R14-2-B1218 Purpose
- R14-2-B1219 Definitions
- R14-2-B1220 Availability of State Matching Funds for Special Construction Projects to Deploy Broadband
- R14-2-B1221 Procedures for Requesting State Matching Funds
- R14-2-B1222 Administrator Responsibilities; Contributions to and Disbursements from the AUSF
- R14-2-B1223 Discontinuation of E-rate Broadband Special Construction Project Matching Fund Program

ARTICLE 12. ARIZONA UNIVERSAL SERVICE FUND

R14-2-1201. Definitions Renumbered

In this Article, unless the context otherwise requires, the following definitions shall apply:

1. "Administrator" is the person designated pursuant to R14-2-1212 to administer the AUSF and perform the functions required by this Article.
2. "Arizona Corporation Commission" or "Commission." The regulatory agency of the state of Arizona having jurisdiction over public service corporations operating in Arizona.
3. "Arizona Universal Service Fund" or "AUSF" is the funding mechanism established by this Article through which surcharges are collected and support paid in accordance with this Article.
4. "AUSF Support" is the amount of money, calculated pursuant to this Article, which a provider of basic local telephone exchange service is eligible to receive from the AUSF pursuant to this Article.
5. "AUSF Support Area" is the geographic area for which a local exchange carrier's eligibility to receive AUSF support is calculated.
6. "Basic local exchange telephone service" is telephone service that provides the following features:
 - a. Access to 1-party residential service with a voice grade line;
 - b. Access to touchtone capabilities;
 - c. Access to an interexchange carrier;
 - d. Access to emergency services, including but not limited to emergency 911;
 - e. Access to directory assistance service;
 - f. Access to operator service;
 - g. Access to a white page or similar directory listing; and
 - h. Access to telephone relay systems for the hearing and speech impaired.
7. "Benchmark rates" for a telecommunications services provider are those rates approved by the Commission for that provider for basic local exchange telephone service, plus the Customer Access Line Charge approved by the Federal Communications Commission.
8. "Commercial Mobile Radio Service" is any radio communication service carried on between mobile stations or receivers and land stations, or by mobile stations communicating among themselves, that is provided for profit and that makes available to the public service that is connected to the public switched network.
9. "Conversion Factor" is a multiplier that is used to convert a quantity of interconnecting trunks for both wireless and wireline customers into equivalent access lines, for the sole purpose of developing Category 1 surcharges. The value of the Conversion Factor shall be 10 until completion of the review provided for in R14-2-1216.



10. "Interconnecting Trunk" is a 1-way or 2-way voice grade or equivalent voice grade switched message transmission channel furnished by a local switched access provider to a provider of wireless services or to a wireline customer of such local switched access provider to interconnect the provider of wireless services or wireline customer to the public switched network.
11. "Intermediate Local Exchange Carriers" are incumbent providers of basic local exchange telephone service with more than 20,000 access lines but fewer than 200,000 access lines in Arizona.
12. "Large Local Exchange Carriers" are incumbent providers of basic local exchange telephone service serving 200,000 or more access lines in Arizona.
13. "Small Local Exchange Carriers" are incumbent providers of basic local exchange telephone service with 20,000 or fewer access lines in Arizona.
14. "Total Service Long Run Incremental Cost" is the total additional cost incurred by a telecommunications company to produce the entire quantity of a service, given that the telecommunications company already provides all of its other services. Total Service Long Run Incremental Cost is based on the least cost, most efficient technology that is capable of being implemented at the time the decision to provide the service is made.
15. "U.S. Census Blocks" are geographic areas defined by the U.S. Department of Commerce. The areas, which define the way in which census data is aggregated, generally contain between 250 and 550 housing units.

R14-2-1202. Calculation of AUSF Support Renumbered

- A.** The amount of AUSF support to which a provider of basic local exchange telephone service is eligible for a given AUSF support area shall be based upon the difference between the benchmark rates for basic local exchange telephone service provided by the carrier, and the appropriate cost to provide basic local exchange telephone service as determined by the Commission, net of any universal service support from federal sources.
- B.** For a small local exchange carrier, the AUSF support area shall include all exchanges served by the local exchange carrier in Arizona. The appropriate cost of providing basic local exchange telephone service for purposes of determining AUSF support for a small local exchange carrier shall be the embedded cost of the incumbent provider. For any request for AUSF support by a small local exchange carrier filed more than three years after the effective date of this Article, the AUSF support area shall be the geographic areas as determined by the Commission.
- C.** For an intermediate local exchange carrier, the AUSF support area shall be either all exchanges in Arizona served by that carrier, or such other support area as may be approved by the Commission. The appropriate cost of providing basic local exchange telephone service for purposes of determining AUSF support for an intermediate local exchange carrier shall be the embedded cost of the incumbent provider. For any request for AUSF support by an intermediate local exchange carrier filed more than three years after the effective date of this Article, the AUSF support area shall be geographic areas as determined by the Commission, and the appropriate cost of providing basic local exchange telephone service for purposes of determining AUSF support shall be the Total Service Long Run Incremental Cost of the incumbent provider. In the event that the FCC adopts a somewhat different forward-looking costing methodology and/or a different geographic study/support area for the Federal universal service fund program, a local exchange carrier may request a waiver from this rule in order to utilize the same cost study methodology and/or geographic study areas in both jurisdictions.
- D.** For a large local exchange carrier, the AUSF support area shall be U.S. census block groups, and the appropriate cost of providing basic local exchange telephone service for purposes of determining AUSF support shall be the Total Service Long Run Incremental Cost. In the event that the FCC adopts a somewhat different forward-looking costing methodology and/or a different geographic study/support area for the Federal universal service fund program, a local exchange carrier may request a waiver from this rule in order to utilize the same cost study methodology and/or geographic study areas in both jurisdictions. Any request for AUSF support by a large local exchange carrier shall include a Total Service Long Run Incremental Cost study, or cost study based on FCC adopted methodology, of basic local exchange service. The cost study shall be developed and presented in a manner that identifies the cost for the individual support areas for which AUSF funding is being requested.

R14-2-1203. Request for AUSF Support Renumbered

A provider of basic local exchange telephone service may request that the Commission authorize AUSF support with a filing under R14-2-103 or other method as the Commission may prescribe, and upon compliance with all applicable rules set forth in R14-2-1101 through R14-2-1115. A request for AUSF support shall include a statement describing the need for such funding. The Commission shall determine the appropriate cost of providing basic local exchange service for each AUSF support area for which AUSF support is requested and shall calculate in accordance with R14-2-1202 the amount of AUSF support, if any, to which the applicant is entitled.

R14-2-1204. Funding of the AUSF Renumbered

- A.** The AUSF shall be funded in accordance with this Article by all telecommunications service providers that interconnect to the public switched network. Within 30 days of the effective date of this Article, and thereafter on or before October 1 of each year, each telecommunications provider shall provide to the Administrator a list of all other telecommunications providers that interconnect to its facilities or network.
- B.** The AUSF shall be funded equally by toll and local customers of the providers of telecommunications services, and shall be assessed in the following manner:
 1. **Category 1**—Providers of basic local exchange service, as discussed in R14-2-1204(B)(1)(a), and other service providers as required under R14-2-1204(B)(1)(a)(i) or permitted under R14-2-1204(B)(3)(b), shall be considered providers of Category 1 service.
 - a. One-half of the AUSF funding requirement will be collected through Category 1 service providers. Category 1 AUSF assessment will be based upon access lines and interconnecting trunks, and assessed by providers of local switched access as either an access line or interconnecting trunk surcharge. The "per access line" surcharge to be in place during a given year will be calculated by the Administrator using the total number of access lines and equivalent access lines deriving from interconnecting trunks that were in service for all Category 1 service providers on October 1 of the previous year.



Access lines shall include business and residence lines, public access lines, and other identifiable access lines. All wireless providers including but not limited to paging and other Commercial Mobile Radio Service providers, that interconnect to the public switched network will contribute to the AUSF under the requirements of Category 1. The number of interconnecting trunks obtained from the local access provider by the wireless provider shall be utilized in conjunction with a Conversion Factor to determine AUSF support from such wireless provider by means of a surcharge on such interconnecting trunks. A wireless provider that fails to contribute to the AUSF as required by this Article shall be subject to termination of its interconnection arrangements pursuant to R14-2-1214(C).

- b. On or before November 1 of each year, each Category 1 local switched access service provider shall provide to the Administrator the number of access lines and number of interconnecting trunks that were in service on October 1 of that year. The Administrator will use these numbers together with the Conversion Factor in calculating the per access line surcharge and per interconnecting trunk surcharge for the following year. The Administrator will multiply the total number of interconnecting trunks by the Conversion Factor to obtain an equivalent number of access lines for the purpose of calculating the surcharges.
- 2. Category 2—Providers of intrastate toll service, or other service providers as permitted under R14-2-1204(B)(3), shall be considered providers of Category 2 service and shall be assessed AUSF charges as follows:
 - a. One half of the AUSF funding requirement will be collected through Category 2 service providers. The Category 2 AUSF assessment will be based on total Arizona intrastate toll revenue, and assessed as a percent of revenue. The percent of revenue assessment to be in place during a given year will be calculated by the Administrator using the annual Arizona intrastate revenue for all Category 2 service providers for the previous year.
 - b. On or before November 1 of each year, each Category 2 service provider shall report to the Administrator the total Arizona intrastate revenue collected between August 1 of the current year and August 1 of the previous year. The Administrator will use this revenue so reported to calculate the AUSF assessment rate for the following year.
- 3. New telecommunications service providers:
 - a. Telecommunications providers that begin providing basic local exchange service after the effective date of this Article shall be assessed AUSF charges pursuant to R14-2-1204(B)(1). Telecommunications providers that begin providing toll service after the effective date of this Article shall be assessed AUSF charges pursuant to R14-2-1204(B)(2).
 - b. All other telecommunications service providers that interconnect to the public switched network and begin providing telecommunications service after the effective date of this Article, shall choose to be considered either a Category 1, Category 2, or both Category 1 and Category 2 service provider. Such election shall be made in writing to the Administrator within 30 days of beginning to provide telecommunications service in Arizona, with a copy to the Director of Utilities. Written concurrence of the Director of Utilities must be received by the Administrator for such selection to be effective. Such selection will be irrevocable for a period of at least three years.
- 4. A telecommunications provider that provides both Category 1 and Category 2 services shall be assessed AUSF charges pursuant to both R14-2-1204(B)(1) and R14-2-1204(B)(2).

R14-2-1205. Calculation of Surcharges Renumbered

- A.** The Administrator will calculate the total AUSF support due all local exchange carriers who have been granted AUSF support by the Commission. Administrative costs and audit fees will be added to this amount. The amount of any excess funds in the AUSF will then be subtracted to determine the total funding requirement. The funding requirements from Category 1 and Category 2 service providers will then be calculated. One half of the funding will be obtained from Category 1 providers through surcharges applied to access lines and interconnecting trunks in service. The other half will be obtained from Category 2 providers through surcharges on intrastate toll revenues.
- B.** For the purpose of determining the surcharges, the Administrator will develop growth factors to apply to the total reported access lines and toll revenues. Such growth factors will be calculated at 1/2 of the estimated annual percentage growth in access lines and in toll revenues.
- C.** Category 1 Surcharge. One half of the total annual AUSF support approved by the Commission for all eligible recipients will be obtained from Category 1 service providers. A monthly per access line surcharge and a monthly per interconnecting trunk surcharge required to obtain this funding will be calculated as follows:
 - 1. Adding together the number of access lines and equivalent access lines for all Category 1 service providers, adjusted by the growth factor;
 - 2. Dividing the total annual AUSF support approved by the Commission for all eligible recipients by 2 to obtain the portion of AUSF support required from Category 1 service providers;
 - 3. Dividing the amount of Category 1 AUSF support calculated in subsection (C)(2) by the sum of access lines calculated in subsection (C)(1) to yield the per access line surcharge;
 - 4. Dividing the per access line surcharge calculated in subsection (C)(3) by 12 to determine the monthly access line assessment;
 - 5. Multiplying the surcharge obtained in subsection (C)(4) by the Conversion Factor to determine the monthly interconnecting trunk surcharge.
- D.** Category 2 Surcharge. One half of the total annual AUSF support approved by the Commission for all eligible recipients will be obtained from Category 2 service providers. A percent of revenue surcharge required to obtain this funding will be calculated as follows:
 - 1. Totalling the annual intrastate toll revenues of all Category 2 service providers, adjusted by the growth factor;
 - 2. Dividing the total AUSF support approved by the Commission for all eligible recipients by 2 to obtain the portion of AUSF support required from Category 2 service providers;
 - 3. Dividing the amount of Category 2 AUSF support requirement calculated in subsection (D)(2) by the total annual intrastate toll revenues calculated in subsection (D)(1) to arrive at a percentage of revenue surcharge.



E. Recipients of lifeline or other low-income support shall be exempt from paying a Category 1 surcharge.

R14-2-1206. Implementation Renumbered

- A. Any provider of telecommunications service may file either an AUSF tariff or price list, if appropriate, establishing a flow-through mechanism to collect the surcharge approved by the Commission and calculated by the Administrator.
- B. On or before the 20th day of each month, each Category 1 service provider responsible for collecting AUSF surcharges shall remit to the Administrator the AUSF surcharge, including any surcharge on wireless providers, collected by that provider during the preceding month. The Category 1 provider shall submit such documentation of AUSF revenues from the AUSF surcharge as may be required by the Administrator.
- C. On or before the 20th day of each month, each Category 2 service provider responsible for collecting AUSF surcharges shall remit to the Administrator the AUSF surcharge collected by that provider during the third preceding month. The Category 2 provider shall submit such documentation of AUSF revenues from the AUSF surcharge as may be required by the Administrator.
- D. Eligible recipients of AUSF support are:
1. Providers of telecommunications service engaged in providing basic local exchange telephone service in Arizona which have obtained a Commission order authorizing payments from the AUSF; and
 2. Providers that become entitled to AUSF support based upon the provisions of R14-2-1206(E).
- E. If the Commission approves AUSF support to a provider of telecommunications service for a defined area, such AUSF support shall also be available to competitive providers of basic local exchange service in the same defined area that are contributing to the AUSF, and that are willing to provide service to all customers in the specific AUSF support area as defined by the Commission. The AUSF support to which the competitive provider is eligible shall be calculated on a per-customer basis, at the same level at which the incumbent provider of telecommunications service receives AUSF support, and shall not result in an increase in the total AUSF support available for the specific census block groups or study area. If basic exchange service is provided through the resale of another carrier's local loop facilities, AUSF support will only be available to the retail service provider if AUSF support is not included in the wholesale price for the resold local service. This Section shall not apply to small local exchange carriers nor to the universal service support being received by any telecommunications service provider as of the effective date of this Article.
- F. For small local exchange carriers and for any basic local exchange telephone service provider receiving universal service support as of the effective date of this Article, the AUSF support shall not be available to competitive providers of basic local exchange service prior to completion of the review provided for in R14-2-1216. Following completion of the review, AUSF support provided to small and intermediate local exchange carriers shall be available to all competitive providers of basic local exchange service in the same defined area that are contributing to AUSF, and that are willing to provide service to all customers in the specific geographic study area as defined by the Commission, unless otherwise ordered by the Commission.
- G. Defined area, study area, geographic area, and support area mean the same area during the first three years of the effective date of this Article. After the first three years, they will still have the same meaning unless otherwise ordered by the Commission.

R14-2-1207. Calculation of Monthly Payments and the Associated Collections Renumbered

- A. For the monthly Category 1 AUSF payment, each provider of local switched access shall remit to the Administrator an amount equal to the number of access lines in service on the first day of the month, times the monthly surcharge per access line plus the number of interconnecting trunks in service on the first day of the month, times the monthly interconnecting trunk surcharge.
- B. The monthly AUSF payment that each Category 2 provider shall remit to the Administrator is an amount equal to its monthly intrastate toll revenue times the monthly surcharge percentage.
- C. Payments must be received by the Administrator by the 20th day of each month. If the payment amount is greater than \$10,000, then it shall be wire transferred to the Administrator.
- D. The Administrator shall enter into an appropriate non-disclosure agreement with each telecommunications service provider to assure that information necessary to allocate AUSF funding obligations and to calculate surcharges is reported, maintained, and used in a manner that will protect the confidentiality of company specific data. The Administrator shall not use confidential data for any purpose other than administering the AUSF.

R14-2-1208. Monthly AUSF Disbursements Renumbered

- A. AUSF disbursement shall be made 30 days following the date of AUSF collections.
- B. The Administrator shall not make AUSF support payments to a provider of telecommunications service until the Administrator has received a copy of a Commission decision authorizing the provider to receive such support.

R14-2-1209. Procedures for Handling AUSF Rate Changes Renumbered

- A. Category 1 and Category 2 AUSF surcharges shall be revised when the Commission authorizes new or revised AUSF payments to any provider of telecommunications service. The Administrator shall calculate the new AUSF flow-through surcharges in accordance with this Article, which surcharges shall become effective upon the Commission's approval of the new or revised AUSF payments.
- B. An annual calculation to revise AUSF flow-through surcharges shall be made by the Administrator on December 1 of each year with an effective date the following January 1. The flow-through surcharges shall be calculated so that the total AUSF funding will equal the AUSF revenue requirements, plus administrative costs as well as any corrections and true-ups. No later than December 1 of each year, the Administrator shall provide notice to the Commission and all telecommunication service providers who pay into the AUSF of the flow-through surcharge rates for the following calendar year.

R14-2-1210. Statement of Participation of All Telecommunications Service Providers in the AUSF Renumbered

- A. Within 30 days of the effective date of this Article, each telecommunications service provider shall provide a letter to the Administrator acknowledging that provider's obligation under this Article to pay AUSF surcharges. Failure to provide such a letter shall be grounds for termination after written notice from the Administrator of the provider's interconnection with the public switched network.



B. Any telecommunications service provider which begins providing telecommunications service after the effective date of this Article shall, within 30 days of beginning to provide intrastate service in Arizona, provide a letter to the Administrator acknowledging that provider's obligation under this Article to make monthly payments for the local and/or toll portion, as appropriate, of the AUSF contribution in accordance with this Article. Failure to provide such a letter shall be grounds for denying to the provider interconnection with the public switched network.

R14-2-1211. Duties and Responsibilities of the AUSF Administrator Renumbered

The Administrator shall:

1. Develop, obtain, and, on or before December 15 of each year, file with the Commission such information and documentation as the Administrator deems necessary for the establishment and calculation of the Category 1 and Category 2 surcharges for the succeeding year. Such a filing shall also be made each time the Commission authorizes a change in the AUSF funding requirement.
2. Monitor the AUSF payments of all telecommunications providers.
3. Oversee the billing of AUSF surcharges.
4. Prepare the necessary forms to be used in reporting the AUSF collections and disbursements and maintain monthly records.
5. Coordinate the collection and disbursement of AUSF monies in accordance with this Article.
6. Prepare an annual report that provides a detailed accounting of the AUSF collections and disbursements and that identifies the annual cost of administration. The report shall be filed with the Commission on or before April 15 of each year.
7. Monitor procedures for auditing the AUSF collections and disbursements. The audit function shall be performed by an independent outside auditor.

R14-2-1212. Interim Administrator Renumbered

US WEST Communications, Inc., will serve as interim Administrator of the AUSF and will perform the functions detailed herein that are required of the Administrator for a transition period until a private, neutral third party is appointed by the Commission to serve as Administrator of the AUSF. A neutral third party selected through the competitive bid process shall be appointed no later than July 1, 1997.

R14-2-1213. Guidelines for Auditing the AUSF Renumbered

- A.** The AUSF records covering both collections and disbursements shall be audited at the end of the first year following the designation of a third party administrator. The AUSF records will then be audited at least once every other year in the subsequent years of operations.
- B.** The records shall be examined for accuracy and the existence of effective internal controls to ensure that the AUSF is being administered appropriately and properly.
- C.** An independent external auditor selected by the Commission shall be utilized to provide an unbiased audit opinion concerning the AUSF administration procedures and controls.
- D.** Any costs for conducting audits will be deducted from the revenues of the AUSF prior to disbursement of funds.

R14-2-1214. Enforcement of Collection of Delinquent AUSF Amounts Renumbered

- A.** The Administrator shall issue past due notices to each provider of telecommunications service that is 15 days or more delinquent in submitting its AUSF payments to the Administrator. A copy of this notice shall be provided to the Commission.
- B.** AUSF support payments shall be withheld from any provider of telecommunications service that is delinquent in submitting its AUSF payments to the Administrator. Each provider of telecommunications service will be fully liable for any accrued interest owing on its AUSF contributions that remain unpaid for 30 days. Such delinquent AUSF payments will begin accruing interest at the rate of 1 and 1/2% per month beginning with the 31st day until such amount is paid in full along with all accrued interest.
- C.** The local switched access service provider shall promptly notify the Commission and the Administrator of the identity of any wireless provider which fails or refuses to pay its AUSF surcharge. Such notice shall also be directed to the wireless provider. If the wireless provider has not paid the amount due within 30 days of such notice, the interconnection provider shall terminate the wireless provider's interconnection until the full amount together with all accrued interest, is paid in full (unless the payment is in bonafide dispute and the wireless carrier has paid the undisputed amount).
- D.** Failure by a telecommunications service provider to comply with the provisions of this Article may result in sanctions as determined by the Commission.

R14-2-1215. AUSF Annual Report Renumbered

- A.** On or before April 1 of each year, the Administrator shall file with the Commission an annual report which shall summarize the preceding year activity and contain the following:
 1. A statement of AUSF collections and disbursements.
 2. A record of the total cost of administration of the AUSF.
 3. Audit reports from the audits conducted during the year.
- B.** A copy of the annual report shall be provided to each provider of telecommunications service who contributes to the AUSF.

R14-2-1216. Review Process Renumbered

- A.** Not later than three years from the effective date of this Article, the Commission staff shall initiate a comprehensive review of this Article and shall provide the Commission with recommendations regarding any necessary changes to the Article. Any interested party may also make such recommendations. The Commission shall consider these recommendations in such proceeding as the Commission deems appropriate.
- B.** The costs used to calculate AUSF funding levels for a given provider or AUSF support area shall be reviewed by the Commission at least every three years following the effective date for any authorized AUSF support for the provider or study area. The Commission may reduce the authorized funding level and require that the AUSF surcharge be recalculated on the basis of this review.

**R14-2-1217. ~~Supersession of Existing USF Mechanism Renumbered~~**

The universal service funding mechanism initially approved by the Commission in Decision No. 56639 (September 22, 1989) is superseded by this Article, except that any calculation, contribution or collection of, or entitlement to, universal service fund support approved by the Commission prior to the adoption of this Article shall remain in effect until otherwise ordered by the Commission or until the application of this Article leads to a different result.

PART A. HIGH COST FUND**~~R14-2-1201~~R14-2-A1201. Definitions**

In this Article Part, unless the context otherwise requires, the following definitions shall apply:

1. No change
2. No change
3. No change
4. "AUSF Support" is the amount of money, calculated pursuant to this Article Part, which a provider of basic local telephone exchange service is eligible to receive from the AUSF pursuant to this Article Part.
5. No change
6. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. No change
13. No change
14. No change
15. No change

~~R14-2-1202~~R14-2-A1202. Calculation of AUSF Support

- A. No change
- B. No change
- C. No change
- D. No change

~~R14-2-1203~~R14-2-A1203. Request for AUSF Support

No change

~~R14-2-1204~~R14-2-A1204. Funding of the AUSF

- A. No change
- B. No change
 1. No change
 - a. No change
 - b. No change
 2. No change
 - a. No change
 - b. No change
 3. No change
 - a. No change
 - b. No change
 4. No change

~~R14-2-1205~~R14-2-A1205. Calculation of Surcharges

- A. No change
- B. No change
- C. No change
 1. No change
 2. No change
 3. No change
 4. No change
 5. No change
- D. No change
 1. No change



- 2. No change
- 3. No change
- E. No change

R14-2-1206.R14-2-A1206. Implementation

- A. No change
- B. No change
- C. No change
- D. No change
 - 1. No change
 - 2. No change
- E. No change
- F. No change
- G. No change

R14-2-1207.R14-2-A1207. Calculation of Monthly Payments and the Associated Collections

- A. No change
- B. No change
- C. No change
- D. No change

R14-2-1208.R14-2-A1208. Monthly AUSF Disbursements

- A. No change
- B. No change

R14-2-1209.R14-2-A1209. Procedure for Handling AUSF Rate Changes

- A. No change
- B. No change

R14-2-1210.R14-2-A1210. Statement of Participation of All Telecommunications Service Providers in the AUSF

- A. No change
- B. No change

R14-2-1211.R14-2-A1211. Duties and Responsibilities of the AUSF Administrator

- No change
- 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change

R14-2-1212.R14-2-A1212. Interim Administrator

No change

R14-2-1213.R14-2-A1213. Guidelines for Auditing the AUSF

- A. No change
- B. No change
- C. No change
- D. No change

R14-2-1214.R14-2-A1214. Enforcement of Collection of Delinquent AUSF Amounts

- A. No change
- B. No change
- C. No change
- D. No change

R14-2-1215.R14-2-A1215. AUSF Annual Report

- A. No change
 - 1. No change
 - 2. No change
 - 3. No change
- B. No change

R14-2-1216.R14-2-A1216. Review Process

- A. No change



B. No change

R14-2-1217-R14-2-A1217. Supersession of Existing USF Mechanism

No change

PART B. ARIZONA UNIVERSAL SERVICE SUPPORT FOR SCHOOLS AND LIBRARIES

R14-2-B1218. Purpose

The purpose of the E-rate Broadband Special Construction Project Matching Fund Program is to provide state funds for special construction projects involving the deployment of broadband to schools and libraries in Arizona so that Arizona schools and libraries may obtain federal matching funds under the FCC Universal Service Fund's Schools and Libraries Program. This Part shall be interpreted to maximize the availability of internet access to schools and libraries within Arizona and to maximize potential support from the FCC Universal Service Fund's Schools and Libraries Program to fill any connectivity gap in Arizona.

R14-2-B1219. Definitions

In this Part, unless the context otherwise requires, the following definitions shall apply:

1. The definitions contained in 47 CFR 54.500 (October 1, 2016), with no future editions or amendments, which are incorporated by reference; on file with the Commission; and published by and available from the U.S. Government Publishing Office, 732 North Capitol Street, NW, Washington, DC 20401-0001 and at <https://www.gpo.gov/fdsys/>;
2. The definitions in R14-2-A1201, to the extent applicable; and
3. The following definitions:
 - a. "Applicant" is a school, library, consortium, or other eligible entity that requests AUSF funds as provided in this Part.
 - b. "Category 1 services" are services used to connect broadband or internet to eligible locations or that provide basic conduit access to the internet, including "telecommunications services," "telecommunications," and "internet access" as defined in 47 CFR 54.5 (October 1, 2016), with no future editions or amendments, which is incorporated by reference; on file with the Commission; and published by and available from the U.S. Government Publishing Office, 732 North Capitol Street, NW, Washington, DC 20401-0001 and at <https://www.gpo.gov/fdsys/>.
 - c. "Category 2 services" are internal connections services needed to enable high speed broadband connectivity and broadband internal connections components, including local area networks (LAN/WLAN), internal connections components, basic maintenance of internal connections components, and managed internal broadband service.
 - d. "Data Transmission Services and Internet Access" is a Category 1 service type that includes broadband connectivity and basic conduit access to the Internet. This does not include charges for content, equipment purchase, or other services beyond basic conduit access to the internet. This service type also covers lit or dark fiber.
 - e. "Department of Education" or "DOE" means the Arizona Department of Education.
 - f. "Discount rate" means the percentage of cost coverage for an applicant, determined by the FCC for its E-rate Program using the percentage of students eligible for the National School Lunch Program or an equivalent measure of poverty, and the rural or urban status of the school district or library system as determined by the U.S. Census Bureau.
 - g. "Eligible provider" means a provider that has a 498 ID, also known as a Service Provider Identification Number or SPIN, obtained by filing an FCC Form 498.
 - h. "Eligible special construction" or "ESC" refers to special construction projects for Category 1 services that deploy new fiber or upgraded facilities to locations eligible for the E-rate Program. ESC may also include non-fiber based services.
 - i. "E-rate Broadband Special Construction Project Matching Fund" is the fund in Arizona that will make available to applicants matching state funds for Category 1 special construction costs in order to obtain up to an additional 10 percent discount from the federal universal fund.
 - j. "E-rate Modernization Orders" are the FCC Orders that have modernized the FCC's E-rate Program and have maximized schools' and libraries' options for purchasing affordable high-speed broadband connectivity: *Modernizing the E-Rate Program for Schools and Libraries, Connect America Fund*, WC Docket No. 13-184, *Report and Order and Further Notice of Proposed Rulemaking*, 29 FCC Rcd 8870 (2014); and *Second Report and Order and Order on Reconsideration*, 29 FCC Rcd. 15538 (2014).
 - k. "E-rate Program" is an FCC program that provides discounts to schools and libraries for eligible products and services.
 - l. "FCC Form 470" is the Description of Services Requested and Certification Form that schools and libraries complete to request services and establish eligibility.
 - m. "FCC Form 471" is the Services Ordered and Certification Form that schools and libraries use to report services ordered and discounts requested for those services.
 - n. "Federal Communications Commission" or "FCC" is the U.S. government agency that regulates interstate and international communications and oversees the federal universal service fund.
 - o. "Funding Commitment Decision Letter" or "FCDL" is a letter from USAC to the applicant which contains USAC's funding decisions on the applicant's funding requests.
 - p. "Funding Year" or "FY" is a 12-month period during which program support is being provided, beginning on July 1 and ending on June 30 of the following calendar year.
 - q. "Second E-rate Modernization Order" is the FCC Order that modernized the FCC's E-rate Program and provided for additional discounts when states match funds for high-speed broadband connections: *Modernizing the E-Rate Program for Schools and Libraries, Connect America Fund*, WC Docket No. 13-184, *Second Report and Order and Order on Reconsideration*, 29 FCC Rcd 15538 (2014).
 - r. "Special Construction Charges" are the upfront, non-recurring costs of ESC installations or upgrades, consisting of three components:
 - i. Construction of network facilities.
 - ii. Design and engineering, and



- iii. Project management.
- s. “Staff designee” is the Director of the Commission’s Utilities Division or another individual that the Commission assigns to perform duties under this Part.
- t. “Universal Service Administrative Company” or “USAC” is an independent, not-for-profit corporation created by the FCC in 1997 to administer the four universal service programs including universal service for schools and libraries.
- u. “Urban” means an individual school or library that is located in an “Urbanized Area” or “Urban Cluster” with a population of 25,000 or more as determined by the U.S. Census Bureau. All other schools or libraries are designated as “rural.”
- v. “Vendor” is the entity that has been selected by the applicant and whose bid USAC has recognized in a FCDL to the applicant.

R14-2-B1220. Availability of State Matching Funds for Special Construction Projects to Deploy Broadband

- A. Applications for AUSF funds for E-rate matching purposes shall be limited to E-rate funding years 2017 and 2018.
- B. An applicant certified by the Department of Education shall be eligible to receive AUSF funds to cover special construction charges to the extent necessary to qualify the applicant to receive additional federal universal service funds of up to 10 percent of special construction charges as authorized by the Second E-rate Modernization Order.
- C. An applicant may not receive total support from the federal Universal Service Fund and AUSF in excess of 100 percent of special construction charges.
- D. Schools and libraries that elect to self-provision shall comply with all of the requirements set forth by the FCC in the Second E-rate Modernization Order.
- E. An ESC shall provide bandwidth sufficient to meet the minimum recommended bandwidth per student or the minimum recommended bandwidth for educational services established for the relevant funding year by the FCC and, without good cause, shall not exceed those standards.
- F. If the E-rate Program discount rate and additional match plus the AUSF funds received by an applicant do not cover 100 percent of the special construction charges, the applicant may include in its request filed with the DOE a request for additional AUSF funds. Additional AUSF funds requested under this subsection shall be awarded as follows:
 - 1. Applicants with 80 percent or higher E-rate Program discount rates shall be awarded AUSF funds before applicants with lower discount rates; and
 - 2. Applicants with discount rates between 60 and 80 percent may request additional AUSF funds for the uncovered amount, up to 50 percent of the uncovered special construction charges. Amounts requested above 50 percent of the uncovered special construction charges will not be considered without good cause shown by the applicant.

R14-2-B1221. Procedures for Requesting State Matching Funds

- A. An applicant shall file a request for state matching funds with the Department of Education, prior to submitting its FCC Form 471 to USAC.
- B. If an applicant meets all FCC eligibility requirements for its ESC, the applicant shall obtain a certification letter along with a letter from the Department of Education stating that the applicant is being awarded state matching funds.
- C. An applicant shall provide the Staff designee a copy of the certification letter and letter awarding state matching funds to it issued by the Department of Education and shall include a copy of the letter awarding state matching funds with its FCC Form 471 sent to USAC.
- D. Once USAC determines an applicant’s eligibility for federal matching funds and issues a FCDL, the applicant shall notify the Department of Education and request that the Department of Education submit a letter to the Staff designee and the Administrator indicating that USAC has issued a FCDL to the applicant with an award of federal funds and including any other information relevant to the award in that particular case.
- E. Disbursement of AUSF funds shall be available for a period of up to five years after USAC has issued a FCDL to the applicant with an award of federal funds, notwithstanding R14-2-B1220(A).
- F. If USAC reduces or rescinds an applicant’s award of federal matching funds following an audit, investigation, enforcement action, or consent decree, the applicant shall immediately notify the Department of Education and the Staff designee and shall reimburse the AUSF fund for any amount by which the AUSF funds received exceeded the federal matching funds award retained.

R14-2-B1222. Administrator Responsibilities: Contributions to and Disbursements from the AUSF

- A. The Administrator shall be responsible for administering the E-rate Broadband Special Construction Project Matching Fund Program and, in doing so, shall comply with R14-2-A1211 and R14-2-A1214.
- B. The Administrator shall:
 - 1. Determine the surcharge rates to fund the E-rate Broadband Special Construction Project Matching Fund Program, subject to Commission approval;
 - 2. Obtain surcharge collections; and
 - 3. Make disbursements from the AUSF for state matching funds as authorized by the Department of Education and the Commission or its Staff designee, as provided in this Section.
- C. The increase to the existing surcharge to fund the E-rate Broadband Special Construction Project Matching Fund Program shall be separately calculated and implemented in accordance with R14-2-A1204, R14-2-A1205(B) through (E), R14-2-A1206 (A) through (C), and R14-2-A1207.
- D. E-rate Broadband Special Construction Project Matching Fund Program surcharges shall not be collected for a period longer than 12 months unless the surcharge collections from carriers in that 12-month period do not produce \$8 million in total funding. If the amount collected is less than the \$8 million cap, the increase in the AUSF surcharge for this Program shall continue until the \$8 million cap is reached. If the collections produce more than \$8 million in the 12-month period, the Commission Staff shall make a recommendation to the Commission regarding the disposition of the over-collected funds.



- E.** A telecommunications service provider may collect the E-rate Broadband Special Construction Project Matching Fund Program surcharges from its customers in any manner it reasonably determines to be best for its business and its customers, but shall not in the aggregate collect more than that authorized by the Commission. The telecommunications service providers shall report and submit payment of assessments according to the schedule established by the Administrator.
- F.** Within 30 days from the effective date of these rules, each telecommunications service provider that interconnects to the public switched network shall provide a letter to the Administrator acknowledging the telecommunications service provider's obligation to pay the new E-rate Broadband Special Construction Project Matching Fund Program surcharges authorized in this Part. Failure to provide such a letter may be grounds for denying the service provider interconnection with the public switched network, upon notice and opportunity to be heard before the Commission.
- G.** An applicant shall:
1. After accepting an eligible provider's bid for an ESC, notify within 15 days the Department of Education and the Administrator of the bid amount accepted so that the Administrator may allocate funds for the ESC; and
 2. After the vendor completes the project, submit to the Department of Education and Administrator a request for disbursement of the funds allocated for the ESC.
- H.** The Administrator shall disburse AUSF funds allocated for an applicant's ESC upon approval from the Commission or its Staff designee.
- R14-2-B1223. Discontinuation of E-rate Broadband Special Construction Project Matching Fund Program**
- A.** No applications for the E-rate Broadband Special Construction Project Matching Fund Program shall be accepted after the 2018 E-rate FY procurement cycle.
- B.** Except as provided in subsection (C), the E-rate Broadband Special Construction Project Matching Fund Program shall be discontinued when all of the funds have been collected and all of the funds collected have been disbursed.
- C.** The E-rate Broadband Special Construction Project Matching Fund Program may be discontinued earlier or later than specified in subsection (B) if required by the FCC or USAC.



NOTICES OF PROPOSED EXPEDITED RULEMAKING

This section of the Arizona Administrative Register contains Notices of Proposed Expedited Rulemaking. The Office of the Secretary of State is the filing office and publisher of these rules.

Questions about the interpretation of the proposed expedited rule should be addressed to the agency proposing them. Refer to Item #4 to contact the person charged with the rulemaking.

NOTICE OF PROPOSED EXPEDITED RULEMAKING
TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION

[R17-183]

PREAMBLE

Table with 2 columns: Article, Part, or Section Affected (as applicable) and Rulemaking Action. Lists rule numbers (R12-4-601 to R12-4-611) and their corresponding actions (Renumber, Amend, New Section).

2. Citations to the agency's statutory authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. §§ 17-231(A)(1) and 41-1027(A)
Implementing statute: A.R.S. §§ 17-231(B)(1), 17-231(B)(12), 17-231, 17-234, 17-304, 17-314, 17-340, 41-1003, 41-1023, 41-1033, and Title 41, Chapter 6, Article 10

3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: 23 A.A.R. 2863, October 13, 2017 (in this issue)

4. The agency's contact person who can answer questions about the rulemaking:

Name: Kent Komadina, Special Assistant to the Director
Address: Arizona Game and Fish Department, 5000 W. Carefree Highway, Phoenix, AZ 85086
Telephone: (623) 236-7288
Fax: (623) 236-7299
Email: KKomadina@azgfd.gov

Please visit the AZGFD website to track the progress of this rule; view the regulatory agenda and all previous Five-year Review Reports; and learn about any other agency rulemaking matters at https://www.azgfd.com/agency/rulemaking/.

5. An agency's justification and reason why the rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

The Arizona Game and Fish Commission proposes to amend its rules following the 2017 five-year rule review of Article 6, Rules of Practice Before the Commission, to enact recommendations developed during the five-year review. The recommended amendments are designed to align the rule with statute, enable the Department to provide better customer service, and reduce regulatory and administrative burdens wherever possible.

Under A.R.S. § 41-1027, an agency may use the expedited rulemaking process to implement, without material change, a course of action proposed in a five-year review report approved by the Governor's Regulatory Review Council provided the rulemaking does not increase burdens or costs to, or reduce procedural rights of, persons regulated by the rule. The Commission approved the Article 6 Five-year Review Report (5YRR) at the December 2, 2016 Commission Meeting and the Governor's Regu-



latory Review Council approved the Article 6 5YRR at the March 7, 2017 Council Meeting.

An exemption from Executive Order 2015-01 was provided for this rulemaking by Hunter Moore, Natural Resource Policy Advisor, Governor's Office, in an email dated May 1, 2017.

R12-4-601. Petition for Rule or Review of Practice or Policy

The objective of the rule is to establish the manner and form in which a person may petition the Commission to adopt, amend, or repeal a rule or review an agency practice or policy. Under A.R.S. § 41-1033, all state agencies are required to establish the manner and form by which a person may petition the agency to request the making of a final rule or the review of an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule. The Commission proposes to adopt a definitions rule and transfer definitions provided within Article 6 rules to R12-4-601, and then renumber rules R12-4-601 through R12-4-607 to increase consistency between Commission rules and ensure conformity with the Arizona Administrative Procedures Act and Secretary of State's rulemaking format and style requirements and standards. The Commission proposes to renumber the rule to R12-4-602. The Commission also proposes to define the terms "business day", "Commission Chair" and "respondent" to ensure the consistent interpretation of Commission rules within Article 6. A person is required to submit a petition that meets specific formatting requirements. In an effort to simplify and enhance the public petition process, the Commission also proposes to amend the rule to require a petitioner to use a form furnished by the Department. This amendment will streamline the process going forward and ensure consistency in all future petitions. In addition, to increase consistency between Commission rules, the Commission proposes to amend the rule to require a person submitting a petition to provide a physical and mailing address (if different from the physical address) and an email address when one is available. The Commission also proposes to increase the amount of time in which the Department must review and accept or return the petition and the time in which the Commission must hear the petition to increase consistency between all Commission petition rules. The Commission proposes to amend the rule to replace the term "Director" with "Department." Because the petition process is delegated to appropriate Department staff, this amendment will make the rule more concise and ensure consistency between Commission rules. In addition, the Commission proposes to amend the rule to remove the statement that a petition shall be retained by the Department for a period of five-years and considered as a comment during the next five-year review process as this requirement is covered under A.R.S. § 41-1056.

R12-4-602. Written Comments on Proposed Rules

The objective of the rule is to establish requirements for written comments submitted to the Department in response to a notice of proposed rulemaking. Under A.R.S. § 41-1029, all state agencies are required to maintain all written petitions, requests, submissions, and comments received by the agency in connection with the rule. The Commission proposes to renumber the rule to R12-4-603. The Department recognizes the requirements specific to comments submitted on behalf of a group or organization are difficult to enforce. The Commission believes this information is necessary to determine the origin of the comment. Often, the person who submits a comment on behalf of a group or organization does not include all of the required information. The Department then attempts to obtain the required information by contacting the person; this is often time-consuming for Department staff. The Commission proposes to amend the rule to clarify how comments submitted on behalf of a group or organization are recorded to enhance the Department's ability to enforce the rule and reduce the impact of the rule on Department staff. The Commission also proposes to amend the rule to remove the requirement that a group or organization provide the type of memberships available and number of Arizona residents represented by the group as this information serves no useful purpose. In addition, the Commission proposes to amend the rule to remove unnecessary verbiage and list requirements specific to comments submitted on behalf of a group or organization to make the rule more concise.

R12-4-603. Oral Proceedings Before the Commission

The objective of the rule is to establish The Commission's operational process for oral proceedings held before the Commission. Under A.R.S. § 41-1023(F), each agency may make rules for the conduct of oral rulemaking proceedings, and may include provisions calculated to prevent undue repetition in the oral proceedings. The Commission proposes to renumber the rule to R12-4-604. The Commission proposes to amend the rule to repeal the definition of "matter" and "proceeding" as the common-use definition is satisfactory. The Commission proposes to amend the rule to replace references to "Chair" with "Commission Chair" to increase consistency between Commission rules and Department publications. The Commission also proposes to amend the rule to list oral proceeding authorizations and requirements to make the rule more concise. In addition, the Commission proposes to amend the rule to remove "based on the amount of time available" to make the rule more concise.

R12-4-604. Ex Parte Communication

The objective of the rule is to establish communication prohibitions during the course of Commission decision processes. The Commission proposes to renumber the rule to R12-4-605. The Commission proposes to amend the rule to repeal the definition of "individual outside the Commission" as the term is no longer referenced in rule. The Commission proposes to amend the rule to transfer the definition of "ex parte communication" to R12-4-601 to ensure conformity with the Arizona Administrative Procedures Act and Secretary of State's rulemaking format and style requirements and standards. Under A.R.17-340(G), the Commission may use the services of the Office of Administrative Hearings to conduct hearings and make recommendations to the Commission. The Office of Administrative Hearings adheres to the requirements of R2-19-105. Ex Parte Communications, not this rule. Thus, the Commission proposes to remove the reference to "hearing office." The Commission compared its rule to rules governing rehearing or review made by other self-supporting agencies (Arizona Medical Board, State Board of Dental Examiners, Office of Administrative Hearings, and State Board of Accountancy) and, as a result of this comparison, the Commission proposes to amend the rule to remove language referencing the service of a memorandum and copies of each response and memorandum for each oral response to any ex parte communication received by the Commissioner as these are self-imposed burdens that serve no valid purpose. Because only members of the Commission are truly involved in the decision-making process and all persons are subject to the rule, the Commission proposes to remove redundant language from the rule to make the rule more concise.

R12-4-605. Standards for Revocation, Suspension, or Denial of a License



The objective of the rule is to establish standards for the revocation, suspension, or denial of a Department-issued license (this includes hunting and fishing licenses, special licenses issued under Article 4, and fur dealer, guide, license dealer, and taxidermy licenses). The Commission proposes to renumber the rule to R12-4-606. Under A.R.S. § 17-340, the Commission may, after a public hearing, revoke or suspend a license issued to any person under Title 17 and deny that person the right to secure another license to take or possess wildlife. Laws 2006, Second Regular Session, Chapter 238 amended A.R.S. §§ 17-309 and 17-340 to include additional violations that may result in the suspension, revocation, or denial of a Department-issued license and the length of time for suspension, revocation, and denial actions. The Commission proposes to amend the rule to increase consistency between Commission rules and statute. The Commission also proposes to amend the rule to replace references to “supports the following conclusion” with “indicates” to increase consistency between subsections. In addition, the Commission proposes to amend the rule to provide additional clarity by removing redundant language and restructuring the rule to more closely mirror A.R.S. § 17-340.

R12-4-606. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages

The objective of the rule is to establish the proceedings for license revocation, suspension, or denial of Department issued licenses (this includes hunting and fishing licenses, special licenses issued under Article 4, and fur dealer, guide, license dealer, and taxidermy licenses) and the assessment of civil damages. The Commission proposes to renumber the rule to R12-4-607. Under A.R.S. § 17-340, the Commission may, after a public hearing, revoke or suspend a license issued to any person under Title 17 and deny that person the right to secure another license to take or possess wildlife. Under A.R.S. § 17-314, the Commission may bring a civil action in the name of the state against any person unlawfully taking, wounding or killing, or unlawfully in possession of certain wildlife. The Commission proposes to amend the rule to clearly indicate the rule applies only to actions taken under A.R.S. § 17-340. The Commission also proposes to amend the rule to remove redundant language to make the rule more concise and understandable. Laws 2006, Second Regular Session, Chapter 238 amended A.R.S. § 17-340 to include additional time-frames for such suspension, revocation, or denial actions resulting from subsequent violations. As a result, a person’s license may be revoked for five years, ten years, or permanently, depending on the number of convictions. In addition, the Commission proposes to amend the rule to increase consistency between statute and rule.

R12-4-607. Rehearing or Review of Commission Decisions

The objective of the rule is to establish the requirements for rehearing or review of a Commission decision. Under A.R.S. § 41-1092.09, a party may file a motion for rehearing or review within thirty days after service of the final administrative decision. A rehearing follows a Commission decision to revoke or suspend a person's license. A review is a Commission hearing on the Department’s decision to deny a license to a person. The Commission proposes to renumber the rule to R12-4-608. The Commission proposes to amend the rule to transfer definitions included in this rule to R12-4-601 to ensure conformity with the Arizona Administrative Procedures Act and Secretary of State's rulemaking format and style requirements and standards. On occasion, a person fully intends to file an appeal to a Commission decision with the Maricopa County Superior Court, but unknowingly eliminates that option by failing to file a motion for rehearing or review with the Commission. The Commission proposes to amend the rule to indicate a person who fails to file a timely motion for rehearing or review is prohibited from seeking a judicial review of the Commission's decision to clarify when a rehearing or review is required. The Commission proposes to remove the requirement that a person filing a motion for rehearing or review attach a supporting memorandum, specifying the grounds for the motion to reduce the burdens and costs to persons regulated by the rule as this information may be gleaned from the motion itself. During this review the Department compared this rule to rules governing rehearing or review made by other self-supporting agencies (Arizona Medical Board, State Board of Dental Examiners, and State Board of Accountancy) and, as a result of this comparison, the Commission proposes to amend the rule to clarify filing time-frames, extend the time in which the Commission may initiate a rehearing or review, and specify the time-frame in which the Commission shall hold the rehearing or review. These changes are made to increase clarity, make the rule more concise, and remove a self-imposed limitation that serves no valid purpose.

R12-4-609. Commission Orders

The objective of the rule is to establish the public process for the consideration of a Commission Order. Under A.R.S. § 17-234, the Commission shall by order open, close or alter seasons and establish bag and possession limits for wildlife, but a Commission Order to open a season shall be issued not less than ten days prior to the opening date. The Commission proposes to amend the rule to reduce the time in which the Department must post a public meeting notice and agenda and provide a draft of the proposed Commission Order from 20 days to 14. Due to leaned processes and technological advances, the Department is able to provide the required information in a shorter amount of time. In addition, an incident involving Tempe Town Lake gave light to the fact that the Commission does not have sufficient authority to issue an Order establishing a special season to allow the take of fish by additional methods on waters where a fish die-off is imminent due to the public meeting notice time-frame requirement. In addition, to ensure the Commission is able to respond more quickly should a similar situation arise, the Commission proposes to amend the rule to allow the Commission to exempt the Commission and Department from the 14-day time-frame in order to review an order establishing a special season, allowing fish to be taken by additional methods on waters where a fish die-off is imminent.

R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles

The objective of the rule is to establish the requirements for submitting a petition for the closure of state or federal lands to hunting, fishing, trapping, or operation of motor vehicles. Under A.R.S. § 17-452, the Commission may, with the concurrence of the land management agency involved and after a public hearing, order such area closed to motor vehicles for not more than five years from the date of such closure, provided that all roads in such area shall remain open unless specifically closed. To increase consistency between Commission rules, the Commission proposes to amend the rule to require a person submitting a petition to provide a physical and mailing address (if different from the physical address) and an email address when one is available. A person is required to submit a petition that meets specific formatting requirements. In an effort to simplify and enhance the public petition



process, the Commission also proposes to amend the rule to require a petitioner to use a form furnished by the Department. This amendment will streamline the process going forward and ensure consistency in all future petitions. In addition, the Commission proposes to amend the rule to replace the term “Director” with “Department.” Because the petition process is delegated to appropriate Department staff, this amendment will make the rule more concise and ensure consistency between Commission rules.

**R12-4-611. Petition for Hearing Before the Commission When No Remedy
is Provided in Statute, Rule, or Policy**

The objective of the rule is to establish the method and form a person shall use to petition the Arizona Game and Fish Commission when no remedy is provided in statute, rule, or policy. To increase consistency between Commission rules, the Commission proposes to amend the rule to require a person submitting a petition to provide a physical and mailing address (if different from the physical address) and an email address when one is available. A person is required to submit a petition that meets specific formatting requirements. In an effort to simplify and enhance the public petition process, the Commission also proposes to amend the rule to require a petitioner to use a form furnished by the Department. This amendment will streamline the process going forward and ensure consistency in all future petitions. The Commission proposes to amend the rule to replace the term “Director” with “Department.” Because the petition process is delegated to appropriate Department staff, this amendment will make the rule more concise and ensure consistency between Commission rules.

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

The agency did not rely on any study in its evaluation of or justification for the rule.

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

Not applicable

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

Under A.R.S. § 41-1027, the rulemaking is exempt from this requirement; however, the Commission offers the following: The proposed rulemaking implements changes the Department proposed to make as a result of the most recent five-year review of Article 6. The Commission’s intent in proposing these amendments is to align the rule with statute, enable the Department to provide better customer-service, and reduce regulatory and administrative burdens wherever possible. The Commission believes the majority of the rulemaking will benefit persons regulated by the rule, members of the public, and the Department by clarifying rule language, creating consistency among existing Commission rules, reducing the burden on the regulated community where practical, implementing customer-service-oriented processes, and allowing the Department additional oversight where necessary. The Commission anticipates the rulemaking will result in little or no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions; or state revenues. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. In addition to the cost of rulemaking, The Commission anticipates the Department will incur costs to implement the proposed amendments; however, these amendments will not require new full-time employees. Therefore, the Commission has determined that the benefits of the rulemaking outweigh any costs.

9. The agency’s contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Kent Komadina, Special Assistant to the Director
 Address: Arizona Game and Fish Department
 5000 W. Carefree Highway
 Phoenix, AZ 85086
 Telephone: (623) 236-7288
 Fax: (623) 236-7299
 Email: KKomadina@azgfd.gov

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

Date: December 1, 2017
 Time: 8:00 a.m. to 5:00 p.m.
 Location: 5000 W. Carefree Highway
 Phoenix, AZ 85086
 Close of record: December 1, 2017

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used, and if not, the reason why a general permit is not used:

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law is not directly applicable to the subject of the rules. The rules are based on state law.

c. Whether a person submitted an analysis to the agency that compares the rule’s impact of the competitive-



ness of business in this state to the impact on business in other states:

The agency has not received an analysis that compares the rule’s impact of competitiveness of business in this state to the impact on business in other states.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

Not applicable

13. The full text of the rules follows:

**TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION**

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

Section

R12-4-601. Definitions

~~R12-4-601.~~R12-4-602. Petition for Rule or Review of Practice or Policy

~~R12-4-602.~~R12-4-603. Written Comments on Proposed Rules

~~R12-4-603.~~R12-4-604. Oral Proceedings Before the Commission

~~R12-4-604.~~R12-4-605. Ex Parte Communication

~~R12-4-605.~~R12-4-606. Standards for Revocation, Suspension, or Denial of a License

~~R12-4-606.~~R12-4-607. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages

~~R12-4-608. Expired~~

~~R12-4-607.~~R12-4-608. Rehearing or Review of Commission Decisions

~~R12-4-609. Commission Orders~~

~~R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles~~

~~R12-4-611. Petition for Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy~~

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

R12-4-601. Definitions

The following definitions apply to this Article unless otherwise specified:

“Appealable agency action” has the same meaning as provided under A.R.S. § 41-1092.

“Business day” means any day other than a furlough day, Saturday, Sunday, or holiday.

“Commission Chair” means the person who presides over the Arizona Game and Fish Department Commission.

“Contested case” has the same meaning as provided under A.R.S. § 41-1001.

“Ex parte communication” means any oral or written communication with a Commissioner by a party concerning a substantive issue in a contested proceeding that is not part of the public record.

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

“Respondent” means the person named as the respondent in a notice of hearing issued by the Department.

~~R12-4-601.~~R12-4-602. Petition for Rule or Review of Practice or Policy

~~A.~~ Any individual, including any organization or agency, requesting that the Commission make, amend, or repeal a rule, shall submit a petition as prescribed under this Section. A person may petition the Commission under A.R.S. § 41-1033 for a:

1. Rulemaking action relating to a Commission rule, including making a new rule or amending or repealing an existing rule; or

2. Review of an existing Department practice or substantive policy statement alleged to constitute a rule.

~~B.~~ Any individual, including any organization or agency, requesting that the Commission review an existing Department practice or substantive policy that the petitioner alleges to constitute a rule under A.R.S. § 41-1033, as defined under A.R.S. § 41-1001, shall submit a petition as prescribed under this Section. To act under A.R.S. § 41-1033 and this Section, a person shall submit a petition form to the Arizona Game and Fish Department, Director’s Office, 5000 W. Carefree Highway, Phoenix, AZ 85086. The form is available at any Department office and on the Department’s website.

~~C.~~ A petitioner shall not address more than only one rule, practice, or substantive policy in the petition.

~~D.~~ If the Commission has considered and denied a petition, and a petitioner submits a petition within the next year that addresses the same substantive issue, the petitioner shall provide a written statement that contains any reason not previously considered by the Commission in making a decision.

~~E.~~ D. A petitioner shall submit an original and one copy of a the petition form to the Arizona Game and Fish Department, Director’s Office, 5000 W. Carefree Highway, Phoenix, AZ 85086. The Commission shall render a decision on the petition as required under A.R.S. § 41-1033. The petition form is furnished by the Department and is available at any Department office and on the Department’s website. A petitioner shall provide all of the following information:

1. Petitioner identification:

a. When the petition is submitted by a private person, the person’s:

i. Name;

ii. Physical and mailing address, if different from the physical address;

iii. Contact telephone number; and

iv. Email, when available;

b. When the petition is submitted by an organization or private group:



- i. Name of organization or group;
 - ii. Name and title of the organization's or group's representative;
 - iii. Physical and mailing address, if different from the physical address;
 - iv. Representative's contact telephone number; and
 - v. Email, when available;
 - c. When the petition is submitted by public agency:
 - i. Name of the public agency;
 - ii. Name and title of the agency's representative;
 - iii. Physical and mailing address if different from the physical address;
 - iv. Representative's contact telephone number; and
 - v. Email, when available;
 - 2. Type of request:
 - a. Adopt, amend, or repeal a rule.
 - b. Review of a practice or substantive policy statement.
 - 3. When the petition is for rulemaking action:
 - a. Statement of the rulemaking action sought, including the Arizona Administrative Code citation of all existing rules, and the specific language of a new rule or rule amendment; and
 - b. Reasons for the rulemaking action, including an explanation of why an existing rule is inadequate, unreasonable, unduly burdensome, or unlawful;
 - 4. When the petition is for a review of an existing practice or substantive policy statement:
 - a. Subject matter of the existing practice or substantive policy statement, and
 - b. Reasons why the existing practice or substantive policy statement constitutes a rule;
 - 5. When the petitioner is a public agency, a summary of issues raised in any public meeting or hearing regarding the petition or any written comments offered by the public.
 - 6. Any other information required by the Department;
 - 7. Petitioner's signature; and
 - 8. Date on which the petition was signed.
- D-E.** In addition to the requirements listed under subsection (D), a person may submit supporting information with a petition, including:
- 1. Statistical data; and
 - 2. A list of other persons likely to be affected by the rulemaking action or the review, with an explanation of the likely effects.
- F.** When a petitioner submits a petition that addresses the same substantive issue considered by the Commission within the previous year, the petitioner shall also provide an additional written statement that includes rationale not previously considered by the Commission in making the previous decision.
- F-G.** Within five working days after a petition is submitted, the Director The Department shall determine whether the petition complies with this Section within fifteen business days after the date on which the petition was received.
- 1. If the petition complies with this Section the Director:
 - a. The Department shall place the petition on a Commission open meeting agenda.
 - b. The petitioner may present oral testimony at that open meeting, as established under R12-4-603 R12-4-604.
 - c. The Commission shall render a final decision on the petition as prescribed under A.R.S. § 41-1033.
 - 2. If a petition does not comply with subsection (G) through (L) of this Section, the:
 - a. The Director shall return a copy of the petition as filed to the petitioner, and indicate
 - b. Indicate in writing why the petition does not comply with this Section. The Director shall not place the petition on a Commission agenda. The Department shall maintain the original petition on file for five years and consider the petition as a comment during the five-year review process. The petitioner shall be afforded the opportunity to resubmit a corrected petition.
- G.** Petitions shall be typewritten, computer or word processor printed, or legibly handwritten, and double spaced, on 8 1/2" x 11" paper; or typewritten, computer or word processor printed, or legibly handwritten on a form provided by the Department. The title shall be centered at the top of the first page and appear as "Petition to the Arizona Game and Fish Commission." The petition shall include the items listed in subsections (H) through (L). The items in the petition shall be presented in the order in which they are listed in this Section.
- H.** The title of Part 1 shall be "Identification of Petitioner." The title shall be centered at the top of the first page of this part. Part 1 shall contain:
- 1. If the petitioner is a private individual, the name, mailing address, and telephone number of the petitioner;
 - 2. If the petitioner is a private group or organization, the name and address of the group or organization; the name, mailing address, and telephone number of an individual who is designated as the representative or official contact for the petitioner; the total number of individuals, and the number of Arizona residents represented by the petitioner; or the names and addresses of all individuals represented by the petitioner; or
 - 3. If the petitioner is a public agency, the name and address of the agency and the name, title, and telephone number of the agency's representative.
- I.** The title of Part 2 shall be "Request for Rule" or "Request for Review," as applicable. The title shall be centered at the top of the first page of this part. Part 2 shall contain:
- 1. If the petition is for a new rule, a statement to this effect, followed by the heading and specific language of the proposed rule;
 - 2. If the request is for amendment of a current rule, a statement to this effect, followed by the Arizona Administrative Code number of the current rule proposed for amendment, the heading of the rule, the specific, clearly readable language of the rule, indicating language to be deleted with strikeouts, and language to be added with underlining;



- 3. If the request is for repeal of a current rule, a statement to this effect, followed by the Arizona Administrative Code number of the rule proposed for repeal and the heading of the rule; or
- 4. If the request is for review of an existing agency practice or substantive policy statement that the petitioner alleges qualifies as a rule, as defined under A.R.S. § 41-1001, a statement to this effect, followed by the practice or policy number, if any, the practice or policy heading, if any, or a brief description of the practice or policy subject matter.
- ~~J.~~ The title of Part 3 shall be "Reason for the Petition." The title shall be centered at the top of the first page of this part. Part 3 shall contain:
 - 1. The reason the petitioner believes rulemaking or review of a practice or policy is necessary;
 - 2. Any statistical data or other justification supporting rulemaking or review of the practice or policy, with clear reference to any exhibits that are attached to or included with the petition;
 - 3. An identification of any individuals or special interest groups the petitioner believes would be impacted by the rule or a review of the practice or policy, and how they would be impacted; and
 - 4. If the petitioner is a public agency, a summary of issues raised in any public meeting or hearing regarding the petition, or any written comments offered by the public.
- ~~K.~~ The title of Part 4 shall be "Statutory Authority." The title shall be centered at the top of the first page of this part. In Part 4, the petitioner shall identify any statute that authorizes the Commission to make the rule, if known, or cite A.R.S. § 41-1033 if the petition relates to review of an existing practice or substantive policy statement.
- ~~L.~~ The title of Part 5 shall be "Date and Signature." The title shall be centered at the top of the first page of this part. Part 5 shall contain:
 - 1. An original signature of the representative or official contact, if the petitioner is a private group or organization or private individual named under subsection (H)(1) or (H)(2); or
 - 2. If the petitioner is a public agency, the signature of the agency head or the agency head's designee; and
 - 3. The month, day, and year that the petition is signed.

~~R12-4-602~~R12-4-603. Written Comments on Proposed Rules

- ~~A.~~ Any Under A.R.S. § 41-1023, an individual a person may submit written statements, arguments, data, and views on the a proposed rules that have been filed with rulemaking published by the Secretary of State under A.R.S. § 41-1022 in the Arizona Administrative Register
- ~~B.~~ An individual who submits A person submitting a written comments comment to the Commission for consideration in a final decision on the rulemaking may voluntarily provide their name and mailing address. To be placed into the rulemaking record and considered by the Commission for a final decision, the individual submitting the The Commission may only consider written comments shall ensure that they:
 - 1. Are received before on or on before the closing close of record date for written comments, as published by the Secretary of State in the *Arizona Administrative Register*;
 - 2. Indicate if expressed on behalf of a group or organization, whether the views expressed are the official position of the group or organization, the number of individuals represented are represented, types of membership available, and number of Arizona residents in each membership category. Comments that do not include the information required under this subsection will be placed in the rulemaking record as the views of the individual submitting the comments and not the views of any group or organization; and
 - ~~3-2.~~ Are submitted to the employee designated by the Department to receive written comments, as published in the Arizona Administrative Register agency contact identified in the Department's notice of proposed rulemaking as published by the Secretary of State in the Arizona Administrative Register.
 - 3. In addition, a person submitting a comment submitted on behalf of a group or organization shall include a statement that the comment represents the official position of the group or organization. A comment submitted on behalf of a group or organization that does not contain this statement shall be considered the comment of the person submitting the comment, and not that of the group or organization.

~~R12-4-603~~R12-4-604. Oral Proceedings Before the Commission

- ~~A.~~ For the purposes of this Section, "matter" or "proceeding" means any contested case, appealable agency action, rule or review petition hearing, rulemaking proceeding, or any public input at a Commission meeting.
- ~~B-A.~~ The Commission may allow an oral proceeding on any matter on the Commission's agenda. At an oral proceeding, the Commission Chair:
 - 1. The Chair is responsible for conducting the proceeding. If an individual wants to speak, the individual shall first request and be granted permission by the Chair.
 - 2. Depending on the nature of the proceeding, the Chair may administer an oath to a witness before receiving testimony.
 - 3. The Chair may order the removal of any individual who is disrupting the proceeding.
 - 4. Based on the amount of time available, the Chair may limit the number of presentations or the time for testimony regarding a particular issue and shall prohibit irrelevant or immaterial testimony.
 - 1. Is responsible for conducting the proceeding.
 - 2. May administer an oath to a witness before receiving testimony.
 - 3. May order the removal of any person who is disrupting a proceeding.
 - 4. May limit the number of presentations or the time for testimony regarding a particular issue.
- ~~B.~~ A person desiring to speak at an oral proceeding shall first request permission to speak from the Commission Chair.
- ~~5-C.~~ Technical rules of evidence do not apply to an oral proceeding, and no informality in any proceeding or in the manner of taking testimony invalidates any order, decision, or rule made by the Commission.
- ~~C-D.~~ The Commission authorizes the Director to designate a hearing officer for oral proceedings to take public input on proposed rulemaking. The hearing officer has the same authority as the Chair in conducting oral proceedings, as provided in this Section.



~~D-E.~~ The Commission authorizes the Director to continue a scheduled proceeding to a later Commission meeting. To request a continuance, a petitioner shall:

1. Deliver the request to the Director no later than 24 hours before the scheduled proceeding;
2. Demonstrate that the proceeding has not been continued more than twice; and
3. Demonstrate good cause for the continuance.

~~R12-4-604~~**R12-4-605. Ex Parte Communication**

~~A.~~ For purposes of this Section:

1. "Individual outside the Commission" means any individual other than a Commissioner, personal aide to a Commissioner, Department employee, consultant of the Commission, or an attorney representing the Commission.
2. "Ex parte communication" means any oral or written communication with the Commission that is not part of the public record and for which no reasonable prior written notice has been given to all interested parties.

~~B-A.~~ In any contested case (as defined in A.R.S. § 41-1001) or proceeding or appealable agency action (as defined in A.R.S. § 41-1092) before the Commission, except to the extent required for disposition of ex parte matters as authorized by law or these rules of procedure, the following prohibitions apply to ex parte communication A party shall not communicate, either directly or indirectly, with a Commissioner about any substantive issue in a pending contested case or appealable agency action, unless:

1. An interested individual outside the Commission shall not make or knowingly cause to be made to any Commissioner, Commission hearing officer, personal aide to a Commissioner, Department employee, or consultant who is or may reasonably be expected to be involved in the decision-making process of the proceeding, an ex parte communication relevant to the merits of the proceeding All parties are present;
2. A Commissioner, Commission hearing officer, personal aide to a Commissioner, Department employee, or consultant who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall not make or knowingly cause to be made to any interested person outside the Commission an ex parte communication relevant to the merits of the proceeding The communication occurs during the schedule proceeding, where an absent party failed to appear after proper notice; or
3. It is by written motion with a copy provided to all parties.

~~C-B.~~ A Commissioner, Commission hearing officer, personal aide to a Commissioner, Department employee, or consultant who is or may be reasonably expected to be involved in the decisional process of the proceeding, who receives, makes, or knowingly causes to be made a an ex parte communication prohibited by subsection (B)(1) or (B)(2) of this Section, shall place on the public record of the proceeding and serve on all interested parties to the proceeding:

1. A copy of ~~each~~ the written communication;
2. A memorandum stating the substance of each summary of the oral communication; and
3. A copy of each response and memorandum stating the substance of each oral The Commissioner's response to any such ex parte communication governed by subsections (C)(1) and (C)(2).

~~D.~~ Upon receipt of a communication made or knowingly caused to be made by a party in violation of this Section, the Commission or its hearing officer, to the extent consistent with equity and fairness, may require the party to show cause why the claim or interest in proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.

~~E-C.~~ The provisions of this Section apply from the date that a notice of hearing for a contested case ~~is served, a notice of or an~~ appealable agency action is served, or a request for hearing is filed, whichever comes first, unless the person responsible for the communication has knowledge that a proceeding will be noticed, in which case the prohibitions apply from the date that the individual acquired the knowledge on the parties.

~~R12-4-605~~**R12-4-606. Standards for Revocation, Suspension, or Denial of a License**

~~A.~~ Under A.R.S. § 17-340, when the Department makes a recommendation to the Commission for license revocation, the Commission shall hold a hearing and may revoke, suspend, or deny any hunting, fishing, or trapping license for an individual who has been a person convicted of any of the following offenses:

1. Killing or wounding a big game animal during a closed season or possessing,
2. Possessing a big game animal taken during a closed season. Conviction for possession of a road kill animal or an animal that was engaged in predation is not considered "possessing during a closed season" for the purposes of this subsection.
- ~~2-3.~~ Destroying, injuring, or molesting livestock, or damaging or destroying personal property, notices or signboards, other improvements, or growing crops while hunting, fishing, or trapping.
4. Damaging or destroying personal property, growing crops, notices or signboards, or other improvements while hunting, fishing, or trapping.
5. Bartering, selling, or offering to sell unlawfully taken wildlife or wildlife parts.
- ~~3-6.~~ Careless use of a firearm while hunting, fishing, or trapping that results in the injury or death of any person, if the act of discharging the firearm was deliberate.
- ~~4-7.~~ Applying for or obtaining a license or permit by fraud or misrepresentation in violation of A.R.S. § 17-341.
8. Knowingly allowing another person to use the person's big game tag, except as provided under A.R.S. § 17-332(D).
- ~~5-9.~~ Entering upon a game refuge or other area closed to hunting, trapping or fishing and taking, driving, or attempting to drive wildlife from the area in violation of A.R.S. §§ 17-303 and 17-304.
- ~~6-10.~~ Unlawfully posting state or federal lands in violation of A.R.S. § 17-304(B).
11. Unlawfully using aircraft to take, assist in taking, harass, chase, drive, locate, or assist in locating wildlife in violation of A.R.S. § 17-340(A)(8).

~~B.~~ Under A.R.S. § 17-340, the Commission shall hold a hearing and may revoke, suspend, or deny any hunting fishing, or trapping license if the Department recommends revocation, suspension, or denial of the license for an individual convicted of any of the following offenses:

- ~~1-12.~~ Unlawfully taking or possessing big game, if sufficient evidence, which may or may not have been introduced in the court proceeding, supports any of the following conclusions:



- a. ~~The big game was taken without a valid license or permit.~~
- b. ~~The unlawful taking was willful and deliberate.~~
- e. ~~The person in unlawful possession aided the unlawful taking or was, or should have been, aware that the taking was unlawful.~~

~~2-13. Unlawfully taking or possessing small game or fish, if sufficient evidence, which may or may not have been introduced in the court proceeding, supports any of the following conclusions:~~

- a. ~~The taking was willful and deliberate.~~
- b. ~~The possession was in excess of the lawful possession limit plus the daily bag limit.~~

~~3-14. Unlawfully taking or possessing wildlife species if sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that the act of taking was willful and deliberate and showed disregard for state wildlife laws.~~

~~15. Unlawful take of any bird or the removal of its nest or eggs.~~

~~4-16. Littering a public hunting or fishing area while taking wildlife, if sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that an individual littered the area, the amount of litter discarded was unreasonably large, and that the individual convicted made no reasonable effort to dispose of the litter in a lawful manner.~~

~~5. Careless use of a firearm while hunting, fishing, or trapping that resulted in injury or death to any person, if the act of discharging the firearm was not deliberate, but sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that the careless use demonstrated wanton disregard for the safety of human life or property.~~

~~17. Waste of edible portions of a game species under A.R.S. § 17-309, in violation of A.R.S. § 17-309(A)(5).~~

~~6-18. Any violation for which a license can be revoked under A.R.S. § 17-340, if the person has been convicted of a revocable offense within the past three years.~~

~~7-19. Violation Any violation of A.R.S. § 17-306 for unlawful possession of wildlife.~~

~~C.B.~~ Under A.R.S. §§ 17-238, 17-334, 17-340, 17-362, 17-363, and 17-364, and 17-340, if when the Department has made makes a recommendation to the Commission for license revocation, the Commission shall hold a hearing and may revoke any fur dealer, guide, taxidermy, license dealers license, or special license (as defined in under R12-4-401) in any case where license revocation is authorized by law.

~~R12-4-606~~**R12-4-607. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages**

A. The Director may commence a proceeding for the Commission to revoke, suspend or deny a license under A.R.S. §§ ~~17-236, 17-238, 17-334, 17-340, 17-362, 17-363, and 17-364, R12-4-105, and R12-4-605.~~ The Director may also commence a proceeding for the ~~Commission to impose a civil damages penalty~~ under A.R.S. § 17-314.

B. The Commission shall conduct a hearing concerning revocation, suspension, or denial of the right to obtain a license in accordance with the Administrative Procedure Act, A.R.S. Title 41, Chapter 6, Article 10. ~~A~~ In a proceeding conducted under A.R.S. § 17-340, a respondent shall limit testimony to facts that show why the license should not be revoked or denied. Because the Commission does not have the authority to consider or change the conviction, a respondent is not permitted to raise this issue in the proceeding. The Commission shall permit a respondent to offer testimony or evidence relevant to the Commission's decision to ~~order recovery of~~ impose a civil damages penalty or order a civil action for the recovery of wildlife parts.

C. If a respondent does not appear for a hearing on the date scheduled, at the time and location noticed, no further opportunity to be heard ~~is~~ shall be provided, unless a rehearing or review is granted under ~~R12-4-607~~ R12-4-608. If the respondent does not wish to attend the hearing, the respondent may submit written testimony to the Department before the hearing date designated in the Notice of Hearing ~~required by A.R.S. § 17-340(D).~~ The Commission shall ensure that written testimony received at the time of the hearing is read into the record at the hearing.

D. The Commission shall base its decision on the officer's case report, a summary prepared by the Department, a certified copy of the court record, and any testimony presented at the hearing. ~~With the notice of hearing required by A.R.S. § 17-340(D), the~~ The Department shall supply the respondent with a copy of each document provided to the Commission for use in reaching a decision.

E. Any party may apply to the Commission for issuance of a subpoena to compel the appearance of any witness or the production of documents at any ~~Commission hearing or deposition. Not later~~ No less than 10 calendar days before the hearing ~~or deposition~~, the party shall file a written application that provides the name and address of the witness, the subject matter of the expected testimony, the documents sought to be produced, and the date, time, and place of the hearing ~~or deposition~~. The Commission ~~chair~~ Chair has the authority to issue the subpoenas.

1. A party shall have a subpoena served as prescribed in the Arizona Rules of Civil Procedure, Rule 45. An employee of the Department may serve a subpoena at the request of the Commission ~~chair~~ Chair.

2. A party may request that a subpoena be amended at any time before the deadline provided in this Section for filing the application. The party shall have the amended subpoena served as provided in subsection (E)(1).

~~F.~~ F. The Commission may vote to use the services of the office of administrative hearings to conduct a hearing concerning revocation, suspension, or denial of the right to obtain a license and to make a recommendation to the Commission, which shall review and accept, reject or modify the recommendation and issue its decision in an open meeting. When the Department receives a recommendation from the administrative law judge at least 30 days prior to the next regularly scheduled Commission meeting, the Department shall place the recommendation on the agenda for that meeting. A recommendation from the administrative law judge received after this time shall be considered at the next regularly scheduled open meeting.

~~F.G.~~ F.G. A license revoked by the Commission is suspended on the date of the hearing and revoked upon issuance of the findings of fact, conclusions of law, and order. If a respondent appeals the Commission's order revoking a license, the license is revoked after all appeals have been ~~completed~~ exhausted. A denial of the right to obtain a license is effective for a period ~~not to exceed five years~~, as determined by the Commission ~~as authorized under A.R.S. § 17-340~~, beginning on the date of the hearing.

~~G.H.~~ G.H. A license suspended by the Commission is suspended on the date of the hearing, and suspended upon issuance of the findings of fact, conclusions of law, and order. If a respondent appeals the Commission's order suspending a license, the license is suspended after all



appeals have been completed exhausted. Under A.R.S. § 17-340(A), a The suspension of a license is effective for a period not to exceed five years, as determined by the Commission as authorized under A.R.S. § 17-340, beginning on the date of the hearing.

R12-4-608: Expired

R12-4-607R12-4-608, Rehearing or Review of Commission Decisions

- ~~A.~~ For purposes of this Section the following terms apply:
1. "Contested case" and "party" are defined as provided in A.R.S. § 41-1001;
 2. "Appealable agency action" is defined as provided in A.R.S. § 41-1092(3).
- ~~A.~~ A party shall exhaust the party's administrative remedies by filing a motion for rehearing or review as provided in this Section. Failure to file a motion for rehearing or review within 30 days of service of the Commission's decision has the effect of prohibiting the party from seeking judicial review of the Commission's decision.
- ~~B.~~ Except as provided in subsection (G), any A party in a contested case or appealable agency action before the Commission may file a motion for rehearing or review of a Commission decision, specifying the grounds upon which the motion is based. The motion for rehearing or review shall be filed within 30 calendar days after service of the final administrative Commission's decision. For purposes of this subsection a decision is served when personally delivered or mailed by certified mail to the party's last known residence or place of business. ~~The party shall attach a supporting memorandum, specifying the grounds for the motion.~~
- ~~C.~~ A party may amend a motion for rehearing or review at any time before the Commission rules upon the motion. ~~An opposing party has 15 calendar days after service to respond to the motion or the amended motion. A written response to a motion for rehearing or review may be filed and served within 15 days after service of the motion for rehearing or review.~~ The Commission has the authority to ~~may~~ require that the parties file written briefs supplemental memoranda on any issue raised in a motion or response, and allow for oral argument.
- ~~D.~~ The Commission has the authority to grant rehearing or review for any of the following causes materially affecting the moving party's rights:
1. Irregularity in the proceedings of the Commission, or any order or abuse of discretion that deprived the moving party of a fair hearing;
 2. Misconduct of the Commission, its staff, an administrative law judge, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding; or
 7. That the findings of fact or decision is not justified by the evidence or is contrary to law.
- ~~E.~~ The Commission may affirm or modify the decision either deny the motion for rehearing or review or grant a rehearing to all or any of the parties on all or part of the issues or review for any of the reasons in listed under subsection ~~(D)~~ (E). The Commission's order modifying a decision or granting a rehearing or review shall specify the grounds for the order, and any rehearing shall cover only those specified matters grounds upon which the rehearing or review was granted.
- ~~F.~~ After giving the party notice and an opportunity to be heard, the Commission may grant a motion for a rehearing or review for a reason not stated in the motion.
- ~~F.G.~~ Not later than 15 calendar days, after a decision Within in time frame for filing a motion for rehearing or review, the Commission may grant a rehearing or review on its own initiative for any reason for which it might the Commission may have granted relief on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Commission may grant a motion for rehearing or review for a reason not stated in the motion.
- ~~H.~~ When the Commission grants a rehearing or review, the Commission shall hold the rehearing or review at its next regularly scheduled meeting or within 90 days of issuance of the order granting the rehearing or review. With the consent of the parties, the Commission may proceed to conduct the rehearing or review in the same meeting in which the Commission granted the rehearing or review.
- ~~G.~~ When a motion for rehearing or review is based upon affidavits, the party shall serve the affidavits with the motion. An opposing party may, within 10 calendar days after service, serve opposing affidavits. The Commission may extend this period for no more than 20 calendar days for good cause shown or by written stipulation of the parties. The Commission has the authority to permit reply affidavits.
- ~~I.~~ The Commission may take additional testimony, amend findings of fact and conclusions of law, and affirm, modify or reverse the original decision.

R12-4-609. Commission Orders

- ~~A.~~ Except as provided in ~~in~~ under subsection (B):
1. At least 20 calendar days before a meeting where the Commission will consider a Commission Order, the Department shall ensure that a public meeting notice and agenda for the public meeting is posted in accordance with A.R.S. § 38-431.02. The Department shall also issue a public notice of the recommended Commission Order to print and electronic media at least 20 calendar days before the meeting. At least 14 calendar days before a meeting where the Commission will consider a Commission Order, the Department shall:
 - a. Post a public meeting notice and agenda in accordance with A.R.S. § 38-431.02; and
 - b. Issue a public notice of the recommended Commission Order in print and electronic media.
 2. The Department shall ensure that the public meeting notice and agenda contains the date, time, and location of the Commission meeting where the Commission Order will be considered and a statement that the public may attend and present written comments at or before the meeting. The Department shall ensure the public meeting notice and agenda includes:
 - a. The date, time, and location of the Commission meeting where the Commission Order will be considered;



- ~~b. A statement that the public may attend and present written comments at or before the meeting; and~~
- ~~c. A statement that a copy of the proposed Commission Order shall be made available to the public 10 calendar days before the meeting. Copies are available for public inspection on the Department's website and at Department offices in Phoenix, Pinetop, Flagstaff, Kingman, Yuma, Tucson, and Mesa.~~
- 3. ~~The Department shall also ensure that the public meeting notice and agenda states that a copy of the proposed Commission Order is available for public inspection at the Department offices in Phoenix, Pinetop, Flagstaff, Kingman, Yuma, Tucson, and Mesa 10 calendar days before the meeting. The Commission may make changes to the recommended Commission Order at the Commission meeting.~~
- B. The requirements of subsection (A) do not apply to a Commission ~~orders establishing~~ Order that establishes:
 - 1. ~~Supplemental hunts~~ A supplemental hunt as prescribed in authorized under R12-4-115, and;
 - 2. ~~Special seasons~~ A special season for individuals that persons who possess a special license tags tag issued under A.R.S. § 17-346 and R12-4-120, and
 - 3. A special season that allows fish to be taken by additional methods on waters where a fish die-off is imminent as established under R12-4-317(C).
- C. The Department shall publish the content of all Commission orders and make them available to the public ~~without~~ free of charge.

R12-4-610. Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles

- A. ~~An individual or agency~~ A person requesting that the Commission consider closing state or federal land to hunting, fishing, or trapping as provided under A.R.S. § 17-304(B) or R12-4-110; or closing roads or trails on state lands as provided under R12-4-110, shall submit a petition as prescribed in this Section before the Commission will consider the request.
- B. ~~A petition petitioner~~ shall not address more than one contiguous closure request in a petition.
- C. ~~Once the Commission has considered and denied a petition, an individual who subsequently submits~~ A petitioner submitting a petition that addresses the same contiguous closure request previously considered and denied by the Commission shall provide a an additional written statement that ~~contains any reason~~ includes rationale not previously considered by the Commission ~~in making a decision.~~
- D. A petitioner shall submit ~~an original and one copy of the petition form~~ to the Director of the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086, not less than 60 calendar days before a scheduled Commission meeting to be placed on the agenda for that meeting. If the Commission receives a petition after that time it will be considered at the next regularly scheduled open meeting. At any time, the petitioner may withdraw the petition or request delay to a later regularly scheduled open meeting. The petition form is furnished by the Department and is available at any Department office and on the Department's website. The petition form shall contain all of the following information:
 - 1. Petitioner identification:
 - a. When the petitioner is the leaseholder of the area proposed for closure:
 - i. Name of person;
 - ii. Lease number;
 - iii. Physical and mailing address, if different from the physical address;
 - iv. Contact telephone number; and
 - v. Email, when available;
 - b. When the petitioner is anyone other than the leaseholder of the area proposed for closure:
 - i. Name of person;
 - ii. Lease number;
 - iii. Physical and mailing address, if different from the physical address;
 - iv. Contact telephone number;
 - v. Email, when available; and
 - vi. Name of each group or organization or organizations that the petitioner represents; or
 - c. When the petitioner is a public agency:
 - i. Name of person;
 - ii. Name of agency;
 - iii. Petitioner's title;
 - iv. Lease number;
 - v. Agency's physical and mailing address, if different from the physical address;
 - vi. Contact telephone number; and
 - vii. Email, when available;
 - 2. Type of closure requested:
 - a. Hunting.
 - b. Fishing.
 - c. Trapping, or
 - d. Operation of motor vehicles.
 - 3. Reason for petition:
 - a. Each reason why the closure should be considered under R12-4-110, A.R.S. § 17-304(B), or A.R.S. § 17-452(A);
 - b. Any data or other justification supporting the reasons for the closure with clear reference to any exhibits that may be attached to the petition;
 - c. Each person or segment of the public the petitioner believes will be impacted by the closure, including any other valid licensees, lessees, or permittees that will or may be affected, and how they will be impacted, including both positive and negative impacts;
 - d. If the petitioner is a public agency, a summary of issues raised in any public hearing or public meeting regarding the petition and a copy of written comments received by the petitioning agency; and



- e. A proposed alternate access route, under R12-4-110.
 4. A concise map identifying the specific location of the proposed closure;
 5. Petitioner's signature;
 6. Date on which the petition was signed; and
 7. Any other information required by the Department.
- E. Within 15 business days after the petition is filed, the Department The-Director Department shall determine whether the petition complies with the requirements established under A.R.S. § 17-452, R12-4-110, and this Section within 15 business days after receiving the petition.
1. ~~Once the Department determines that~~ If the petition meets these requirements, and if provided the petitioner has not agreed to an alternative solution or withdrawn the petition, the Department, in accordance with the schedule in subsection ~~(D)~~ (F), shall place the petition on the agenda for the Commission's next regularly scheduled open meeting and provide written notice to the petitioner of the meeting date that the Commission will consider the petition.
 1. ~~The petitioner may present oral testimony in support of the petition at the Commission meeting, in accordance with the provisions established under R12-4-603.~~
 2. ~~If a petition does not meet~~ comply the requirements prescribed under A.R.S. § 17-452, R12-4-110, and this Section, ~~the;~~
 - a. ~~The Department shall return one copy of the petition as filed to the petitioner, and~~
 - b. Indicate in writing with the reasons why the petition does not comply with this Section meet the requirements, and not place the petition on a Commission agenda.
 3. ~~If the Department returns a petition to a petitioner for a reason that cannot be corrected, the Department shall serve on the petitioner a notice of appealable agency action under A.R.S. § 41-1092.03.~~
- F. When the Department receives a petition not less than 60 calendar days before a regularly scheduled Commission meeting, the Department shall place the petition on the agenda for that meeting. A petition received after this time will be considered at the next regularly scheduled open meeting.
- G. The petitioner may:
1. Present oral testimony in support of the petition at the Commission meeting, in accordance with the provisions established under R12-4-604.
 2. Withdraw the petition or request a continuance to a later regularly scheduled open meeting at any time.
- F. The petitioner shall submit a petition that:
1. Is typewritten, computer or word processor printed, or legibly handwritten, and double spaced, on 8 1/2 x 11" paper;
 2. Has a concise map that shows the specific location of the proposed closure;
 3. Has the title "Petition for the Closure of Hunting, Fishing, or Trapping Privileges on Public Land" or "Petition for the Closure of Public Lands to the Operation of Motor Vehicles" at the top of the first page;
 4. Is in four parts, with titles designating each part as prescribed in this subsection;
 5. Has a "Part 1" with the title "Identification of Petitioner" and contains the following information, if applicable:
 - a. If the petitioner is the leaseholder of the area proposed for closure, the name, lease number, mailing address, and home telephone number of the petitioner;
 - b. If the petitioner is anyone other than the leaseholder, the name, mailing address, and telephone number of the leaseholder; the name, mailing address, and telephone number of the petitioner; and the name of each group or organization or organizations that the petitioner represents; or
 - e. If the petitioner is a public agency, the name and address of the agency and the name, title, and telephone number of the agency's representative regarding the petition.
 6. Has a "Part 2" with the title "Request for Closure" and contains all of the following information, if applicable:
 - a. The type of closure requested: either a hunting, fishing, or trapping closure, or closure to the operation of motor vehicles;
 - b. A complete legal description of the area to be closed;
 - e. The name or identifying number of any road and the portion of the road affected by the closure; and
 - d. The dates proposed for the closure:
 - i. If the closure is to the operation of motor vehicles, the actual time period of the closure (up to five years), and whether or not the closure is seasonal; or
 - ii. If the closure is for hunting, fishing, or trapping, whether or not the request is for a permanent closure or for some other period of time.
 7. Has a "Part 3" with the title "Reason for Closure" and contains all of the following information, if applicable:
 - a. Each reason why the closure should be considered under R12-4-110, A.R.S. § 17-304(B), or A.R.S. § 17-452(A);
 - b. Any data or other justification supporting the reasons for the closure with clear reference to any exhibits that may be attached to the petition;
 - e. Each individual or segment of the public the petitioner believes will be impacted by the closure, including any other valid licensees, lessees, or permittees that will or may be affected, and how they will be impacted, including both positive and negative impacts;
 - d. If the petitioner is a public agency, a summary of issues raised in any public hearing or public meeting regarding the petition and a copy of each written comment or document of concurrence authorized under A.R.S. § 17-452(A), received by the petitioning agency; and
 - e. A proposed alternate access route, under R12-4-110.
 8. Has a "Part 4" with the title "Dates and Signatures" and contains the following:
 - a. The original signature of the private party or the official contact named under subsection (F)(5)(a) or (b) of this Section, or, if the petitioner is a public agency, the signature of the agency head or the agency head's designee; and
 - b. The month, day, and year when the petition was signed.



R12-4-611. Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy

- ~~A.~~ A. ~~If no~~ A person may request a hearing before the Commission when an administrative remedy ~~exists in~~ does not exist under statute, rule, or policy; ~~an aggrieved individual may request a hearing before the Commission by following the provisions of this Section by submitting a petition as prescribed by this Section.~~
- ~~B.~~ B. ~~Any individual who requests a hearing under this Section shall submit a petition as prescribed in this Section before the request for a hearing will be considered by the Commission.~~
- ~~C.B.~~ C.B. ~~A petitioner shall submit an original and one copy of a~~ the petition form to the Arizona Game and Fish Department, Director’s Office, 5000 W. Carefree Highway, Phoenix, AZ 85086. ~~The petition form is furnished by the Department and is available at any Department office and on the Department’s website. The petition form shall contain all of the following information:~~
 - 1. Petitioner identification:
 - a. When the petitioner is a private person:
 - i. Name of person;
 - ii. Physical and mailing address, if different from the physical address;
 - iii. Contact telephone number; and
 - iv. Email, when available;
 - b. When the petitioner is a private group or organization:
 - i. Name of the person designated as the contact for the group or organization;
 - ii. Physical and mailing address, if different from the physical address;
 - iv. Contact telephone number;
 - v. Email, when available; or
 - c. When the petitioner is a public agency:
 - i. Name of person.
 - ii. Name of agency
 - iii. Petitioner’s title.
 - iv. Agency’s physical and mailing address, if different from the physical address.
 - v. Contact telephone number, and
 - vi. Email, when available;
 - 2. Statement of Facts and Issues:
 - a. Description of issue to be resolved, and
 - b. Any facts relevant to resolving the issue;
 - 3. Specific proposed remedy;
 - 4. Petitioner’s signature;
 - 5. Date on which the petition was signed; and
 - 6. Any other information required by the Department.
- ~~D.~~ D. ~~The petitioner shall ensure that the petition is typewritten, computer or word processor printed, or legibly handwritten, and double-spaced on 8 1/2” x 11” paper. The petitioner shall place the title “Petition for Hearing by the Arizona Game and Fish Commission” at the top of the first page. The petition shall include the items listed in subsections (E) through (H). The petitioner shall present the items in the petition in the order in which they are listed in this Section.~~
- ~~E.~~ E. ~~The petitioner shall ensure that the title of Part 1 is “Identification of Petitioner” and that Part 1 includes the following information, as applicable:~~
 - 1. If the petitioner is a private person, the name, mailing address, telephone number, and e-mail address (if available) of the petitioner;
 - 2. If the petitioner is a private group or organization, the name and address of the organization; the name, mailing address, telephone number, and e-mail address (if available) of one person who is designated as the official contact for the group or organization; the number of individuals or members represented by the private group or organization, and the number of these individuals or members who are Arizona residents. If the petitioner prefers, the petitioner may provide the names and addresses of all members; or
 - 3. If the petitioner is a public agency, the name and address of the agency and the name, title, telephone number, and e-mail address (if available) of the agency’s representative.
- ~~F.~~ F. ~~The petitioner shall ensure that the title of Part 2 is “Statement of Facts and Issues.” Part 2 shall contain a description of the issue to be resolved, and a statement of the facts relevant to resolving the issue.~~
- ~~G.~~ G. ~~The petitioner shall ensure that the title of Part 3 is “Petitioner’s Proposed Remedy.” Part 3 shall contain a full and detailed explanation of the specific remedy the petitioner is seeking from the Commission.~~
- ~~H.~~ H. ~~The petitioner shall ensure that the title of Part 4 is “Date and Signatures.” Part 4 shall contain:~~
 - 1. The original signature of the private party or the official contact named in the petition, or, if the petitioner is a public agency, the signature of the agency head or the agency head’s designee; and
 - 2. The month, day, and year that the petition is signed.
- ~~I.C.~~ I.C. ~~If a petition does not comply with this Section, the Director~~ Department ~~shall return the petition and indicate why the petition is deficient.~~
 - 1. Return the petition to the petitioner, and
 - 2. Indicate in writing why the petition does not comply with this Section.
- ~~J.D.~~ J.D. ~~After the Director~~ Department ~~receives a petition that complies with this Section, the Director~~ Department ~~shall place the petition on the agenda of a regularly scheduled Commission meeting.~~
- ~~K.E.~~ K.E. ~~If the Commission votes to deny a petition, the Department shall not accept a subsequent petition on the same matter~~ issue, unless the petitioner presents new evidence or reasons for considering the subsequent petition.
- ~~L.E.~~ L.E. ~~This Section does not apply to the following:~~



1. ~~A matter~~ An action related to a license revocation, suspension, denial, or civil assessment penalty; or
2. An unsuccessful hunt permit-tag draw application, ~~where there was no~~ that did not involve an error on the part of the Department; or
3. The reinstatement of a bonus point, except as authorized under R12-4-107(M).

NOTICE OF PROPOSED EXPEDITED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

[R17-184]

PREAMBLE

- | | |
|---|---------------------------------|
| 1. <u>Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
| Article 9 | Renumber |
| Article 11 | Renumber |
| R12-4-901 | Renumber |
| R12-4-902 | Renumber |
| R12-4-902 | Amend |
| R12-4-1101 | Renumber |
| R12-4-1102 | Renumber |
- 2. Citations to the agency’s statutory authority to include the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statute: A.R.S. § 17-231(A)(1)
 Implementing statute: A.R.S. §§ 5-311(A)(5), 17-255.01, 17-255.02, and 17-255.03
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
 Notice of Rulemaking Docket Opening: 23 A.A.R. 2864, October 13, 2017 (*in this issue*)

- 4. The agency’s contact person who can answer questions about the rulemaking:**
- Name: Chris Cantrell, Aquatics Branch Chief
 Address: Arizona Game and Fish Department
 5000 W. Carefree Highway
 Phoenix, AZ 85086
 Telephone: (623) 236-7259
 Fax: (623) 236-7265
 E-mail: CCantrell@azgfd.gov
- Please visit the AZGFD website to track the progress of this rule; view the regulatory agenda and all previous Five-year Review Reports; and learn about any other agency rulemaking matters at <https://www.azgfd.com/agency/rulemaking/>.

- 5. An agency’s justification and reason why the rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**

The Arizona Game and Fish Commission proposes to amend its rules following the 2017 five-year rule review of Article 11, Aquatic Invasive Species, to enact recommendations developed during the five-year review. The recommended amendments are designed to make the rule more concise and easier to understand.

Under A.R.S. § 41-1027(A)(7), an agency may use the expedited rulemaking process to implement, without material change, a course of action proposed in a five-year review report approved by the Governor's Regulatory Review Council provided the rulemaking does not increase burdens or costs to, or reduce procedural rights of, persons regulated by the rule. The Commission approved the Article 11 Five-year Review Report (5YRR) at the December 2, 2016 Commission Meeting and the Governor's Regulatory Review Council approved the Article 11 5YRR at the March 7, 2017 Council Meeting.

An exemption from Executive Order 2015-01 was provided for this rulemaking by Hunter Moore, Natural Resource Policy Advisor, Governor’s Office, in an email dated May 1, 2017.

R12-4-1101. Definitions

The objective of the rule is to establish definitions that assist the regulated community and members of the public in understanding the unique terms that are used throughout Article 11. The Commission proposes to renumber the rule to R12-4-901.

R12-4-1102. Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols

The objective of the rules is to establish the requirements necessary to eradicate, abate, or prevent the transport and spread of aquatic invasive species in and through Arizona. Aquatic invasive species are a threat to Arizona’s water and electrical infrastructure and the public’s angling and boating recreation. It is critical for anyone who owns or uses watercraft, vehicle, conveyance or equipment on Arizona's waterbodies, to understand the essential nature of the aquatic invasive species containment effort by the Department, other state and federal agencies and political subdivisions. The spread of aquatic invasive species will result in far-reaching impacts that can touch virtually every resident of Arizona. For example, quagga mussels have a negative ecological and environmental impact to Arizona waterways and water delivery systems. These mussels accumulate on underwater surfaces and impair water delivery structures and systems. They clog water intake and delivery pipes and infest hydropower infrastructure, dams, and water control structures. They adhere to watercraft bottoms, engines, docks, and pilings and can ultimately destroy



beaches and alter the functioning of native aquatic ecosystems.

The principle pathway for quagga mussel transfer between watersheds is the overland movement of boats and equipment with attached adult mussels and the movement of water itself containing juvenile mussels in un-drained bilge areas, live wells, internal storage spaces, or conveyances designed to carry water. The initial movement of these mussels to the Colorado River was in all likelihood as a hitchhiker on a boat or equipment item that was moved more than 1,000 miles overland. Aquatic invasive species are currently established in a number of Arizona waterbodies: Lake Pleasant, Lake Havasu, Lake Mead, Lake Mohave, Martinez Lake, Mittry Lake, Topock Marsh, and Lake Powell; water delivery systems: parts of the Central Arizona Project aqueduct and Salt River Project Canal System; and other states and countries: Alabama, Arkansas, California, Colorado, Connecticut, Iowa, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Mississippi, Nebraska, Nevada, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, Vermont, Wisconsin, West Virginia; and the Provinces of Ontario and Quebec.

Since 2011, in addition to media campaigns (newsletters, billboards, radio and televisions advertisements), the Department’s Aquatic Invasive Species Program has performed numerous outreach campaigns and conducted surveys on the boat ramps at various quagga infested waterbodies (e.g., Havasu, Pleasant, and Powell). State-wide surveys indicate a gap between knowledge of required actions and the physical action of pulling a drainage plug when exiting infested waterbodies in Arizona. In 2015, 85% of boaters surveyed verbally by Department personnel said they pull their boat’s plug upon exit; however only 67% were physically observed pulling the boat’s drain plug upon exiting.

The Commission proposes to renumber the rule from R12-4-1102 to R12-4-902. The Commission has determined there are issues with compliance due to the current boating culture, (similar to requiring the use of seat belts in automobiles) which will require a paradigm shift in common boating practices. Some persons do not believe they need to remove plugs and devices that prevent water from draining; other persons remove the plug or barrier, but then replace it before leaving the waterbody, which makes it difficult for law enforcement to determine whether a person is in compliance with the rule when they are driving away from a waterbody where aquatic invasive species are established or suspected with the plug and/or device in place. To more clearly communicate compliance requirements and enable an officer to immediately determine whether a person has complied with the rule, the Department proposes to amend the rule to specify a person is required to remove all plugs and devices, except those that are sealed and exist for maintenance purposes only, and any other barriers that prevent water drainage while a watercraft, vehicle, conveyance, or equipment is in transport after leaving any affected waterbody.

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

The agency did not rely on any study in its evaluation of or justification for the rule.

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

Not applicable

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

Under A.R.S. § 41-1027, the rulemaking is exempt from this requirement; however, the Commission offers the following: The Commission anticipates the proposed amendments will have an insignificant impact on persons regulated by the rule. However, establishing conditions for the overland movement of watercraft, vehicles, conveyances, and equipment is crucial in helping to prevent the accidental spread of aquatic invasive species and the far-reaching financial and ecological impacts that can affect virtually every Arizona resident and water storage, treatment, and delivery provider. The rulemaking will benefit private consumers and public and private entities by addressing a current threat to the state’s economy, ecology, and public health and safety. The rulemaking will have little or no financial effect on most watercraft owners and operators. The Commission anticipates increased costs associated with implementing the amended rules due to increased training of enforcement officers. The Commission has determined that the benefits of the rulemaking outweigh any costs.

9. The agency’s contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Chris Cantrell, Aquatics Branch Chief
Address: Arizona Game and Fish Department
5000 W. Carefree Highway
Phoenix, AZ 85086
Telephone: (623) 236-7259
Fax: (623) 236-7265
E-mail: CCantrell@azgfd.gov

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

Date: December 1, 2017
Time: 8:00 a.m. to 5:00 p.m.
Location: 5000 W. Carefree Highway
Phoenix, AZ 85086
Close of record: December 1, 2017



11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used, and if not, the reason why a general permit is not used:

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

The Department did not receive any analyses.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

Not applicable

13. The full text of the rules follows:

**TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION**

ARTICLE 449. AQUATIC INVASIVE SPECIES

Section

R12-4-1101-R12-4-901. Definitions

R12-4-1102-R12-4-902. Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols

ARTICLE 449. AQUATIC INVASIVE SPECIES

~~R12-4-1101-R12-4-901~~. Definitions

In addition to the definitions provided under A.R.S. §§ 5-301 and 17-255, the following definitions apply to this Article, unless otherwise specified:

“Aquatic invasive species” means those species listed in Director’s Order 1.

“Certified agent” means a person who meets Department standards to conduct inspections authorized under A.R.S. § 17-255.01(C)(1).

“Conveyance” means a device designed to carry or transport water. Conveyance includes, but is not limited to, dip buckets, water hauling tanks, and water bladders.

“Equipment” means an item used either in or on water; or to carry water. Equipment includes, but is not limited to, trailers used to launch or retrieve watercraft, rafts, inner tubes, kick boards, anchors and anchor lines, docks, dock cables and floats, buoys, beacons, wading boots, fishing tackle, bait buckets, skin diving and scuba diving equipment, submersibles, pumps, sea planes, and heavy construction equipment used in aquatic environments.

“Operator” means a person who operates or is in actual physical control of a watercraft, vehicle, conveyance or equipment.

“Owner” means a person who claims lawful possession of a watercraft, vehicle, conveyance, or equipment.

“Person” has the same meaning as defined under A.R.S. § 1-215.

“Release” means to place, plant, or cause to be placed or planted in waters.

“Transporter” means a person responsible for the overland movement of a watercraft, vehicle, conveyance, or equipment.

“Waters” means surface water of all sources, whether perennial or intermittent, in streams, canyons, ravines, drainage systems, canals, springs, lakes, marshes, reservoirs, ponds, and other bodies or accumulations of natural, artificial, public or private waters situated wholly or partly in or bordering this state.

~~R12-4-1102-R12-4-902~~. Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols

A. A person shall not, unless authorized under Article 4:

1. Possess, import, ship, or transport into or within this state an aquatic invasive species, unless authorized by the Director.
2. Sell, purchase, barter, or exchange in this state an aquatic invasive species.
3. Release an aquatic invasive species into waters or into any water treatment facility, water supply or water transportation facility, device or mechanism in this state.

B. Upon removing a watercraft, vehicle, conveyance, or equipment from any waters listed in Director’s Order 2 and ~~before leaving that location~~ prior to transport, a person shall:

1. Remove all clinging materials such as plants, animals, and mud.
2. Remove ~~any plug or all plugs and other barrier valves or devices that prevents prevent~~ water drainage or, where none exists, take reasonable measures to drain or dry from all compartments or spaces that hold may retain water. Reasonable measures include, but are not limited to, emptying, such as ballast tanks, ballast bags, bilges, application of absorbents, or ventilation and ensure plugs or devices remain removed or open during transport.
3. If no plugs or barriers exist, take reasonable measures to drain or dry all compartments or spaces that may retain water. Reasonable measures include, but are not limited to, emptying bilges, application of absorbents, or ventilation.

C. Before transporting a watercraft, vehicle, conveyance, or equipment to any waters located within or bordering this state from waters or locations ~~where aquatic invasive species are suspected or known to be present, as listed in Director’s Order 2, a person~~



shall comply with the mandatory conditions and protocols identified in Director’s Order 3 for decontamination of watercraft, vehicles, conveyances, and equipment.

- D.** Department employees, certified agents, and Arizona peace officers authorized under A.R.S. § 17-104 may inspect a watercraft, vehicle, conveyance, or equipment for the purposes of determining compliance with A.R.S. Title 17, Chapter 2, Article 3.1 and this Section.
- E.** If the presence of an aquatic invasive species is documented or suspected on or in a watercraft, vehicle, conveyance, or equipment, a Department employee or any Arizona peace officer may order a person to decontaminate or cause to be decontaminated such watercraft, vehicle, conveyance, or equipment using the mandatory protocols described in Director’s ~~order~~ **Order 3**.
- F.** The following Director’s Orders are available at any Department office and online at azgfd.gov:
 - 1. Director’s Order 1 – Listing of Aquatic Invasive Species for Arizona,
 - 2. Director’s Order 2 – Designation of Waters or Locations Where Listed Aquatic Invasive Species are Present, and
 - 3. Director’s Order 3 – Mandatory Conditions on the Movement of Watercraft, Vehicles, Conveyances, or Other Equipment from Listed Waters Where Aquatic Invasive Species are Present.
- G.** This Section does not apply to owners and operators exempt under A.R.S. § 17-255.04.



NOTICES OF EMERGENCY RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Emergency Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these rules.

Questions about the interpretation of the emergency rules should be addressed to the agency proposing them. Refer to Item #5 to contact the person charged with the rulemaking.

NOTICE OF EMERGENCY RULEMAKING TITLE 9. HEALTH SERVICES CHAPTER 4. DEPARTMENT OF HEALTH SERVICES NONCOMMUNICABLE DISEASES

[R17-185]

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| Article 6 | New Article |
| R9-4-601 | New Section |
| R9-4-602 | New Section |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statutes: A.R.S. §§ 36-132(A)(1), 36-136(G)
 Implementing statutes: A.R.S. § 36-133
- 3. The effective date of the rule:**
 September 21, 2017.
 The rule will take effect upon the filing of the Approval of Emergency Rulemaking and the Notice of Emergency Rulemaking with the Office of the Secretary of State by the Office of the Attorney General. An exception from the effective date provisions in A.R.S. § 41-1032(A) is necessary to preserve public health by immediately addressing the epidemic of opioid overdose deaths occurring in Arizona.
- 4. Citations to all related emergency rulemaking notices published in the Register as specified in R1-1-409(A) that pertain to the record of this Notice of Emergency Rulemaking:**
 None
- 5. The agency's contact person who can answer questions about the rulemaking:**
- | | |
|------------|---|
| Name: | Colby Bower, Assistant Director |
| Address: | Arizona Department of Health Services Public Health Licensing Services 150 N. 18th Ave., Suite 510 Phoenix, AZ 85007 |
| Telephone: | (602) 542-6383 |
| Fax: | (602) 364-4808 |
| E-mail: | Colby.Bower@azdhs.gov |
| | or |
| Name: | Robert Lane, Chief |
| Address: | Arizona Department of Health Services Office of Administrative Counsel and Rules 150 N. 18th Ave., Suite 200 Phoenix, AZ 85007 |
| Telephone: | (602) 542-1020 |
| Fax: | (602) 364-1150 |
| E-mail: | Robert.Lane@azdhs.gov |
- 6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

Over the past 15 years, prescription opioid sales in the United States have risen by an astonishing 300%. Not surprisingly, this surge in the availability of prescription opioids has paralleled a simultaneous increase in opioid-related overdose deaths nationwide. In 2015, prescription opioid overdose deaths reached a new high water mark, claiming 33,000 American lives nationwide and leading to several states adopting more stringent regulations regarding opioid prescription and use. In 2016, 790 Arizonans died after suffering opioid overdoses, a figure accounting for over *half* of all drug overdoses in Arizona. This equates to an average of more than two Arizonans per day dying as a result of opioid use. The Department estimates that hundreds of opioid prescrip-



tions are issued each day in Arizona, each having the potential to lead to an opioid overdose death. More than 33% of individuals experiencing an opioid overdose since June 15, 2017, had an opioid prescription filled in the two months before the overdose, and 62% of those prescriptions were for a period longer than six days. With opioid-related deaths increasing by 74% between 2012 and 2016, Arizona is now in the midst of a full-blown public health emergency that demands immediate attention.

In response to the emergency situation created by the opioid overdose epidemic, Governor Doug Ducey, on June 13, 2017, issued Executive Order 2017-04, Enhanced Surveillance Advisory, in which health care providers, pharmacists, emergency medical service providers, local and state law enforcement agencies, and others were directed to report data on specific health conditions to the Department. This Executive Order was revised and renewed on August 10, 2017, when the Governor issued Executive Order 2017-05. The enhanced surveillance being undertaken by the Department as a result of the Governor's Executive Orders 2017-04 and 2017-05 has begun to provide more robust and more accurate data that will help shape the public health response to the opioid overdose epidemic. Since reporting began, there have been 1,961 reports of a suspected opioid overdose, and 263 Arizonans have died as a result. Executive Order 2017-05 will be expiring shortly, but the Department's need for data will continue after its expiration.

The Department believes that opioid use disorder, which can lead to opioid overdose and death, has become a chronic disease in Arizona. To successfully prevent and combat opioid use disorder, overdoses, and deaths, the Department needs to be able to obtain complete and accurate data in a timely fashion. The Department has begun using the data being reported under the Executive Orders to monitor incidence patterns for opioid overdoses, assess the success of intervention strategies being deployed to combat the opioid overdose epidemic, identify population subgroups at high risk for morbidity and mortality due to opioid overdoses, and identify regions of the state that are in particular need of intervention programs to reduce the incidence of opioid overdoses. However, continued reporting is necessary to obtain the data necessary to shape, implement, and assess the success of a public health response to the opioid overdose epidemic.

The Department has already adopted emergency rules in 9 A.A.C. 10, effective July 28, 2017, to strengthen requirements for health care institutions that prescribe, order, or administer opioids. The Department anticipates an immediate effect on opioid prescribing practices, a decrease in the number of unnecessary opioid prescriptions, and an attendant reduction in overdose-related events thereafter. However, these changes only affect licensed health care institutions by requiring them to report deaths related to opioid prescription or administration as part of treatment. In response to the Executive Orders, the majority of suspected overdose and death reports being submitted, as well as reports of dispensed and administered doses of naloxone, are coming from healthcare professionals, law enforcement agencies, emergency medical services providers, and pharmacies. This real time data is critical for identifying and implementing public health strategies, including targeted prevention activities. Therefore, the Department is adopting emergency rules in 9 A.A.C. 4 to establish a surveillance system for opioid overdose-related events, similar to other non-communicable diseases.

In this emergency rulemaking, the Department seeks to protect the health and safety of the residents of Arizona by adopting rules to establish a surveillance system for opioid overdose-related events under A.R.S. § 36-133. Specifically, these rules require continued reporting of suspected opioid deaths, suspected opioid overdoses, naloxone doses administered in response to a suspected opioid overdose, naloxone doses dispensed, and neonatal abstinence syndrome cases. In this way, the Department may be able to detect changes in opioid prescribing practices, as well as changes in the number of opioid overdoses and intervention activities, in a time-frame during which new intervention activities may be initiated and changes to existing strategies made in order to save lives.

If the current rate of opioid-related deaths continues, nearly 600 Arizonan lives may be lost due to an opioid overdose in the time it takes to initiate and complete a regular rulemaking. It is, therefore, imperative that the Department act immediately through emergency rulemaking to continue to monitor both opioid overdoses and the availability and use of naloxone, as one aspect of the public health response to the opioid overdose crisis, while gathering data to better shape, implement, and assess the success of a public health response to the opioid overdose epidemic. Accordingly, in light of the human and economic costs posed by the opioid overdose crisis, the Department believes that an emergency rulemaking is both justified and proper.

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

The Department did not review or rely on any study related to this rulemaking package.

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

Not applicable

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

Not applicable. Pursuant to A.R.S. § 41-1055(D)(1), this rulemaking is exempt from the requirements to prepare and file an economic, small business, and consumer impact statement.

10. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include but are not limited to:

a. Whether the rule requires a permit, whether a general permit is used and, if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and, if so, citation to the statutory authority to exceed the requirements of federal law:

The rule is not more stringent than federal law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitive-



ness of business in this state to the impact on business in other states:

No analysis comparing competitiveness was received by the Department.

11. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

None

12. An agency explanation about the situation justifying the rulemaking as an emergency rule:

The Department tracks deaths of individuals who die of an opioid overdose and recently reported a significant increase in prescription and illicit drug overdose deaths in 2016, as published in a report available at: <http://azdhs.gov/documents/audiences/clinicians/clinical-guidelines-recommendations/prescribing-guidelines/arizona-opioid-report.pdf>. However, until the initiation of enhanced surveillance under Executive Orders 2017-04 and 2017-05, this data was not being collected in a time-frame that enabled the Department to respond in a timely manner. Because the data being submitted under enhanced surveillance has helped the Department to better understand the extent of this public health epidemic, the Department and community partners have initiated strategies, including intervention activities, to address the epidemic. It is now imperative that these and future intervention activities be monitored so new public health strategies may be developed. This situation was not caused by the Department's delay or inaction. In addition, given the additional time necessary to conduct a regular rulemaking, the current situation cannot be averted by a regular rulemaking (which at a minimum could take an additional six to eight months to complete).

13. The date the Attorney General approved the rule:

September 21, 2017

14. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 4. DEPARTMENT OF HEALTH SERVICES
NONCOMMUNICABLE DISEASES**

ARTICLE 6. OPIOID POISONING-RELATED REPORTING

Section

R9-4-601.

Definitions

R9-4-602.

Opioid Poisoning-Related Reporting Requirements

ARTICLE 6. OPIOID POISONING-RELATED REPORTING

R9-4-601. Definitions

In this Article, unless otherwise specified:

1. "Administrator" means the individual who is a senior leader in a health care institution or correctional facility.
2. "Ambulance service" has the same meaning as in A.R.S. § 36-2201.
3. "Business day" means the period from 8:00 a.m. to 5:00 p.m. on a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state holiday.
4. "Clinical laboratory" has the same meaning as in A.R.S. § 36-451.
5. "Correctional facility" has the same meaning as in A.A.C. R9-6-101.
6. "Dispense" has the same meaning as in A.R.S. § 32-1901.
7. "Emergency medical services provider" has the same meaning as in A.R.S. § 36-2201.
8. "Health care institution" has the same meaning as in A.R.S. § 36-401.
9. "Health professional" has the same meaning as in A.R.S. § 32-3201.
10. "Law enforcement agency" has the same meaning as in A.A.C. R13-1-101.
11. "Medical examiner" has the same meaning as in A.R.S. § 36-301.
12. "Naloxone" means a prescription medication, as defined in A.R.S. § 32-1901, that is used to block the effects of an opioid in an individual.
13. "Neonatal abstinence syndrome" means a set of signs of opioid withdrawal occurring in an individual shortly after birth that are indicative of opioid exposure while in the womb.
14. "Opioid" means the same as "opiate" in A.R.S. § 36-2501.
15. "Opioid overdose" means respiratory depression, slowing heart rate, or unconsciousness or mental confusion caused by the administration, including self-administration, of an opioid to an individual.
16. "Pharmacist" has the same meaning as in A.R.S. § 32-1901.

R9-4-602. Opioid Poisoning-Related Reporting Requirements

A. An ambulance service, an emergency medical services provider, or a law enforcement agency shall, either personally or through a representative, submit a report to the Department, in a Department-provided format and within five business days after an encounter with an individual with a suspected opioid overdose, that includes:

1. The following information about the ambulance service, emergency medical services provider, or law enforcement agency:
 - a. Name;
 - b. Street address, city, county, and zip code;
 - c. Whether the entity reporting is:
 - i. An ambulance service,



- ii. An emergency medical services provider, or
 - iii. A law enforcement agency; and
 - d. If applicable, the certificate number issued by the Department to the ambulance service; and
 - 2. The name, title, telephone number, and email address of a point of contact for the entity required to report;
 - 3. The street address, city, county, state, and zip code of the location at which the ambulance service, emergency medical services provider, or law enforcement agency encountered the individual;
 - 4. If applicable, the date and time the ambulance service, emergency medical services provider, or law enforcement agency was dispatched to the location specified according to subsection (A)(3);
 - 5. The following information about the individual with a suspected opioid overdose or who died of a suspected opioid overdose:
 - a. Name;
 - b. Date of birth;
 - c. Age in years;
 - d. Gender;
 - e. Race and ethnicity; and
 - f. Reason for suspecting that the individual had an opioid overdose;
 - 6. Whether naloxone was administered to the individual before the ambulance service, emergency medical services provider, or law enforcement agency encountered the individual and, if so:
 - a. The number of doses of naloxone administered to the individual; and
 - b. As applicable, that the naloxone was administered to the individual by:
 - i. Another individual; or
 - ii. Another entity and, if so the type of entity that administered the naloxone to the individual;
 - 7. Whether naloxone was administered to the individual by the ambulance service, emergency medical services provider, or law enforcement agency and, if so, the number of doses of naloxone administered to the individual;
 - 8. The following information about the disposition of the individual:
 - a. Whether the individual was pronounced dead at the location specified according to subsection (A)(3);
 - b. Whether the individual was transported to a hospital and, if so:
 - i. The name of the hospital to which the individual was transported, and
 - ii. The type of entity that transported the individual to the hospital; and
 - c. If known, whether the individual:
 - i. Survived the suspected opioid overdose;
 - ii. Died from the suspected opioid overdose, or
 - iii. Died from another cause after experiencing a suspected opioid overdose; and
 - 9. The date of the report.
- B.** An administrator of a health care institution licensed under 9 A.A.C. 10 or a pharmacist, as applicable, is not required to submit a report to the Department under this Article for:
 - 1. An opioid overdose resulting from the administration of the opioid to a patient in the health care institution if the opioid overdose is addressed through the health care institution's quality management program; or
 - 2. Naloxone dispensed in connection with a surgical procedure, as defined in A.A.C. R9-10-101, performed in the health care institution.
- C.** Except as prohibited by Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2 or as specified in subsection (B), a health professional or the administrator of a health care institution licensed under 9 A.A.C. 10 shall, either personally or through a representative, submit a report to the Department, in a Department-provided format and within five business days after an encounter with an individual with a suspected opioid overdose, that includes:
 - 1. The name, street address, city, county, zip code, and telephone number of the health professional or health care institution;
 - 2. If different from the person in subsection (C)(1), the name, title, street address, city, county, zip code, telephone number, and email address of the individual reporting on behalf of the person in subsection (C)(1);
 - 3. The following information about the individual with a suspected opioid overdose:
 - a. The individual's name;
 - b. The individual's street address, city, county, state, and zip code;
 - c. The individual's date of birth;
 - d. The individual's gender;
 - e. The individual's race and ethnicity;
 - f. Whether the individual is pregnant and, if so, the expected date of delivery;
 - g. If applicable, the name of the individual's guardian; and
 - h. Whether naloxone was administered to the individual before the health professional or health care institution encountered the individual and, if so:
 - i. The type of entity that administered the naloxone to the individual, or
 - ii. That the naloxone was administered to the individual by another individual;
 - 4. The following information about the diagnosis of opioid overdose:
 - a. The reason for suspecting that the individual had an opioid overdose;
 - b. The date of the suspected opioid overdose;
 - c. The date of diagnosis; and
 - d. Except as provided in subsection (G), if the diagnosis was confirmed through one or more tests performed by a clinical laboratory, for each test:
 - i. The name, address, and telephone number of the clinical laboratory;
 - ii. The date a specimen was collected from the individual;



- iii. The type of specimen collected;
 - iv. The type of laboratory test performed; and
 - v. The laboratory test result and date of the result;
 - 5. The following information about the suspected opioid overdose:
 - a. Whether the opioid overdose appeared to be intentional or unintentional;
 - b. The location where the opioid overdose took place;
 - c. Whether the individual was alone at the time of the opioid overdose;
 - d. Whether the individual was transported to the health professional or health care institution by an ambulance service, an emergency medical services provider, or a law enforcement agency and, if so, the type of entity that transported the individual;
 - e. The specific opioid that appeared to be responsible for the opioid overdose; and
 - f. If known, whether:
 - i. The individual was prescribed an opioid within the 90 calendar days before the date of the suspected opioid overdose;
 - ii. The individual had been referred to receive behavioral health services, as defined in A.R.S. § 36-401; or
 - iii. The opioid overdose was the first time the individual had had an opioid overdose and, if not, the number of previous opioid overdoses the individual was known to have had;
 - 6. Whether the individual with the suspected opioid overdose:
 - a. Survived the suspected opioid overdose and:
 - i. Was admitted to the health care institution;
 - ii. Was transferred to another health care institution and, if so, the name of the health care institution;
 - iii. Was discharged to a law enforcement agency;
 - iv. Was discharged to home; or
 - v. Left the health care institution against medical advice;
 - b. Died from the suspected opioid overdose and, if so, the date of death; or
 - c. Died from another cause after experiencing a suspected opioid overdose and, if so, the date of death; and
 - 7. The date of the report.
- D. Except as prohibited by Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2, a health professional or the administrator of a health care institution licensed under 9 A.A.C. 10 shall, either personally or through a representative, submit a report to the Department, in a Department-provided format and within five business days after an encounter with an individual with suspected neonatal abstinence syndrome, that includes:
 - 1. The name, street address, city, county, zip code, and telephone number of the health professional or health care institution;
 - 2. If different from the person in subsection (D)(1), the name, title, street address, city, county, zip code, telephone number, and email address of the individual reporting on behalf of the person in subsection (D)(1);
 - 3. The following information about the individual with suspected neonatal abstinence syndrome:
 - a. The individual's name;
 - b. The individual's date of birth;
 - c. The individual's gender;
 - d. The individual's race and ethnicity;
 - e. The name of the individual's mother; and
 - f. If not the individual's mother, the name of the individual's guardian;
 - 4. The following information about a diagnosis of neonatal abstinence syndrome:
 - a. The reason for suspecting that the individual has neonatal abstinence syndrome;
 - b. The date of the onset of signs of neonatal abstinence syndrome;
 - c. The date of diagnosis;
 - d. Except as provided in subsection (G), if the diagnosis was confirmed through one or more tests performed by a clinical laboratory, for each test:
 - i. The name, address, and telephone number of the clinical laboratory;
 - ii. The date a specimen was collected from the individual;
 - iii. The type of specimen collected;
 - iv. The type of laboratory test performed; and
 - v. The laboratory test result and date of the result; and
 - e. Whether any of the following supported a diagnosis of neonatal abstinence syndrome:
 - i. A maternal history of opioid use;
 - ii. A positive laboratory test for opioid use by the individual's mother, or
 - iii. A positive laboratory test for opioids in the individual;
 - 5. If known, the following information about the suspected neonatal abstinence syndrome:
 - a. The source of the opioid believed to have caused the neonatal abstinence syndrome; and
 - b. If the source of the opioid used by the individual's mother was not through a prescription order, as defined in A.R.S. § 32-1901, the specific opioid used by the individual's mother; and
 - 6. The date of the report.
- E. Except as specified in subsection (B), a pharmacist shall, either personally or through a representative, submit a report to the Department, in a format provided by the Arizona Board of Pharmacy and within five business days after dispensing naloxone to an individual, that includes:
 - 1. The following information about the pharmacist:
 - a. Name;
 - b. Pharmacy street address, city, county, and zip code; and



- c. The professional license number issued to the pharmacist under A.R.S. Title 32;
 - 2. The number of doses of naloxone dispensed to the individual by the pharmacist;
 - 3. The date the naloxone was dispensed; and
 - 4. The date of the report.
- F.** A medical examiner shall, either personally or through a representative, submit a report to the Department, in a Department-provided format and within five business days after the completion of the death investigation required in A.R.S. § 11-594 on the human remains of a deceased individual with a suspected opioid overdose, that includes:
- 1. The following information about the medical examiner:
 - a. Name; and
 - b. Street address, city, county, and zip code;
 - 2. The following information about the deceased individual with a suspected opioid overdose:
 - a. The deceased individual's name;
 - b. The deceased individual's date of birth;
 - c. The deceased individual's gender;
 - d. The deceased individual's race and ethnicity;
 - e. Whether the deceased individual was pregnant and, if so, the expected date of delivery;
 - f. If applicable, the name of the deceased individual's guardian; and
 - g. Whether naloxone was administered to the deceased individual before the deceased individual's death and, if known:
 - i. The type of entity that administered the naloxone to the deceased individual, or
 - ii. That the naloxone was administered to the deceased individual by another individual;
 - 3. The following information about the diagnosis of opioid overdose:
 - a. The reason for suspecting that the deceased individual had an opioid overdose;
 - b. The date of the opioid overdose;
 - c. The date of diagnosis; and
 - d. If the diagnosis was confirmed by clinical laboratory tests:
 - i. The name, address, and telephone number of the clinical laboratory;
 - ii. The date a specimen was collected from the deceased individual;
 - iii. The type of specimen collected;
 - iv. The type of laboratory test performed; and
 - v. The laboratory test result and date of the result;
 - 4. If applicable, a copy of the clinical laboratory test results;
 - 5. If known, the following information about the suspected opioid overdose:
 - a. Whether the opioid overdose appeared to be intentional or unintentional;
 - b. The location where the opioid overdose took place;
 - c. Whether the deceased individual was alone at the time of the opioid overdose;
 - d. The specific opioid that appeared to be responsible for the opioid overdose;
 - e. Whether the deceased individual was prescribed an opioid within the 90 calendar days before the date of the opioid overdose; and
 - f. Whether the opioid overdose was the first time the deceased individual was known to have had an opioid overdose and, if not, the number of previous opioid overdoses the deceased individual had had;
 - 6. Whether the deceased individual with the suspected opioid overdose:
 - a. Died from the suspected opioid overdose and, if so, the date of death; or
 - b. Died from another cause after experiencing a suspected opioid overdose and, if so, the date of death; and
 - 7. The date of the report.
- G.** A director of a clinical laboratory, on the premises of a health care institution licensed as a hospital, as defined in A.A.C. R9-10-101, or performing laboratory tests under an arrangement with a hospital, shall submit a report to the Department, in a Department-provided format and within five business days after completing laboratory tests on one or more specimens from an individual that indicate a positive result for the presence of an opioid or an opioid metabolite, that includes:
- 1. The name and address of the clinical laboratory;
 - 2. The name and telephone number of the director of the clinical laboratory;
 - 3. The name and, if available, the address of the individual;
 - 4. The date of birth of the individual;
 - 5. The gender of the individual;
 - 6. The laboratory identification number;
 - 7. For each laboratory test performed:
 - a. The date of collection of the specimen;
 - b. The type of specimen collected;
 - c. The type of laboratory test performed on the specimen;
 - d. The laboratory test result, including quantitative values and reference ranges, if applicable; and
 - e. The date of the laboratory test result; and
 - 8. The date of the report.
- H.** Information collected on individuals pursuant to this Article is confidential, subject to disclosure provisions in A.R.S. Title 12, Chapter 13, Article 7.1, and 9 A.A.C. 1, Article 3.



NOTICES OF RULEMAKING DOCKET OPENING

This section of the *Arizona Administrative Register* contains Notices of Rulemaking Docket Opening.

A docket opening is the first part of the administrative rulemaking process. It is an “announcement” that the agency intends to work on its rules.

When an agency opens a rulemaking docket to consider rulemaking, the Administrative Procedure Act (APA) requires the publication of the Notice of Rulemaking Docket Opening.

Under the APA effective January 1, 1995, agencies must submit a Notice of Rulemaking Docket Opening before beginning the formal rulemaking process. Many times an agency may file the Notice of Rulemaking Docket Opening with the Notice of Proposed Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these notices. Questions about the interpretation of this information should be directed to the agency contact person listed in item #4 of this notice.

NOTICE OF EXPEDITED RULEMAKING DOCKET OPENING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

[R17-186]

1. **Title and its heading:** 12, Natural Resources
Chapter and its heading: 4, Game and Fish Commission
Article and its heading: 6, Rules of Practice Before the Commission
Section numbers: R12-4-601 through R12-4-611
(As part of this rulemaking, the Department may add, delete, or modify additional Sections as necessary)

2. **The subject matter of the proposed rule:**
 The Commission proposes to amend rules to enact recommendations developed during the five-year review, which includes establishing a rule of definitions, increasing consistency in grammar and format for all rules governing a petition process, authorizing the Commission to hold a meeting to review an order establishing a special season that allows fish to be taken by additional methods on waters where a fish die-off is imminent, reducing burdens and costs to persons regulated by the rule wherever possible by repealing unnecessary or obsolete requirements. Completion of the rulemaking package implements changes the Department proposed to make as a result of that review. The recommended amendments are designed to align the rule with statute, enable the Department to provide better customer-service, and reduce regulatory and administrative burdens wherever possible.

3. **A citation to all published notices relating to the proceeding:**
 Notice of Proposed Expedited Rulemaking: 23 A.A.R. 2840, October 13, 2017 *(in this issue)*

4. **The name and address of agency personnel with whom persons may communicate regarding the rule:**
 Name: Kent Komadina, Special Assistant to the Director
 Address: Arizona Game and Fish Department
 5000 W. Carefree Highway
 Phoenix, AZ 85086

 Telephone: (623) 236-7288
 Fax: (623) 236-7299
 E-mail: KKomadina@azgfd.gov

 Please visit the AZGFD website to track the progress of this rule; view the regulatory agenda and all previous Five-year Review Reports; and learn about any other agency rulemaking matters at <https://www.azgfd.com/agency/rulemaking/>.

5. **The time during which the agency will accept written comments and the time and place where oral comments may be made:**
 The Commission will accept comments Monday through Friday from 8:00 a.m. until 5:00 p.m. at the address listed under item #4 for 30 days from the date the Notice of Proposed Expedited Rulemaking is published in the *Arizona Administrative Register*. Information regarding an oral proceeding is included in the Notice of Proposed Expedited Rulemaking on page 2840 of this issue.

6. **A timetable for agency decisions or other action on the proceeding, if known:**
 To be determined.



NOTICE OF EXPEDITED RULEMAKING DOCKET OPENING
TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION

[R17-187]

- 1. Title and its heading: 12, Natural Resources
Chapter and its heading: 4, Game and Fish Commission
Article and its heading: 11, Aquatic Invasive Species
Section numbers: R12-4-901, R12-4-902, R12-4-1101, R12-4-1102
2. The subject matter of the proposed rule: The objective of the rules is to establish the requirements necessary to eradicate, abate, or prevent the transport and spread of aquatic invasive species...
3. A citation to all published notices relating to the proceeding: Notice of Proposed Expedited Rulemaking: 23 A.A.R. 2853, October 13, 2017 (in this issue)
4. The name and address of agency personnel with whom persons may communicate regarding the rule: Name: Chris Cantrell, Aquatics Branch Chief
Address: Arizona Game and Fish Department
5000 W. Carefree Highway
Phoenix, AZ 85086
Telephone: (623) 236-7259
Fax: (623) 236-7265
E-mail: CCantrell@azgfd.gov
Please visit the AZGFD website to track the progress of this rule; view the regulatory agenda and all previous Five-year Review Reports; and learn about any other agency rulemaking matters at https://www.azgfd.com/agency/rulemaking/.
5. The time during which the agency will accept written comments and the time and place where oral comments may be made: The Commission will accept comments Monday through Friday from 8:00 a.m. until 5:00 p.m. at the address listed under item #4 for 30 days from the date the Notice of Proposed Expedited Rulemaking is published in the Arizona Administrative Register.
6. A timetable for agency decisions or other action on the proceeding, if known: To be determined.

NOTICE OF RULEMAKING DOCKET OPENING
DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES

[R17-188]

- 1. Title and its heading: 17, Transportation
Chapter and its heading: 4, Department of Transportation – Title, Registration, and Driver Licenses
Article and its heading: 5, Safety; and 7, Hazardous Materials Endorsement
Section numbers: R17-4-501, R17-4-507, R17-4-508, R17-4-701, R17-4-702, R17-4-705 through R17-4-707, R17-4-709, R17-4-710, and R17-4-712 (Sections may be added, deleted, or modified as necessary.)
2. The subject matter of the proposed rules: The Department, in partnership with the Arizona Department of Public Safety, is engaged in rulemaking to incorporate parts of the 2016 edition of the Code of Federal Regulations relating to the Federal Motor Carrier Safety Regulations.
3. A citation to all published notices relating to the proceeding: Notice of Proposed Rulemaking: 23 A.A.R. 2804, October 13, 2017 (in this issue)
4. The name and address of agency personnel with whom persons may communicate regarding the rules: Name: Candace Olson, Rules Analyst
Address: Government Relations and Policy Development Office
Department of Transportation
206 S. 17th Ave., Mail Drop 140A
Phoenix, AZ 85007



Telephone: (602) 712-4534

E-mail: COlson2@azdot.gov

Please visit the ADOT web site to track the progress of this rule and any other agency rulemaking matters at <https://www.azdot.gov/about/GovernmentRelations>

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:

Written comments may be submitted at any time. All comments should be directed to the person listed under item 4. The date, time, and location of any oral proceeding scheduled for this rulemaking will be included in the Notice of Proposed Rulemaking.

6. A timetable for agency decisions or other action on the proceeding, if known:

To be determined

**NOTICE OF RULEMAKING DOCKET OPENING
DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS**

[R17-189]

- | | |
|---|--|
| 1. <u>Title and its heading:</u> | 17, Transportation |
| <u>Chapter and its heading:</u> | 5, Department of Transportation – Commercial Programs |
| <u>Article and its heading:</u> | 2, Motor Carriers |
| <u>Section numbers:</u> | R17-5-202, R17-5-203, R17-5-205, R17-5-206, R17-5-208, R17-5-209, and R17-5-212 (<i>Sections may be added, deleted, or modified as necessary.</i>) |

2. The subject matter of the proposed rules:

The Arizona Department of Transportation (ADOT), in partnership with the Arizona Department of Public Safety (DPS), engages in this rulemaking to incorporate parts of the 2016 edition of the *Code of Federal Regulations* and 82 FR 5292, January 17, 2017. The Federal Motor Carrier Safety Administration of the U.S. Department of Transportation requires that each state adopt certain Federal Motor Carrier Safety Regulations to ensure eligibility for federal enforcement grants. Both ADOT and DPS rely on these federal monies to fund numerous enforcement positions.

3. A citation to all published notices relating to the proceeding:

Notice of Proposed Rulemaking: 23 A.A.R. 2810, October 13, 2017 (*in this issue*)

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

Name: Candace Olson, Rules Analyst

Address: Government Relations and Policy Development Office
Department of Transportation
206 S. 17th Ave., Mail Drop 140A
Phoenix, AZ 85007

Telephone: (602) 712-4534

E-mail: COlson2@azdot.gov

Please visit the ADOT web site to track the progress of this rule and any other agency rulemaking matters at <http://www.azdot.gov/about/GovernmentRelations>

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:

Written comments may be submitted at any time. All comments should be directed to the person listed under item 4. The date, time, and location of any oral proceeding scheduled for this rulemaking will be included in the Notice of Proposed Rulemaking.

6. A timetable for agency decisions or other action on the proceeding, if known:

To be determined



GOVERNOR EXECUTIVE ORDERS

The Administrative Procedure Act (APA) requires the full-text publication of Governor Executive Orders.

With the exception of egregious errors, content (including spelling, grammar, and punctuation) of these orders has been reproduced as submitted.

In addition, the Register shall include each statement filed by the Governor in granting a commutation, pardon or reprieve, or stay or suspension of execution where a sentence of death is imposed.

EXECUTIVE ORDER 2017-02

Internal Review of Administrative Rules; Moratorium to Promote Job Creation and Customer-Service-Oriented Agencies

[M17-23]

Editor's Note: This Executive Order is being reproduced in each issue of the Administrative Register until its expiration on December 31, 2017, as a notice to the public regarding state agencies' rulemaking activities.

WHEREAS, burdensome regulations inhibit job growth and economic development;

WHEREAS, job creators and entrepreneurs are especially hurt by red tape and regulations;

WHEREAS, all government agencies of the State of Arizona should promote customer-service-oriented principles for the people that it serves;

WHEREAS, each State agency should undertake a critical and comprehensive review of its administrative rules and take action to reduce the regulatory burden, administrative delay, and legal uncertainty associated with government regulation;

WHEREAS, overly burdensome, antiquated, contradictory, redundant, and nonessential regulations should be repealed;

WHEREAS, Article 5, Section 4 of the Arizona Constitution and Title 41, Chapter 1, Article 1 of the Arizona Revised Statutes vests the executive power of the State of Arizona in the Governor;

NOW, THEREFORE, I, Douglas A. Ducey, by virtue of the authority vested in me by the Constitution and laws of the State of Arizona hereby declare the following:

- 1. A State agency subject to this Order, shall not conduct any rulemaking except as permitted by this Order.
2. A State agency subject to this Order, shall not conduct any rulemaking, whether informal or formal, without the prior written approval of the Office of the Governor. In seeking approval, a State agency shall address one or more of the following as justification for the rulemaking:
a. To fulfill an objective related to job creation, economic development, or economic expansion in this State.
b. To reduce or ameliorate a regulatory burden while achieving the same regulatory objective.
c. To prevent a significant threat to the public health, peace, or safety.
d. To avoid violating a court order or federal law that would result in sanctions by a court of the federal government against an agency for failure to conduct the rulemaking action.
e. To comply with a federal statutory or regulatory requirement if such compliance is related to a condition for the receipt of federal funds or participation in any federal program.
f. To comply with a state statutory requirement.
g. To fulfill an obligation related to fees or any other action necessary to implement the State budget that is certified by the Governor's Office of Strategic Planning and Budgeting.
h. To promulgate a rule or other item that is exempt from Title 41, Chapter 6, Arizona Revised Statutes, pursuant to section 41-1005, Arizona Revised Statutes.
i. To address matters pertaining to the control, mitigation, or eradication of waste, fraud, or abuse within an agency or wasteful, fraudulent, or abusive activities perpetrated against an agency.
j. To eliminate rules that are antiquated, redundant or otherwise no longer necessary for the operation of state government.
3. All directors of state agencies subject to this Order shall engage their respective regulated or stakeholder communities to solicit comment on which rules the regulated community believes to be overly burdensome and not necessary to protect consumers, public health, or public safety. Each agency shall submit a report regarding the aforementioned information to the Governor's Office no later than September 1, 2017.
4. For the purposes of this Order, the term "State agencies," includes without limitation, all executive departments, agencies, offices, and all state boards and commissions, except for: (a) any State agency that is headed by a single elected State official, (b) the Corporation Commission and (c) any board or commission established by ballot measure during or after the November 1998 general election. Those State agencies, boards and commissions excluded from this Order are strongly encouraged to voluntarily comply with this Order in the context of their own rulemaking processes.
5. This Order does not confer any legal rights upon any persons and shall not be used as a basis for legal challenges to rules, approvals, permits, licenses or other actions or to any inaction of a State agency. For the purposes of this Order, "person," "rule," and "rulemaking" have the same meanings prescribed in Arizona Revised Statutes Section 41-1001.



6. This Executive Order expires on December 31, 2017.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

Douglas A. Ducey
GOVERNOR

DONE at the Capitol in Phoenix on this Eleventh day of January in the Year Two Thousand and Seventeen and of the Independence of the United States of America the Two Hundred and Forty-First.

ATTEST:

Michele Reagan
SECRETARY OF STATE

REGISTER INDEXES

The *Register* is published by volume in a calendar year (See “General Information” in the front of each issue for more information).

Abbreviations for rulemaking activity in this Index include:

PROPOSED RULEMAKING

PN = Proposed new Section
PM = Proposed amended Section
PR = Proposed repealed Section
P# = Proposed renumbered Section

SUPPLEMENTAL PROPOSED RULEMAKING

SPN = Supplemental proposed new Section
SPM = Supplemental proposed amended Section
SPR = Supplemental proposed repealed Section
SP# = Supplemental proposed renumbered Section

FINAL RULEMAKING

FN = Final new Section
FM = Final amended Section
FR = Final repealed Section
F# = Final renumbered Section

SUMMARY RULEMAKING**PROPOSED SUMMARY**

PSMN = Proposed Summary new Section
PSMM = Proposed Summary amended Section
PSMR = Proposed Summary repealed Section
PSM# = Proposed Summary renumbered Section

FINAL SUMMARY

FSMN = Final Summary new Section
FSMM = Final Summary amended Section
FSMR = Final Summary repealed Section
FSM# = Final Summary renumbered Section

EXPEDITED RULEMAKING**PROPOSED EXPEDITED**

PEN = Proposed Expedited new Section
PEM = Proposed Expedited amended Section
PER = Proposed Expedited repealed Section
PE# = Proposed Expedited renumbered Section

SUPPLEMENTAL EXPEDITED

SPEN = Supplemental Proposed Expedited new Section
SPEM = Supplemental Proposed Expedited amended Section
SPER = Supplemental Proposed Expedited repealed Section
SPE# = Supplemental Proposed Expedited renumbered Section

FINAL EXPEDITED

FEN = Final Expedited new Section
FEM = Final Expedited amended Section
FER = Final Expedited repealed Section
FE# = Final Expedited renumbered Section

EXEMPT RULEMAKING**EXEMPT PROPOSED**

PXN = Proposed Exempt new Section
PXM = Proposed Exempt amended Section
PXR = Proposed Exempt repealed Section
PX# = Proposed Exempt renumbered Section

EXEMPT SUPPLEMENTAL PROPOSED

SPXN = Supplemental Proposed Exempt new Section
SPXR = Supplemental Proposed Exempt repealed Section
SPXM = Supplemental Proposed Exempt amended Section
SPX# = Supplemental Proposed Exempt renumbered Section

FINAL EXEMPT RULEMAKING

FXN = Final Exempt new Section
FXM = Final Exempt amended Section
FXR = Final Exempt repealed Section
FX# = Final Exempt renumbered Section

EMERGENCY RULEMAKING

EN = Emergency new Section
EM = Emergency amended Section
ER = Emergency repealed Section
E# = Emergency renumbered Section
EEXP = Emergency expired

RECODIFICATION OF RULES

RC = Recodified

REJECTION OF RULES

RJ = Rejected by the Attorney General

TERMINATION OF RULES

TN = Terminated proposed new Sections
TM = Terminated proposed amended Section
TR = Terminated proposed repealed Section
T# = Terminated proposed renumbered Section

RULE EXPIRATIONS

EXP = Rules have expired
See also “emergency expired” under emergency rulemaking

CORRECTIONS

C = Corrections to Published Rules

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| R3-8-210. | RC-1976 | R3-8-503. | FXM-1949; RC-1976 |
| R3-8-211. | FXM-1949; RC-1976 | R3-8-504. | FXM-1949; RC-1976 |
| R3-8-212. | RC-1976 | R3-8-505. | FXM-1949; RC-1976 |
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| R3-8-215. | FXM-1949; RC-1976 | R3-8-602. | FXM-1949; RC-1976 |
| R3-8-216. | FXM-1949; RC-1976 | R3-8-603. | FXM-1949; RC-1976 |
| R3-8-301. | FXM-1949; RC-1976 | R3-8-604. | RC-1976 |
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| R3-8-303. | RC-1976 | R3-8-606. | FXM-1949; RC-1976 |
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| R3-8-305. | RC-1976 | R3-8-608. | RC-1976 |
| R3-8-306. | FXM-1949; RC-1976 | R3-8-609. | RC-1976 |
| R3-8-307. | FXM-1949; RC-1976 | R3-8-701. | FXM-1949; RC-1976 |
| R3-8-308. | FXM-1949; RC-1976 | R3-8-702. | FXM-1949; RC-1976 |
| R3-8-309. | FXM-1949; RC-1976 | R3-8-703. | FXM-1949; RC-1976 |
| R3-8-310. | FXM-1949; RC-1976 | R3-8-704. | RC-1976 |
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| R3-7-503. | PM-895; FM-2280 |
| R3-7-504. | PM-895; FM-2280 |
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| R3-7-507. | PM-895; FM-2280 |
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| R3-7-603. | PM-895; FM-2280 |
| R3-7-604. | PM-895; FM-2280 |
| R3-7-701. | PM-895; FM-2280 |
| R3-7-702. | PM-895; FM-2280 |
| R3-7-703. | PM-895; FM-2280 |
| R3-7-704. | PM-895; FM-2280 |
| R3-7-705. | PM-895; FM-2280 |

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| R3-7-711. | PM-895; FM-2280 | R3-7-911. | PM-895; FM-2280 |
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| R9-22-712.63. | PM-1791 |
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| R9-22-712.66. | PM-1791 |
| R9-22-712.68. | PM-1791 |
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| R9-22-712.80. | PM-1791 |
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| R2-20-109. | FXM-121; | | PN-1869; | PN-1869; |
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| R2-20-110. | FXM-124 | | PM-1869 | R14-2-1216. |
| R2-20-111. | FXM-126; | R14-2-1205. | E#-865; P#-1869 | R14-2-A1216. |
| | EXP-1757 | R14-2-A1205. | EN-865; E#-865; | E#-865; P#-1869 |
| R2-20-112. | FXM-128 | | EM-865; | EN-865; E#-865; |
| R2-20-402.01. | FXM-130; | | PN-1869; | EM-865; |
| | PXM-1935 | | P#-1869; | PN-1869; |
| R2-20-402.02. | FXN-131 | | PM-1869 | PM-1869 |
| R2-20-702. | PXM-610; | R14-2-1206. | E#-865; P#-1869 | R14-2-1217. |
| | PXM-658; | R14-2-A1206. | EN-865; E#-865; | R14-2-A1217. |
| | PXM-722; | | EM-865; | EN-865; E#-865; |
| | FXM-2342 | | PN-1869; | EM-865; |
| R2-20-703. | FXM-133 | | P#-1869; | PN-1869 |
| R2-20-703.01. | PXN-610; | | PM-1869 | R14-2-B1218. |
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| | PM-1599; | R14-2-1208. | E#-865; P#-1869 | R14-2-B1221. |
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| R4-9-103. | PM-1599; | | EM-865; | PN-1869 |
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| | FM-2525 | | PM-1869 | R14-2-B1222. |
| R4-9-106. | PM-1599; | R14-2-1209. | E#-865; P#-1869 | R14-2-B1223. |
| | FM-2525 | R14-2-A1209. | EN-865; E#-865; | EN-865; |
| R4-9-108. | PM-1599; | | EM-865; | PN-1869 |
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| R4-9-109. | PM-1599; | | P#-1869; | PN-1869 |
| | FM-2525 | | PM-1869 | R14-2-B1223. |
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| R4-9-113. | PM-1599; | | EM-865; | |
| | FM-2525 | | PN-1869; | |
| R4-9-115. | PM-1599; | | P#-1869; | |
| | FM-2525 | | PM-1869 | |
| R4-9-117. | PM-1599; | R14-2-1211. | E#-865; P#-1869 | |
| | FM-2525 | R14-2-A1211. | EN-865; E#-865; | |
| R4-9-118. | PN-1599; | | EM-865; | |
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| | P#-1869 | | EM-865; | |
| R14-2-A1201. | EN-865; E#-865; | | PN-1869; | |
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| | PM-1869 | | EN-865; E#-865; | |
| R14-2-1202. | E#-865; P#-1869 | | EM-865; | |
| R14-2-A1202. | EN-865; E#-865; | | PN-1869; | |
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| R6-1-104. | PM-861; FM-2757 | R6-5-5518. | EXP-581 | R6-5-5846. | EXP-581 |
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| R6-1-202. | P#-2421; PM-2421 | R6-5-5523. | EXP-581 | R6-5-5903. | EXP-581 |
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| | | R6-5-5525. | EXP-581 | R6-5-5906. | EXP-581 |
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| | | R6-5-5605. | EXP-465 | R6-5-6004. | EXP-581 |
| | | R6-5-5606. | EXP-465 | R6-5-6005. | EXP-581 |
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| | | R6-5-5608. | EXP-465 | R6-5-6007. | EXP-581 |
| | | R6-5-5609. | EXP-465 | R6-5-6008. | EXP-581 |
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| | | R6-5-5803. | EXP-581 | R6-5-6012. | EXP-581 |
| | | R6-5-5804. | EXP-581 | R6-5-6013. | EXP-581 |
| | | R6-5-5805. | EXP-581 | R6-5-6014. | EXP-581 |
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| | | R6-5-5811. | EXP-581 | | |
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| | | R6-5-5813. | EXP-581 | | |
| | | R6-5-5814. | EXP-581 | | |
| | | R6-5-5815. | EXP-581 | | |
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| | | R6-5-5817. | EXP-581 | | |
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| | | R6-5-5819. | EXP-581 | | |
| | | R6-5-5820. | EXP-581 | | |
| | | R6-5-5821. | EXP-581 | | |
| | | R6-5-5822. | EXP-581 | | |
| | | R6-5-5823. | EXP-581 | | |
| | | R6-5-5824. | EXP-581 | | |
| | | R6-5-5825. | EXP-581 | | |
| | | R6-5-5826. | EXP-581 | | |
| | | R6-5-5827. | EXP-581 | | |
| | | R6-5-5828. | EXP-581 | | |
| | | R6-5-5829. | EXP-581 | | |
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| | | R6-5-5831. | EXP-581 | | |
| | | R6-5-5832. | EXP-581 | | |
| | | R6-5-5833. | EXP-581 | | |
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| R9-6-204. | PM-1524; FM-2605 | | F#-2605; FN-2605 | R9-6-332. | P#-1524; PM-1524; |
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| Table 2.3. | PN-1524; FN-2605 | | F#-2605; FM-2605 | R9-6-333. | P#-1524; PM-1524; |
| R9-6-205. | PM-1524; FM-2605 | R9-6-317. | P#-1524; PM-1524; | | F#-2605; FM-2605 |
| R9-6-206. | PM-1524; FM-2605 | | F#-2605; FM-2605 | R9-6-334. | P#-1524; PM-1524; |
| Table 4. | PR-1524; FR-2605 | R9-6-318. | P#-1524; PN-1524; | | F#-2605; FM-2605 |
| Table 2.4. | PN-1524; FN-2605 | | F#-2605; FN-2605 | R9-6-335. | P#-1524; PM-1524; |
| R9-6-207. | PM-1524; FM-2605 | R9-6-319. | P#-1524; PM-1524; | | F#-2605; FM-2605 |
| R9-6-301. | PM-1524; FM-2605 | | F#-2605; FM-2605 | R9-6-336. | P#-1524; PM-1524; |
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| R9-6-303. | PM-1524; FM-2605 | | F#-2605; FM-2605 | R9-6-337. | P#-1524; PN-1524; |
| R9-6-304. | PM-1524; FM-2605 | R9-6-321. | P#-1524; PN-1524; | | F#-2605; FN-2605 |
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| | | R9-6-322. | P#-1524; PM-1524; | | F#-2605; FM-2605 |
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| | | R9-6-323. | P#-1524; PM-1524; | | F#-2605; FM-2605 |
| R9-6-307. | PR-1524; PN-1524; FR-2605; FN-2605 | | F#-2605; FM-2605 | R9-6-340. | P#-1524; PM-1524; |
| | | R9-6-324. | P#-1524; PM-1524; | | F#-2605; FM-2605 |
| R9-6-308. | P#-1524; PM-1524; F#-2605; FM-2605 | | F#-2605; FM-2605 | R9-6-341. | P#-1524; PM-1524; |
| | | R9-6-325. | P#-1524; PM-1524; | | F#-2605; FM-2605 |
| R9-6-309. | P#-1524; PN-1524; F#-2605; FN-2605 | | F#-2605; FM-2605 | R9-6-342. | P#-1524; PM-1524; |
| | | R9-6-326. | P#-1524; PM-1524; | | F#-2605; FM-2605 |
| R9-6-310. | P#-1524; PN-1524; F#-2605; FN-2605 | | F#-2605; FM-2605 | R9-6-343. | P#-1524; PM-1524; |
| | | R9-6-327. | P#-1524; PM-1524; | | F#-2605; FM-2605 |
| R9-6-311. | P#-1524; PM-1524; F#-2605; FM-2605 | | F#-2605; FM-2605 | R9-6-344. | P#-1524; PM-1524; |
| | | R9-6-328. | P#-1524; PM-1524; | | F#-2605; FM-2605 |
| R9-6-312. | P#-1524; PM-1524; F#-2605; FM-2605 | | F#-2605; FM-2605 | R9-6-345. | P#-1524; PM-1524; |
| | | R9-6-329. | P#-1524; PM-1524; | | F#-2605; FM-2605 |
| R9-6-313. | P#-1524; PM-1524; F#-2605; FM-2605 | | F#-2605; FM-2605 | R9-6-346. | P#-1524; PM-1524; |
| | | R9-6-330. | P#-1524; PM-1524; | | F#-2605; FM-2605 |
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| R9-6-350. | P#-1524; PM-1524; F#-2605; FM-2605 | R9-6-366. | P#-1524; PM-1524; F#-2605; FM-2605 | R9-6-382. | P#-1524; PM-1524; F#-2605; FM-2605 |
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| R9-6-354. | P#-1524; PM-1524; F#-2605; FM-2605 | R9-6-370. | P#-1524; PN-1524; F#-2605; FN-2605 | R9-6-386. | P#-1524; PM-1524; F#-2605; FM-2605 |
| R9-6-355. | P#-1524; PM-1524; F#-2605; FM-2605 | R9-6-371. | P#-1524; PM-1524; F#-2605; FM-2605 | R9-6-387. | PR-1524; P#-1524; PM-1524; F#-2605; FM-2605 |
| R9-6-356. | P#-1524; PM-1524; F#-2605; FM-2605 | R9-6-372. | P#-1524; PM-1524; F#-2605; FM-2605 | R9-6-388. | P#-1524; PM-1524; F#-2605; FM-2605 |
| R9-6-357. | P#-1524; PM-1524; F#-2605; FM-2605 | R9-6-373. | P#-1524; PM-1524; F#-2605; FM-2605 | R9-6-389. | P#-1524; PM-1524; F#-2605; FM-2605 |
| R9-6-358. | P#-1524; PN-1524; F#-2605; FN-2605 | R9-6-374. | P#-1524; PM-1524; F#-2605; FM-2605 | R9-6-390. | P#-1524; PM-1524; F#-2605; FM-2605 |
| R9-6-359. | P#-1524; PM-1524; F#-2605; FM-2605 | R9-6-375. | P#-1524; PM-1524; F#-2605; FM-2605 | R9-6-391. | P#-1524; PM-1524; F#-2605; FM-2605 |
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| R9-6-361. | P#-1524; PN-1524; F#-2605; FN-2605 | R9-6-377. | P#-1524; PN-1524; F#-2605; FN-2605 | R9-6-393. | P#-1524; PM-1524; F#-2605; FM-2605 |
| R9-6-362. | P#-1524; PM-1524; F#-2605; FM-2605 | R9-6-378. | P#-1524; PM-1524; F#-2605; FM-2605 | R9-6-394. | P#-1524; PM-1524; F#-2605; FM-2605 |
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| R20-6-1008. | PXM-151; FXM-1119 | Land Department, State | | R4-29-203. | RC-1976 |
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| R20-6-1012. | PXR-151; PX#-151; PXM-151; FXR-1119; FX#-1119; FXM-1119 | R13-5-102. | PM-1478; FM-2564 | R4-29-207. | RC-1976 |
| R20-6-1013. | PX#-151; PXM-151; FX#-1119; FXM-1119 | R13-5-402. | PM-1478; FM-2564 | R4-29-208. | RC-1976 |
| R20-6-1014. | PX#-151; PXM-151; FX#-1119; FXM-1119 | R13-5-701. | PM-1478; FM-2564 | R4-29-209. | RC-1976 |
| R20-6-1015. | PX#-151; PXM-151; FX#-1119; FXM-1119 | R13-5-702. | PM-1478; FM-2564 | R4-29-210. | RC-1976 |
| R20-6-1017. | PXM-151; FXM-1119 | R13-5-703. | PM-1478; FM-2564 | R4-29-211. | RC-1976 |
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| R20-6-1021. | PXM-151; FXM-1119 | R4-16-102. | PM-2461 | R4-29-215. | RC-1976 |
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| R20-6-1024. | PX#-151; PXM-151; FX#-1119; FXM-1119 | R4-16-205. | FXM-2056; PM-2461 | R4-29-301. | RC-1976 |
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RULES EFFECTIVE DATES CALENDAR

A.R.S. § 41-1032(A), as amended by Laws 2002, Ch. 334, § 8 (effective August 22, 2002), states that a rule generally becomes effective 60 days after the day it is filed with the Secretary of State's Office. The following table lists filing dates and effective dates for rules that follow this provision. Please also check the rulemaking Preamble for effective dates.

| January | | February | | March | | April | | May | | June | |
|------------|----------------|------------|----------------|------------|----------------|------------|----------------|------------|----------------|------------|----------------|
| Date Filed | Effective Date |
| 1/1 | 3/2 | 2/1 | 4/2 | 3/1 | 4/30 | 4/1 | 5/31 | 5/1 | 6/30 | 6/1 | 7/31 |
| 1/2 | 3/3 | 2/2 | 4/3 | 3/2 | 5/1 | 4/2 | 6/1 | 5/2 | 7/1 | 6/2 | 8/1 |
| 1/3 | 3/4 | 2/3 | 4/4 | 3/3 | 5/2 | 4/3 | 6/2 | 5/3 | 7/2 | 6/3 | 8/2 |
| 1/4 | 3/5 | 2/4 | 4/5 | 3/4 | 5/3 | 4/4 | 6/3 | 5/4 | 7/3 | 6/4 | 8/3 |
| 1/5 | 3/6 | 2/5 | 4/6 | 3/5 | 5/4 | 4/5 | 6/4 | 5/5 | 7/4 | 6/5 | 8/4 |
| 1/6 | 3/7 | 2/6 | 4/7 | 3/6 | 5/5 | 4/6 | 6/5 | 5/6 | 7/5 | 6/6 | 8/5 |
| 1/7 | 3/8 | 2/7 | 4/8 | 3/7 | 5/6 | 4/7 | 6/6 | 5/7 | 7/6 | 6/7 | 8/6 |
| 1/8 | 3/9 | 2/8 | 4/9 | 3/8 | 5/7 | 4/8 | 6/7 | 5/8 | 7/7 | 6/8 | 8/7 |
| 1/9 | 3/10 | 2/9 | 4/10 | 3/9 | 5/8 | 4/9 | 6/8 | 5/9 | 7/8 | 6/9 | 8/8 |
| 1/10 | 3/11 | 2/10 | 4/11 | 3/10 | 5/9 | 4/10 | 6/9 | 5/10 | 7/9 | 6/10 | 8/9 |
| 1/11 | 3/12 | 2/11 | 4/12 | 3/11 | 5/10 | 4/11 | 6/10 | 5/11 | 7/10 | 6/11 | 8/10 |
| 1/12 | 3/13 | 2/12 | 4/13 | 3/12 | 5/11 | 4/12 | 6/11 | 5/12 | 7/11 | 6/12 | 8/11 |
| 1/13 | 3/14 | 2/13 | 4/14 | 3/13 | 5/12 | 4/13 | 6/12 | 5/13 | 7/12 | 6/13 | 8/12 |
| 1/14 | 3/15 | 2/14 | 4/15 | 3/14 | 5/13 | 4/14 | 6/13 | 5/14 | 7/13 | 6/14 | 8/13 |
| 1/15 | 3/16 | 2/15 | 4/16 | 3/15 | 5/14 | 4/15 | 6/14 | 5/15 | 7/14 | 6/15 | 8/14 |
| 1/16 | 3/17 | 2/16 | 4/17 | 3/16 | 5/15 | 4/16 | 6/15 | 5/16 | 7/15 | 6/16 | 8/15 |
| 1/17 | 3/18 | 2/17 | 4/18 | 3/17 | 5/16 | 4/17 | 6/16 | 5/17 | 7/16 | 6/17 | 8/16 |
| 1/18 | 3/19 | 2/18 | 4/19 | 3/18 | 5/17 | 4/18 | 6/17 | 5/18 | 7/17 | 6/18 | 8/17 |
| 1/19 | 3/20 | 2/19 | 4/20 | 3/19 | 5/18 | 4/19 | 6/18 | 5/19 | 7/18 | 6/19 | 8/18 |
| 1/20 | 3/21 | 2/20 | 4/21 | 3/20 | 5/19 | 4/20 | 6/19 | 5/20 | 7/19 | 6/20 | 8/19 |
| 1/21 | 3/22 | 2/21 | 4/22 | 3/21 | 5/20 | 4/21 | 6/20 | 5/21 | 7/20 | 6/21 | 8/20 |
| 1/22 | 3/23 | 2/22 | 4/23 | 3/22 | 5/21 | 4/22 | 6/21 | 5/22 | 7/21 | 6/22 | 8/21 |
| 1/23 | 3/24 | 2/23 | 4/24 | 3/23 | 5/22 | 4/23 | 6/22 | 5/23 | 7/22 | 6/23 | 8/22 |
| 1/24 | 3/25 | 2/24 | 4/25 | 3/24 | 5/23 | 4/24 | 6/23 | 5/24 | 7/23 | 6/24 | 8/23 |
| 1/25 | 3/26 | 2/25 | 4/26 | 3/25 | 5/24 | 4/25 | 6/24 | 5/25 | 7/24 | 6/25 | 8/24 |
| 1/26 | 3/27 | 2/26 | 4/27 | 3/26 | 5/25 | 4/26 | 6/25 | 5/26 | 7/25 | 6/26 | 8/25 |
| 1/27 | 3/28 | 2/27 | 4/28 | 3/27 | 5/26 | 4/27 | 6/26 | 5/27 | 7/26 | 6/27 | 8/26 |
| 1/28 | 3/29 | 2/28 | 4/29 | 3/28 | 5/27 | 4/28 | 6/27 | 5/28 | 7/27 | 6/28 | 8/27 |
| 1/29 | 3/30 | | | 3/29 | 5/28 | 4/29 | 6/28 | 5/29 | 7/28 | 6/29 | 8/28 |
| 1/30 | 3/31 | | | 3/30 | 5/29 | 4/30 | 6/29 | 5/30 | 7/29 | 6/30 | 8/29 |
| 1/31 | 4/1 | | | 3/31 | 5/30 | | | 5/31 | 7/30 | | |



| July | | August | | September | | October | | November | | December | |
|------------|----------------|------------|----------------|------------|----------------|------------|----------------|------------|----------------|------------|----------------|
| Date Filed | Effective Date |
| 7/1 | 8/30 | 8/1 | 9/30 | 9/1 | 10/31 | 10/1 | 11/30 | 11/1 | 12/31 | 12/1 | 1/30 |
| 7/2 | 8/31 | 8/2 | 10/1 | 9/2 | 11/1 | 10/2 | 12/1 | 11/2 | 1/1 | 12/2 | 1/31 |
| 7/3 | 9/1 | 8/3 | 10/2 | 9/3 | 11/2 | 10/3 | 12/2 | 11/3 | 1/2 | 12/3 | 2/1 |
| 7/4 | 9/2 | 8/4 | 10/3 | 9/4 | 11/3 | 10/4 | 12/3 | 11/4 | 1/3 | 12/4 | 2/2 |
| 7/5 | 9/3 | 8/5 | 10/4 | 9/5 | 11/4 | 10/5 | 12/4 | 11/5 | 1/4 | 12/5 | 2/3 |
| 7/6 | 9/4 | 8/6 | 10/5 | 9/6 | 11/5 | 10/6 | 12/5 | 11/6 | 1/5 | 12/6 | 2/4 |
| 7/7 | 9/5 | 8/7 | 10/6 | 9/7 | 11/6 | 10/7 | 12/6 | 11/7 | 1/6 | 12/7 | 2/5 |
| 7/8 | 9/6 | 8/8 | 10/7 | 9/8 | 11/7 | 10/8 | 12/7 | 11/8 | 1/7 | 12/8 | 2/6 |
| 7/9 | 9/7 | 8/9 | 10/8 | 9/9 | 11/8 | 10/9 | 12/8 | 11/9 | 1/8 | 12/9 | 2/7 |
| 7/10 | 9/8 | 8/10 | 10/9 | 9/10 | 11/9 | 10/10 | 12/9 | 11/10 | 1/9 | 12/10 | 2/8 |
| 7/11 | 9/9 | 8/11 | 10/10 | 9/11 | 11/10 | 10/11 | 12/10 | 11/11 | 1/10 | 12/11 | 2/9 |
| 7/12 | 9/10 | 8/12 | 10/11 | 9/12 | 11/11 | 10/12 | 12/11 | 11/12 | 1/11 | 12/12 | 2/10 |
| 7/13 | 9/11 | 8/13 | 10/12 | 9/13 | 11/12 | 10/13 | 12/12 | 11/13 | 1/12 | 12/13 | 2/11 |
| 7/14 | 9/12 | 8/14 | 10/13 | 9/14 | 11/13 | 10/14 | 12/13 | 11/14 | 1/13 | 12/14 | 2/12 |
| 7/15 | 9/13 | 8/15 | 10/14 | 9/15 | 11/14 | 10/15 | 12/14 | 11/15 | 1/14 | 12/15 | 2/13 |
| 7/16 | 9/14 | 8/16 | 10/15 | 9/16 | 11/15 | 10/16 | 12/15 | 11/16 | 1/15 | 12/16 | 2/14 |
| 7/17 | 9/15 | 8/17 | 10/16 | 9/17 | 11/16 | 10/17 | 12/16 | 11/17 | 1/16 | 12/17 | 2/15 |
| 7/18 | 9/16 | 8/18 | 10/17 | 9/18 | 11/17 | 10/18 | 12/17 | 11/18 | 1/17 | 12/18 | 2/16 |
| 7/19 | 9/17 | 8/19 | 10/18 | 9/19 | 11/18 | 10/19 | 12/18 | 11/19 | 1/18 | 12/19 | 2/17 |
| 7/20 | 9/18 | 8/20 | 10/19 | 9/20 | 11/19 | 10/20 | 12/19 | 11/20 | 1/19 | 12/20 | 2/18 |
| 7/21 | 9/19 | 8/21 | 10/20 | 9/21 | 11/20 | 10/21 | 12/20 | 11/21 | 1/20 | 12/21 | 2/19 |
| 7/22 | 9/20 | 8/22 | 10/21 | 9/22 | 11/21 | 10/22 | 12/21 | 11/22 | 1/21 | 12/22 | 2/20 |
| 7/23 | 9/21 | 8/23 | 10/22 | 9/23 | 11/22 | 10/23 | 12/22 | 11/23 | 1/22 | 12/23 | 2/21 |
| 7/24 | 9/22 | 8/24 | 10/23 | 9/24 | 11/23 | 10/24 | 12/23 | 11/24 | 1/23 | 12/24 | 2/22 |
| 7/25 | 9/23 | 8/25 | 10/24 | 9/25 | 11/24 | 10/25 | 12/24 | 11/25 | 1/24 | 12/25 | 2/23 |
| 7/26 | 9/24 | 8/26 | 10/25 | 9/26 | 11/25 | 10/26 | 12/25 | 11/26 | 1/25 | 12/26 | 2/24 |
| 7/27 | 9/25 | 8/27 | 10/26 | 9/27 | 11/26 | 10/27 | 12/26 | 11/27 | 1/26 | 12/27 | 2/25 |
| 7/28 | 9/26 | 8/28 | 10/27 | 9/28 | 11/27 | 10/28 | 12/27 | 11/28 | 1/27 | 12/28 | 2/26 |
| 7/29 | 9/27 | 8/29 | 10/28 | 9/29 | 11/28 | 10/29 | 12/28 | 11/29 | 1/28 | 12/29 | 2/27 |
| 7/30 | 9/28 | 8/30 | 10/29 | 9/30 | 11/29 | 10/30 | 12/29 | 11/30 | 1/29 | 12/30 | 2/28 |
| 7/31 | 9/29 | 8/31 | 10/30 | | | 10/31 | 12/30 | | | 12/31 | 3/1 |



REGISTER PUBLISHING DEADLINES

The Secretary of State's Office publishes the Register weekly. There is a three-week turnaround period between a deadline date and the publication date of the Register. The weekly deadline dates and issue dates are shown below. Council meetings and Register deadlines do not correlate. Also listed are the earliest dates on which an oral proceeding can be held on proposed rulemakings or proposed delegation agreements following publication of the notice in the Register.

| Deadline Date (paper only) Friday, 5:00 p.m. | Register Publication Date | Oral Proceeding may be scheduled on or after |
|---|--------------------------------------|---|
| August 4, 2017 | August 25, 2017 | September 25, 2017 |
| August 11, 2017 | September 1, 2017 | October 2, 2017 |
| August 18, 2017 | September 8, 2017 | October 10, 2017 |
| August 25, 2017 | September 15, 2017 | October 16, 2017 |
| September 1, 2017 | September 22, 2017 | October 23, 2017 |
| September 8, 2017 | September 29, 2017 | October 30, 2017 |
| September 15, 2017 | October 6, 2017 | November 6, 2017 |
| September 22, 2017 | October 13, 2017 | November 13, 2017 |
| September 29, 2017 | October 20, 2017 | November 20, 2017 |
| October 6, 2017 | October 27, 2017 | November 27, 2017 |
| October 13, 2017 | November 3, 2017 | December 4, 2017 |
| October 20, 2017 | November 10, 2017 | December 11, 2017 |
| October 27, 2017 | November 17, 2017 | December 18, 2017 |
| November 3, 2017 | November 24, 2017 | December 26, 2017 |
| November 10, 2017 | December 1, 2017 | January 2, 2018 |
| November 17, 2017 | December 8, 2017 | January 8, 2018 |
| November 24, 2017 | December 15, 2017 | January 16, 2018 |
| December 1, 2017 | December 22, 2017 | January 22, 2018 |
| December 8, 2017 | December 29, 2017 | January 29, 2018 |
| December 15, 2017 | January 5, 2018 | February 5, 2018 |
| December 22, 2017 | January 12, 2018 | February 12, 2018 |
| December 29, 2017 | January 19, 2018 | February 20, 2018 |
| January 5, 2018 | January 26, 2018 | February 26, 2018 |
| January 12, 2018 | February 2, 2018 | March 5, 2018 |
| January 19, 2018 | February 9, 2018 | March 12, 2018 |
| January 26, 2018 | February 16, 2018 | March 19, 2018 |
| February 2, 2018 | February 23, 2018 | March 26, 2018 |
| February 9, 2018 | March 2, 2018 | April 2, 2018 |
| February 16, 2018 | March 9, 2018 | April 9, 2018 |
| February 23, 2018 | March 16, 2018 | April 16, 2018 |



GOVERNOR’S REGULATORY REVIEW COUNCIL DEADLINES

The following deadlines apply to all Five-Year-Review Reports and any adopted rule submitted to the Governor’s Regulatory Review Council. Council meetings and *Register* deadlines do not correlate. We publish these deadlines as a courtesy.

All rules and Five-Year Review Reports are due in the Council office by 5 p.m. of the deadline date. The Council’s office is located at 100 N. 15th Ave., Suite 402, Phoenix, AZ 85007. For more information, call (602) 542-2058 or visit www.grrc.state.az.us.

GOVERNOR’S REGULATORY REVIEW COUNCIL DEADLINES FOR 2017

[M16-300]

| DEADLINE FOR PLACEMENT ON AGENDA | FINAL MATERIALS SUBMITTED TO COUNCIL | DATE OF COUNCIL STUDY SESSION | DATE OF COUNCIL MEETING |
|----------------------------------|--------------------------------------|--------------------------------|--------------------------------|
| Tuesday November 22, 2016 | Tuesday December 20, 2016 | Wednesday December 28, 2016 | Wednesday January 4, 2017 |
| Tuesday December 27, 2016 | Tuesday January 24, 2017 | Tuesday January 31, 2017 | Tuesday February 7, 2017 |
| Tuesday January 24, 2017 | Tuesday February 21, 2017 | Tuesday February 28, 2017 | Tuesday March 7, 2017 |
| Tuesday February 21, 2017 | Tuesday March 21, 2017 | Tuesday March 28, 2017 | Tuesday April 4, 2017 |
| Tuesday March 21, 2017 | Tuesday April 18, 2017 | Tuesday April 25, 2017 | Tuesday May 2, 2017 |
| Tuesday April 25, 2017 | Tuesday May 23, 2017 | Wednesday May 31, 2017 | Tuesday June 6, 2017 |
| Tuesday May 23, 2017 | Tuesday June 20, 2017 | Tuesday June 27, 2017 | Thursday July 6, 2017 |
| Tuesday June 20, 2017 | Tuesday July 18, 2017 | Tuesday July 25, 2017 | Tuesday August 1, 2017 |
| Tuesday July 25, 2017 | Tuesday August 22, 2017 | Tuesday August 29, 2017 | Wednesday September 6, 2017 |
| Tuesday August 22, 2017 | Tuesday September 19, 2017 | Tuesday September 26, 2017 | Tuesday October 3, 2017 |
| Tuesday September 26, 2017 | Tuesday October 24, 2017 | Tuesday October 31, 2017 | Tuesday November 7, 2017 |
| Tuesday October 24, 2017 | Tuesday November 21, 2017 | Tuesday November 28, 2017 | Tuesday December 5, 2017 |
| Tuesday November 21, 2017 | Tuesday December 19, 2017 | Wednesday December 27, 2017 | Wednesday January 3, 2018 |

*Materials must be submitted by **5 P.M.** on dates listed as a deadline for placement on a particular agenda. Placement on a particular agenda is not guaranteed.