

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION PERSONNEL ADMINISTRATION

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|------------------------------------|---------------------------------|
| R2-5-101 | Amend |
| R2-5-102 | Amend |
| R2-5-103 | Amend |
| R2-5-104 | Amend |
| R2-5-105 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
Authorizing statute: A.R.S. § 41-763(2) and (6)
Implementing statute: A.R.S. § 41-783
- 3. The effective date of the rule:**
May 4, 2003
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 8 A.A.R. 1109, March 15, 2002
Notice of Proposed Rulemaking: 8 A.A.R. 1882, April 19, 2002
Notice of Public Information: 8 A.A.R. 5085, December 13, 2002
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|--|
| Name: | Claudia R. Smith |
| Address: | Arizona Department of Administration
Human Resources Division
100 N. 15th Avenue, Room 261A
Phoenix, AZ 85007 |
| Telephone: | (602) 542-4894 |
| Fax: | (602) 542-2796 |
| E-mail: | Claudia.Smith@ad.state.az.us |
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
The agency is amending R2-5-101 Definitions, R2-5-102 General Provisions, R2-5-103 Applicability, R2-5-104 Nondiscrimination, and R2-5-105 Personnel Records to add the definition of new terms used in Articles 2 through 6, to update existing definitions, to delete obsolete terms, to improve clarity of existing rules, and to conform to current G.R.R.C. and Secretary of State rulemaking style.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
The agency considered the recommendations contained in the November 1999 Final Report of the Personnel Rules Review Committee. This report is available for review in the offices of the ADOA Human Resources Division, 100 N. 15th Avenue, Suite 261, Phoenix, AZ 85007.

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

Not applicable

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

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

R2-5-101, R2-5-102, R2-5-104, and R2-5-105: Any impact on state revenues would be minimal and would be restricted to the day-to-day administrative costs.

R2-5-103: Any impact on state revenues would be restricted to the day-to-day administrative costs and the additional cost generated by the development and operation of a pilot project. It would be difficult to project the extent to which agencies might use the pilot project provision and the funds involved.

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

Based on suggestions from two satellite agency Human Resources' offices, minor, non-substantive changes were made throughout the rules to improve clarity. These two groups suggested grammatical and other changes relating to clarification. Modifying a word or sentence made these changes. Other changes were made to bring the structure and grammar into conformance with current G.R.R.C. and Secretary of State rulemaking style. No substantive changes were made to the submitted rules.

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

Two public hearings were held with no attendees. As part of the initial rulemaking process, the agency solicited input through two focus groups with agency representatives and ADOA Personnel Managers and staff assigned to the seven satellite Human Resources (HR) offices and the Capitol Area Mall Personnel (CAMP) Office that provides HR services to 94 agencies, boards, and commissions. Following submission of the Notice of Proposed Rulemaking, representatives from two agency HR offices submitted suggestions relative to clarity and style. The agency received inquiries regarding: 1) the removal of "clear inequity" from R2-5-102(F); 2) verbiage be added relative to storage of the I-9 form that states, "this document must be retained in the employee's official personnel file;" 3) expansion of the definition of "FLSA exempt" under federal law to include A.R.S. § 23-391; and 4) addition of definitions for the terms "FLSA nonexempt" and "FLSA excluded." The term "clear inequity" is being removed from R2-5-102(F) because the provision was moved to R2-5-303(C) in a prior rulemaking. (7 A.A.R. 2724, effective June 6, 2001, Supp. 01-2). There is no required method for retaining the I-9 form. Therefore, the agency wrote the I-9 form rule to provide agency flexibility regarding the method of retention of the form. The agency retained the definition of the federal term "FLSA exempt" to be consistent with the federal law. The term "FLSA non-exempt" was included in the original filing under the term "FLSA covered" and was altered to conform to the FLSA exempt definition. The definition of "FLSA excluded" currently exists in the rule (R2-5-305(E)). Based on the comments received, the agency made non-substantive changes to the final rule, where appropriate, and has engaged in positive dialogue with the responding agencies regarding use of the suggestions.

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

Not applicable

13. Incorporations by reference and their location in the rule:

In R2-5-103(B), ADOA incorporates by reference, *Standards for a Merit System of Personnel Administration*, 5 CFR 900.603, Jan. 2001.

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

No

15. The full text of the rule follows:

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION
PERSONNEL ADMINISTRATION

ARTICLE 1. GENERAL

Section

R2-5-101.	Definitions
R2-5-102.	General Provisions
R2-5-103.	Applicability
R2-5-104.	Non-discrimination <u>Discrimination</u>
R2-5-105.	Personnel Records

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ARTICLE 1. GENERAL

R2-5-101. Definitions

The following words and phrases used in these rules have the defined meanings unless otherwise clearly indicated by the context.

1. "Agency" means ~~any~~ a department, board, office, authority, commission, or other governmental budget unit of the state ~~except those exempted by A.R.S. § 41-771.~~
2. "Agency head" means the chief executive officer of ~~any department, board, office, authority, commission, or other governmental budget unit of the state~~ an agency.
3. "Announcement" means ~~the public notice of examination to fill positions by open competition, or the notice to employees of an examination to fill positions from within the state service.~~
- 4.3. "Appeal" means ~~the~~ a request for a review by the Personnel Board of a disciplinary action ~~pursuant~~ under to A.R.S. § 41-782.
- 5.4. "Applicant" means ~~any~~ a person who seeks appointment to a position in ~~the~~ state service.
- 6.5. "Appointment" means the offer to and the acceptance by a person of a position in ~~the~~ state service.
6. "Base salary" means an employee's salary excluding overtime pay, shift differential, bonus pay, special performance adjustment previously granted, or pay for other allowance or special incentive pay program.
7. "Business day" means the hours between 8:00 a.m. and 5:00 p.m. Monday through Friday, excluding observed state holidays.
- 7.8. "Candidate" means a person who has made a passing score on an examination whose knowledge, skills, and abilities (KSAs) meet the requirements of a position and whose name is placed in a register who may be considered for employment.
- 8.9. "Cause" means any of the reasons for disciplinary action provided by ~~statutes~~ A.R.S. § 41-771 or these rules.
9. "Certification" means ~~the referral of candidates on a hiring list to an agency to be considered for appointment to a position in the state service.~~
10. "Child" means:
 - a. For purposes of ~~R2-5-415~~ R2-5-416(C) pertaining to the health benefit plan, ~~R2-5-417~~ R2-5-418(B) pertaining to the retiree health benefit plan, and ~~R2-5-418~~ R2-5-419(C) pertaining to the health benefit plan for former elected officials, each unmarried natural, adopted, foster, ~~and or~~ stepchild ~~under~~ who is less than age 19, or ~~under the less than~~ age ~~of 24~~ 25 if a full-time student, and who resides, or is placed by court order, in the household of the employee, the retired employee, or the former ~~or incumbent~~ elected official; ~~and~~
 - b. For purposes of ~~R2-5-416~~ R2-5-417(C) pertaining to the life and disability income insurance plan, and ~~R2-5-419 (A)~~ R2-5-421(B) pertaining to the life insurance plan for former elected officials, each unmarried natural, adopted, foster, ~~and or~~ stepchild ~~under~~ who is less than age 19, or ~~less than the age of 25 if a full-time student,~~ and who resides or is placed by court order in the household of the employee or the former ~~or incumbent~~ elected official; ~~and or~~
 - c. For purposes of R2-5-207(D), pertaining to the employment of relatives, R2-5-404, pertaining to sick leave, ~~and~~ R2-5-410(B), pertaining to bereavement leave, and R2-5-411, pertaining to parental leave, each natural, adopted, foster, ~~and or~~ stepchild.
 - d. ~~For purposes of R2-5-411, pertaining to parental leave, each natural, adopted, foster and stepchild under five years of age.~~
11. "Class" means a group of positions sufficiently similar as to duties performed, scope of discretion and responsibility, ~~minimum requirements of training, experience, or skill;~~ knowledge, skills, and abilities required and ~~such~~ other characteristics that the same title and the same pay grade apply to each position in the group.
12. "Class series" means ~~the~~ a group of related classes ~~which that are~~ is listed in the Arizona Department of Administration, Human Resources Division, Occupational Listing of Classes as a subsection of the occupational group.
13. "Class specification" means ~~the~~ a description of the type and level of duties and responsibilities of the positions assigned to a class.
14. "Clerical pool appointment" means the non-competitive, temporary placement of a qualified individual in a clerical position.
15. "Competition" means the process leading to the identification of candidates for employment or promotional consideration, ~~which that~~ includes ~~the announcement of a vacancy, a formal~~ an evaluation of applicants' qualifications knowledge, skills, and abilities and the development of a hiring list; in accordance with these rules.
16. "Conversion" means ~~the non-competitive movement of an employee from a seasonal or temporary position to a permanent or limited position.~~
16. "Covered employee" means an employee in state service who is subject to the provisions of these rules.
17. "Covered position" means ~~any~~ a position in ~~the~~ state service, as provided by A.R.S. § 41-762.
18. "Days" means calendar days ~~unless otherwise stated.~~
19. "Demotion" means a change in the assignment of an employee ~~for cause~~ from a position in ~~+~~ one class to a position in another class having a lower pay grade resulting from disciplinary action for cause.

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20. "Department" means the Arizona Department of Administration.
21. ~~"Detail to special duty" means the temporary assignment of a permanent employee to a covered position other than the employee's current position in the same agency.~~
- ~~22.~~21. "Director" means the Director of the Arizona Department of Administration, and the Director's designee with respect to personnel administration.
22. "Eligible dependent" means a dependent eligible for employee benefits under Section 125 of the Internal Revenue Code.
23. "Emergency appointment" means an appointment made without regard to the recruitment, ~~examination, certification~~ evaluation, referral, or selection requirements of these rules in response to a governmental emergency.
24. "Entrance salary" means the minimum rate of the salary plan established for a specific class.
25. "Essential job function" means the physical, mental, and environmental demands of a position's basic job duties that an employee must be able to perform, with or without a reasonable accommodation.
- ~~24.~~26. "~~Examination~~ Evaluation" means the ~~evaluation~~ procedure used to determine the relative ~~excellence~~ knowledge, skills, and abilities of an ~~applicant's~~ applicant.
- ~~25.~~27. "Flexible or cafeteria employee benefit plan" means a plan providing benefits to eligible employees ~~which that~~ meets the requirements of Section 125 of the Internal Revenue Code.
28. "FLSA" means the federal Fair Labor Standards Act.
29. "FLSA exempt" means a position that is not entitled to overtime compensation under the FLSA.
30. "FLSA non-exempt" means a position that is entitled to overtime compensation under the FLSA.
31. "FMLA" means the federal Family Medical Leave Act.
- ~~26.~~32. "Good standing" means the status of a former employee at the time of separation from state service for reasons other than disciplinary or anticipated disciplinary action.
33. "Grievance" means a formal complaint filed by an employee, using the procedure established in Article 7 of these rules, that alleges discrimination, noncompliance with these rules, or other work-related matters that directly and personally affect the employee.
27. "Handicap" means a physical impairment that substantially restricts or limits an individual's general ability to secure, retain or advance in employment except:
 - a. Any impairment caused by current or recent use of alcohol or drugs; or
 - b. Any impairment or condition to which A.R.S. §§ 23-1044(A) or 23-1045(A) applies.
34. "Human Resources Employment Database" means the database containing the resume of an applicant interested in employment within state service.
35. "Incumbent" means the officer or employee currently holding an office or position.
- ~~28.~~36. "Institution" means a facility ~~which that~~ provides supervision or care for residents on a 24-hour per day, 7-day per week, basis.
37. "Knowledge, skills, and abilities (KSAs)" means familiarity with or possession of information and the capability to perform tasks through a variety of manual, physical, intellectual, or interpersonal activities and a natural talent or acquired expertise to perform the functions of a specific position.
- ~~29.~~38. "Limited appointment" means an appointment to a position ~~which that~~ is funded for at least ~~6~~ six months but not more than 36 months.
- ~~30.~~39. "Manifest error" means an act or failure to act ~~which that~~ is, or clearly has caused, a mistake, ~~of commission or omission to occur.~~
- ~~31.~~40. "Mobility assignment" means the assignment of a permanent ~~status~~ employee to an uncovered position; ~~or to a position in another state agency, or to another governmental jurisdiction. This term also applies to the assignment of an employee from another governmental jurisdiction.~~
- ~~32.~~41. "Original probation" means the specified period following initial appointment to ~~the~~ state service in a ~~permanent~~ regular or limited position for evaluation of the employee's work.
- ~~33.~~42. "Original probationary appointment" means the initial appointment to a ~~permanent~~ regular or limited position in ~~the~~ state service.
43. "Parent" means, for purposes of R2-5-403(E) pertaining to donation of annual leave, R2-5-404(A) pertaining to sick leave, and R2-5-410 pertaining to bereavement leave, birth parent, adoptive parent, stepparent, foster parent, grandparent, parent-in-law, or anyone who can be considered "in loco parentis."
- ~~34.~~44. "Participant" means ~~all employees~~ an employee who ~~are~~ is enrolled in the state's insurance programs.
45. "Part-time" means, for purposes of R2-5-402 pertaining to holidays, R2-5-403 pertaining to annual leave, R2-5-404 pertaining to sick leave, R2-5-902 pertaining to reduction in force, and R2-5-903 pertaining to temporary reduction in force, employment scheduled for less than 40 hours per week.
- ~~35.~~46. "Pay grade" means a salary level range in a state service salary plan.
- ~~36.~~47. "Pay status" means ~~the condition of~~ an employee who ~~is~~ eligible to receiving ~~receive~~ pay for work or for a compensated absence.

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- ~~37-48.~~ “Permanent status” means the standing an employee achieves after the completion of an original probation or a promotional probation.
- ~~38-49.~~ “Plan” means ~~the~~ a flexible or cafeteria employee benefit plan.
- ~~39-50.~~ “Plan administrator” means the Director, Arizona Department of Administration.
- ~~40-51.~~ “Promotion” means a permanent change in assignment of a an permanent status employee from a position in ~~+~~ one class to a position in another class having a higher pay grade.
- ~~41-52.~~ “Promotional probation” means the specified period of employment following promotion of a permanent status employee for evaluation of the employee’s work.
- ~~42.~~ “Provisional appointment” means ~~an appointment of a qualified individual to fill a vacancy in a class for which there are less than three candidates available and for which no related registers can be used.~~
- ~~43-53.~~ “Qualified” means ~~meeting possessing the minimum qualification for a class~~ knowledge, skills, and abilities required of a specific position as defined described in the class specification specifications plus any special requirements that may be published for a position in that class any unique characteristics required for the position.
- ~~44-54.~~ “Reclassification” means changing the classification of a position when a material and permanent change in duties or responsibilities occurs.
- ~~45-55.~~ “Reduction” means the non-appealable movement of an employee from ~~+~~ one position to another in a lower pay grade as a result of a reduction in force.
- ~~46-56.~~ “Reemployment” means the appointment of a former permanent status employee who was separated by a reduction in force.
- ~~47.~~ “Register” means ~~a file of candidates for a position or class, in final score order, from which hiring lists are prepared.~~
- ~~57.~~ “Regular position” means a full-time equivalent (FTE) position in state service.
- ~~48-58.~~ “Reinstatement” means the appointment of a former permanent status employee who resigned, was separated in good standing, or was separated without prejudice within two years from the effective date of separation.
- ~~49-59.~~ “Repromotion” means the promotion of an employee who was reduced in grade due to a reduction in force to the grade held ~~prior to~~ before the reduction in force or to an intervening grade.
- ~~50.~~ “Resident” means ~~an individual who is in the state for other than a temporary or transitory purpose.~~
- ~~51-60.~~ “Reversion” means the return of an employee on promotional probation to a position in the class in which the employee held permanent status immediately ~~prior to~~ before the promotion.
- ~~52-61.~~ “Rules” means the rules contained in the Arizona Administrative Code, Title 2, Chapter 5.
- ~~53.~~ “Seasonal appointment” means ~~an appointment to a position which recurs on a seasonal or intermittent basis.~~
- ~~54-62.~~ “Separation without prejudice” means ~~the removal, without appeal rights, of an employee from the state service due to a reduction in force, the lack of a position for an employee requesting to return from leave without pay, or the inability of an employee to return to work at the conclusion of a leave without pay. the non-disciplinary removal, without appeal rights, of an employee in good standing from state service.~~
- ~~63.~~ “Special detail” means the temporary assignment of a permanent status employee to a covered position in the same agency.
- ~~55-64.~~ “State service” means ~~all agencies, officers, and employees subject to these rules as provided by~~ the same as at A.R.S. § 41-762.
- ~~65.~~ “Surviving spouse” means the husband or wife, as provided by law, of a current or former elected official, or active or retired officer or employee who survives upon the death of the elected official, officer, or employee.
- ~~56-66.~~ “Temporary appointment” means ~~the an~~ an appointment to a position for a specified period of less than 6 months made for a maximum of 1500 hours in any one position per agency each calendar year.
- ~~57-67.~~ “Transfer” means the movement of an employee from one position in ~~the~~ state service to another position in ~~the~~ state service in the same pay grade.
- ~~68.~~ “Uncovered position” means a position that is exempt under A.R.S. § 41-771 and not subject to the provisions of these rules.
- ~~58-69.~~ “Underfill” means the ~~employment~~ appointment of a person ~~in~~ to a class with a pay grade that is lower than the pay grade for the allocated class for that position.
- ~~70.~~ “Voluntary pay grade decrease” means a change in assignment at the request of an employee to a position in a class with a lower pay grade.

R2-5-102. General Provisions

- A. Delegation of authority.
- The Director may, in writing, delegate authority to an agency head as consistent with legal requirements.
 - The Director may review or audit delegated authority to determine compliance with laws, rules, and policies.
 - Unless otherwise stated by law, or in these rules, an agency head may delegate any authority granted to the agency head in these rules.
- B. Availability of funds. The granting of any compensation ~~in~~ under these rules is contingent upon the availability of funds, as determined by ~~the~~ an agency head and the Director.

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- C. Conflict with federal requirements. The provisions of A.R.S. § 41-784 ~~shall be applicable~~ apply to these rules, ~~and any~~ Any provision of these rules ~~which that~~ which conflicts or is inconsistent with federal rules, regulations, or standards governing the granting of federal funds to an agency ~~shall does not be applicable~~ apply to ~~such the~~ the agency.
- D. Service of notice. If ~~any~~ a notice or document is to be given to ~~any~~ a person or agency, the notice or document may be served personally or mailed to the last known residence or current business address of the ~~addressee~~ person or agency. Unless otherwise provided by law or these rules, service is complete upon personal delivery or mailing.
- E. Employee handbook. The Director may publish an employee handbook outlining pertinent rules and regulations and make ~~such the~~ the handbook available to all employees.
- F. Correction of errors. ~~Only The the~~ Only The Director, or ~~designee~~, ~~may correct a manifest error or a clear inequity affecting an employee or an applicant for employment~~ has authority to determine whether a manifest error exists and to correct the manifest error.

R2-5-103. Applicability

- A. General. These rules are applicable to all covered employees ~~and to all state service positions~~.
- B. Exception. The Director may implement a temporary pilot projects project to improve personnel management in ~~the~~ the state service. The ~~projects project~~ project may include an activities activity or procedures procedure that ~~are is~~ is not in accordance with these rules, ~~for the purpose of determining the feasibility or effectiveness of such activities or procedures~~, and ~~may shall~~ shall not exceed ~~12-18~~ 12-18 months in duration. ~~A Pilot pilot projects project must shall~~ must shall conform to the Standards for a Merit System of Personnel Administration, 5 CFR ~~Part 900.603, Subpart F, Section 900.603~~, Part 900.603, ~~which is~~ which is incorporated by reference ~~herein~~ herein and on file ~~in~~ with the Office of the Secretary of State. ~~This incorporation by reference does not include amendments or revisions to Standards for a Merit System of Personnel Administration published after January 1, 2001. A copy of this incorporated material is available for review at the Arizona Department of Administration, Human Resources Division and may be obtained from the Arizona State Library, Archives & Public Records, Research Division, 1700 W. Washington, Phoenix, AZ 85007.~~

R2-5-104. Nondiscrimination Discrimination

An agency shall not discriminate against an individual in violation of A.R.S. §§ 41-1461, 41-1463, and 41-1464.

R2-5-105. Personnel records

- A. Purpose. An employee's official personnel file is the official record and documentation of the administration of the employee's employment.
- ~~A.B.~~ B. Content. Each An employee's official personnel file shall contain:
 - 1. A copy of the job application or resume for the employee's current ~~permanent regular~~ regular position; ;
 - 2. A copy of all performance appraisal reports completed as required by R2-5-503; ;
 - 3. ~~A file of personnel~~ Personnel action forms that have authorized changes in employment status, position, classification, pay, or leave status; ;
 - 4. Letters of commendation as established by agency policy; ~~or disciplinary letters, or objections filed thereto by the employee.~~
 - 5. Correspondence concerning disciplinary actions as described in Article 8, and letters of reprimand, Documents documents acknowledging receipt of reprimand or other disciplinary communications; ~~, or other related employee objections that are not filed as grievances under Article 7, and~~
 - 6. Corrective action plans and performance planning documents.
- ~~B.C.~~ C. Insurance and medical records. ~~Group insurance records enrollment forms may be contained in the an employee's official personnel file or in consolidated files. All medical records shall be maintained in a separate file that is not part of the employee's official personnel file.~~
- D. Immigration records. The I-9 form and other documents required by law to prove employment eligibility may be retained in an employee's official personnel file or a separate file.
- ~~C.E.~~ E. Access. For the purpose of this subsection, an official is an individual who provides identification verifying that the individual is exercising powers and duties on behalf of the chief administrative head of a public body. Access to ~~any an~~ an employee's official personnel file shall be limited to:
 - 1. The employee or ~~any an~~ an individual who has written authorization from the employee to review the personnel file; ;
 - 2. Agency personnel designated by the agency head as having a need for ~~such the~~ the information; ;
 - 3. A Department department official in the normal line of duty; ;
 - 4. An Officials official acting in response to a court orders order or subpoenas subpoena; ;
 - 5. An Officials official of an agency to which the employee has applied; ; and
 - 6. An official of an agency of the federal government, state government, ~~or any of their political subdivisions subdivi-~~ sion, but only ~~when it is deemed by if~~ if the agency head of the employing agency deems it to be appropriate to a proper function of the official requesting access.
 - 7. ~~For purposes of subsection (C) of this Section, an official is one who provides identification verifying that he is exercising powers and duties on behalf of the chief administrative head of a public body.~~

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~~D.F.~~ Disclosure ~~in~~ of information: The Director, or designee, shall ensure that except as provided in subsection (E), only the following information about an employee will is be provided to any person pursuant to Article 2, Chapter 1, Title 39, under A.R.S. Title 39, Chapter 1, Article 2.

1. Name of employee: ;
2. Date of employment: ;
3. Current and previous class titles and dates received: ;
4. Name and location of current and previous agencies to which the employee has been assigned: ;
5. Current and previous salaries and dates of each change: ; and
6. Name of employee's current or last known supervisor.

~~E.G.~~ Access to other files: ~~The presence of copies of any item listed in subsection (A) in any other informational file concerning an employee shall not in itself confer upon such employee any right of access to such file. An employee has the right to access only the employee's official personnel file.~~

~~F.H.~~ Control:

1. When an employee moves from ~~+~~ one state service agency to another, the losing agency ~~will~~ shall forward the employee's official personnel file to the gaining agency within 10 days of the effective date of the move.
2. When ~~an~~ a former employee returns to state service ~~after a separation~~ to an agency other than the agency in which the employee was last employed, the gaining agency ~~will~~ shall request that the last agency forward the employee's official personnel ~~files~~ file. The last agency shall forward the ~~personnel files~~ file within 10 days of the receipt of the request.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

PREAMBLE

- 1. Sections Affected**

R3-4-240	Amend
R3-4-241	Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 3-107(A)(1)
Implementing statutes: A.R.S. §§ 3-201.01 and 3-211
- 3. The effective date of the rules:**

May 5, 2003
- 4. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 8 A.A.R. 3758, August 30, 2002
Notice of Proposed Rulemaking: 8 A.A.R. 4980, December 6, 2002
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Sherry D. Blatner, Rules Analyst
Address:	Arizona Department of Agriculture 1688 W. Adams, Room 235 Phoenix, AZ 85007
Telephone:	(602) 542-0962
Fax:	(602) 542-5420
E-mail:	sherry.blatner@agric.state.az.us
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

Amendments to R3-4-240 expand the area under quarantine and clarify existing language. Amendments to R3-4-241 revise the definition of the pest, modify the area under quarantine by listing infested counties rather than entire states, and update the list of regulated commodities.

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The Department committed to update these rules in the 1998 Five-year Review Report presented by the Plant Services Division to the Governor's Regulatory Review Council.

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

None

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

Not applicable

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

A. *The Arizona Department of Agriculture.*

The Department will incur modest expenses related to training staff and educating the regulated community on the amendments.

B. *Political Subdivision.*

Other than the Department, no political subdivision is affected by this rulemaking.

C. *Businesses Directly Affected by the Rulemaking.*

R3-4-240: Out-of-state vendors that ship regulated commodities into Arizona will need to become familiar with the revised quarantine area.

R3-4-241: Out-of-state vendors that ship palm trees and other plant material into Arizona, and Arizona nurseries that place orders for out-of-state palm trees and other plant material, will need to become familiar with the updated quarantine areas and regulated commodities.

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

In subsection (C), Regulated Commodities, apricot is added to the list of *Prunus* species for clarification; it has always been a regulated commodity.

Minor technical and grammatical changes have been made to the rule based on suggestions from Department and G.R.R.C. staff.

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

No written comments were received. The Arizona Department of Agriculture's Advisory Council supported the amendments by a motion during a meeting held on December 12, 2002. The Department thanks the Council for its support of this rulemaking.

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

None

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

None

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

No

15. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE

PLANT SERVICES DIVISION

ARTICLE 2. QUARANTINE

Section

R3-4-240. ~~Plum Curculio and Apple Maggot Pests~~ Apple Maggot and Plum Curculio

R3-4-241. ~~Lethal Yellowing and Lethal Decline of Palms~~

ARTICLE 2. QUARANTINE

R3-4-240. ~~Plum Curculio and Apple Maggot Pests~~ Apple Maggot and Plum Curculio

A. ~~Jurisdiction.~~ The entry of covered commodities into the state of Arizona shall be governed by the following rule.

Notices of Final Rulemaking

B.A. Pests Covered. Plum, Curculio, Conotrachelus nenuphar and Apple Maggot, Rhagoletis pomonella Definitions. The following term applies to this Section:

"Pest" means:

1. Apple maggot, *Rhagoletis pomonella* (Walsh), or
2. Plum curculio, *Conotrachelus nenuphar*.

C.B. Areas Under Quarantine Area under quarantine.

1. ~~All states, territories, and districts of the United States, east of the western borders of the states of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma and Texas.~~
2. ~~The infested areas in the state of California, including the following counties:
Del Norte Mendocino Trinity
Humboldt Siskiyou
Lake Sonoma~~
3. ~~Including the state of Colorado.~~
4. ~~The infested area in the state of Idaho, including the county of Franklin.~~
5. ~~The infested areas in the state of Oregon, including the following counties:
Benton Curry Lane Polk
Clackamas Douglas Lincoln Tillamook
Clatsop Hood River Linn Yamhill
Columbia Jackson Marion Washington
Coos Josephine Multnomah Wasco~~
6. ~~The infested areas in the state of Utah, including the following counties:
Box Elder Davis Utah
Cache Salt Lake Weber~~
7. ~~The infested areas in the state of Washington, including the following counties:
Clark Klickitat Pacific
Cowlitz Lewis Skamania~~

D.C. Commodities Covered Regulated commodities. All The fresh fruit of the following plants: apple, apricot, cherry, hawthorn, nectarine, peach, pear, plum, prune and quince.

Chaenomeles spp. (Quince).

Crataegus spp. (Hawthorne).

Malus spp. (Apple).

Prunus spp. (Apricot, Cherry, Nectarine, Peach, Plum, and Prune), and

Pyrus communis spp. (Pear).

E.D. Restrictions.

1. ~~Commodities covered under subsection (D) which are produced in or shipped from the areas under quarantine are prohibited entry into the state of Arizona unless each lot or shipment is accompanied by an official certificate. This certificate shall be signed by an agricultural official of the state from which it is shipped and shall indicate compliance with subsection (E)(1)(a), (b), or (c).~~
 - a. ~~Repacked commodities are admissible from quarantined areas if each lot or shipment is officially certified to have been grown outside the area under quarantine and that continued identity has been maintained while within the quarantined area before reshipment to any point in this state. Such certificates shall set forth the state in which the commodities were grown, point of repacking and reshipment, amount and kind of commodities comprising the lot or shipment, and the name and address of the shipper and consignee.~~
 - b. ~~Apples which have been exposed to controlled atmosphere storage may be admitted into Arizona if all the following requirements are met:~~
 - i. ~~The exposure is for a period of 90 continuous days.~~
 - ii. ~~The temperature is maintained at 38° Fahrenheit continuously.~~
 - iii. ~~The controlled atmosphere facility is approved by the Department of Agriculture of the state in which the facility is located.~~
 - iv. ~~A certificate, signed by an agricultural inspector of the Department of Agriculture of the state in which the facility is located, attesting to the provisions of the 3 preceding subdivisions.~~
 - e. ~~Commodities shall be held in cold storage for a continuous period of 40 days or more. In cold storage, during the treatment period, means that the temperature within the storage room shall be maintained at 32° Fahrenheit or less. Commodities so treated shall be admitted into Arizona provided each lot or shipment is accompanied by an official certificate indicating compliance with the minimum requirements of this subsection.~~
2. Exemptions:
 - a. No restrictions are placed by this rule on the entry into this state of fruits which are already frozen solid upon arrival in Arizona and are under refrigeration to assure their solid frozen state.
 - b. Reshipments in original containers from quarantine areas of commodities grown outside the area under quaran-

Notices of Final Rulemaking

time, provided commodities are in the original, unopened containers, each bearing labels or other identifying marks evidencing origin outside the quarantine area. These shipments may be reshipped into Arizona from any point within the quarantined areas and no certificate is required.

- e. A special permit may be issued by the Commission to allow shipment into Arizona of covered commodities from the areas under quarantine in the states of Idaho, Oregon, Utah and Washington because of the Apple Maggot. Commercial apple fruit grown in those counties in which there is an active Apple Maggot eradication program, including trapping for the Apple Maggot in commercial orchards, and in which Apple Maggot has not been detected in those commercial orchards.
- 1. A person shall not ship into Arizona a regulated commodity that is produced in or shipped from an area under quarantine unless each lot or shipment is accompanied by a certificate issued by an official of the state of origin, attesting that the regulated commodity was:
 - a. Held in an approved controlled atmosphere storage facility for a minimum of 90 continuous days at a maximum temperature of 38° F, or
 - b. Held in an approved cold storage facility for a minimum of 40 continuous days at a maximum temperature of 32° F.
- 2. The Director may issue a permit to allow a regulated commodity from an area under quarantine to enter Arizona without treatment as prescribed in subsection (D)(1) if the commodity originates from an area:
 - a. That is certified to be pest-free, or
 - b. That is infested, but where an on-going pest eradication program exists that is acceptable to the Director of the Arizona Department of Agriculture.

~~F.E.~~ Disposition of Violations commodity not in compliance. Commodities covered by this rule which are shipped into the state of Arizona or moved within the state of Arizona in violation of this rule shall, at the option and expense of the owner or authorized agent, be sent out of the state or destroyed. This disposition shall be under the direction of the Director of the Commission of Agriculture and Horticulture and supervision of an Inspector of the Commission. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed or transported out-of-state by the owner and at the owner's expense.

R3-4-241. Lethal Yellowing and Lethal Decline of Palms

~~A.~~ Jurisdiction. The entry of commodities covered into the state of Arizona shall be governed by the following rule.

~~B.A.~~ Pests covered. Pests under this rule are pathogens of palm trees which are identified as mycoplasma-like organisms that cause Lethal Yellowing and Lethal Decline of palm trees, and the vector of these mycoplasma-like organisms, which is a leaf hopper, *Myndus crudus*. Definitions. The following term applies to this Section:

"Pest" means:

- A pathogen, a non-cultivable mollicute, causing lethal yellowing of palms, or
- Myndus crudus*, a planthopper that vectors the pathogen.

~~C.B.~~ Areas Area under quarantine. The entire states of Texas and Florida:

- 1. In the state of Florida, the following counties: Broward, Collier, Hendry, Lee, Martin, Miami-Dade, Monroe, and Palm Beach.
- 2. In the state of Texas, the following counties: Cameron, Hidalgo, and Willacy.

~~D.C.~~ Commodities covered Regulated commodities. All propagative parts of the following plants, except seed:

- 1. St. Augustine grass, *Stenotaphrum secundatum*, and all parts thereof except the seed.
- 2. All susceptible palm trees and all parts thereof except the seed including the following:
 - a. *Aiphanes lindentiana*,
 - b. *Allagoptera arendria*,
 - Andropogon virginicus* (Broomsedge),
 - e. *Arenga* spp. *engleri*, Sugar Palm or Dwarf Sugar Palm
 - d. *Arikuryroba schizophulla*, Arikury Palm
 - e. *Borassus flabellifer* (Palmyra Palm), Wine Palm
 - f. *Caryota* spp., *mitis* (Cluster Fishtail Palm), *Dwarf Fishtail*
 - Caryota rumphiana* (Giant Fishtail Palm),
 - Chelyocarpus chuco*,
 - g. *Chrysalidocarpus eabadae*, *cabadae*, syn. *Dypsis cabadae* (Cabada Palm),
 - h. *Cocos nucifera*, (Coconut Palm),
 - i. *Corypha elata*, (Buri Palm),
 - Cynodon dactylon* (Bermuda Grass),
 - Cyperus* spp. (Sedges),
 - j. *Dictyosperma album*, (Princess Palm), Hurricane Palm
 - Eremochloa ophiuroides* (Centipede Grass),
 - k. *Gaussia attenuata* spp., (Puerto Rican Palm), Lume Palm
 - l. *Howea belmoreana* spp., Sentry Palm, (Belmore Sentry Palm),

Notices of Final Rulemaking

- ~~m.~~ *Latania* spp.; (Latan Palm).
- ~~n.~~ *Livistonia* spp.; *Livistona chinensis* (Chinese Fan Palm), ~~Australian Fan Palm~~
Livistona rotundifolia (Javanese Fan Palm).
- ~~o.~~ *Mascarena* spp.; *verschaffeltii* (Spindle Palm), ~~Bottle Palm~~
- ~~p.~~ *Nannorrhops ritchiana*; (Mazari Palm).
- ~~q.~~ *Neodypsis decaryi*, ~~syn. *Dypsis decaryi*~~ (Triangle Palm).
Pandanus utilis (Screw Pine).
Panicum purpurascens (Para Grass).
Panicum bartowense.
Paspalum notatum (Bahia Grass).
- ~~r.~~ *Phoenix canariensis*; (Canary Island Date Palm).
- ~~s.~~ *Phoenix dactylifera*; ~~True~~ (Date Palm).
- ~~t.~~ *Phoenix reclinata*; (Sengal Date Palm).
- ~~u.~~ *Phoenix rupicola*; (Cliff Date Palm).
- ~~v.~~ *Phoenix zeylanica*; ~~Ceylon Date Palm~~
- ~~w.~~ *Phoenix sylvestris*; (Wild Date Palm), ~~Silver Date Palm~~
Phoenix zeylanica (Ceylon Date Palm).
- ~~x.~~ *Polyandrococos caudescens*.
- ~~y.~~ *Pritchardia* spp., ~~Kona Palm, Hawaiian Palm, Fiji Island Palm~~
- ~~z.~~ *Ravenea* spp; *hildebrandtii*.
Stenotaphrum secundatum (St. Augustine Grass).
Syagrus schizophylla
- ~~aa.~~ *Trachycarpus* spp.; *fortunei* Chinese (Windmill Palm), ~~Windmill Palm~~
- ~~bb.~~ *Veitchia* spp., ~~Christmas Palm, Manila Palm, Montgomery Palm and~~
Zoysia spp. (*Zoysia* Grass).

~~E.D.~~ Restrictions. All covered commodities listed in subsection (D) of this rule are prohibited entry into Arizona when grown in, or shipped from, the quarantined areas listed in subsection (C) of this rule. A person shall not ship into Arizona a regulated commodity that is produced in or shipped from an area under quarantine.

~~F.E.~~ Disposition of violations commodity not in compliance. Any commodities covered in subsection (D) of this rule which are shipped into the state of Arizona or moved within the state of Arizona and are in violation of this rule shall, at the option and expense of the owner or authorized agent, be sent out of the state or destroyed. This disposition shall be under the direction of the Director and supervision of an Inspector of the Commission. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed or transported out-of-state by the owner and at the owner's expense.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 10. BOARD OF COSMETOLOGY

PREAMBLE

- | | |
|-----------------------------|---------------------------------|
| 1. Sections Affected | <u>Rulemaking Action</u> |
| R4-10-102 | Amend |
| R4-10-103 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 32-504(A)(1)
Implementing statute: A.R.S. § 32-507
- 3. The effective date of the rules:**
May 6, 2003
- 4. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 8 A.A.R. 4299, October 11, 2002
Notice of Proposed Rulemaking: 8 A.A.R. 4266, October 11, 2002

Notices of Final Rulemaking

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

Name: Cheryl Adams
Address: 1721 E. Broadway
Tempe, AZ 85282
Telephone: (480) 784-4539, ext. 227
Fax: (480) 784-4962
E-mail: Cheryl.Adams@cb.state.az.us

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

The proposed rule amendments relate to changes in A.R.S. § 32-507 which allow higher fees. The Board is in the process of purchasing a long-awaited E- Licensing system which will require constant updating and monitoring by an Outside and Professional Network Engineer. This purchase and upkeep along with higher costs for most services received by the agency require an increased monetary base. Prior to 2001, the agency carried close to a million dollar reserve fund; however, the last two years have seen that reserve fall to an unacceptable low. Also, the examinations given by the agency have historically been approximately 25 percent of budgetary costs but examination fees have paid for little more than the actual exams purchased through a national testing company. With this fee package, examinations will begin carrying their fair share of the budget.

7. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes 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 rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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

The costs to the Board are minimal to moderate as current staff already processes fees, and the only additional burden on staff would be returning incorrect fees received. Costs to other state agencies will be minimal to none. Small businesses, including individual licensees, will bear the brunt of the fee increases; however, on an individual basis, the cost will remain minimal. Fees charged by the Board have historically been low. For instance, the Arizona Barber Board fee for a barber biennial renewal is \$80 while a cosmetologist is \$18 per year (\$25 proposed). An initial barber-shop license is \$150 compared to \$90 (\$110 proposed) for a cosmetology salon and renewal of a barbershop license is \$50 yearly while a cosmetology salon is \$30 (\$50 proposed) per year. Most of the proposed fee increases remain low in comparison.

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

Minor clerical and grammatical changes were made at the suggestion of Council staff.

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

No comments have been received.

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

None

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

None

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

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 10. BOARD OF COSMETOLOGY

ARTICLE 1. GENERAL PROVISIONS

Section

R4-10-102. Fees

R4-10-103. Payment of Fees

Notices of Final Rulemaking

ARTICLE 1. GENERAL PROVISIONS

R4-10-102. Fees

- A. Aesthetician fees are as follows:**
 - 1. Examination \$33.00
 - 2. Re-examination 33.00
 - 3. License 24.00
 - 4. License by reciprocity 60.00
 - 5. Processing a license by reciprocity 12.00
 - 6. License renewal 15.00
 - 7. Delinquent license renewal penalty 30.00
 - 8. Request for inactive status license 20.00
 - 9. Duplicate license 12.00
- B. Cosmetologist fees are as follows:**
 - 1. Examination \$37.00
 - 2. Re-examination 37.00
 - 3. License 27.00
 - 4. License by reciprocity 80.00
 - 5. Processing a license by reciprocity 12.00
 - 6. License renewal 18.00
 - 7. Delinquent license renewal penalty 37.00
 - 8. Request for inactive status license 20.00
 - 9. Duplicate license 12.00
- C. Nail Technician fees are as follows:**
 - 1. Examination \$30.00
 - 2. Re-examination 30.00
 - 3. License 22.00
 - 4. License by reciprocity 60.00
 - 5. Processing a license by reciprocity 12.00
 - 6. License renewal 12.00
 - 7. Delinquent license renewal penalty 22.00
 - 8. Request for inactive status license 20.00
 - 9. Duplicate license 12.00
- D. Instructor fees are as follows:**
 - 1. Examination \$50.00
 - 2. Re-examination 50.00
 - 3. License 30.00
 - 4. License by reciprocity 90.00
 - 5. Processing a license by reciprocity 12.00
 - 6. License renewal 24.00
 - 7. Delinquent license renewal penalty 48.00
 - 8. Duplicate license 12.00
- E. Aesthetics salon fees are as follows:**
 - 1. License \$80.00
 - 2. License renewal 30.00
 - 3. Delinquent license renewal penalty 50.00
 - 4. Transfer of ownership or location change 80.00
 - 5. Name change 15.00
 - 6. Duplicate license 12.00
- F. Cosmetology salon fees are as follows:**
 - 1. License \$90.00
 - 2. License renewal 30.00
 - 3. Delinquent license renewal penalty 50.00
 - 4. Transfer of ownership or location change 90.00
 - 5. Name change 15.00
 - 6. Duplicate license 12.00
- G. Nail technology salon fees are as follows:**
 - 1. License \$70.00
 - 2. License renewal 30.00
 - 3. Delinquent license renewal penalty 50.00

Notices of Final Rulemaking

- 4. ~~Transfer of ownership or location change~~ 70.00
- 5. ~~Name change~~ 15.00
- 6. ~~Duplicate license~~ 12.00

H. ~~School fees are as follows:~~

- 1. ~~License~~ \$450.00
- 2. ~~License renewal~~ 400.00
- 3. ~~Delinquent license renewal penalty~~ 500.00
- 4. ~~Transfer of ownership~~ 450.00
- 5. ~~Change of trade name~~ 15.00
- 6. ~~Duplicate license~~ 12.00

I. ~~The fee for a certification is \$15.00.~~

J. ~~The fee for copying public documents is 25¢ a page. The fee for providing a list of licensees' names and addresses is 25¢ for each license.~~

K. ~~The for providing an insufficient funds check is \$10.00.~~

Subject to R4-10-103(E), the Board shall collect the following fees:

- 1. Written examination \$50.00
- 2. Practical examination \$50.00
- 3. Initial personal license \$40.00
- 4. Personal licensing renewal fees \$30.00
- 5. Delinquent personal license renewal for each year or portion of a year for which the license is inactive to a maximum of four years delinquent fees. \$50.00
- 6. Duplicate license \$20.00
- 7. Personal reciprocity license \$110.00
- 8. Salon initial license \$110.00
- 9. Salon renewal \$50.00
- 10. Salon delinquent renewal \$80.00
- 11. School license \$600.00
- 12. School renewal \$500.00
- 13. Delinquent school renewal \$600.00
- 14. Board administered educational classes \$25.00
- 15. Review of examination \$50.00
- 16. Regrading of examination \$25.00
- 17. Certification of licensure or hours \$30.00
- 18. Service charge for alternative payment method per transaction 2.5% of applicable fee.
- 19. The fee for copying public documents is 50¢ per page. The fee for audiotapes, videotapes, computer discs, or other media used for recording sounds, images, or information, is \$15 per tape, disc, page, or other medium.
- 20. The fee for providing a list of licensees' names and addresses is 25¢ per name.
- 21. The Board shall charge \$20.00 for the return of a dishonored check or the failure of any other means of payment to be honored.

R4-10-103. Payment of Fees

- A.** ~~A fee shall not be is not considered paid until the Board receives the amount tendered is received by the Board required.~~
The Board shall not provide services, administer examinations, or issue certifications or licenses until it ~~has received~~ receives the required fee.
- B.** ~~Personal The Board shall accept personal checks shall be accepted by the Board only for license renewals. If a check for a license renewal is returned because of it is dishonored for any reason including insufficient funds, the renewal application is incomplete, and any license renewal which that has been issued is void effective upon the date that the Board mails written notice to the licensee that the license is void.~~
- C.** ~~A person who has paid An applicant or licensee whose fee payment to the Board by is dishonored for any reason including an insufficient funds check shall is not be entitled to a further services, examinations, certifications, or licenses service, examination, certification, or license until the fee for which the check was tendered, applicable delinquent penalty fees, and the \$10.00 penalty for an insufficient funds check, provided by R4-10-102(K), have been paid. the Board receives the following:~~
 - 1. The amount of the fee for which the payment was dishonored;
 - 2. The penalty provided in R4-10-102(21);
 - 3. If applicable, the delinquent fee for each year or part of a year the license was inactive for the type of license to be renewed.
- D.** Fees are nonrefundable except if A.R.S. § 41-1077 applies.
- E.** The Board shall not refund fees tendered for \$5 or less over the amount specified in R4-10-102 except the Board shall refund fees paid over the amount specified as the maximum fee in A.R.S. § 32-507.

Notices of Final Rulemaking

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

PREAMBLE

1. Sections Affected

R4-11-101
R4-11-1301
R4-11-1302
R4-11-1303
R4-11-1303
R4-11-1304
R4-11-1304
R4-11-1305
R4-11-1305
R4-11-1306
R4-11-1306

Rulemaking Action

Amend
Amend
Amend
ReNUMBER
New Section
ReNUMBER
Amend
ReNUMBER
Amend
ReNUMBER
Amend

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

Authorizing statute: A.R.S. § 32-1207(A)(1) and (15)
Implementing statute: A.R.S. § 32-1207(B)(3)(b) and (D)

3. The effective date of the rules:

May 6, 2003

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

Notice of Rulemaking Docket Opening: 8 A.A.R. 1111, March 15, 2002
Notice of Proposed Rulemaking: 8 A.A.R. 3882, September 13, 2002

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

Name: Julie N. Chapko, Executive Director
Address: Arizona State Board of Dental Examiners
5060 N. 19th Avenue, Suite 406
Phoenix, AZ 85015
Telephone: (602) 242-1492
Fax: (602) 242-1445
E-mail: jnchapko@azbodex.com

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

The proposed rule establishes the requirements for a new oral conscious sedation permit. The Board feels that a new level of practice is necessary because of national data indicating an increase in deaths due to excessive oral sedation, including the recent deaths of six children in California. The states of Arkansas, California, North Carolina, Ohio, Oklahoma, and Oregon have made rules for oral conscious sedation. The data indicate a need for increased practitioner education and monitoring. The proposed rule amends the definition of "oral or rectal conscious sedation" and adds three new definitions to R4-11-101. Sections R4-11-1303, R4-11-1304, and R4-11-1305 are renumbered and amended to R4-11-1304, R4-11-1305, and R4-11-1306. A new Section, Oral Conscious Sedation, is placed at R4-11-1303. The new Section establishes minimum requirements for practitioner education, training, safety, and monitoring necessary to protect the public health. Citations in Sections R4-11-1301 and R4-11-1302 are amended because of the renumbering of R4-11-1303, R4-11-1304, and R4-11-1305. Sections R4-11-1301, R4-11-1302, R4-11-1303, R4-11-1304, and R4-11-1305 are amended with changes in style, format, and grammar to comply with current requirements of the Administrative Procedure Act and the Governor's Regulatory Review Council's rules.

The Board believes that approval of these rules will benefit the public health and safety by increasing the education, training, and monitoring of dental practitioners who perform oral conscious sedation.

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

None

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

Not applicable

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

The rules' impact on established Board of Dental Examiner's procedures and office-related costs is minimal. The Board's office-related costs will increase slightly to support the new permit established by the rule. The number of licensees who may apply for the new permit is estimated at 44.

The rule will only affect dentists who do not already have a R4-11-1301 permit for general anesthesia and semi-conscious sedation or a R4-11-1302 permit for conscious sedation. A rulemaking docket will be opened to establish a fee for the R4-11-1303 permit, and an economic impact statement for the new fee will be written as part of the fee rule-making.

The Board, dentists, and the public benefit from a rule that is clear, concise, and understandable. The rule benefits the public health and safety by increasing the education, training, and monitoring of dental practitioners who perform oral conscious sedation.

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

Minor technical and grammatical changes were made at the suggestion of G.R.R.C. staff. There are no substantive changes between the final rule and the proposed rule.

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

No one attended the public hearing and the Board received no oral or written comments on the proposed rules.

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

Not applicable

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

None

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

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

ARTICLE 1. DEFINITIONS

Section

R4-11-101. Definitions

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION

Section

R4-11-1301. General Anesthesia and Semi-conscious Sedation

R4-11-1302. Conscious Sedation

R4-11-1303. Oral Conscious Sedation

~~R4-23-1303.~~ R4-11-1304. Reports of Adverse Occurrences

~~R4-11-1304.~~ R4-11-1305. Education

~~R4-11-1305.~~ R4-11-1306. Renewal of Permit

ARTICLE 1. DEFINITIONS

R4-11-101. Definitions

The following definitions, and definitions in A.R.S. § 32-1201, apply to this Chapter:

- ± "Analgesia" means a state of decreased sensibility to pain produced by using nitrous oxide (N₂O) and oxygen (O₂) with or without local anesthesia.

Notices of Final Rulemaking

- “Anxiolysis” means the reduction or elimination of anxiety.
2. “Application” means, for purposes of Article 3 only, forms designated as applications and all documents and additional information the Board requires to be submitted with an application.
3. “Calculus” means a hard mineralized deposit attached to the teeth.
4. “Certificate holder” means a dentist who practices denture technology ~~pursuant to~~ under A.R.S. Title 32, Chapter 11, Article 5.
5. “Clinical evaluation” means a dental examination of the patient named in a complaint regarding the dental condition as it exists at the time the examination is performed.
6. “Closed subgingival curettage” means the removal of the inner surface of the soft tissue wall of a periodontal pocket in a situation where a flap of tissue has not been intentionally or surgically opened.
“Combination inhalation and enteral conscious sedation” is conscious sedation induced by the administration of nitrous oxide and oxygen in combination with one or more enteral drugs or non-drug substances.
7. ~~“Conscious sedation” means the use of pharmacologic or non-pharmacologic methods, or a combination of the two methods which results in minimal depression of the~~ is a minimally depressed level of consciousness ~~and that~~ allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command ~~and is induced by a drug or non-drug method or a combination of both methods.~~
8. “Controlled substance” has the meaning prescribed in A.R.S. § 36-2501(A)(3).
9. “Credit hour” means one clock hour of participation in a recognized continuing dental education program.
10. “Deep sedation” has the same meaning as “semi-conscious sedation.”
11. “Dental laboratory technician” or “dental technician” has the meaning prescribed in A.R.S. § 32-1201(6).
12. “Designee” means a person to whom the Board ~~has delegated~~ delegates authority to act on the Board’s behalf regarding a particular task specified by this Chapter.
13. “Direct supervision” means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant’s work.
14. “Direct supervision” means, for purposes of Article 13 only, that a licensed dentist is physically present in the operator and actually performing dental procedures.
15. “Dispense for profit” means selling a drug or device for any amount above the administrative overhead costs to inventory.
16. “Documentation of attendance” means a document ~~which that~~ contains the following information:
a. Name of sponsoring entity;
b. Course title and synopsis;
c. Number of credit hours;
d. Name of speaker;
e. Date, time, and location of the course; and
f. Signature of person authorized to verify registration.
“Enteral” means an administration technique in which a drug or non-drug substance is absorbed through the oral, rectal, sublingual, or nasal mucosa.
17. “Epithelial attachment” means the layer of cells that extends apically from the depth of the gingival (gum) sulcus (crevice) along the tooth, forming an organic attachment.
18. “Ex-parte communication” means ~~any a~~ written or oral communication between ~~the a~~ a decision maker, fact finder, or ~~any~~ Board member and one party to the proceeding, in the absence of other parties.
19. “Fully retired” means a dentist, dental hygienist, or dentist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism.
20. ~~“General anesthesia” means the use of any drug, element, or any other material which results in the elimination of sensations, accompanied by a state of unconsciousness~~ is a state of unconsciousness accompanied by partial or complete loss of protective reflexes, including the inability to continually maintain an airway and to respond appropriately to physical stimulation or verbal command, that is induced by a drug or non-drug method or a combination of both methods.
21. “General supervision” means, for purposes of Article 7 only, ~~the a~~ a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment ~~which that~~ the dentist ~~has authorized~~ authorizes and for which the dentist remains responsible.
22. “Homebound patient” means a person who is unable to receive dental care in ~~the a~~ a dental office as a result of a medically diagnosed disabling physical or mental condition.
23. “Informal interview” means ~~the a~~ a proceeding conducted under A.R.S. § 32-1263.02, during which a Board member, acting as an informal interviewing officer, and other investigators, hear testimony from ~~the a~~ a complainant, licensee, or certificate holder, and any witnesses, and receive and review evidence relating to ~~the a~~ a complaint to form findings of fact, conclusions of law, and a recommended disposition for presentation to the full Board.
24. “Intravenous or intramuscular sedation” ~~means is~~ the parenteral use of ~~any a~~ a drug, element, or ~~material~~ non-drug sub-

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- stance to ~~produce~~ induce general anesthesia, semi-conscious sedation, or conscious sedation.
25. "Investigative interview" means a proceeding conducted under A.R.S. § 32-1263.02, during which an investigator or investigative panel hears testimony from ~~the~~ a complainant, licensee, or certificate holder, and any witnesses, and receives and reviews evidence relating to ~~the~~ a complaint to form findings of fact, conclusions of law, and a recommended disposition for presentation to the full Board.
26. "Irreversible procedure" means a single treatment, or a step in a series of treatments, ~~which that~~ causes change in the affected hard or soft tissues and is permanent or requires reconstructive or corrective procedures.
27. "Jurisdiction" means the Board's power to investigate and rule on complaints ~~which that~~ allege grounds for disciplinary action under A.R.S. Title 32, Chapter 11 or ~~the rules in~~ this Chapter.
28. "Lay person" means a person who is not a dentist, dental hygienist, dental assistant, denturist, or dental technician.
29. "Licensee" means a dentist, dental hygienist, or person who holds a restricted permit ~~pursuant to~~ under A.R.S. § 32-1237.
30. "Local anesthesia" ~~means is~~ the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic drug.
31. "Nitrous oxide analgesia" means ~~the use of~~ nitrous oxide N₂O/O₂ (N₂O/O₂) ~~used~~ as an inhalation analgesic.
32. "Nonsurgical periodontal treatment" means plaque removal, plaque control, supragingival and subgingival scaling, root planing, and the adjunctive use of chemical agents.
33. "Nurse anesthetist" means a licensed nurse with special training in all phases of anesthesia.
- "Outpatient" means an individual who receives treatment in a dental office or clinic.
34. "~~Oral or rectal~~ conscious sedation" ~~means the oral or rectal use of any~~ is conscious sedation induced by an enterally administered drug or non-drug substance or combination inhalation and enterally administered drug, element, or material to produce conscious sedation non-drug substance on an outpatient basis.
35. "Periodontal examination and assessment" means to collect and correlate clinical signs and patient symptoms that point to either the presence of or the potential for periodontal disease.
36. "Periodontal pocket" means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the epithelial attachment.
37. "Permanently disabled" means a dentist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism due to a physician's order because of a medical reason.
38. "Plaque" means a film-like sticky substance composed of mucoidal secretions containing bacteria and toxic products, dead tissue cells, and debris.
39. "Prescription-only device" means:
- a. Any device that is ~~limited~~ restricted by the federal act, as defined in A.R.S. § 32-1901(34), ~~restricted~~ to use only under the supervision of a medical practitioner; or
 - b. Any device required by the federal act, as defined in A.R.S. § 32-1901(34), to bear on its label the legend, "~~Caution: federal law prohibits dispensing without prescription.~~" "Rx Only."
40. "Prescription-only drug" means:
- a. A drug ~~which that~~, because of its toxicity or other potential for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized ~~among~~ by experts; ~~who are~~ qualified by scientific training and experience to evaluate ~~its~~ the drug's safety and efficacy, as safe for use, except by or under the supervision of a medical practitioner;
 - b. ~~Any~~ A drug that is limited by an approved new drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner;
 - c. ~~Every~~ A potentially harmful drug, the labeling of which does not ~~bear or~~ contain full and adequate directions for use by the consumer; or
 - d. ~~Any~~ A drug, other than a controlled substance, required by the federal act to ~~bear~~ contain on its label the legend "~~Caution: federal law prohibits dispensing without prescription.~~" "Rx Only."
41. "President's designee" means the Board's executive director, an investigator, or ~~another~~ a Board member acting on behalf of the Board president.
42. "Preventative and therapeutic agents" means substances used in relation to dental hygiene procedures that affect the hard or soft oral tissues to aid in preventing or treating oral disease.
43. "Prophylaxis" means a scaling and polishing procedure performed on patients with healthy tissues to remove coronal plaque, calculus, and stains.
44. "Recognized continuing dental education" means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school as defined in A.R.S. § 32-1201(15), recognized dental hygiene school as defined in A.R.S. § 32-1201(14), or recognized school of denture technology as defined in A.R.S. § 32-1201(16), or sponsored by a national or state dental, dental hygiene, or denturist association, dental, dental hygiene, or denturist study club, governmental agency, or commercial dental supplier.
45. "Representative" means, for purposes of Article 15 only, a person recognized by the Board as authorized to act on behalf of a complainant or a party in proceedings governed by this Chapter.

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- 46. "Restricted permit holder" means a dentist who meets the requirements of A.R.S. § 32-1237 and is issued a restricted permit by the Board.
- 47. "Root planing" means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.
- 48. "Scaling" means use of instruments on the crown and root surfaces of the teeth to remove plaque, calculus, and stains from these surfaces.
- 49. "Section 1301 permit" means a permit to administer general anesthesia and semi-conscious sedation, ~~pursuant to under~~ Article 13.
- 50. "Section 1302 permit" means a permit to administer conscious sedation, ~~pursuant to under~~ Article 13.
"Section 1303 permit" means a permit to administer oral conscious sedation under Article 13.
- 51. "Semi-conscious sedation" means use of ~~pharmacologic drug or non-pharmacologic non-drug~~ methods, or a combination of the two methods, to induce a state of depressed consciousness accompanied by partial loss of protective reflexes, and the inability to continually maintain an airway independently or respond appropriately to physical stimulation or verbal command.
- 52. "Specialist" means, for purposes of Article 15 only, a licensee whose practice is limited to one of the following eight specialty categories recognized by the American Dental Association: endodontics, oral and maxillofacial surgery, orthodontics and dentofacial orthopedics, pediatric dentistry, periodontics, prosthodontics, oral pathology, or dental public health.
- 53. "Study Club club" means a group of at least five Arizona licensed dentists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.
- 54. "Treatment records" means all documentation related directly or indirectly to the dental treatment of a patient.

ARTICLE 13. GENERAL ANESTHESIA AND SEDATION

R4-11-1301. General Anesthesia and Semi-conscious Sedation

- A. ~~To administer Before inducing~~ general anesthesia by any means, or semi-conscious sedation by intravenous or intramuscular means, on an outpatient basis, a dentist shall possess a ~~permit to administer general anesthesia and semi-conscious sedation ("Section 1301 permit")~~ Section 1301 permit issued by the Board. A dentist may renew a Section 1301 permit shall be renewed every three years by complying with ~~R4-11-1305~~ R4-11-1306.
- B. To obtain or renew a Section 1301 permit, a dentist shall:
 - 1. ~~Apply to the Board on the prescribed~~ Submit a completed application on a form available from supplied by the Board office. ~~The application form shall require information about each requirement to issue and renew a Section 1301 permit, as specified in that, in addition to the requirements of subsections (B)(2) and (B)(3), and R4-11-1305.~~ R4-11-1306, includes:
 - a. ~~The application form shall require general~~ General information about the applicant such as:
 - i. ~~name~~ Name;
 - ii. ~~home~~ Home and office addresses and telephone numbers;
 - iii. ~~limitations~~ Limitations of practice;
 - iv. ~~hospital~~ Hospital affiliations;
 - v. ~~denial~~ Denial, curtailment, revocation, or suspension of hospital privileges; ~~and~~
 - vi. ~~denial~~ Denial of membership in, ~~or denial of~~ renewal of membership in, or disciplinary action by ~~any dental regulatory body or a dental organization;~~ and
 - vii. ~~Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body;~~ and
 - b. ~~The application form shall require the dentist to sign an~~ dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules. ~~The dentist shall return the completed form to the Board office;~~
 - 2. ~~Produce evidence that the dentist~~ On forms provided by the Board, provide a dated and signed affidavit attesting that a facility where the dentist will administer general anesthesia or semi-conscious sedation:
 - a. ~~Will administer general anesthesia and semi-conscious sedation in a facility containing~~ Contains the following properly operating equipment and supplies:
 - i. ~~anesthesia~~ Anesthesia or analgesia machine_;
 - ii. ~~emergency~~ Emergency drugs_;
 - iii. ~~electrocardiograph~~ Electrocardiograph monitor_;
 - iv. ~~pulse~~ Pulse oximeter_;
 - v. ~~cardiac~~ Cardiac defibrillator_;
 - vi. ~~positive~~ Positive pressure oxygen_;
 - vii. ~~suction;~~ Suction equipment,
 - viii. ~~laryngoscope~~ Laryngoscope and blades_;

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- c. ~~Indicate~~ nothing by mouth or ~~time of~~ last intake ~~noted of~~ food or water;
 - d. ~~consent~~ Consent form; and
 - e. ~~time~~ Time of discharge and status, including name of escort.
- E. A dentist, who ~~has obtained~~ obtains a Section 1301 permit ~~to administer general anesthesia and semi-conscious sedation,~~ may employ a nurse anesthetist to administer general anesthesia ~~and or~~ semi-conscious sedation under the dentist's direct supervision.
- F. A dentist who ~~has obtained~~ obtains a Section 1301 permit ~~is also authorized to administer~~ may also induce conscious sedation without obtaining a Section 1302 permit.

R4-11-1302. Conscious Sedation

- A. A dentist who possesses a Section 1301 permit ~~is also authorized to administer~~ may also induce conscious sedation. ~~To administer~~ Before inducing conscious sedation by intravenous or intramuscular means on an outpatient basis, a dentist who does not possess a Section 1301 permit shall possess a ~~permit to administer conscious sedation ("Section 1302 permit")~~ Section 1302 permit issued by the Board. ~~The~~ A dentist may renew a Section 1302 permit ~~shall be renewed~~ every three years by complying with ~~R4-11-1305~~ R4-11-1306.
- B. To obtain or renew a Section 1302 permit, the dentist shall:
1. ~~Apply to the Board on the prescribed~~ Submit a completed application ~~on a form available from~~ supplied by the Board office. ~~The application form shall require information regarding that, in addition to the requirements to obtain and renew a Section 1302 permit, as specified in of subsections (B)(2) and (B)(3) and R4-11-1305.~~ R4-11-1306, includes:
 - a. ~~The application form shall require general~~ General information about the applicant such as:
 - i. ~~name~~ Name;
 - ii. ~~home~~ Home and office addresses and telephone numbers;
 - iii. ~~limitations~~ Limitations of practice;
 - iv. ~~hospital~~ Hospital affiliations;
 - v. ~~denial~~ Denial, curtailment, revocation, or suspension of hospital privileges; ~~and~~
 - vi. ~~denial~~ Denial of membership in, ~~or denial of~~ renewal of membership in, or disciplinary action by ~~any dental regulatory body or a dental organization.;~~ and
 - vii. Denial of licensure by, denial of renewal of licensure by, or disciplinary action by a dental regulatory body; ~~and~~
 - b. ~~The application form shall require the dentist to sign an~~ dentist's dated and signed affidavit stating that the information provided is true, and that the dentist has read and complied with the Board's statutes and rules. ~~The dentist shall return the completed form to the Board office; and~~
 2. ~~Produce evidence that the dentist~~ On forms provided by the Board, provide a dated and signed affidavit attesting that a facility where the dentist will administer conscious sedation by intravenous or intramuscular route:
 - a. ~~Will administer conscious sedation intravenously or intramuscularly in a facility containing~~ Contains the following properly operating equipment and supplies:
 - i. ~~emergency~~ Emergency drugs;
 - ii. ~~positive~~ Positive pressure oxygen;
 - iii. ~~stethoscope;~~ Stethoscope.
 - iv. ~~suction;~~ Suction equipment.
 - v. ~~nasopharyngeal~~ Nasopharyngeal tubes;
 - vi. ~~pulse~~ Pulse oximeter;
 - vii. ~~oropharyngeal~~ Oropharyngeal tubes; and
 - viii. ~~blood~~ Blood pressure monitoring device; ~~and~~
 - b. Maintains a staff of supervised personnel capable of handling procedures, complications, and emergency incidents, ~~for each facility in which the dentist will administer conscious sedation.~~ At including at least one staff member; who:
 - i. Holds a current certificate in basic cardiopulmonary resuscitation (CPR);
 - ii. Is present during the conscious sedation procedure, shall be certified in basic cardiac life support (CPR) annually; and
 - iii. After the procedure, monitors the patient until discharge;
 - e.3. Holds ~~Hold~~ a valid license to practice dentistry in ~~Arizona~~ this state;
 - d.4. ~~Maintains~~ Maintain a current permit to prescribe and administer controlled substances in ~~Arizona~~ this state issued by the United States Drug Enforcement Administration;
 - e.5. ~~Has passed a course approved by~~ Hold a current certificate from the American Heart Association or the American Red Cross ~~on in~~ advanced cardiac life support (ACLS) ~~within the two years before submitting the permit application;~~ and
 - f.6. ~~Has participated~~ Participate in 60 clock hours of Board-approved undergraduate, graduate, or postgraduate education within the three years before submitting the permit application, ~~which includes that covers~~ training in basic conscious sedation, including;

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- a. ~~administration~~ Administration of parenteral sedative medications to at least 10 patients;
 - b. ~~physical~~ Physical evaluation;
 - c. ~~management~~ Management of medical emergencies;
 - d. The importance of and techniques for maintaining proper documentation; and
 - e. ~~monitoring~~, Monitoring and the use of monitoring equipment.
- C. After submitting the application and written evidence of compliance with requirements outlined in subsection (B) to the Board, the dentist shall schedule an onsite evaluation by the Board ~~in~~ during which the dentist shall administer conscious sedation. After a dentist completes the application requirements and successfully completes the onsite evaluation, the Board shall issue the dentist a Section 1302 permit.
- 1. The onsite evaluation team shall ~~be~~ consist of two dentists who are Board members, or Board designees. The onsite evaluation team shall look for the following:
 - a. The availability of equipment and personnel ~~pursuant to as specified in~~ subsection (B)(2);
 - b. Proper administration of conscious sedation to a patient by the dentist ~~before in the presence of~~ the evaluation team; and
 - c. Successful responses by the dentist to oral examination questions ~~from the evaluation team;~~ about patient management, medical emergencies, and emergency medications;
 - d. Proper documentation of controlled substances, that includes a perpetual inventory log showing the receiving, administering, dispensing, and destroying of all controlled substances; and
 - e. Proper recordkeeping as specified in subsection (D) by reviewing the records generated for the patient receiving conscious sedation as specified in subsection (C)(1)(b).
 - 2. The onsite evaluation of a subsequent facility in which conscious sedation is administered by a dentist who possesses a Section 1302 permit shall consist of the elements described in subsection (C)(1)(a) only, as verified by may be waived by the Board staff upon receipt in the Board office of an affidavit verifying compliance with subsection (C)(1)(a).
- D. A dentist shall keep an anesthesia record for each conscious sedation administered: ~~that:~~
- 1. ~~The record shall include~~ Includes the following entries:
 - a. ~~pre, post-,~~ Pre-operative, post-operative, and intra-operative pulse oximeter readings;
 - b. ~~pre and postoperative~~ Pre-operative and post-operative blood pressure and vital signs;
 - c. ~~intra-operative~~ Intra-operative blood pressures; and
 - d. a list of all medications given, with dosage and time intervals; and
 - 2. ~~The record may~~ May include the following entries:
 - a. ~~pre-~~ Pre-operative and post-operative electrocardiograph report;
 - b. ~~route~~ Route and site of administration;
 - c. ~~type~~ Type of catheter or portal with gauge;
 - d. Indicate nothing by mouth or time of last intake ~~noted~~ of food or water;
 - e. ~~consent~~ Consent form; and
 - f. ~~time~~ Time of discharge and status, including name of escort.
- E. A dentist who ~~has obtained~~ obtains a Section 1302 permit ~~to administer conscious sedation,~~ may employ a nurse anesthetist to administer conscious sedation under the dentist's direct supervision.

R-4-11-1303. Oral Conscious Sedation

- A.** Before inducing oral conscious sedation on an outpatient basis, a dentist shall possess a Section 1303 permit issued by the Board, unless the dentist qualifies for a permit under subsection (E). A dentist may renew a Section 1303 permit every three years by complying with R4-11-1306.
- 1. A dentist who possesses a Section 1301 or Section 1302 permit may also induce oral conscious sedation without obtaining a Section 1303 permit.
 - 2. The administration of an anti-anxiety drug is not combination inhalation and enteral conscious sedation if:
 - a. Only one dose of one anti-anxiety drug is administered;
 - b. The intent of administering the anti-anxiety drug is anxiolysis only; and
 - c. The administered dose of anti-anxiety drug is within the current guidelines for anxiolysis dosage on the manufacturer's package insert or other recognized drug reference.
- B.** To obtain or renew a Section 1303 permit, a dentist shall:
- 1. Submit a completed application on a form supplied by the Board office that, in addition to the requirements of subsections (B)(2) and (B)(3) and R4-11-1306, includes:
 - a. General information about the applicant such as:
 - i. Name;
 - ii. Home and office addresses and telephone numbers;
 - iii. Limitations of practice;
 - iv. Hospital affiliations;
 - v. Denial, curtailment, revocation, or suspension of hospital privileges;

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- g. Consent form;
- h. Special notes, such as, nothing by mouth or last intake of food or water; and
- i. Time of discharge and status, including name of escort; and
- 2. May include the following entries:
 - a. Pre-operative and post-operative electrocardiograph report; and
 - b. Intra-operative blood pressures.
- E.** To continue inducing oral conscious sedation after May 1, 2004, a dentist licensed in this state who has been inducing oral conscious sedation for at least three years before May 1, 2003 may obtain a Section 1303 permit without meeting the educational requirements of subsection (B)(6) by:
 - 1. Applying for a Section 1303 permit on or before May 1, 2004;
 - 2. Complying with subsections (B)(1) through (B)(5); and
 - 3. Providing the Board with the following:
 - a. Documentation of 12 oral conscious sedation cases per year for the previous three years;
 - b. Documentation of 12 continuing education hours in oral conscious sedation in the previous three years; and
 - c. Records from the last 10 consecutive oral conscious sedation cases with an affidavit attesting that the records are the licensee's last 10 consecutive cases.

~~R4-23-1303, R4-11-1304, Reports of Adverse Occurrences~~

If a death, or incident causing a patient temporary or permanent physical or mental injury or requiring medical intervention, occurs in an outpatient facility as a direct result of the administration of general anesthesia, semi-conscious sedation, ~~or~~ conscious sedation, or oral conscious sedation, the permit holder and the treating dentist involved shall submit a complete report of the incident to the Board within 10 days after ~~its~~ the occurrence.

~~R4-11-1304, R4-11-1305, Education~~

- A.** To obtain a Section 1301 permit by satisfying the education requirement of ~~R4-11-1301(B)(6)~~, a dentist shall successfully complete an advanced graduate or post-graduate education program (~~postgraduate or graduate~~) in pain control.
 - 1. The program shall include instruction in the following subject areas:
 - a. Anatomy and physiology of the human body and its response to the various pharmacologic agents used in pain control;
 - b. Physiological and psychological risks for the use of various modalities of pain control;
 - c. Psychological and physiological need for various forms of pain control and the potential response to pain control procedures;
 - d. Techniques of local anesthesia, sedation, and general anesthesia, and psychological management and behavior modification, as they relate to pain control in dentistry; and
 - e. Handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.
 - 2. The program shall consist of didactic and clinical training. The didactic component of the program shall:
 - a. ~~be~~ Be the same for all dentists, whether general practitioners; or specialists; and
 - b. ~~The didactic component shall include~~ Include each subject area listed in subsection (A)(1).
 - 3. The ~~dentist program shall complete~~ provide at least one calendar year of training as prescribed in ~~R4-11-1301(B)(3)(a) (B)(6)(a)~~.
- B.** To maintain a Section 1301 or 1302 permit ~~pursuant to under~~ under R4-11-1301 or R4-11-1302, a dentist shall:
 - 1. ~~participate~~ Participate in 12 clock hours of continuing education every three years. ~~The education shall be~~ in one or more of the following areas:
 - a. ~~general~~ General anesthesia;
 - b. ~~conscious~~ Conscious sedation;
 - c. ~~physical~~ Physical evaluation;
 - d. ~~medical~~ Medical emergencies;
 - e. ~~monitoring~~ Monitoring and use of monitoring equipment; or
 - f. ~~pharmacology~~ Pharmacology of ~~utilized~~ utilized drugs and ~~agents~~; non-drug substances used in general anesthesia or conscious sedation; and
 - 2. ~~In addition to these 12 hours, the dentist shall pass a course approved by~~ Hold a current certificate from the American Heart Association or American Red Cross ~~on~~ in advanced cardiac life support (ACLS), ~~at intervals described in R4-11-1301(B)(2)(e) and R4-11-1302(B)(2)(e)~~.
- C.** To maintain a Section 1303 permit issued under R4-11-1303, a dentist shall:
 - 1. Participate in six clock hours of continuing education every three years in one or more of the following areas:
 - a. Oral conscious sedation.
 - b. Physical evaluation.
 - c. Medical emergencies.
 - d. Monitoring and use of monitoring equipment, or

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- e. Pharmacology of oral conscious sedation drugs and non-drug substances, and
- 2. Hold a current certificate in basic cardiopulmonary resuscitation (CPR).

~~R4-11-1305.~~ **R4-11-1306. Renewal of Permit**

- A. To renew a Section 1301, ~~or 1302,~~ or 1303 permit ~~before December 31 of every third year,~~ a dentist shall:
 - 1. ~~provide~~ Provide written documentation of compliance with the applicable continuing education requirements, ~~as prescribed in R4-11-1304~~ R4-11-1305;
 - 2. ~~by submitting the~~ Before December 31 of the year the permit expires, submit a completed application form to on a form supplied by the Board office as described in Article 13: R4-11-1301, R4-11-1302, or R4-11-1303; and
 - 3. Not less than 90 days before the expiration of a dentist's current permit, ~~the dentist shall~~ arrange for a new onsite evaluation as described in Article 13 R4-11-1301, R4-11-1302, or R4-11-1303.
- B. After a dentist ~~has successfully completed~~ completes the evaluation and ~~submitted~~ submits the required affidavits, the Board shall issue a renewal Section 1301, ~~or 1302,~~ or 1303 permit.
- ~~B.C.~~ The Board may stagger due dates for renewal applications.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

PREAMBLE

- 1. **Sections Affected**

R4-23-110	<u>Rulemaking Action</u>
R4-23-671	Amend
R4-23-674	Amend
R4-23-701	New Section
R4-23-701.01	Amend
R4-23-701.02	Amend
R4-23-701.03	Amend
- 2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
 - Authorizing statutes: A.R.S. §§ 32-1904(A)(1) and (2) and 32-1904(B)(3)
 - Implementing statutes: A.R.S. §§ 32-1904(A)(1) and (2) and 32-1904(B)(3)
- 3. **The effective date of the rules:**
 - May 4, 2003
- 4. **A list of all previous notices appearing in the Register addressing the proposed rule:**
 - Notice of Rulemaking Docket Opening: 8 A.A.R. 1193, March 22, 2002
 - Notice of Proposed Rulemaking: 8 A.A.R. 3546, August 16, 2002
- 5. **The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name:	Dean Wright, Compliance Officer
Address:	Board of Pharmacy 4425 W. Olive, Suite 140 Glendale, AZ 85302
Telephone:	(623) 463-2727, ext. 131
Fax:	(623) 934-0583
E-mail:	rxcop@msn.com
- 6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The Board's five-year rule review in September 1997 identified Sections R4-23-701, R4-23-701.01, R4-23-701.02, and R4-23-701.03 for amending. These Sections deal with pharmacy services to long-term care facilities. The proposed rule will incorporate relevant portions of these Sections into a new Section R4-23-674. Section R4-23-674 will specify the requirements for limited-service long-term care pharmacies. Section R4-23-671 dealing with the general requirements of limited-service pharmacy will be amended to reference the new Section R4-23-674. Sections R4-23-701, R4-23-701.01, R4-23-701.02, and R4-23-701.03 will be further amended to increase the clarity, conciseness, and understandability of the Sections. Section R4-23-110 will be amended to include new definitions for "limited-ser-

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vice long-term care pharmacy” and “long-term care facility” (or “LTCF”) and an amended definition for “provider pharmacy.” The amended rule will include format, style, and grammar changes necessary to comply with the current administrative rules of the Secretary of State and the Governor’s Regulatory Review Council.

The Board believes that approval of these rules will benefit the public health and safety by establishing clear and current standards governing the practices of consultant pharmacists and limited-service long-term care pharmacies that provide pharmacy services to long-term care facilities.

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

None

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

Not applicable

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

The proposed rules will impact the Board, pharmacists, pharmacies, and long-term care facilities. Most of the changes to the rule have no economic impact, but rather provide more clear, concise, and understandable language.

The public, Board, pharmacists, and pharmacies benefit from rules that are clear, concise, understandable, and reflect current practice standards. A rule that reflects current practice standards is easier to enforce because there are fewer gray areas that require subjective interpretation by compliance staff. The proposed rules will not have an economic impact on the Board office.

The proposed rules will have no economic impact on pharmacists.

The proposed rules allow the use of a four to one technician to pharmacist ratio in a limited-service long-term care pharmacy. This will provide an economic benefit to those pharmacies by reducing payroll costs.

The Board believes that approval of these rules will benefit the public health and safety by establishing clear and current standards governing the practices of consultant pharmacists and limited-service long-term care pharmacies that provide pharmacy services to long-term care facilities.

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

There are no substantive changes in the final rules from the proposed rules. There are minor changes to style, format, grammar, and punctuation requested by G.R.R.C. staff. Based on public comment received by the Board on the proposed rules, the Board chose to make the rules less restrictive regarding the development of a formulary by long-term care pharmacies. In the proposed rules, Section R4-23-674(E) required that all long-term care pharmacies develop a formulary for use in a long-term care facility. The Board changed the language in the final rules to allow rather than require that a long-term care pharmacy develop a formulary, if necessary. Because most long-term care pharmacies are paid through established third-party insurance contracts that have existing formularies, the need for a long-term care pharmacy to develop its own formulary will be the exception instead of the rule.

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

No one attended the public hearing, and two written comments were received by the Board. Both commentors were concerned with the proposed rule language that made it mandatory that a long-term care pharmacy develop a formulary. Both commentors felt that this mandatory provision would be too burdensome on long-term care pharmacies. One commentor felt that even no requirement would be better than a mandatory one. Both commentors requested that the Board change the rule to allow the development of a formulary, if necessary. The Board agreed with the public comment and changed the final rule language to allow the development of a formulary, if necessary, instead of mandating formulary development.

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

Not applicable

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

42 CFR 483.60, published October 1, 2001, and no future amendments or editions, located at A.A.C. R4-23-701(A)(3)(b)

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

No

15. The full text of the rules follows:

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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

ARTICLE 1. ADMINISTRATION

Section
R4-23-110. Definitions

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

Section
R4-23-671. General Requirements for Limited-service Pharmacy
R4-23-674. ~~Reserved~~ Limited-service Long-term Care Pharmacy

ARTICLE 7. NON-PHARMACY LICENSED OUTLETS - GENERAL PROVISIONS

Section
R4-23-701. Long-term Care Facilities Pharmacy Services: Consultant Pharmacist
R4-23-701.01. Long-term Care Facilities Pharmacy Services: Provider ~~Pharmacist~~ Pharmacy
R4-23-701.02. Long-term Care Facilities Pharmacy Services: Emergency ~~Medications~~ Drugs
R4-23-701.03. Long-term Care Facilities Pharmacy Services: Emergency ~~Medication~~ Drug Prescription Order

ARTICLE 1. ADMINISTRATION

R4-23-110. Definitions

In addition to definitions in A.R.S. § 32-1901, the following definitions apply to A.A.C. Title 4, Chapter 23:

- “Active ingredient” No change
- “Approved course in pharmacy law” No change
- “Approved Provider” No change
- “Authentication of product history” No change
- “AZPLEX” No change
- “Batch” No change
- “Beyond-use date” No change
- “Biological safety cabinet” No change
- “Certified pharmacy technician” No change
- “Class 100 environment” No change
- “Community pharmacy” No change
- “Component” No change
- “Computer system” No change
- “Computer system audit” No change
- “Container” No change
- “Continuing education” No change
- “Continuing education activity” No change
- “Continuing education unit” or “CEU” No change
- “Contact hour” No change
- “Correctional facility” No change
- “CRT” No change
- “Current good compounding practices” No change
- “Current good manufacturing practice” No change
- “Cytotoxic” No change
- “Day” No change
- “DEA” No change
- “Delinquent license” No change
- “Dispensing pharmacist” No change

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“Drug sample” No change

“Extreme emergency” No change

“FDA” No change

“Immediate notice” No change

“Inactive ingredient” No change

“Internal test assessment” No change

“Limited-service correctional pharmacy” No change

“Limited-service long-term care pharmacy” means a limited-service pharmacy, as defined in A.R.S. § 32-1901, that holds a current Board-issued permit and dispenses prescription medication or prescription-only devices to patients in long-term care facilities.

“Limited-service mail-order pharmacy” No change

“Limited-service nuclear pharmacy” No change

“Limited-service pharmacy permittee” No change

“Long-term care consultant pharmacist” No change

“Long-term care facility” or “LTCF” means a nursing care institution as defined in A.R.S. § 36-401 or an assisted living facility that:

Provides 24-hour, seven-day a week licensed nursing services to resident patients; and
Is licensed by the Arizona Department of Health Services.

“Lot” No change

“Lot number” or “control number” No change

“Materials approval unit” No change

“Mediated instruction” No change

“MPJE” No change

“NABP” No change

“NABPLEX” No change

“NAPLEX” No change

“Other designated personnel” No change

“Outpatient” No change

“Outpatient setting” No change

“Patient profile” No change

“Pharmaceutical care” No change

“Pharmacy law continuing education” No change

“Pharmacy technician” No change

“Prepackaged drug” No change

“Provider pharmacist pharmacy” means a pharmacist who supplies pharmacy that contracts with a long-term care facility to supply prescription medication to or other services for residents of a long-term care facility and maintains patient profiles.

“Radiopharmaceutical” No change

“Radiopharmaceutical quality assurance” No change

“Radiopharmaceutical services” No change

“Red C stamp” No change

“Remodel” No change

“Remote drug storage area” No change

“Resident” No change

“Responsible person” No change

“Score transfer” No change

“Sight-readable” No change

“Single-drug audit” No change

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- “Single-drug usage report” No change
- “Sterile pharmaceutical product” No change
- “Strength” No change
- “Supervision” No change
- “Supplying” No change
- “Support personnel” No change
- “Transfill” No change
- “Wholesale distribution” No change
- “Wholesale distributor” No change

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-671. General Requirements for Limited-service Pharmacy

- A.** Before opening a limited-service pharmacy, a person shall obtain a permit in compliance with A.R.S. §§ 32-1929, 32-1930, 32-1931, and R4-23-606.
- B.** The limited-service pharmacy permittee shall secure the limited-service pharmacy by conforming with the following standards:
 - 1. Permit no one to be in the limited-service pharmacy unless the pharmacist-in-charge or a pharmacist authorized by the pharmacist-in-charge pursuant to A.A.C. R4-23-672(B) or R4-23-673(E) is present;
 - 2. Require the pharmacist-in-charge to designate in writing, by name, title, and specific area, those persons who will have access to particular areas of the limited-service pharmacy;
 - 3. Implement procedures to guard against theft or diversion of drugs, including controlled substances; and
 - 4. Require all persons working in the limited-service pharmacy to wear badges, with their names and titles, while on duty.
- C.** To obtain permission to deviate from the minimum area requirement set forth in R4-23-609, ~~or R4-23-673,~~ or R4-23-682, a limited-service pharmacy permittee shall submit a written request to the Board and include documentation that the deviation will facilitate experimentation or technological advances in the practice of pharmacy as defined in A.R.S. § 32-1901. If the Board determines the requested deviation from the minimum area requirement will enhance the practice of pharmacy and benefit the public, the Board shall grant the requested deviation.
- D.** The Board shall require more than the minimum area in a limited-service pharmacy when the Board determines that equipment, personnel, or other factors in the limited-service pharmacy cause crowding that interferes with safe pharmacy practice.
- E.** Before dispensing from a limited-service pharmacy, the limited-service pharmacy permittee or pharmacist-in-charge shall:
 - 1. Prepare and implement written policies and procedures for pharmacy operations and drug distribution,
 - 2. ~~Submit a copy of the written policies and procedures to the Board office with the original permit application,~~
 - 3. ~~2. Conduct a biennial review and revision of~~ Review biennially and if necessary revise the policies and procedures and submit a copy of any revision to the Board office, and required under subsection (E)(1).
 - 3. Document the review required under subsection (E)(2).
 - 4. Assemble the policies and procedures as a written manual or by another method approved by the Board or its designee, and
 - 4.5. Make the policies and procedures available in the pharmacy for employee reference and inspection by the Board or its designee.

R4-23-674. Reserved Limited-service Long-term Care Pharmacy

- A.** A limited-service pharmacy permittee shall ensure that the limited-service long-term care pharmacy complies with:
 - 1. The general requirements of R4-23-671;
 - 2. The professional practice standards of 4 A.A.C. 23, Article 4, except R4-23-403(C); and
 - 3. The permits and drug distribution standards of R4-23-606 through R4-23-612, R4-23-670, and this Section.
- B.** If a limited-service long-term care pharmacy permittee contracts with a long-term care facility as a Provider Pharmacy, as defined in R4-23-110, the limited-service long-term care pharmacy permittee shall ensure that:
 - 1. The limited-service long-term care pharmacy employs or contracts with a long-term care consultant pharmacist; and
 - 2. The long-term care consultant pharmacist and the pharmacist-in-charge of the limited-service long-term care pharmacy comply with R4-23-701, R4-23-701.01, R4-23-701.01, and R4-23-701.03 and this Section.
- C.** The limited-service long-term care pharmacy permittee or pharmacist-in-charge shall ensure that prescription medication is delivered to the patient’s long-term care facility or locked in the dispensing area of the pharmacy when a pharmacist is not present in the pharmacy.
- D.** The pharmacist-in-charge of a limited-service long-term care pharmacy shall:
 - a. Authorize only those individuals listed in R4-23-610(B) to be in the limited-service long-term care pharmacy, and

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- b. Allow no more than four pharmacy technicians or certified pharmacy technicians per pharmacist to be in the limited-service long-term care pharmacy.
- E. In consultation with the long-term care facility's medical director and director of nursing, the long-term care consultant pharmacist and pharmacist-in-charge of the long-term care facility's provider pharmacy may develop, if necessary, a medication formulary for the long-term care facility that ensures the safe and efficient procurement, dispensing, distribution, administration, and control of drugs in the long-term care facility.
- F. The limited-service long-term care pharmacy permittee or pharmacist-in-charge shall ensure that the written policies and procedures required in R4-23-671(E) include the following:
 - 1. Clinical services and drug utilization management for:
 - a. Drug utilization reviews,
 - b. Inventory audits,
 - c. Patient outcome monitoring,
 - d. Drug information, and
 - e. Education of pharmacy and other health professionals;
 - 2. Controlled substances;
 - 3. Drug compounding, dispensing, and storage;
 - 4. Drug delivery requirements for:
 - a. Transportation,
 - b. Security,
 - c. Temperature and other environmental controls, and
 - d. Emergency provisions;
 - 5. Drug product procurement;
 - 6. Duties and qualifications of professional and support staff;
 - 7. Emergency drug supply unit procedures;
 - 8. Formulary, including development, review, modification, use, and documentation, if applicable;
 - 9. Patient profiles;
 - 10. Patient education;
 - 11. Prescription orders;
 - 12. Quality management procedures for:
 - a. Adverse drug reactions,
 - b. Drug recalls,
 - c. Expired and beyond-use-date drugs,
 - d. Medication or dispensing errors, and
 - e. Education of professional and support staff;
 - 13. Recordkeeping;
 - 14. Sanitation; and
 - 15. Security.

ARTICLE 7. NON-PHARMACY LICENSED OUTLETS - GENERAL PROVISIONS

R4-23-701. Long-term Care Facilities Pharmacy Services: Consultant Pharmacist

- A. The long-term care consultant pharmacist as defined in R4-23-110, in cooperation with the pharmacist-in-charge of a provider pharmacy shall:
 - 1. Establish Prepare, implement, review, and revise written policies and procedures for the safe and efficient receipt, distribution, and storage of pharmaceutical products by the long-term care facility in the manner specified in R4-23-671(E);
 - 2. Such documents shall be Make the policies and procedures available for review during inspections in the provider pharmacy and long-term care facility for employee reference and inspection by the Board or its designee; and
 - 3. These Ensure that the written policies and procedures shall, at a minimum, required under (A)(1) include the following:
 - 1-a. Specification for the storage, distribution, and procurement of medications drugs and biologicals;
 - 2-b. Resident evaluation programs which that relate to monitoring the therapeutic response and utilization use of all medications drugs and biologicals prescribed or administered to residents, utilizing using as guidelines the most current indicators established by the Health Care Financing Administration/ Centers for Medicare and Medicaid Services, United States Department of Health and Human Services as provided in 42CFR Part 431, et. seq. published in the Federal Register/Vol. 56, No. 187/September 26, 1991 page 48875 § required in 42 CFR 483.60, published October 1, 2001, and no future amendments or editions, incorporated herein by reference and on file with the Board and the Office of the Secretary of State;
 - 3-c. Pharmacist assistance in medication drug-related emergency situations on a 24-hour basis;

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- d. Controlled substance accountability including:
 - i. Date and time of administration,
 - ii. Name of the person who administers the controlled substance,
 - iii. Documenting and verifying of any wasted or partial doses, and
 - iv. Exception reports for refused doses;
- e. Prescription order requirements;
- f. Approved abbreviations;
- g. Stop-order procedures;
- h. Pass and discharge prescription order procedures;
- i. Emergency drug supply unit procedures;
- j. Formulary procedures, including development, review, modification, use, and documentation, if applicable;
- 4.k. Security and temperature control procedures for all medications drugs and biologicals;
- 5. Key control of locked medication storage areas:
 - 6.l. Guidelines to ensure that all discontinued or outdated, prescription only medicines drugs or containers with worn, illegible, or missing labels are destroyed or disposed of under the supervision of either the long term care consultant or provider pharmacist, witnessed by the administrator or his designee. All medication destruction shall be done in a timely manner using procedures consistent with state and local requirements or regulations and subject to review by the Board of Pharmacy. Disposal procedures that comply with subsection (D) for discontinued or outdated, prescription-only drugs or containers with illegible or missing labels; and
 - 7.m. Identifying Procedures for identifying and reporting to proper authorities drug irregularities and dispensing errors.
- B. A long-term care consultant pharmacist shall ensure that:**
 - 1. Only medical practitioners as defined in A.R.S. § 32-1901, authorized by law to prescribe medications, may prescribe for the practitioner's patient in a long term care facility.
 - 1. A pharmacist shall evaluate the evaluates and verifies a prescription order, or a copy thereof of a long-term care facility resident and at a minimum verify the following: in compliance with R4-23-402(A)(5) and (6);
 - 2. Only symbols and abbreviations that are customarily used in the practice of medicine and pharmacy or those placed on an approved list agreed to by the long term care consultant pharmacist and medical staff shall be acceptable on long term care facility medical orders.
 - 3.2. Prescription orders for use by residents of the The prescription order of a long-term care facility shall, at a minimum, contain resident contains:
 - a. resident's Resident's name;
 - b. medication Facility name or address;
 - c. Drug name, and strength, and dosage form;
 - d. directions Directions for use;
 - e. date of order, Date issued; and
 - f. name Name of prescriber;
 - 4.3. That during such time at the long term care facility When the a provider pharmacist pharmacy is not available open for business, arrangements shall be are made in advance by the long-term care consultant pharmacist, in cooperation with the pharmacist-in-charge of the provider pharmacy and the director of nursing and medical staff of the long-term care facility, for providing medications to the licensed nursing staff emergency drugs for the licensed nursing staff to administer to the residents of the facility using an emergency medication box drug supply unit located at the facility;
 - 4. The label and packaging of prescription-only and nonprescription drugs intended for use within a long-term care facility complies with R4-23-701.01 and state and federal law; and
 - 5. A long-term care facility's personnel is informed that laws governing controlled substances require that a long-term care facility:
 - a. Store controlled substances listed in A.R.S. § 36-2513 in a separately locked and permanently affixed compartment, unless the facility uses a single-unit package medication distribution system, and
 - b. Maintain accurate records of controlled substance administration or ultimate disposition.
 - 5. Medications should be dispensed for a specific duration within the parameters defined by the policy and procedure manual developed by the long term care consultant pharmacist.
 - C. The long term care consultant pharmacist shall establish and implement procedures designed to assure that controlled substance accountability records are in conformity with requirements found in A.R.S. § 36-2501 et. seq. and A.A.C. Chapter 23, Article 10. In addition to general accountability, the procedures shall address; the name of the persons administering the controlled substance, documentation and verification of any wasted doses or partial doses and exception reporting for refused doses.**
 - ~~D.C.~~ The long-term care consultant pharmacist shall assure that ensure availability of records and reports are designed to provide the data necessary to evaluate the drug utilization use of each long-term care facility resident- that include the following shall be included in such records and reports:**

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1. ~~Pharmacy medication~~ Provider pharmacy patient profiles and long-term care facility medication administration records;
 2. Reports of suspected adverse ~~medication drug~~ reactions;
 3. ~~Inspections~~ Inspection reports of medication drug storage area areas with emphasis on detecting outdated medications; drugs; and
 4. Accountability reports, including all drug destruction forms ~~for controlled substance medications.~~
- E.** ~~The label and packaging of all prescription and nonprescription medications intended for use within the facility shall comply with definitions as set forth in A.R.S. § 32-1901 and in accordance with state and federal regulations.~~
- F.** ~~Pharmacists, when dispensing controlled substances, shall alert nursing home personnel that laws governing such medications require that long term care facilities keep them double locked in a separate cabinet, and accurate records be kept of their administration or ultimate disposition.~~
- D.** A long-term care consultant pharmacist or pharmacist-in-charge of a provider pharmacy shall ensure that:
1. Discontinued or outdated drugs, including controlled substances, are destroyed or disposed of:
 - a. Under the supervision of either a long-term care consultant pharmacist or a pharmacist employed by a provider pharmacy and witnessed by the long-term care facility administrator or the administrator's designee;
 - b. List by drug name, strength, dosage form, and quantity; and
 - c. In a timely manner using methods consistent with state and local requirements and subject to review by the Board or its designee; and
 2. Drug containers with illegible or missing labels are:
 - a. Identified; and
 - b. Replaced or relabeled by a pharmacist employed by the pharmacy that dispensed the prescription medication.

R4-23-701.01 Long-term Care Facilities Pharmacy Services: Provider ~~Pharmacist~~ Pharmacy

- A.** ~~The provider pharmacist limited-service pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall ensure that:~~
1. ~~provide medications~~ A prescription medication is provided only pursuant to by a valid prescription order for an individual long-term care facility resident, properly labeled for that resident, as addressed in R4-23-701(E) specified in this subsection, except for nonprescription medications. Nothing in this section Section shall prevent the a provider pharmacist pharmacy from supplying nonprescription drugs in a manufacturer's unopened container or emergency medications drugs using an emergency drug supply unit as addressed specified in R4-23-701.02;
 - ~~B.2.~~ The provider pharmacist shall affix labels to each container of medication for residents in long term care facilities, in compliance with A prescription medication label for a long-term care facility resident complies with A.R.S. §§ 32-1963.01(C) and (I), A.R.S. § 32-1968, and A.R.S. § 36-2525 and the applicable parts of R4-23-658(E)(D), and contains:
 - a. The drug name, strength, dosage form, and quantity; and
 - b. The beyond-use-date;
 - ~~C.3.~~ Only Only a pharmacist shall, at their professional discretion, relabel medications. A pharmacist is permitted to label or relabel only medication originally dispensed from the provider pharmacy. employed by the pharmacy that dispensed the prescription medication may, through the exercise of professional judgement, relabel or alter a prescription medication label that is illegible or missing;
 - ~~D.4.~~ The provider pharmacist shall develop a medication long-term care facility develops and implements drug recall procedure policies and procedures that protects protect the health and safety of the resident facility residents. Including The drug recall procedures shall include immediate discontinuation of any recalled medication drug and notification of the prescriber and director of nursing of the facility; and
 - ~~E.5.~~ The provider pharmacist pharmacy or any of its employees shall does not pay any rebate pursuant to under A.R.S. § 32-1932(D) and R4-23-404 and A.R.S. § 32-1932(C).

R4-23-701.02. Long-term Care Facilities Pharmacy Services: Emergency Medications Drugs

- A.** ~~Medications necessary to meet the immediate therapeutic needs of residents and which are not readily available shall be supplied by the provider pharmacist. The limited-service pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall ensure that an emergency drug supply unit is available within the long-term care facility.~~
- B.** ~~In consultation with physicians from the facility, the long term care consultant pharmacist shall initially prepare and quarterly revise, a list of medications, by name, strength and quantity to be included in the emergency supply. Only properly packaged and labeled medications shall be available therein and only in quantities sufficient for immediate therapeutic needs of residents. An emergency drug supply unit shall contain only a drug that meets the following criteria:~~
 1. The drug is necessary to meet the emergent and immediate needs of long-term care facility residents as determined by the provider pharmacy's pharmacist-in-charge in consultation with the long-term care facility's medical director and nursing director; and
 2. The drug is packaged and labeled to include the drug name, strength, dosage form, manufacturer, lot number, and expiration date and provider pharmacy's name, address, telephone number, and pharmacist's initials.

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- C. ~~Emergency medications shall be~~ The limited-service pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall ensure that an emergency drug supply unit:
1. Is stored in an area that:
 - a. Is temperature controlled; and
 - b. ~~areas suitable to prevent~~ Prevents unauthorized access;
 2. Contains on the exterior of the emergency drug supply unit a label to indicate that the contents are for emergency use only;
 3. Contains on the exterior of the emergency drug supply unit a complete list of the contents of the unit by drug name, strength, dosage form, expiration date, and quantity and the provider pharmacy's name, address, and telephone number; and
 4. Contains on the exterior of the emergency drug supply unit a label that indicates the date of and person responsible for the last inspection of the emergency drug supply unit.
- D. ~~The exterior of an emergency medication storage unit shall be labeled to indicate that it is for emergency use only. Such label shall also contain a listing of the name, strength, expiration date and quantity of the medications, and the name of the provider pharmacy. Additionally, the exterior of the storage unit shall indicate the name of the provider pharmacist and the date of the last inspection. All medications included in the emergency supply shall be labeled to include the name, strength, manufacturer, lot number and expiration date. The limited-service pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall:~~
1. Prepare and implement written policies and procedures for the storage and use of an emergency drug supply unit in a long-term care facility in the manner specified in R4-23-671(E).
 2. Make the policies and procedures available in the provider pharmacy and long-term care facility for employee reference and inspection by the Board or its designee, and
 3. Ensure that the written policies and procedures include the following:
 - a. Drug removal procedures that requires:
 - i. The long-term care facility's personnel receive a valid prescription order for each drug removed from the emergency drug supply unit,
 - ii. The long-term care facility's personnel notify the provider pharmacy when a drug is removed from the emergency drug supply unit, and
 - iii. The provider pharmacy's personnel restock the emergency drug supply unit within 48 hours of receiving the notification required in subsection (D)(3)(a)(ii).
 - b. Outdated drug replacement procedures that requires:
 - i. The provider pharmacy's personnel check for outdated drugs in the emergency drug supply unit once a month,
 - ii. The long-term care facility's personnel notify the provider pharmacy when an outdated drug is found in the emergency drug supply unit,
 - iii. The provider pharmacy's personnel remove an outdated drug from the emergency drug supply unit within 48 hours of receiving the notification required in subsection (D)(3)(b)(ii), and
 - iv. The provider pharmacy's personnel restock the emergency drug supply unit within 48 hours of receiving the notification required in subsection (D)(3)(b)(ii)
 - c. Security and inspection procedures, and
 4. Educate pharmacy and long-term care facility personnel in the storage and use of an emergency drug supply unit.
- E. ~~Medications shall be removed from the emergency supply pursuant to a valid prescriber order.~~
- F. ~~Provider pharmacist shall replace used or outdated emergency medications within 48 hours of being notified of the need.~~

R4-23-701.03. Long-term Care Facilities Pharmacy Services: Emergency ~~Medication~~ Drug Prescription Order

~~In cases where an emergency medication order is written when pharmacy services are unavailable, the medication~~ The limited-service pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall ensure that every emergency drug prescription order shall be is evaluated for legal and therapeutic appropriateness according to the requirements of R4-23-402(A) by a pharmacist within 72 hours of the first dose of drug administered by long-term care facility personnel under the emergency drug prescription order.

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NOTICE OF FINAL RULEMAKING

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

CHAPTER 4. CORPORATION COMMISSION
SECURITIES

PREAMBLE

- 1. Sections Affected** **Rulemaking Action**
R14-4-132 Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
Authorizing statute: A.R.S. § 44-1821
Implementing statutes: A.R.S. §§ 44-1822, 44-1824, and 44-1961
Constitutional authority: Arizona Constitution, Article XI, § 4
- 3. The effective date of the rule:**
May 3, 2003
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 8 A.A.R. 494, February 1, 2002
Notice of Proposed Rulemaking: 8 A.A.R. 2221, May 24, 2002
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Cheryl T. Farson
Address:	Arizona Corporation Commission, Securities Division 1300 W. Washington, 3rd Floor Phoenix, AZ 85007-2996
Telephone:	(602) 542-4242
Fax:	(602) 594-7470
E-mail:	cf@ccsd.cc.state.az.us
- 6. An explanation of the rule, including the agency's reasons for initiating the rulemaking:**
A.A.C. R14-4-132 ("rule 132") requires that registered dealers make, maintain, and preserve books and records in compliance with certain specified U.S. Securities and Exchange Commission ("SEC") rules, including 17 CFR 240.17a-3 and 17 CFR 240.17a-4.

The SEC's books and records rules, promulgated under the Securities Exchange Act of 1934, specify minimum requirements with respect to the records that dealers must make and how long those records and other documents relating to a dealer's business must be kept. The SEC has required that dealers create and maintain certain records so that, among other things, the SEC, self-regulatory organizations, and state securities regulators may conduct effective examinations of dealers. The SEC has amended 17 CFR 240.17a-3 and 17 CFR 240.17a-4. The amendments will be effective May 2, 2003.

The National Securities Market Improvement Act of 1996 prohibits states from establishing books and records rules that differ from, or are in addition to, the SEC's books and records rules.

The Division proposes amending rule 132 to reflect the federal law mandate that state books and records requirements do not differ from the SEC books and records rules and to reflect the SEC's amendments effective May 2, 2003.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
None
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
An amendment to rule 132 will not diminish a previous grant of authority.

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

The economic, small business, and consumer impact statement for rule 132 incorporates by reference SEC Release No. 34-44992; File No. S7-26-98, which analyzes the costs, savings, and benefits of amendments to the federal books and records requirements. This analysis is relevant to the Commission's amendment of rule 132 because, by federal mandate, rule 132 is uniform with federal law.

Section 15(h)(1) of the federal Securities Exchange Act of 1934 (15 U.S.C. § 78o(h)(1)), adopted in 1996, provides that

"No law, rule, regulation, or order, or other administrative action of any State or political subdivision thereof shall establish . . . making and keeping records . . . requirements for . . . dealers . . . that differ from, or are in addition to, the requirements in those areas established under this title."

The SEC has amended two of the rules incorporated in rule 132; the amendments will be effective May 2, 2003. The Commission amends rule 132 to reflect the federal law mandate that state books and records requirements do not differ from the SEC books and records rules and to reflect the SEC's amendments.

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

A typographical error was corrected in subsection (A) of the rule.

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

The Commission did not receive written comments to the rule.

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

None

13. Incorporations by reference and their location in the rule:

The following materials are incorporated by reference in rule 132(A):

17 CFR 240.17a-3 (2002) as amended by 66 Fed. Reg. 55817 (2001)

17 CFR 240.17a-4 (2002) as amended by 66 Fed. Reg. 55817 (2001)

17 CFR 240.15g (2002)

17 CFR 240.15c2-11 (2002)

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

No

15. The full text of the rule follows:

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

**CHAPTER 4. CORPORATION COMMISSION
SECURITIES**

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

Section

R14-4-132. Books and Records of Dealers

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

R14-4-132. Books and Records of Dealers

- A.** Unless otherwise provided by order of the Commission, each registered dealer shall make, maintain, and preserve books and records in compliance with U.S. Securities and Exchange Commission rules 17a-3 (17 CFR 240.17a-3 (~~1991~~2002)); ~~and 17-a-4~~17a-4 (17 CFR 240.17a-4 (~~1991~~2002)) as amended in Release No. 34-4992, 66 Fed. Reg. 55817 (2001); ~~15e2-~~6 15g (17 CFR 240.15e2-6 (~~1991~~240.15g (2002))); and 15c2-11 (17 CFR 240.15c2-11 (~~1991~~2002)), as amended in Release No. 34-29094, 56 Fed. Reg. 19148 (~~1991~~)) all of which are incorporated ~~herein~~ by reference. Copies of the materials are available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, from the Commission, and are on file with the office of the Secretary of State.
- B.** To the extent that the U.S. Securities and Exchange Commission promulgates changes to the above-referenced rules, dealers in compliance with such rules as amended shall not be subject to enforcement action by the Commission for violation of this rule to the extent that the violation results solely from the dealer's compliance with the amended rule.

Notices of Final Rulemaking

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 3. DEPARTMENT OF TRANSPORTATION
HIGHWAYS

PREAMBLE

1. Sections Affected

Article 3
R17-3-301
R17-3-301
R17-3-302
R17-3-302
R17-3-303
R17-3-303
R17-3-304
R17-3-304
R17-3-305
R17-3-306

Rulemaking Action

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

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

Authorizing statutes: A.R.S. §§ 28-366 and 28-7148

Implementing statutes: A.R.S. §§ 28-7141 through 28-7149 and 28-7152

3. The effective date of the rules:

May 6, 2003

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

Notice of Rulemaking Docket Opening: 8 A.A.R. 2643, June 21, 2002

Notice of Proposed Rulemaking: 8 A.A.R. 4991, December 6, 2002

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

Name: Wendy S. LeStarge, Rules Analyst
Address: Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079
Telephone: (602) 712-6007
Fax: (602) 241-1624
E-mail: wlestarge@dot.state.az.us

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules/index.htm.

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

This proposed rulemaking deals with the relocation assistance program under A.R.S. §§ 28-7141 through 28-7149, and 28-7152. Under this program, the Arizona Department of Transportation ("ADOT") is authorized to pay certain expenses to persons and businesses that have been displaced due to construction or reconstruction of transportation facilities. This proposed rulemaking arises from proposed agency action in the five-year review report approved by the Governor's Regulatory Review Council on May 2, 2000 (F-00-0402). This proposed rulemaking also was subject of a petition for rulemaking under A.R.S. § 41-1033. The ADOT Director granted the petition for rulemaking on May 17, 2001.

Arizona's relocation assistance statutes are based on the federal statutes, the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, 42 U.S.C. §§ 4601 et seq. The policy reason behind the relocation assistance program is to minimize the hardship of displacement to those persons displaced by programs and projects designed for the benefit of the public as a whole. 42 U.S.C. § 4621(b).

The Arizona statutes establish the main concepts for relocation assistance. Displacees are categorized as either a residential or non-residential displacee. A residential displacee may be eligible for three types of relocation payments: moving expenses, replacement housing, and housing of last resort. A non-residential displacee may be eligible for

Notices of Final Rulemaking

moving expenses and reestablishment expenses. The statutes also set out the maximum amount of money a person can claim for replacement housing, and broad eligibility criteria.

Main definitions are set out in A.R.S. § 28-7141. ADOT provides relocation services to a displacee, such as determining needs, providing information on sales and rentals, and assisting farms and businesses to reestablish in a new location. A.R.S. § 28-7142. A displacee can receive money for moving and related expenses, such as the actual expenses for moving, some expenses for direct loss of personal property, and reestablishment expenses for a small business of up to \$10,000. A.R.S. § 28-7143. A displacee has the option to recover actual moving expenses, or fixed payments based on a schedule, although a business is limited to an amount between \$1,000 and \$20,000. A.R.S. § 28-7143.

For replacement housing payments, a residential owner who owned the property for at least 180 days can qualify for up to \$22,500 to assist in purchasing a comparable replacement dwelling. A.R.S. § 28-7144(A). This money can go toward the difference in price for a comparable replacement dwelling, the difference in interest rate, or other costs. A.R.S. § 28-7144(A)(1) through (3). A property owner can also receive money for recording fees, penalty for prepayment of mortgage, and property taxes already paid. A.R.S. § 28-7145. A tenant or residential owner who owned the property for at least 90 days can receive rental assistance of up to \$5,250, for up to 42 months. A.R.S. § 28-7146(A) and (B). A displacee can request that the rental assistance be used as a downpayment to purchase a comparable replacement dwelling. A.R.S. § 28-7146(C). A displacing agency such as ADOT is obligated to ensure that no person is forced to leave their home without a comparable replacement dwelling to go to, except for emergencies. A.R.S. § 28-7152(C). If time and circumstances mean that a comparable replacement dwelling is not available, then ADOT can exceed the statutory amounts to find replacement housing as a last resort. A.R.S. § 28-7152(A).

ADOT must make rules that ensure fair and uniform payment, prompt payment, and if needed advance payment, and a grievance review procedure. A.R.S. §§ 28-7147 and 28-7148(A). ADOT also can make rules consistent with and appropriate to carry out the relocation assistance statutes. A.R.S. § 28-7148(B).

ADOT's relocation assistance rules, as contained in R17-3-301 through R17-3-304, have not been updated since 1970. The existing rules conflict with current ADOT procedures and are inadequate to compensate displacees. ADOT is repealing all of the existing rules, and creating new Sections that incorporate by reference the federal regulations on uniform relocation assistance, 49 CFR, Part 24 – Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The proposed rulemaking is organized as follows.

R17-3-301 lists the sections of 49 CFR, Part 24 that ADOT incorporates as its own. This proposed rulemaking concerns only relocation assistance for residential and business displacees. ADOT chose not to address property acquisition or utility relocation in this rulemaking. ADOT amends parts of the federal regulations in order to conform to ADOT's program and procedures. The incorporated federal regulations are organized as follows:

1. Subpart A, of 49 CFR, Part A – General, lists and describes many of the general aspects of the relocation assistance program:
 - Section 24.2 contains the definitions, elaborating on some of the statutory definitions.
 - Section 24.3 prohibits duplication of payments between different government entities.
 - Section 24.5 describes the notices to a property owner or occupant. The notices are defined in 49 CFR 24.2, and describe a person's eligibility for relocation assistance.
 - Section 24.8 requires compliance with other laws, such as civil rights laws.
 - Section 24.9 describes recordkeeping requirements.
 - Section 24.10 sets out the appeal process.
2. Subpart C, of 49 CFR, Part A – General Relocation Requirements, describes more specific aspects of eligibility:
 - Section 24.202 states that the relocation requirements apply to any displaced person.
 - Section 24.203 describes the specifics of what is contained in the notice, and requires that a displacee be given at least a 90-day notice to relocate.
 - Section 24.204 reiterates the requirements of A.R.S. § 28-7152(B) that no person be displaced without a comparable replacement dwelling, unless in time of emergency.
 - Section 24.205 describes the relocation planning and services offered by ADOT.
 - Section 24.206 covers eviction.
 - Section 24.207 lists the general requirements for relocation payment claims, such as documentation, time-line, and advance payments.
 - Section 24.208 is a recent amendment that requires a displacee to be a United States citizen or a lawful permanent resident in order to receive relocation payments or advisory assistance. An exception exists if a displacee can show exceptional and extremely unusual hardship to a spouse, parent, or child who is a United States citizen or a lawful permanent resident. Because ADOT accepts federal monies for its highway construction projects, including relocation assistance, ADOT must comply with this federal law.

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3. Subpart D, of 49 CFR, Part A – Payments for Moving and Related Expenses describes criteria and eligibility for moving and related expenses payments:
 - Section 24.301 lists the expenses that can be claimed under A.R.S. § 28-7143 for residential moves.
 - Section 24.302 describes the fixed payments under the schedule, as described under A.R.S. § 28-7143(B).
 - Section 24.303 lists the expenses that can be claimed under A.R.S. § 28-7143 for non-residential moves.
 - Section 24.304 lists the eligible reestablishment expenses for a non-residential move.
 - Section 24.305 lists ineligible expenses.
 - Section 24.306 describes the fixed payment according to the schedule for non-residential moves, as described under A.R.S. § 28-7143(C).
4. Subpart E, of 49 CFR, Part A – Replacement Housing Payments describes eligibility and criteria for replacement housing for residential displacees:
 - Incorporation of section 24.401 implements A.R.S. § 28-7144, describing eligibility and the procedure for a 180-day homeowner to use up to \$22,500 to purchase a comparable replacement dwelling.
 - Incorporation of section 24.402 implements A.R.S. § 28-7146, describing eligibility and the procedure for a tenant or 90-day homeowner to use up to \$5,250 for rental assistance or to purchase a comparable replacement dwelling.
 - Section 24.403 describes additional rules for replacement housing payments.
 - Incorporation of section 24.404 implements A.R.S. § 28-7152, or as described in the federal regulations, replacement housing of last resort.
5. Subpart F of 49 CFR, Part A – Mobile Homes, mirrors the eligibility requirements and criteria of a residential homeowner:
 - Section 24.501 describes applicability of this subpart.
 - Section 24.502 describes eligible moving and related expenses for a mobile home.
 - Section 24.503 describes eligibility for a 180-day owner to use up to \$22,500 to purchase a comparable replacement dwelling.
 - Section 24.504 describes eligibility for a tenant or 90-day owner to use up to \$5,250 for rental assistance or to purchase a comparable replacement dwelling.
 - Section 24.505 describes additional requirements for relocation payments for mobile homes, based on whether an owner owns both the property and the mobile home.
6. Appendix A to Part 24 offers further explanations and examples of various technical terms.

ADOT amends various sections of the incorporated federal regulations in order to conform to ADOT's program and procedures, and to account for differences between Arizona statutes and federal regulations. ADOT also amends sections to eliminate references to property acquisition or utility relocation based on ADOT's decision not to institute rulemaking on those subjects at this time. R17-3-302 amends 49 CFR Subpart A – General. R17-3-302(A) amends and clarifies various definitions in 49 CFR 24.2. R17-3-302(B) amends 49 CFR 24.5, manner of notices, to eliminate references to property acquisition. R17-3-302(C) amends 49 CFR 24.9(a), the recordkeeping and reports requirement, to conform to Arizona law. R17-3-302(D) amends 49 CFR 24.10 on appeals to conform to Arizona law on administrative review, A.R.S. §§ 41-1061 through 41-1067. R17-3-302(E) creates provisions for potential conflict of interest if a displacee is an employee of the state, or of a political subdivision involved in a joint project with ADOT. R17-3-302(F) requires ADOT to determine whether or not a person is required to relocate permanently as a result of a project.

R17-3-303 amends 49 CFR Subpart C – General Relocation Requirements. R17-3-303(A) amends 49 CFR 203(b), to begin relocation eligibility on the date of the notice of intent to acquire or the notice of eligibility instead of the initiation of negotiations because Arizona statutes define initiation of negotiations differently than the federal regulations. R17-3-303(B) amends 49 CFR 24.205 to allow limited planning when timing or scheduling is restricted, and eliminates subsection (b) because ADOT does not use loans as part of its relocation assistance program. R17-3-303(C) amends 49 CFR 24.206 on eviction to conform to Arizona law, and the ADOT relocation program.

R17-3-304 amends 49 CFR Subpart D – Payments for Moving and Related Expenses. R17-3-304(A) amends 49 CFR 24.301(d) to clarify the limit on storage expenses, and deletes subsection (f), because ADOT does not pay for lost, stolen, or damaged property not covered by insurance. R17-3-304(B)(1) amends 49 CFR 24.303 by deleting as an eligible expense any lost, stolen, or damaged property not covered by insurance, or fees paid to a real estate agent, other than a commission. R17-3-304(B)(2) allows for some professional planner services, if pre-approved. R17-3-304(B)(3) eliminates "fair" from the term fair market value, because the industry terminology is just "market value."

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R17-3-304(B)(4) allows ADOT to determine whether a business owner may elect to self-move. R17-3-304(B)(5) clarifies that payment is for an on-premise advertising sign. R17-3-304(C) amends 49 CFR 24.305(h) on ineligible expenses to allow a legal fee only as required under A.R.S. § 28-7153.

R17-3-305 amends 49 CFR Subpart E – Replacement Housing Payments. R17-3-305(A)(1) eliminates “fair” from the term fair market value, because the industry terminology is just “market value.” R17-3-305(A)(2) amends 49 CFR 24.401(d) to allow a residential displacee to use replacement housing payments to buy down the interest rate on a comparable replacement dwelling. R17-3-305(A)(3) and (4) eliminate incidental expenses that are not normally incurred in Arizona, such as legal fees, escrow agent fees, and state taxes. R17-3-305(B)(1) amends 49 CFR 24.402(b)(2) to eliminate “fair” from the term fair market value, because the industry terminology is just “market value.” R17-3-305(B)(2) amends 49 CFR 24.402(c)(1) to reflect ADOT’s program to not pay more than the computed payment, and not up to the maximum allowed by statute. R17-3-305(C)(1) amends 49 CFR 24.403 to reflect ADOT’s program criteria of requiring only one comparable replacement dwelling. R17-3-305(C)(2) and (3) eliminate “fair” from the term fair market value, because the industry terminology is just “market value.”

R17-3-306 amends portions of Appendix A to Part 24.

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

None

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

Not applicable

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

The relocation assistance program provides financial assistance and program services to persons and businesses displaced by construction and reconstruction projects designed to benefit the public as a whole. The benefits of the relocation assistance program are substantial to the displaced public, the main stakeholders of this proposed rulemaking. The maximum monetary amounts for reimbursement are set by statute. This proposed rulemaking establishes the specifics for ADOT to administer the program fairly, and in a fiscally efficient manner necessary to disburse public money.

The proposed rulemaking provides numerous benefits to the displaced public, such as informing them of claim procedures, the types of notices used to begin the process, and the specific advisory services ADOT offers. It establishes rights for displacees in appeal and eviction proceedings. It provides certainty by listing eligible and ineligible expenses that may be claimed under relocation assistance. The proposed rulemaking also explains how replacement housing payments are calculated, and the options a residential displacee has for using a replacement housing payment, as a downpayment, to reduce a mortgage interest rate, or as rental assistance. It implements the statutory provisions for payments for housing of last resort, which allows ADOT to exceed the statutory limits for replacement housing payments. The proposed rulemaking also seeks to minimize inconvenience costs, by allowing for advance payment of costs, and payments according to a federal fixed schedule.

Because ADOT does not have an unlimited amount of money to disburse, the proposed rulemaking sets out fair eligibility criteria so that most displacees will be adequately compensated for their hardship of relocating. However, eligibility criteria means costs for displacees, because displacees will not be eligible for all costs they may incur. The proposed rulemaking lists eligible and ineligible expenses, and establishes an 18-month deadline to submit a claim. The proposed rulemaking also imposes costs in time and effort. A displacee has to provide documentation, such as receipts, to show expenses incurred, or submit bids to receive advance payment for a cost. It establishes limiting criteria to qualify for payments for housing of last resort. It also prohibits any payments to a displacee who is not a United States citizen or lawful permanent resident.

The relocation assistance program constitutes substantial costs for ADOT. ADOT paid out over \$7 million for claims in FY 2002. The benefits are intangible, constituting public goodwill and good relations. Other state agencies and political subdivisions benefit by this proposed rulemaking, because ADOT provides the services and payments, thereby lessening disruption to the displaced public. Businesses that provide relocation services, such as realtors or moving companies, also benefit because their services constitute reimbursable expenses.

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

Grammatical and organizational changes were made at the suggestion of the Governor’s Regulatory Review Council’s staff.

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

ADOT did not receive any comments.

Notices of Final Rulemaking

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

Not applicable

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

In R17-3-301, subsection (A):

49 CFR Sections 24.2, 24.3, 24.5, 24.8, 24.9, 24.10, 24.202, 24.203, 24.204, 24.205, 24.206, 24.207, 24.208, 24.301, 24.302, 24.303, 24.304, 24.305, 24.306, 24.401, 24.402, 24.403, 24.404, 24.501, 24.502, 24.503, 24.504, 24.505, and Appendix A to Part 24 published October 1, 2001.

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

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

**CHAPTER 3. DEPARTMENT OF TRANSPORTATION
HIGHWAYS**

ARTICLE 3. ~~RIGHT-OF-WAY ACQUISITION AND MANAGEMENT~~ RELOCATION ASSISTANCE

Section

- R17-3-301. ~~Relocation program to conform with state and federal statutes~~ Relocation Assistance; Adoption of Federal Regulations
- R17-3-302. ~~Claim for relocation payments~~ Relocation Assistance; 49 CFR Part 24, Subpart A – General
- R17-3-303. ~~Relocation assistance program~~ Relocation Assistance; 49 CFR Part 24, Subpart C – General Relocation Requirements
- R17-3-304. ~~Rental of lands held for state highway purposes~~ Relocation Assistance; 49 CFR Part 24, Subpart D – Payments for Moving and Related Expenses
- R17-3-305. Relocation Assistance; 49 CFR Part 24, Subpart E – Replacement Housing Payments
- R17-3-306. Relocation Assistance; Appendix A to Part 24 – Additional Information

ARTICLE 3. ~~RIGHT-OF-WAY ACQUISITION AND MANAGEMENT~~ RELOCATION ASSISTANCE

R17-3-301. ~~Relocation program to conform with state and federal statutes~~ Relocation Assistance; Adoption of Federal Regulations

- A.** ~~The Arizona Highway Department's Relocation Program has been operating under regulations adopted by the Arizona State Highway Commission on April 2, 1969.~~
 - ~~1. Clarification of regulations has been received on a continuing basis from the Bureau of Public Roads.~~
 - ~~2. It is the intent of the Arizona State Highway Commission to require the Relocation Program to fully conform with state and federal statutes and regulations thereto on a continually current basis.~~
- B.** ~~The Arizona State Highway Commission hereby adopts the following regulations to ensure conformance to the above.~~
 - ~~1. Definitions. Specific terms relating to the Relocation Program are defined in the regulations of the Bureau of Public Roads in the A.R.S. § 18-141 and in procedures incorporated in the Right-of-Way Manual. These definitions are hereby adopted.~~
 - ~~2. Relocation advisory service. The Arizona State Highway Department may give relocation assistance authorized by A.R.S. § 18-142 to any individual, family, business or farm operation displaced because of the acquisition of real property for any project on the State Highway System or Federal Aid System. In giving such assistance, the Property Management Division of the Right-of-Way Section shall be governed by established procedures that are implemented into the Right-of-Way Manual.~~
 - ~~3. Schedules:~~
 - ~~a. Moving costs for unfurnished dwellings, re A.R.S. § 18-143.B:~~
 - ~~1 Room \$25.00 5 Rooms \$125.00~~
 - ~~2 Rooms 50.00 6 Rooms 150.00~~
 - ~~3 Rooms 75.00 7 Rooms 175.00~~
 - ~~4 Rooms 100.00 8 Rooms or 200.00~~
 - ~~max. more~~
 - ~~Plus \$100.00 dislocation allowance.~~
 - ~~b. Moving costs for furnished dwellings, re A.R.S. § 18-143.B and Bureau of Public Roads request:~~
 - ~~1 Room \$15.00 7 Rooms \$105.00~~
 - ~~2 Rooms 30.00 8 Rooms 120.00~~
 - ~~3 Rooms 45.00 9 Rooms 135.00~~

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4 Rooms 60.00 10 Rooms 150.00
 5 Rooms 75.00 11 Rooms 165.00
 6 Rooms 90.00 12 Rooms or 180.00
 max. more

Plus \$100.00 dislocation allowance.

- e. Moving costs for mobile homes, re Bureau of Public Roads request, including cost to move, tear down, set up, re-level:

Size Schedule Move

Up to 8' wide x 40' in length \$75.00

8' wide over 40' in length 100.00

10' width 125.00

12' width 150.00

14' width 200.00

Plus \$100.00 dislocation allowance.

- 4. Decent, safe and sanitary standards. The establishment of decent, safe and sanitary standards will conform to those contained in Instructional Memo 80-1-68, dated September 5, 1968, covering the Administration of the Highway Relocation Assistance Program established by Chapter 5 of Title 23 U.S.C. Any exceptions to these standards are authorized only in conformance with procedures established by the Bureau of Public Roads regulations and upon written approval thereof from the Bureau of Public Roads.
- 5. Eligibility for payment. Eligibility for payments for moving costs, owner or tenant supplemental payment, and optional business payments, is established for those persons or firms otherwise eligible who were in occupancy on April 2, 1969, if the property was purchased before that date; persons or firms whose property is purchased on or subsequent to April 2, 1969, are eligible for payment in accordance with §§ 18-143, 18-144 and 18-146, Title 18, Chapter 1, A.R.S. Article 2.1.
- 6. Claim for relocation payments. Applications for moving expense payments and supplemental payments shall be made to the state upon forms prescribed by the state agency and shall be accomplished by such information and documents as may be required by the state agency. Except as otherwise provided, no applications for relocation payments will be accepted more than 18 months after the date on the notice to vacate. After an eligible person has vacated the property, no relocation payments will be made to any person with respect to the subsequent occupancy of the same property. Relocation payments shall not be made prior to the date the property is acquired and possession is taken. A state agency, city, county, district or other subdivision of government shall not be eligible to receive relocation payments. A displaced person or firm who rents or leases property from the Arizona State Highway Department shall not be eligible for relocation payments unless the eligibility is a result of continued occupancy from prior ownership or tenancy.

A. The Department incorporates by reference 49 CFR 24.2, 24.3, 24.5, 24.8, 24.9, 24.10, 24.202, 24.203, 24.204, 24.205, 24.206, 24.207, 24.208, 24.301, 24.302, 24.303, 24.304, 24.305, 24.306, 24.401, 24.402, 24.403, 24.404, 24.501, 24.502, 24.503, 24.504, 24.505, and Appendix A to Part 24 published October 1, 2001, and no later amendments or editions, as amended by R17-3-301 through R17-3-306. The incorporated material is on file with the Arizona Department of Transportation and the Office of Secretary of State. An unofficial version of the federal regulations is available at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.

B. The following definitions apply for the purpose of R17-3-301 through R17-3-306 unless indicated otherwise. "Department" means the Arizona Department of Transportation.

R17-3-302. Claim for relocation payments Relocation Assistance; 49 CFR Part 24, Subpart A – General

It is the intent of the Arizona State Highway Commission to require its relocation program to fully conform with state and federal statutes and regulations thereto on a continually current basis.

- 1. Section VI of Commission Resolution 70-60, which was adopted by the Commission on July 17, 1970, is in conflict in part with federal interpretation of those regulations.
- 2. The strict application of this Section creates a definite hardship for certain relocatees.
- 3. The Arizona State Highway Commission adopts the following Section VI as a substitution and to replace original Section VI of Commission Resolution 70-60 (R16-3-12):
 - a. Claim for relocation payments. (6) "Applications for moving expense payments and supplemental payments shall be made to the Arizona Highway Department (Department) upon forms prescribed by it and shall be accompanied by such information and documents as may be required by the Department. No application for relocation payments will be accepted after 18 months from the date a displaced person actually vacates the property, except that the Department may in its discretion extend this time period to avoid unjust results. After an eligible person has vacated the property, no relocation payments, except moving expenses, will be made to any person who subsequently occupies the same property. Relocation payments shall not be made prior to the date property is acquired and possession is taken, provided, however such payments may be made prior to that time if the Department determines a denial thereof would work an undue hardship on a person to be displaced. A displaced

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~~person or firm who rents or leases property from the Arizona Highway Department shall not be eligible for relocation payments unless the eligibility is a result of continued occupancy from prior ownership or tenancy.”~~

- A.** 49 CFR 24.2, “Definitions” is amended as follows:
1. “Agency” means the Arizona Department of Transportation.
 2. “Business” is amended to read:
The term business means any lawful activity, including a farm operation, that is conducted;
 3. “Comparable replacement dwelling” is amended at paragraph (8)(i) to read:
A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days before initiation of negotiations (180-day homeowner) is considered to be within the homeowner’s financial means if the homeowner will receive the price differential as described in Sec. 24.401(c), all increased mortgage interest costs as described at Sec. 24.401(d) and all incidental expenses as described at Sec. 24.401(e), plus any additional amount required to be paid under Sec. 24.404, Replacement housing of last resort.
 4. “Contribute materially” is amended to read:
The term “contribute materially” means that during the two taxable years before the taxable year in which displacement occurs, a business:
 - a. Contributed at least 33 1/3 percent of the owner’s or operator’s average annual gross income from all sources,
 - b. Registered and has a use permit from the local political subdivision, and
 - c. Submitted federal income tax returns for the last two years.
 5. “Decent, safe, and sanitary dwelling” is amended to read:
The term decent, safe, and sanitary dwelling means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply unless waived for good cause by the federal agency or state agency funding the project. The dwelling shall:
 - a. Be structurally sound, weathertight, and in good repair;
 - b. Contain a safe electrical wiring system adequate for lighting and other devices; and
 - c. Contain heating and cooling systems capable of sustaining a healthful temperature for a displaced person, except in those areas where local climatic conditions do not require such systems.
 6. “Displaced person” is amended to read:
 - a. General. The term “displaced person” means, except as provided in the definition of “persons not displaced,” any person who is required to move from the real property or moves his or her personal property from the real property as a direct result of the real property being acquired in whole or in part for an approved State project as a result of a written notice of intent to acquire:
 - i. This includes a person who occupies the real property before its acquisition but does not meet the length of occupancy requirements for relocation assistance other than reimbursement of moving expenses.
 - ii. Any person who does not meet the statutory occupancy requirements and is unable to obtain comparable replacement housing within the person’s financial means is eligible for assistance only under Sections 24.401 and 24.402, as qualified by Section 24.404, in obtaining comparable, decent, safe and sanitary housing.
 - b. “Persons not displaced” is amended as follows:
 - i. Amend paragraph (2)(i) to read:
A person who moves before the initiation of negotiations unless this requirement is waived by the Department due to a move necessitated for reasons beyond the person’s control.
 - ii. Delete paragraphs (2)(v), (2)(viii), (2)(ix), and (2)(x).
 7. “Initiation of negotiations” is amended to have the same meaning as prescribed in A.R.S. § 28-7141(8).
 8. “Notice of intent to acquire or notice of eligibility for relocation assistance” is amended to read:
Written notice furnished to a person to be displaced that establishes eligibility for relocation benefits before the initiation of negotiation.
 9. “Owner of dwelling” is amended as follows:
Subsection (3) is deleted.
 10. “Program or project” is amended to read:
The phrase “program” or “project” means any displacing activity or series of activities undertaken by the Department, related to construction or reconstruction of a transportation facility or a facility necessary for maintaining a transportation facility.
 11. “Salvage value” is deleted.
 12. “State” is amended to read:
“State” means a state of the United States or the District of Columbia.
 13. “Uneconomic remnant” is deleted.
 14. “Uniform Act” is amended to read:
The term “Uniform Act” refers to A.R.S. §§ 28-7141 through 28-7156.

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- 15. “Unlawful occupancy” is amended to read:
A person is considered to be in unlawful occupancy if:
a. A court of competent jurisdiction has found the person guilty of forcible entry and detainer, or forcible detainer (under A.R.S. §§ 12-1171 through 12-1183) before the initiation of negotiations, or
b. The Department determines that the person is occupying the real property without the permission of the owner and has no legal right to occupy the property under state law.
- 16. “Utility costs” is amended to read:
The term “utility costs” means expenses for electrical, gas, water, and sewer.
- 17. “Utility facility” is deleted.
- 18. “Utility relocation” is deleted.

B. 49 CFR 24.5 “Manner of notices” is amended to read:
Each notice the Agency is required to provide to a property owner or occupant under this part shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

C. 49 CFR 24.9 “Recordkeeping and reports” is amended as follows:
1. Paragraph (a) Records. The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least five years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part, or in accordance with the applicable regulations of the federal funding agency, whichever is later.
2. Paragraph (c) is deleted.

D. 49 CFR 24.10 “Appeals” is amended to read:
In addition to the provisions of A.R.S. §§ 41-1061 through 41-1067, the following provisions apply:

- 1. Actions which may be appealed. A person who believes the Department has failed to determine properly the person’s eligibility for or the amount of a relocation payment, may file a written appeal. A person shall include all contested issues in one appeal.
- 2. Process. To appeal, a person shall submit a letter stating name and address, and the reasons for disagreeing with the Department’s decision to the Right-of-Way Group, Arizona Department of Transportation, 205 S. 17th Ave., MD 612E, Phoenix, AZ 85007-3212.
- 3. Time limit. The person shall file the written appeal within 60 days after receiving notice of the Department’s determination on the person’s claim. The date the appeal request is received begins the official time limit constraints, as prescribed in subsections (D)(4) and (D)(8). Filing the appeal does not extend any eligibility periods or a required date to vacate a property.
- 4. Hearing date. Within 45 days of receiving the appeal request, the Department shall set a mutually acceptable date for a hearing before a hearing officer.
- 5. Review of files. Upon making a written request to the address in subsection (D)(2), the person may review and copy any non-confidential documentation contained in the Department’s files regarding the person’s appeal.
- 6. Scope of review. The Department shall consider and review the person’s arguments, statements, and documents in support of the appeal, allowing reasonable latitude for the hearing of relevant material.
- 7. Right to representation. The person has a right to be represented by legal counsel or other representative in connection with the person’s appeal, but solely at the person’s own expense.
- 8. Determination. Within 30 days of the hearing, the hearing officer shall make a recommendation to the Chief Right-of-Way Agent. The Department shall promptly issue a written decision and provide a copy to the person by certified mail. The Department shall explain the basis on which its decision was made, and what relief, if any, is to be provided.
- 9. If the Department does not grant the relief requested, the Department shall advise the person of the right to seek judicial review.

E. Conflict of interest. If a displaced person is an employee of the state, or of a political subdivision involved in a joint project with the displacing agency, the Department shall forward the displaced person’s file to the Office of the Attorney General for settlement purposes and decision.

F. The Department shall determine whether a person is required to relocate permanently as a direct result of a project.

R17-3-303. ~~Relocation assistance program~~ Relocation Assistance; 49 CFR Part 24, Subpart C – General Relocation Requirements

A: The Relocation Assistance Program of the Arizona Highway Department has been operating under regulations adopted by the Arizona State Highway Commission on July 28, 1970, as amended on May 7, 1971.

- 1. Public Law 91-646, “Uniform Relocation Assistance and Land Acquisition Policies Act of 1970”, was enacted on January 2, 1971, by the 91st Congress of the United States.

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2. Title 18, Chapter 1, Article 2.1, Arizona Revised Statutes was amended by the Thirtieth Legislature of the state of Arizona and signed into law by the Governor on April 16, 1971, which enables the state to provide relocation assistance in accordance with the aforementioned Public Law 91-646.
 3. Instructional Memorandum 80-1-71 was promulgated by the Federal Highway Administration and sets forth the rules and regulations which must be adhered to by the state as a prerequisite to federal reimbursement.
 4. It is the intent of the Arizona State Highway Commission to require the Relocation Assistance Program to fully conform with state and federal statutes and regulations on a continually current basis.
- B.** The Arizona State Highway Commission hereby adopts the following regulations to ensure conformance to the above:
1. Adoption of federal regulations. Those regulations, definitions, policies and procedures promulgated by the United States Department of Transportation, Federal Highway Administration in a document known as Instructional Memorandum 80-1-71, Right of Way 20, is hereby adopted by this reference as the regulations of the Arizona Highway Department for the implementation of Title 18, Chapter 1, Article 2.1, Arizona Revised Statutes as amended.
 2. Substitution of words:
 - a. Wherever in Instructional Memorandum 80-1-71, Right of Way 20, the term state, state agency, or State Highway Department is used, it shall be deemed to mean the Arizona State Highway Department.
 - b. Wherever in Instructional Memorandum 80-1-71, Right of Way 20, the term federal or Federal Aid Highway is used, those words shall be deemed to include state highways, state routes and state highway construction.
- C.** Moving cost schedules:
1. Occupants of unfurnished dwelling units per A.R.S. § 18-143.B:
1 Room \$50.00 5 Rooms \$200.00
2 Rooms 80.00 6 Rooms 240.00
3 Rooms 120.00 7 Rooms 280.00
4 Rooms 160.00 8 Rooms or 300.00
more
Plus \$200.00 dislocation allowance.
 2. Occupants of furnished dwelling units per A.R.S. § 18-143.B:
1 Room \$15.00
Each additional room \$10.00 up to maximum of \$300.00
Plus \$200.00 dislocation allowance.
 3. Occupants who move mobile homes per A.R.S. § 18-143.B:
300 sq. ft. \$130.00 501-600 sq. ft. \$240.00
300-400 sq. ft. 180.00 601-700 sq. ft. 270.00
400-500 sq. ft. 210.00 over 700 sq. ft. 300.00
Plus \$200.00 dislocation allowance.
 4. Occupants of mobile homes moving only personal property per A.R.S. § 18-143(B).
- D.** Appeal procedure:
1. Any person aggrieved by a determination of the Arizona Highway Department as to eligibility or amount of financial assistance offered may appeal in writing to the Director of the Department for review in accordance with procedures set forth in the Right of Way Manual.
- E.** Relocation assistance advisory service:
1. Where the State Highway Director determines that any person occupying property immediately adjacent to the right of way is caused substantial economic injury because of the acquisition of right of way, he may offer such person advisory services which shall not include any payments.
- F.** Last resort housing:
1. In the event the state wishes to acquire a person's home in an area where comparable sale or rental housing is not available and action as is necessary or appropriate to provide such housing.
- A.** 49 CFR 24.203(b) "Notices of relocation eligibility" is amended to read:
Notice of relocation eligibility. Eligibility for relocation assistance shall begin on the date of the notice of intent to acquire or notice of eligibility for relocation assistance (defined in Sec. 24.2) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.
- B.** 49 CFR 24.205 "Relocation planning, advisory services, and coordination" is amended as follows:
1. Paragraph (a) is amended to read:
Relocation planning. During the early stages of development, federal and federal-aid programs or projects will be planned in a manner that the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. The planning, appropriate to the scope, complexity, and scheduling shall precede any action by an Agency which will cause displacement. The planning should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. If timing or scheduling is restricted, the planning may be limited. Planning may involve a relocation survey or study

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which may include the following:

2. Paragraph (b) is deleted.

C. 49 CFR 24.206 is amended to read:

1. Eviction for cause must conform to A.R.S. §§ 12-1171 through 12-1183. The Department may determine that a person who is an unlawful occupant (as defined in 49 CFR 24.2) is still eligible for advisory relocation assistance, using the following factors:
 - a. The person received an eviction notice before the initiation of negotiations and, as a result of that notice is later evicted;
 - b. The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement;
 - c. The eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part;
 - d. The person occupying the property and the owner dispute the issue of lawful occupancy;
 - e. The duration of prior legal occupancy of the person occupying the property;
 - f. Financial or medical hardship of the person occupying the property; or
 - g. The cost of the relocation assistance is less than the cost of an appeal.
2. For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available.
3. The state may initiate eviction proceedings due to:
 - a. Unlawful activities being conducted on state-owned property.
 - b. Willful destruction of state-owned property.
 - c. Refusal to vacate state-owned property after all required notices to vacate have been delivered and appropriate assistance provided, or
 - d. Failure to pay rent when there is no hardship.

R17-3-304. ~~Rental of lands held for state highway purposes~~ Relocation Assistance; 49 CFR Part 24, Subpart D – Payments for Moving and Related Expenses

~~Arizona Revised Statutes § 18-155.D authorizes the Arizona State Highway Commission to lease or let at fair rental value any lands which are held for state highway purposes:~~

- ~~1. The number of parcels currently being leased makes it impracticable for the Arizona State Highway Commission to personally execute the rental of these properties and to determine if and when the terms of the rental agreements have been violated.~~
- ~~2. The Arizona State Highway Commission shows faith and trust in the judgment of the State Highway Director and subordinate officers and employees of the Right-of-Way Section of the Arizona Highway Department.~~
- ~~3. The Arizona State Highway Commission does, until further action, authorize and delegate to the Director and such employees of the Arizona Highway Department as he may designate the authority to enter into rental or lease agreements at fair rental value for any lands which are held for state highway purposes and are not presently needed therefor.~~
- ~~4. The Commission authorizes the Director or his designee to proceed by any legal means to enforce the provisions of the rental or lease agreements and to evict by lawful means any tenant in violation of his rental or lease agreement.~~
- ~~5. The director or his designee is authorized to renovate, repair, maintain and oversee such properties as are subject to lease and rental agreements to best secure to the people of the state of Arizona a fair rental return from such properties.~~

A. 49 CFR 24.301 “Payment for actual reasonable moving and related expenses-residential moves” is amended as follows.

1. Paragraph (d) is amended to read:
Storage, if necessary to accommodate the Department’s project schedule, for a period not to exceed 12 months.
2. Paragraph (f) is deleted.

B. 49 CFR 24.303 “Payments for actual reasonable moving and related expenses-nonresidential moves” is amended as follows.

1. Paragraphs (a)(7) and (a)(13)(iv) are deleted.
2. Paragraph (a)(8) is amended to read:
Professional services necessary for:
 - i. Planning the move of the personal property, when the Department approves in advance the quantity and type of planning.
 - ii. Moving the personal property, and
 - iii. Installing the relocated personal property at the replacement location.
3. Paragraph (a)(10)(i) is amended to read:
The market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that the effort is not necessary. When payment for property loss is claimed for goods held for sale, the market value

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shall be based on the cost of the goods to the business, not the potential selling price.); or

4. Paragraph (c) is amended to read:
Self-moves. If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency. At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate. The Agency has sole authority to determine, in the best interests of the Agency and the displaced business or farm operation, if a self-move will be permitted.
5. Paragraph (e) is amended to read:
Advertising signs. The amount of a payment for direct loss of an on-premise advertising sign which is personal property shall be the lesser of:
 - a. (1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or
 - b. (2) The estimated cost of moving the sign, but with no allowance for storage.

- C.** 49 CFR 24.305(h) for "Ineligible moving and related expenses" is amended to read:
Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency, except as required under A.R.S. § 28-7153; or

R17-3-305. Relocation Assistance; 49 CFR Part 24, Subpart E – Replacement Housing Payments

- A.** 49 CFR 24.401 "Replacement housing payment for 180-day homeowner-occupants" is amended as follows.
1. Paragraph (c)(4)(iii) is amended to read:
The current market value for residential use of the replacement site (see Appendix A of this part, Sec. 24.401(c)(4)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and
 2. Paragraph (d)(3) is amended to read:
The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located. If a displaced person chooses to buy down the interest rate, the Agency shall:
 - a. Require documents indicating the initial interest rate,
 - b. Require documents indicating the final interest rate, and
 - c. Limit reimbursement to the lower of the amount the displaced person actually paid or the amount qualified under the established market interest rate.
 3. Paragraph (e)(1) is amended to read:
Closing and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.
 4. Paragraphs (e)(7) and (e)(8) are deleted.
- B.** 49 CFR 24.402 "Replacement housing payment for 90-day occupants" is amended as follows.
1. Paragraph (b)(2)(i) is amended to read:
The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency. (For an owner-occupant, use the market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the market rent, unless its use would result in a hardship because of the person's income or other circumstances); or
 2. Paragraph (c)(1) is amended to read:
Amount of payment. An eligible displaced person who purchases a replacement dwelling is entitled to a down payment assistance payment in the amount the person would receive under paragraph (b) of this section if the person rented a comparable replacement dwelling.
- C.** 49 CFR 24.403 "Additional rules governing replacement housing payments" is amended as follows.
1. Paragraph (a)(1) is amended to read:
At least one comparable replacement dwelling shall be examined. If more than one dwelling is examined, then the payment shall be computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data (see also Sec. 24.205(a)(2) and Appendix A of this part). An obviously overpriced dwelling will be ignored.
 2. Paragraph (a)(3) is amended to read:
If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.
 3. Paragraph (c)(6) is amended to read:
Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current market value.

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R17-3-306. Relocation Assistance; Appendix A to Part 24 – Additional Information

- A.** Appendix A, Section 24.9 “Recordkeeping and Reports” is deleted.
- B.** Appendix A, Subpart B – “Real Property Acquisition” is deleted.
- C.** Appendix A, Section 24.204(a) “General” is amended to read:
This provision requires that no one may be required to move from a dwelling without one comparable replacement dwelling having been made available. In addition, Sec. 24.204(a) requires that, “Where possible, three or more comparable replacement dwellings shall be made available.” Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.
- D.** Appendix A, Section 24.307 “Discretionary Utility Relocation Payments” is deleted.
- E.** Appendix A, Section 24.401(c) “Price differential” is amended to read:
The provision in Sec. 24.401(c)(4)(iii) to use the current market value for residential use does not mean the Agency must have the property appraised. Any reasonable method for arriving at the market value may be used.
- F.** Appendix A, Section 24.402 “Replacement Housing Payment for 90-Day Occupants” is deleted.
- G.** Appendix A, Section 24.403 “Additional Rules Governing Replacement Housing Payments” Section 24.403(a)(1) is amended to read:
The procedure for adjusting the asking price of comparable replacement dwellings requires that the agency provide advisory assistance to the displaced person concerning negotiations so that he or she may enter the market as a knowledgeable buyer. If a displaced person elects to buy the selected comparable, but cannot acquire the property for the adjusted price, it is appropriate to increase the replacement housing payment to the actual purchase amount.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

PREAMBLE

- | | |
|---|--|
| <u>1. Sections Affected</u>
R20-6-401 | <u>Rulemaking Action</u>
New Section |
|---|--|
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 20-143(B)
Implementing statutes: A.R.S. §§ 20-143(B)
- 3. The effective date of this rule:**
March 6, 2003. The Department requests that this rule be effective immediately upon filing with the Secretary of State under A.R.S. § 41-1032. This rule provides a benefit to the public in that it will allow certain Arizona insurance companies to satisfy the requirements for an exemption allowed under the Securities and Exchange Act of 1934 (1934 Act). It will spare those companies the cumbersome and costly process of registering with the Securities and Exchange Commission (SEC). The rule will also ensure access to information, helping the shareholders to be more informed and better able to carry out important voting responsibilities. Violation of this rule, by itself, will not result in imposition of a penalty. The director must determine whether to impose a penalty under A.R.S. § 20-220.
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 8 A.A.R. 4011, September 20, 2002
Notice of Proposed Rulemaking: 8 A.A.R. 4892, November 29, 2002
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|--|
| Name: | Margaret McClelland |
| Address: | Arizona Department of Insurance
2910 N. 44th Street, 2nd Floor
Phoenix, AZ 85018 |
| Telephone: | (602) 912-8456 |
| Fax: | (602) 912-8452 |

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

The Department proposes this rule to incorporate by reference the National Association of Insurance Commissioners (NAIC) model regulation found at NAIC Model Laws, Regulations and Guidelines, Volume III, pp. 490-1 through 490-40, Regulation Regarding Proxies, Consents, and Authorizations of Domestic Stock Insurers, April 1995, with a modification to meet the statutory requirement of A.R.S. § 20-143(B).

Former rule R20-6-403, Proxies, Consents, and Authorizations of Domestic Stock Insurers, expired under A.R.S. § 41-1056(E) on August 24, 2000. Prior to expiration, the rule governed proxies, consents, and authorizations with respect to securities issued by certain insurance companies. Recently, American Savings Life Insurance Company of Mesa, AZ petitioned the Department for rulemaking action to re-adopt the rule. The absence of the rule means certain Arizona insurance companies can no longer satisfy the requirements for an exemption allowed under the 1934 Act. This exemption allows an insurer engaged in interstate commerce, or whose securities are traded by mail or interstate commerce, to avoid registration with the SEC if three requirements are met, including that the insurance company is subject to regulation by its domiciliary state of proxies, consents, or authorization and the regulation conforms to that prescribed by the NAIC. Because Arizona law does not presently have a provision that satisfies this requirement (due to the expiration of former R20-6-403), some insurance companies are subject to cumbersome and costly registration requirements of the 1934 Act. This rulemaking is proposed to correct that problem.

The NAIC model regulation that the Department proposes to incorporate by reference differs from the 1934 Act in that the model regulation is applicable to domestic insurers that have any class of equity securities held of record by 300 or more persons. The exemption provided under the 1934 Act is applicable to domestic insurers that have assets exceeding \$1 million and a class of equity securities held by 500 or more. In Arizona, under A.R.S. § 20-143(B), the rule regarding proxies, consents, or authorizations must apply to securities issued by domestic stock insurance companies having equity securities held by 100 or more persons. Because of the lower threshold required by statute in Arizona, the proposed rule will apply to more domestic stock insurers than just those seeking exemption under the 1934 Act. Domestic insurers that have between 100-499 shareholders of record will have to provide their shareholders with proxies, consents, and authorizations that meet the disclosure standards provided in the proposed rule. Shareholders being solicited by or on behalf of the management of the insurer will be provided with important financial, operational, and management information about the insurer that might otherwise be unavailable to them.

The proposed rule will ensure access to information helping the shareholders to be more informed and better able to carry out important voting responsibilities.

Over 40 states have adopted this NAIC model regulation or a similar regulation.

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

None

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

Not applicable

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

Insurers that utilize the SEC exemption and thus, are subject to this regulation, are domestic stock insurers that have total assets in excess of \$1,000,000 and a class of equity security (other than an exempted security) held of record by 500 or more persons. Without this rule, these insurers cannot satisfy the SEC exemption, and they would be required to register that class of equity security with the SEC under the 1934 Act. Securities registration is complex, costly, and burdensome. This rule will reduce the regulatory and financial burden on insurers who fit within the scope of the rule.

A company that has between 100-499 shareholders of record will have new economic impacts as a result of being subject to the proposed rule. Those companies will have to file a proxy statement with the Department and provide proxy statements to shareholders, resulting in additional publication and mailing costs. The petitioner for this rule-making estimates the cost of providing the proxy statements to shareholders to be about \$0.72 per shareholder.

The Department does not know exactly how many insurers will be subject to regulation under the proposed rule, but the number is expected to be under five. The Department believes that at least one of those insurers, the petitioner for this rulemaking, meets the definition of a small business. That insurer, and any other small business insurer meeting the exemption requirements under the 1934 Act, is expected to have substantial cost savings of at least \$60,000 annually as a result of the exemption under the 1934 Act. For those insurers that might incur costs for publication and mailing, the Department believes that the benefits of the rule to the shareholders of those companies and the importance of access to information outweigh the costs of subjecting these few companies to this rule.

This rule is expected to have little economic impact on consumers. There could be some minimal trickle down cost savings to insureds as a result of reduced costs to the insurers who take advantage of the exemption under the 1934 Act. Conversely, for insurers with 100-499 shareholders of record, it is possible that some minimal costs could be

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passed on to the insureds for publication and mailing costs. However, those costs are outweighed by the benefits of access to and disclosure of important company information to the insureds.

The Department will incur some minimal costs for review of the filings made. There will be a minimal economic impact on the Department, the Office of the Secretary of State, and the Governor's Regulatory Review Council for costs associated with the rulemaking process. The Department does not expect the rulemaking to have any economic impact on any other public agencies or political subdivisions.

10. A description of the changes between the proposed rule, including supplemental notices, and the final rule:

Minor grammatical or stylistic changes were made at the request of the G.R.R.C. staff.

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

The Department received one oral comment during the oral proceeding held on this rulemaking. The commenter expressed appreciation for the Department's work on this rulemaking and support for the rulemaking. The Department received no written comments.

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

Not applicable

13. Incorporations by reference and their location in the rule:

NAIC Model Laws, Regulations and Guidelines, Volume III, pp. 490-1 through 490-40, Regulation Regarding Proxies, Consents, and Authorizations of Domestic Stock Insurers, April 1995 is incorporated by reference in R20-6-401.

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

No

15. The full text of the rule follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

ARTICLE 4. TYPES OF INSURANCE COMPANIES

Section

R20-6-401. ~~Expired~~ Proxies, Consents, and Authorizations of Domestic Stock Insurers

ARTICLE 4. TYPES OF INSURANCE COMPANIES

R20-6-401. ~~Expired~~ Proxies, Consents, and Authorizations of Domestic Stock Insurers

A. The Department incorporates by reference National Association of Insurance Commissioners Model Laws, Regulations and Guidelines, Volume III, pp. 490-1 through 490-40, Regulation Regarding Proxies, Consents, and Authorizations of Domestic Stock Insurers, April 1995 (and no future editions or amendments), which is on file with the Office of the Secretary of State and available from the Department of Insurance, 2910 N. 44th Street, Phoenix, AZ 85018 and the National Association of Insurance Commissioners, Publications Department, 2301 McGee St., Suite 800, Kansas City, MO 64108, modified as follows:

Section 1 A is modified to read "No domestic stock insurer that has any class of equity securities held of record by 100 or more persons, or any director, officer or employee of that insurer, or any other person, shall solicit, or permit the use of the person's name to solicit, by mail or otherwise, any proxy, consent or authorization in respect to any class of equity securities in contravention of this regulation and Schedules A and B, hereby made a part of this regulation."

B. Domestic stock insurance companies shall comply with this Section as required under A.R.S. § 20-143(B).