

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 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 23. BOARD OF PHARMACY

[R07-36]

PREAMBLE

- 1. Sections Affected**

R4-23-110	<u>Rulemaking Action</u>
R4-23-614	Amend
R4-23-615	New Section
R4-23-616	New Section
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 32-1904(A)(1)
Implementing statute: A.R.S. § 32-1904(B)(3)
- 3. The effective date of the rules:**

April 7, 2007
- 4. A list of all previous notices appearing in the *Register* addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 11 A.A.R. 5545, December 30, 2005
Notice of Proposed Rulemaking: 11 A.A.R. 5444, December 30, 2005
Notice of Supplemental Proposed Rulemaking: 12 A.A.R. 1160, April 14, 2006
Notice of Supplemental Proposed Rulemaking: 12 A.A.R. 3186, September 1, 2006
- 5. The name and address of agency personnel with whom persons may communicate regarding the rules:**

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Glendale, AZ 85302
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- 6. An explanation of the rules, including the agency's reasons for initiating the rules:**

Automated storage and distribution systems, such as Pyxis, and mechanical counting devices, such as Baker cells and cassettes, have been used by pharmacies for many years. However, the Board does not have rules specifically addressing these systems and devices. R4-23-402(A)(9) addresses the issue of prepackaging by pharmacy technicians under pharmacist supervision, and although this subsection has been used to partially address the use of mechanical counting devices, the subsection does not truly apply to mechanical counting devices. The amended rules will add three new Sections to address automated storage and distribution systems, mechanical storage and counting devices, and mechanical counting devices. New definitions for "automated storage and distribution system," "mechanical counting device for a drug in solid, oral dosage form," and "mechanical storage and counting device for a drug in solid, oral dosage form" will be added to R4-23-110 Definitions. New Section R4-23-614 Automated Storage and Distribution System will establish the standards for the use of automated storage and distribution systems in Arizona. New Section R4-23-615 Mechanical Storage and Counting Device for a Drug in Solid, Oral Dosage Form will establish standards for the use of mechanical storage and counting devices by Arizona pharmacies. New Section R4-23-

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616 Mechanical Counting Device for a Drug in Solid, Oral Dosage Form will establish standards for the use of mechanical counting devices by Arizona pharmacies. The rules will include format, style, and grammar necessary to comply with the current rules of the Secretary of State and Governor's Regulatory Review Council.

The Board believes that approval of these rules benefits the public and the pharmacy community by clearly establishing standards for the use of automated storage and distribution systems, mechanical storage and counting devices, and mechanical counting devices in Arizona.

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

The agency did not review or rely on any study relevant to these rules.

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules 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 amended rules will impact the Board, pharmacists, pharmacies, and the public. The amended rules' impact on the Board will be the usual rulemaking-related costs, which are minimal. The Board looked at the existing systems and devices in use within the state to develop the minimum standards established in the rules. The existing systems and devices will meet or exceed the standards. The rules will have no economic impact on pharmacies or pharmacists. The rules have no economic impact on the public.

The public, Board, pharmacists, and pharmacies benefit from rules that are clear, concise, and understandable. The amended rules benefit the public and the pharmacy community by clearly establishing standards for the use of automated storage and distribution systems, mechanical storage and counting devices, and mechanical counting devices in Arizona.

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

After receiving public comment on the Notice of Proposed Rulemaking published on December 30, 2005 from the Arizona Community Pharmacy Committee, the Board decided to make two substantial changes. The first change would clarify the required location of an automated storage and distribution system. The original proposed rule required that the automated storage and distribution system be located in a wall of a properly permitted pharmacy. The substantial change approved by the Board allows the location of an automated storage and distribution system either in a wall of a properly permitted pharmacy or within 20 feet of a properly permitted pharmacy if the automated storage and distribution system is secured against a wall or floor in such a manner that prevents the automated storage and distribution system's unauthorized removal. The second change is the removal of language in R4-23-614(B)(1) that requires that the automated storage and distribution system "accurately supplies the correct strength, dosage form, and quantity of the drug prescribed." The Arizona Community Pharmacy Committee stated and the Board agreed that the language was unnecessary because accurately supplying the correct strength, dosage form, and quantity of prescribed drug is a function of a pharmacist, not an automated storage and distribution system. The substantial change approved by the Board removes the following language from R4-23-614(B)(1): "and accurately supplies the correct strength, dosage form, and quantity of the drug prescribed."

After reviewing public comment on the Notice of Supplemental Proposed Rulemaking published on April 14, 2006 and additional changes requested by Board staff, the Board decided to make additional substantial changes. The first change adds a new Section for mechanical counting devices that only count medications and do not store the medications. The second change involves adding the words "storage and" between the words "mechanical" and "counting" in every instance they occur together in R4-23-615. This will change the Title of the Section to read "Mechanical Storage and Counting Device for a Drug in Solid, Oral Dosage Form." This is necessary because these devices not only count medications, but also store medications and in many instances also package or label the medications. Whereas, the devices addressed by R4-23-616 only count medications, and do not store, package, or label medications. A third change is made by adding the words "placement into the automated storage and distribution system and subsequent" in R4-23-614(B)(2)(a)(ii) to improve the clarity of the subsection. A fourth change involves adding a new subsection (B) to R4-23-615 and renumbering the subsequent subsections. The new subsection R4-23-615(B) prohibits a pharmacy from returning a drug previously counted by a mechanical storage and counting device that has not left the pharmacy to the original cell, cassette or stock bottle. This prohibition is necessary to prevent restocking errors, as it is impossible to guarantee that the correct drug is placed in the correct cell, cassette, or stock bottle. The fifth change involves adding subsection (D) to R4-23-615 and subsection (B) to R4-23-616 requiring the pharmacy permittee or pharmacist-in-charge to make all documentation required under R4-23-615(C) and R4-23-616(A) available for inspection by the Board or its designee.

After reviewing the public comments on the Notice of Supplemental Proposed Rulemaking published on September 1, 2006, the Board chose to make a non-substantive change to subsections R4-23-615(C)(2) and R4-23-616(A)(2) by removing the word "daily" and adding the words "as recommended by the device's manufacturer" after the word "device." Because some device manufacturers do not require daily maintenance and calibration of their devices, the

Board feels that it is not necessary to require daily maintenance and calibration of a device when the device's manufacturer actually recommends a less frequent maintenance and calibration schedule. The Board feels it would be better for the user of a device to follow the particular device manufacturer's recommended maintenance and calibration schedule. The change in the final rule does not prevent a device user from doing daily maintenance and calibration, but it does allow a device user to follow a less frequent maintenance and calibration schedule if recommended by the device manufacturer. The final language constitutes a non-substantive change, because it is less burdensome on the regulated public and does not affect the safety of consumers. The Board added the words "or electronic" in R4-23-614(C)(4) and R4-23-615(E)(4) as requested by the public and deleted the words "or by another method approved by the Board or its designee." This is a reasonable, non-substantive change that reduces a pharmacy's written records requirements and does not affect the safety of consumers. To be consistent, the previous changes involving the addition of "or electronic" and removing "or by another method approved by the Board or its designee" are also made in the final language of R4-23-615(E)(4) and R4-23-616(C)(4). There are also minor changes to style, format, grammar, and punctuation requested by G.R.R.C. staff.

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

At a public hearing on January 30, 2006, the Board received written comments on the Notice of Proposed Rulemaking from Janet Elliott representing the Arizona Community Pharmacy Committee and Bob Hansen representing Asteres Inc. Ms. Elliot and Mr. Hansen requested that R4-23-614(B)(2)(c) be amended to allow the automated system to be located in close proximity to the pharmacy as long as the device is secured against the wall or floor in such a manner that the device is secure from removal. The Board agreed with this proposal and made the change in a supplemental proposed rulemaking and the final rule. Ms. Elliott requested that the language in R4-23-614(B)(1) be amended to remove the language "accurately supplies the correct strength, dosage form, and quantity of drug prescribed" as this function is performed before the prescription is placed in the device and is therefore not a procedure that the device performs. The Board agreed with this proposal and made the change in a supplemental proposed rulemaking and the final rule. Ms. Elliott asked that the requirement in R4-23-614(B)(4) to "implement an ongoing quality assurance program" be removed from the rule. The Board disagreed with this proposal and stated that it feels that an ongoing quality assurance program is quite necessary and decided to leave the requirement in the final rule.

At a public hearing on May 15, 2006, the Board received written comment on the Notice of Supplemental Proposed Rulemaking from Janet Elliott representing the Arizona Community Pharmacy Committee and Diane Darvey representing the National Association of Chain Drug Stores (NACDS). Ms. Elliott spoke in favor of the proposed rules. Ms. Darvey requested that R4-23-614(C)(4) and R4-23-615(E)(4) be amended to allow the documentation of the review and maintenance of the policies and procedures to be maintained electronically or in writing. The Board staff agreed that the addition of the words "or electronic" is a reasonable and non-substantive change. Ms. Darvey requested that R43-23-615(A)(2) be amended to only require the initials of the supervising pharmacist. The Board disagrees with the rationale for this change. The Board feels that it is absolutely necessary to know the identity of the individual pharmacist who is responsible for supervising the non-pharmacist who fills each cassette or cell within the automated storage and distribution system, not just the pharmacist who supervises the overall operation of the pharmacy. Ms. Darvey feels that R4-23-614(B)(2)(a) might be interpreted to require a second verification by a pharmacist. The Board does not believe the rule is unclear. The rule states that an automated storage and distribution system used where patients have access to the prescriptions shall "only contain prescriptions that are properly labeled and verified by a pharmacist before placement into the automated storage and distribution system and subsequent release to patients." The Board feels the language is very clear that this means the final verification by a pharmacist.

At a public hearing on October 2, 2006, the Board received comment on the Notice of Supplemental Proposed Rulemaking from Tim Koch representing Wal-Mart Corporation, Karen Nishi representing Cardinal Health, and Janet Elliott representing the Arizona Community Pharmacy Committee. Ms. Nishi provided oral comment regarding two questions. The first question was whether nurses were included as authorized licensed personnel in R4-23-614(B)(3)(b). The Board staff assured Ms. Nishi that nurses are considered authorized licensed personnel by this rule, specifically in R4-23-614(B)(3)(b). The second question involved whether long-term care facilities can use automated storage and distribution systems to provide drugs to their long-term care patients. The Board staff told Ms. Nishi that long-term care pharmacies can use automated storage and distribution systems in long-term care facilities to supply emergency drugs. Because of the requirement that long-term care pharmacies must supply drugs to long-term care facility patients on a patient-specific prescription, the use of automated storage and distribution systems in long-term care facilities is limited to emergency drugs. The Board would need to change other rules to allow the unlimited use of automated storage and distribution systems by long-term care pharmacies. This is a subject for a future rulemaking. Ms. Elliott provided written and oral comment.

Ms. Elliott asked that R4-23-614(B)(4) regarding an ongoing quality assurance program be removed from the rule. The Board addressed this same issue at the public hearing on May 15, 2006. The Board's feeling on the necessity of an ongoing quality assurance program has not changed, and the Board intends to leave the requirement in the final rule. Ms. Elliott stated that the Arizona Community Pharmacy Committee feels that the new language in R4-23-616 is overregulation. Ms. Elliott asks that subsections R4-23-616(A)(1), (2), and (3) be removed. The Board feels that the subsections are necessary to ensure the accuracy of the counting devices. The Board has discovered that some mechanical counting devices, specifically electronic balances used to count drugs, have been inaccurate. The Board feels it is necessary to specify in rule that anyone using these devices should have training in the maintenance, cali-

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bration, and use of the devices, that there be regular maintenance and calibration of these devices, and that there be routine quality assurance and accuracy validation of these devices.

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. Any material incorporated by reference and its location in the rules:

None

14. Were these rules previously approved as emergency rules?

No

15. The full text of the rules follows:

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

R4-23-614. ~~Reserved~~ Automated Storage and Distribution System

R4-23-615. ~~Reserved~~ Mechanical Storage and Counting Device for a Drug in Solid, Oral Dosage Form

R4-23-616. ~~Reserved~~ Mechanical Counting Device for a Drug in Solid, Oral Dosage Form

ARTICLE 1. ADMINISTRATION

R4-23-110. Definitions

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

“Active ingredient” No change

“Alternate physician” No change

“Approved course in pharmacy law” No change

“Approved Provider” No change

“Authentication of product history” No change

“Automated storage and distribution system” means a mechanical system that performs operations or activities other than counting, compounding, or administration, relative to the storage, packaging, or distributing of drugs or devices and that collects, controls, and maintains all transaction information.

“Batch” No change

“Beyond-use date” No change

“Biological safety cabinet” No change

“Care-giver” No change

“Community pharmacy” No change

“Component” No change

“Compounding and dispensing counter” No change

“Computer system” No change

“Computer system audit” No change

“Contact hour” No change

“Container” No change

“Continuing education” No change

“Continuing education activity” No change

“Continuing education unit” or “CEU” No change

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- “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
- “Dietary supplement” No change
- “Dispensing pharmacist” No change
- “Drug sample” No change
- “Drug therapy management” No change
- “Drug therapy management agreement” No change
- “Eligible patient” No change
- “Extreme emergency” No change
- “FDA” No change
- “Immediate notice” No change
- “Inactive ingredient” No change
- “Internal test assessment” No change
- “ISO Class 5 environment” No change
- “ISO Class 7 environment” No change
- “Limited-service correctional pharmacy” No change
- “Limited-service long-term care pharmacy” No change
- “Limited-service mail-order pharmacy” No change
- “Limited-service nuclear pharmacy” No change
- “Limited-service pharmacy permittee” No change
- “Limited-service sterile pharmaceutical products pharmacy” No change
- “Long-term care consultant pharmacist” No change
- “Long-term care facility” or “LTCF” No change
- “Lot” No change
- “Lot number” or “control number” No change
- “Materials approval unit” No change
- “Mechanical counting device for a drug in solid, oral dosage form” means a mechanical device that counts drugs in solid, oral dosage forms for dispensing and includes an electronic balance when used to count drugs.
- “Mechanical storage and counting device for a drug in solid, oral dosage form” means a mechanical device that stores and counts and may package or label drugs in solid, oral dosage forms for dispensing.
- “Mediated instruction” No change
- “MPJE” No change
- “NABP” No change
- “NABPLEX” No change
- “NAPLEX” No change
- “Order” No change
- “Other designated personnel” No change
- “Outpatient” No change
- “Outpatient setting” No change
- “Patient profile” No change
- “Pharmaceutical patient care services” No change

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- “Pharmaceutical product” No change
- “Pharmacist-administered immunizations training program” No change
- “Pharmacy counter working area” No change
- “Pharmacy law continuing education” No change
- “Pharmacy permittee” No change
- “Prepackaged drug” No change
- “Prep area” No change
- “Proprietor” No change
- “Provider pharmacy” No change
- “Radiopharmaceutical” No change
- “Radiopharmaceutical quality assurance” No change
- “Radiopharmaceutical services” No change
- “Red C stamp” No change
- “Refill” No change
- “Remodel” No change
- “Remote drug storage area” No change
- “Resident” No change
- “Responsible person” No change
- “Score transfer” No change
- “Shared order filling” No change
- “Shared order processing” No change
- “Shared services” No change
- “Sight-readable” No change
- “Single-drug audit” No change
- “Single-drug usage report” No change
- “Standard-risk sterile pharmaceutical product” No change
- “Sterile pharmaceutical product” No change
- “Strength” No change
- “Substantial-risk sterile pharmaceutical product” No change
- “Supervision” No change
- “Supervisory physician” No change
- “Supplying” No change
- “Support personnel” No change
- “Transfill” No change
- “Verified signature” or “signature verifying” No change
- “Wholesale distribution” No change
- “Wholesale distributor” No change

ARTICLE 6. PERMITS AND DISTRIBUTION OF DRUGS

R4-23-614. ~~Reserved~~ Automated Storage and Distribution System

- A.** Before using an automated storage and distribution system, a pharmacy permittee or pharmacist-in-charge shall:
 - 1. Ensure that the automated storage and distribution system and the policies and procedures comply with subsection (B); and
 - 2. Notify the Board in writing of the intent to use an automated storage and distribution system, including the type or name of the system.
- B.** A pharmacy permittee or pharmacist-in-charge shall establish policies and procedures for appropriate performance and use of the automated storage and distribution system that:
 - 1. Ensure that the automated storage and distribution system is in good working order while maintaining appropriate recordkeeping and security safeguards;

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2. Ensure that an automated storage and distribution system used by the pharmacy that allows access to drugs or devices by a patient:
 - a. Only contains prescriptions that:
 - i. Do not require oral consultation as specified in R4-23-402(B); and
 - ii. Are properly labeled and verified by a pharmacist before placement into the automated storage and distribution system and subsequent release to patients;
 - b. Allows a patient to choose whether or not to use the system;
 - c. Is located either in a wall of a properly permitted pharmacy or within 20 feet of a properly permitted pharmacy if the automated storage and distribution system is secured against the wall or floor in such a manner that prevents the automated storage and distribution system's unauthorized removal;
 - d. Provides a method to identify the patient and only release that patient's prescriptions;
 - e. Is secure from access and removal of drugs or devices by unauthorized individuals;
 - f. Provides a method for a patient to obtain a consultation with a pharmacist if requested by the patient; and
 - g. Does not allow the system to dispense refilled prescriptions if a pharmacist determines that the patient requires oral counseling as specified in R4-23-402(B);
 3. Ensure that an automated storage and distribution system used by the pharmacy that allows access to drugs or devices only by authorized licensed personnel for the purposes of administration based on a valid prescription order or medication order:
 - a. Provides for adequate security to prevent unauthorized individuals from accessing or obtaining drugs or devices; and
 - b. Provides for the filling, stocking, or restocking of all drugs or devices in the system only by a Board licensee or other authorized licensed personnel; and
 4. Implement an ongoing quality assurance program that monitors compliance with the established policies and procedures of the automated storage and distribution system and federal and state law.
- C.** A pharmacy permittee or pharmacist-in-charge shall:
1. Ensure that the policies and procedures required under subsection (B) are prepared, implemented, and complied with;
 2. Review biennially and, if necessary, revise the policies and procedures required under subsection (B);
 3. Document the review required under subsection (C)(2);
 4. Assemble the policies and procedures as a written or electronic manual; and
 5. Make the policies and procedures available for employee reference and inspection by the Board or its staff within the pharmacy and at any location outside the pharmacy where the automated storage and distribution system is used.
- D.** The Board may prohibit a pharmacy permittee or pharmacist-in-charge from using an automated storage and distribution system if the pharmacy permittee or the pharmacy permittee's employees do not comply with the requirements of subsections (A), (B), or (C).

R4-23-615. ~~Reserved~~ Mechanical Storage and Counting Device for a Drug in Solid, Oral Dosage Form

- A.** A pharmacy permittee or pharmacist-in-charge shall ensure that a mechanical storage and counting device for a drug in a solid, oral dosage form that is used by a pharmacist or a pharmacy intern, graduate intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist complies with the following method to identify the contents of the device:
1. The drug name and strength are affixed to the front of each cell or cassette of the device;
 2. A paper or electronic log is kept for each cell or cassette that contains:
 - a. An identification of the cell or cassette by the drug name and strength or the number of the cell or cassette;
 - b. The drug's manufacturer or National Drug Code (NDC) number;
 - c. The expiration date and lot number from the manufacturer's stock bottle that is used to fill the cell or cassette. If multiple lot numbers of the same drug are added to a cell or cassette, each lot number and expiration date shall be documented, and the earliest expiration date shall become the expiration date of the mixed lot of drug in the cell or cassette;
 - d. The date the cell or cassette is filled;
 - e. Documentation of the identity of the licensee who placed the drug into the cell or cassette; and
 - f. If the licensee who filled the cell or cassette is not a pharmacist, documentation of the identity of the pharmacist who supervised the non-pharmacist licensee who filled the cell or cassette; and
 3. The paper or electronic log is available in the pharmacy for inspection by the Board or its designee for not less than two years.
- B.** A pharmacy permittee or pharmacist-in-charge shall ensure that any drug previously counted by a mechanical storage and counting device for a drug in a solid, oral dosage form that has not left the pharmacy is not returned to the drug's original cell, cassette, or stock bottle. This subsection does not prevent a pharmacy permittee or pharmacist-in-charge from using a manual or mechanical counting device to count and dispense a previously counted drug that has not left the pharmacy if the previously counted drug is dispensed before its beyond-use-date.
- C.** A pharmacy permittee or pharmacist-in-charge shall ensure the accuracy of any mechanical storage and counting device

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for a drug in a solid, oral dosage form that is used by a pharmacist or a pharmacy intern, graduate intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist by documenting completion of the following:

1. Training in the maintenance, calibration, and use of the mechanical storage and counting device for each employee who uses the mechanical storage and counting device;
2. Maintenance and calibration of the mechanical storage and counting device as recommended by the device's manufacturer; and
3. Routine quality assurance and accuracy validation testing for each mechanical storage and counting device.

D. A pharmacy permittee or pharmacist-in-charge shall ensure that the documentation required in subsection (C) is available for inspection by the Board or its designee.

E. A pharmacy permittee or pharmacist-in-charge shall:

1. Ensure that policies and procedures for the performance and use of a mechanical storage and counting device for a drug in a solid, oral dosage form are prepared, implemented, and complied with;
2. Review biennially and, if necessary, revise the policies and procedures required under subsection (E)(1);
3. Document the review required under subsection (E)(2);
4. Assemble the policies and procedures as a written or electronic manual; and
5. Make the policies and procedures available within the pharmacy for employee reference and inspection by the Board or its staff

F. The Board may prohibit a pharmacy permittee or pharmacist-in-charge from using a mechanical storage and counting device for a drug in a solid, oral dosage form if the pharmacy permittee or the pharmacy permittee's employees do not comply with the requirements of subsections (A), (B), (C), (D), or (E).

R4-23-616. ~~Reserved~~ Mechanical Counting Device for a Drug in Solid, Oral Dosage Form

A. A pharmacy permittee or pharmacist-in-charge shall ensure the accuracy of any mechanical counting device for a drug in a solid, oral dosage form that is used by a pharmacist or a pharmacy intern, graduate intern, pharmacy technician, or pharmacy technician trainee under the supervision of a pharmacist by documenting completion of the following:

1. Training in the maintenance, calibration, and use of the mechanical counting device for each employee who uses the mechanical counting device;
2. Maintenance and calibration of the mechanical counting device as recommended by the device's manufacturer; and
3. Routine quality assurance and accuracy validation testing for each mechanical counting device.

B. A pharmacy permittee or pharmacist-in-charge shall ensure that the documentation required in subsection (A) is available for inspection by the Board or its designee.

C. A pharmacy permittee or pharmacist-in-charge shall:

1. Ensure that policies and procedures for the performance and use of a mechanical counting device for a drug in a solid, oral dosage form are prepared, implemented, and complied with;
2. Review biennially and, if necessary, revise the policies and procedures required under subsection (C)(1);
3. Document the review required under subsection (C)(2);
4. Assemble the policies and procedures as a written or electronic manual; and
5. Make the policies and procedures available within the pharmacy for employee reference and inspection by the Board or its staff.

D. The Board may prohibit a pharmacy permittee or pharmacist-in-charge from using a mechanical counting device for a drug in a solid, oral dosage form if the pharmacy permittee or the pharmacy permittee's employees do not comply with the requirements of subsections (A), (B), or (C).

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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 29. STRUCTURAL PEST CONTROL COMMISSION

[R07-42]

PREAMBLE

1. Sections Affected

- R4-29-101
- R4-29-102
- R4-29-103
- R4-29-104
- R4-29-105

Rulemaking Action

- New Section
- New Section
- New Section
- New Section
- New Section

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R4-29-106	New Section
R4-29-107	New Section
Table 1	New Table
Article 2	New Article
R4-29-201	New Section
R4-29-202	New Section
R4-29-203	New Section
R4-29-204	New Section
R4-29-205	New Section
R4-29-206	New Section
R4-29-207	New Section
R4-29-208	New Section
R4-29-209	New Section
R4-29-210	New Section
R4-29-211	New Section
R4-29-212	New Section
R4-29-213	New Section
R4-29-214	New Section
R4-29-215	New Section
R4-29-216	New Section
Article 3	New Article
R4-29-301	New Section
R4-29-302	New Section
R4-29-303	New Section
R4-29-304	New Section
R4-29-305	New Section
R4-29-306	New Section
R4-29-307	New Section
Article 5	New Article
R4-29-501	New Section
R4-29-502	New Section
R4-29-503	New Section
R4-29-504	New Section
R4-29-505	New Section
Article 6	New Article
R4-29-601	New Section
R4-29-603	New Section
R4-29-604	New Section
R4-29-605	New Section
R4-29-606	New Section
R4-29-607	New Section
R4-29-608	New Section
R4-29-609	New Section
Article 7	New Article
R4-29-701	New Section
R4-29-702	New Section
R4-29-703	New Section
R4-29-704	New Section
R4-29-705	New Section
R4-29-706	New Section
R4-29-707	New Section
R4-29-708	New Section

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

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

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

3. The effective date for the rules:

April 7, 2007

4. List of all previous notices appearing in the Register addressing the final rules:

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

Notice of Proposed Rulemaking: 12 A.A.R. 3639, October 6, 2006

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

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

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

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

None

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules 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:

Although these rules are new, the subject matter they address is not new. The Commission has had rules since 1992 that establish licensing procedures and regulatory standards. The rules will have economic impact on those who seek to be licensed or are licensed by the Commission. The costs relate to completing an application and paying application, examination, and fingerprint processing fees, obtaining continuing education, and complying with regulatory standards designed to protect the public and environment. These costs, which are a cost of doing business that is passed to consumers, are offset by the economic benefit of being able to provide structural pest control services.

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

In addition to the changes identified in item 11, the Commission made minor changes between the proposed and final rules. None of the changes is substantial under the standards at A.R.S. § 41-1025. The more significant changes are:

- In R4-29-201, subsection (K) was deleted because it duplicates statute.
- In R4-29-202(B), the phrase "literature accompanying" was changed to "labeling of" when referring to use of a device for an unintended purpose.
- In R4-29-215 and R4-29-216, the phrase "certificate of attendance" was changed to "verification of attendance."
- In R4-29-216(A), the subject matter that can be addressed at an approved continuing education was expanded to include "new pest management technologies."
- In R4-29-303(B), the second sentence, which required an applicator to use a flashlight to inspect dark spaces and a ladder to access areas, was deleted.
- In R4-29-304(C), the word "spray" was deleted before "tank" because not all tanks are spray tanks and all tanks need to be filled in a manner that protects the water supply.
- In R4-29-504(H) (now R4-29-504(I)) and R4-29-605(C), the reference to "an individual, animal, or fish" was changed to "an individual or animal."
- The responsibility in R4-29-505 for making and maintaining certain records, which was cross-referenced in R4-29-609, was moved to R4-29-609 to clarify that it is the business licensee who is ultimately responsible for making and maintaining most records.
- In R4-29-608(D), language was added to clarify that if termites occur in a treated addition that does not abut the slab of a treated structure, a free re-treatment is required only to the addition.

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

Robert Hartley, Vice President with Truly Nolen, submitted comments regarding several subsections of the proposed rules. The comments and the Commission's analysis of and response to each follow:

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COMMENT	COMMISSION'S ANALYSIS	COMMISSION'S RESPONSE
The definition of "Of employment," as used in A.R.S. § 32-2312(E) and R4-29-202(E) expands licensing requirements and limits flexibility if an employee is unable to pass the examinations within 90 days.	It is the intent of the legislature that an employee who applies a pesticide be licensed within 90 days of employment. The 90-day exception to licensing provides flexibility to businesses while the time limit on the exception protects the public.	The language of the definition was changed to more closely track statutory language and reflect that the 90 days begins when an employee first applies a pesticide within the scope of employment by the business licensee.
By defining "pest management services" as the tasks comprising the business of structural pest control, every employee of a business would be required to be licensed.	The Commission uses the phrase "pest management services" to encompass tasks enumerated in statute as comprising the business of structural pest control. Under the statutory definition, employees such as office staff are not performing pest management service. But, regardless of job title, an employee that offers to provide, advertises, or solicits structural pest control business requires a license.	No change
The definition of "repeated de minimus violation" makes no allowance for the size of a business. Three similar violations for a large company is unduly onerous compared with a small, one-location business.	A large company, with its resources for training and supervision, is in at least as good a position as a small business to avoid violations. This requirement is to protect the public. Statute allows the Commission to issue a non-disciplinary advisory notice for a de minimis violation unless the licensee repeatedly commits a violation. "Repeated" must be defined.	No change
R4-29-105(A)(2)(b): Is the fee for license broadening per application or per category?	The rule clearly indicates the fee is for an application.	No change
R4-29-105(B): The penalty for late renewal is excessive.	Since 1985, A.R.S. § 32-2317(A)(9) has required that the "penalty fee" for late renewal be "double the prescribed renewal fee." The penalty needs to encourage licensees to renew timely. This is important to avoid the possibility of individuals providing pest management services with an expired license. Also, with online license renewals and the Commission sending pre-renewal notices, renewal notices, and reminder notices to licensees, the Commission has substantially reduced late renewals and saved licensees thousands of dollars in late fees.	No change

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<p>R4-29-201(B): Does this mean that a QP has to maintain an applicator license or only have one when the QP license is obtained?</p>	<p>It was not the intent of the Commission to change current law and practice, which requires an applicator license at the time a QP license is obtained and if a QP performs applicator duties. If the QP does not engage in applicator duties, it is not necessary for the QP to maintain the applicator license.</p>	<p>The language was changed to reflect that an applicator license is required only to obtain a QP license. However, because many QPs fail to maintain their applicator license and then have to reapply and retest to obtain a new applicator license when they want to perform applicator duties, it might be wiser for a QP to maintain the applicator license. An applicator license renewal is only \$20 a year.</p>
<p>R4-29-212(A)(1) and (C)(1): It is not clear whether a separate application is required for each category of broadening or whether multiple categories can be added with one application.</p>	<p>The rule does not change the law or Commission's long-standing practice of allowing multiple categories to be added with one application.</p>	<p>No change</p>
<p>R4-29-304(B)(2): The requirement regarding clothing and equipment is subjective. It would be better to reference clothing and equipment required by the label or labeling.</p>	<p>The Commission agrees.</p>	<p>The language was changed to reference clothing and personal protective equipment required by the label or labeling.</p>
<p>R4-29-304(B)(4): No pesticide is "safe" to use in a food-handling establishment. It would be better to reference the label or labeling.</p>	<p>The Commission agrees.</p>	<p>The Commission substituted "recommends not be used" for "do not indicate is safe to use."</p>
<p>R4-29-304(C): What constitutes an effective anti-siphoning device for a fill opening?</p>	<p>The comment correctly indicates that the language is confusing.</p>	<p>The language was changed to clarify that it is the fill-pipe or hose connection that is equipped with an effective anti-siphoning device rather than the fill opening.</p>
<p>R4-29-305(A) and Article 4: The term "supervising applicator" is not defined. Who is this person?</p>	<p>The Commission agrees there is confusion regarding a supervising applicator and believes it will be better to address this in another rulemaking.</p>	<p>Article 4 and all references to a supervising applicator were removed from this rulemaking. The requirements that were in Article 4 and cross-referenced in Articles 5 and 6, were moved to those Articles. The Commission will move forward with a rulemaking regarding supervising applicators at a later time.</p>
<p>R4-29-305(D)(5) and (E)(3): It is a financial burden and not fair that a treating company has to re-treat a disturbed barrier when the company did not cause the disturbance.</p>	<p>This requirement has existed since 1982 (R4-29-15, subsequently R4-29-407). The rule does not require that the re-treatment be done without pay.</p>	<p>The Commission clarified that a re-treatment of a disturbed pre-treatment is not required unless an opportunity to do so is provided before concrete is poured. A conforming change was made at R4-29-608(A). A conforming change was not made to R4-29-305(E)(3) because timing is not an issue when re-treating a disturbed new-construction treatment.</p>
<p>R4-29-307(B)(2): What is meant by the "specific site" at which a pest management service was performed?</p>	<p>The Commission believes it would be clearer if the language was similar to that in the 1992 rule (R4-29-308(B)(2)).</p>	<p>The language was changed to reference the specific site at which a pesticide was applied.</p>

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<p>R4-29-307(C) and (D): This requirement is totally ridiculous and burdensome. What purpose is served by having applicators keep purchase or disposal records?</p>	<p>An applicator that does not purchase or dispose of a pesticide is not required to keep a record. Records of purchase or disposal are best maintained by the individual making the purchase or disposal.</p>	<p>The rule was changed to require an applicator to make records of the purchase or disposal of only restricted-use pesticides. The business licensee makes records of the purchase of other pesticides.</p>
<p>R4-29-402(F) (now R4-29-502(E)): How often does the instruction have to be done? What does “immediately” mean in this context?</p>	<p>Under A.R.S. § 32-2308, a supervisor can be held jointly responsible for the acts or omissions of a supervised applicator. A supervisor will want to provide the instruction as frequently as necessary to avoid acts or omissions for which the supervisor could be held jointly responsible. “Immediately” has its ordinary dictionary meaning. How quickly an applicator is able to contact the supervisor probably will be a factor in determining joint responsibility. This rule is one of many intended to help licensees by clarifying what is sufficient for “direct” supervision and how a licensee can defend against joint responsibility.</p>	<p>No change</p>
<p>R4-29-403: The recordkeeping requirements for a supervising applicator are totally ridiculous and short circuit the responsibilities of the QP.</p>	<p>The Commission agrees.</p>	<p>The Commission decided not to move forward with Article 4. This requirement, which had been cross-referenced in R4-29-505 in the Notice of Proposed Rulemaking, was moved to that Section.</p>
<p>R4-29-504(G) (now R4-29-504(H)): Not allowing a QP to delegate the enumerated responsibilities would preclude a large company with numerous branches from delegating these responsibilities to staff.</p>	<p>The Commission agrees that some of the enumerated tasks could be delegated.</p>	<p>The language was changed to indicate that the only requirement that cannot be delegated is the requirement that a QP be present in an office every 30 days.</p>
<p>R4-29-504(H) (now R4-29-504(I)): This is a burdensome requirement.</p>	<p>This requirement is necessary to protect the public. However, the Commission believes the public can be protected and the burden on licensees reduced by limiting the reporting requirement to incidents that are confirmed rather than alleged.</p>	<p>The language was changed to require only confirmed, rather than alleged, incidents be reported.</p>
<p>R4-29-505(A)(2) (now R4-29-609(A)(8)): What is a written inspection report?</p>	<p>This phrase has existed in rule since 1992 (R4-29-309(B)). Licensees do numerous kinds of inspections and prepare reports of those inspections.</p>	<p>This responsibility, which was cross-referenced in R4-29-609 in the Notice of Proposed Rulemaking, was moved to that Section. Information regarding the time that records must be maintained was also moved.</p>
<p>R4-29-605(B)(3): Indicating that a sales vehicle does not have to be marked conflicts with the definition of “pest management services.”</p>	<p>The Commission agrees.</p>	<p>The word “otherwise” was added to this subsection to clarify the kind of vehicle that is not required to be marked.</p>
<p>R4-29-606(C): It is absurd to require that a sign be posted regarding each stored pesticide.</p>	<p>The Commission agrees.</p>	<p>The language was changed to reflect that a sign must be posted indicating only that a pesticide, chemical, or poison is stored inside.</p>

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<p>R4-29-608(A): This makes it the responsibility of the business licensee rather than an applicator to re-treat a disturbed area.</p>	<p>The rule clearly indicates that the business licensee is required to ensure that re-treatment is done. It does not require the business licensee actually do the re-treatment. This requirement has existed since 1982 (R4-29-15, subsequently R4-29-407). The rule does not require that the re-treatment be done without pay.</p>	<p>No change</p>
<p>R4-29-608(D) through (H): It is time to eliminate this rule and let the market decide pretreatment guarantee periods.</p>	<p>The Commission has discussed this on numerous occasions and continues to believe these are necessary provisions. They provide important protections to the public. Eliminating them could cause great economic harm to consumers. If a termite pretreatment is properly performed with an effective product or method, a structure should not have termites for several years. Companies that perform the majority of termite pretreatments have reported a very low re-treatment rate in the first five years after a pretreatment. Eliminating the re-treatment warranty may have the effect of reducing the quality of pretreatments due to financial pressures, thereby lessening structural protection for consumers.</p>	<p>No change</p>

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

Under A.R.S. § 32-2304(A)(4), the Commission is required to provide each business licensee a written copy of a rule that is approved by the Governor’s Regulatory Review Council within 30 days after the approval.

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

None

14. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 29. STRUCTURAL PEST CONTROL COMMISSION

ARTICLE 1. GENERAL AND ADMINISTRATIVE PROVISIONS

Section

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

ARTICLE 2. ~~REPEALED~~ OBTAINING, RENEWING, ACTIVATING OR INACTIVATING A LICENSE; EXAMI-

NATION; CONTINUING EDUCATION REQUIREMENT; APPROVAL OF CONTINUING EDUCATION

Section

- R4-29-201. ~~Repealed~~ Activities that Require a License; General Provisions
- R4-29-202. ~~Repealed~~ License Exemptions; Unlicensed Persons
- R4-29-203. ~~Repealed~~ Obtaining an Applicator License
- R4-29-204. ~~Repealed~~ Obtaining a Qualifying Party License
- R4-29-205. ~~Repealed~~ Licensing Examination for an Applicator or Qualifying Party Applicant
- R4-29-206. ~~Repealed~~ Obtaining a Business License
- R4-29-207. ~~Repealed~~ Renewing an Applicator, Qualifying Party, or Business License
- R4-29-208. ~~Repealed~~ Obtaining a Temporary Qualifying Party License
- R4-29-209. ~~Repealed~~ Renewing a Temporary Qualifying Party License
- R4-29-210. ~~Expired~~ Inactivating or Activating an Applicator License
- R4-29-211. ~~Repealed~~ Inactivating or Activating a Qualifying Party License
- R4-29-212. ~~Repealed~~ Broadening an Applicator or Qualifying Party License
- R4-29-213. ~~Repealed~~ Branch Office Registration
- R4-29-214. Change in a Business Licensee
- R4-29-215. Continuing Education Requirement for an Applicator or Qualifying Party
- R4-29-216. Requirements for Approval of Continuing Education

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

Section

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

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

Section

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

ARTICLE 6. BUSINESS LICENSEE DUTIES AND RESPONSIBILITIES

Section

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

ARTICLE 7. INSPECTIONS; INVESTIGATIONS; COMPLAINTS; DISCIPLINARY PROCEDURES

Section

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

ARTICLE 1. GENERAL AND ADMINISTRATIVE PROVISIONS

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

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

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

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

“Applicant” means:

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

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

An individual, for a sole proprietorship;

An officer, for a corporation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Next business day,” as used in A.R.S. § 32-2323(G), means the first day after the 30th calendar day that is not a Saturday, Sunday, or state holiday.

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

“Of employment,” as used in A.R.S. § 32-2312(E), means the date on which an employee of a business licensee first applies a pesticide within the scope of employment by the business licensee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“TARF” means termite action report form.

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

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

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

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

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

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

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

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

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8. Category B9 (Aquatic) is limited to controlling pests, including weeds, in an aquatic area other than a water-retention basin or agricultural or forest area, and except for mosquito control.

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

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

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

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

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

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

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

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

R4-29-106. Expired Joint Responsibility

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

R4-29-107. Repealed Licensing Time-frames

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

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

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

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

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

- A.** Unless exempt under A.R.S. § 32-2311, an individual who provides pest management services shall obtain an applicator license from the Commission. An applicator shall perform pest management services only on behalf of a business licensed by the Commission.
- B.** To obtain a license as a qualifying party, an individual shall also be licensed as an applicator.
- C.** A licensed business shall provide pest management services only if the licensed business employs at least one individual who holds a qualifying party license. A licensed business shall provide pest management services in a category only if the licensed business employs an individual who has an activated qualifying party or temporary qualifying party license in the category.
- D.** A licensed qualifying party or temporary qualifying party shall not qualify more than one licensed business. A licensed business may employ more than one licensed qualifying party.
- E.** An applicator or qualifying party shall provide pest management services only in the category for which the applicator or qualifying party is licensed. To provide pest management services in a new category, an applicator or qualifying party shall complete the license-broadening process described in R4-29-212.
- F.** Under A. R. S. § 32-2312(D), an applicant for licensure is required to be of good moral character. The Commission shall deny a license to an applicant determined not to be of good moral character. In determining whether an applicant is of good moral character, the Commission shall consider whether the applicant:
 - 1. Committed an act, which, if committed by a licensee, would be grounds for disciplinary action against the licensee;
 - 2. Has been convicted of a felony or a misdemeanor; or
 - 3. Cheated on a licensing examination.
- G.** The holder of a license issued by the Commission shall not assign or transfer the license.
- H.** An applicator license expires on May 31 except that a new applicator license that is issued in May is valid until May 31 of the following year.
- I.** A qualifying party or business license expires on December 31 except that a new qualifying party or business license issued in December is valid until December 31 of the following year.
- J.** If a licensee files a timely and complete renewal application, the existing license does not expire until the Commission issues a notice granting or denying renewal. If the Commission denies license renewal, the existing license does not expire until all administrative appeals are exhausted.

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

- A.** In addition to the exemptions in A.R.S. § 32-2311, a person is not required to be licensed by the Commission if:
 - 1. The person provides general information about a label or labeling, identifying or controlling a pest, integrated pest

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

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

- A.** An applicant for an applicator license shall submit the following information to the Commission on a form obtained from the Commission:
1. Full name;
 2. Applicator license number, if any;
 3. Physical address;
 4. Mailing address, if different from the physical address;
 5. Telephone number;
 6. Electronic mail address, if any;
 7. Date of birth;
 8. Social Security number;
 9. A statement whether the applicant has ever been convicted of a felony or a misdemeanor and if the answer is yes, submit:
 - a. A completed Criminal Conviction Supplement form that includes information regarding the charge, date, jurisdiction and disposition of conviction, and current status;
 - b. A copy of documents pertaining to each conviction including court orders and police, probation, and pre-sentence reports;
 - c. A complete set of fingerprints; and
 - d. The fee for fingerprint processing;
 10. A statement whether the applicant has ever had a license or permit to practice pest management denied, revoked, or suspended and if the answer is yes, date, jurisdiction taking the action, nature of the action, and explanation of the circumstances;
 11. Name of employer, if any;
 12. Employer's business license number, if applicable;
 13. Employer's telephone number, if applicable;
 14. License category for which application is made; and
 15. The applicant's dated signature affirming that the information provided is true and correct.
- B.** In addition to the form required under subsection (A), an applicant shall submit the fee specified in R4-29-105.
- C.** Under the authority at A.R.S. § 32-2304(B)(2), if the Commission determines it is in the best interest of the state, the Commission shall require an applicant to submit a complete set of fingerprints and the fee for fingerprint processing.
- D.** If the Commission determines that an applicant is eligible for licensure, the Commission shall notify the applicant that the applicant may schedule and take a licensing examination described under R4-29-205.
- E.** If the Commission determines there may be cause to deny a license to an applicant, the Commission shall send a written notice to the applicant specifying the date and time for the applicant to appear at a Commission meeting and answer questions.
- F.** The Commission shall issue a license to an applicant who meets all of the qualifications in A.R.S. § 32-2312 and this Chapter and passes the licensing examinations. The license authorizes the applicator to provide pest management services until May 31 if the applicator is employed by a licensed business.

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

- A.** Before applying for a qualifying party license, an applicant shall hold an applicator license for each category in which a qualifying party license is sought and fulfill the practical experience requirement for each category.
- B.** An applicant for a qualifying party license shall submit the following information to the Commission on a form obtained from the Commission:
1. Full name;
 2. Applicator license number;
 3. Qualifying party license number, if any;
 4. Physical address;
 5. Mailing address, if different from the physical address;
 6. Telephone number;
 7. Electronic mail address, if any;
 8. Date of birth;
 9. Social Security number;
 10. A statement whether the applicant has ever been convicted of a felony or a misdemeanor and if the answer is yes, submit:
 - a. A completed Criminal Conviction Supplement form that includes information regarding the charge, date, jurisdiction and disposition of conviction, and current status; and
 - b. A copy of documents pertaining to each conviction including court orders and police, probation, and pre-sentence reports;
 11. A statement whether the applicant has ever had a license or permit to practice pest management denied, revoked, or suspended and if the answer is yes, date, jurisdiction taking the action, nature of the action, and explanation of the circumstances;
 12. Name of employer, if any;
 13. Employer's business license number, if applicable;
 14. Employer's telephone number, if applicable;
 15. License category for which application is made; and
 16. The applicant's dated signature affirming that the information provided is true and correct.
- C.** In addition to the form required under subsection (B), an applicant shall submit:
1. The fee specified in R4-29-105;
 2. Evidence of the hours of practical experience required under A.R.S. § 32-2314(C)(2) in each category for which the applicant seeks licensure. Evidence that is acceptable to the Commission includes:
 - a. A completed Verification of Practical Experience form that is signed by a business or qualifying party licensee or another person with first-hand knowledge of the applicant's experience and notarized;
 - b. Payroll records, invoices, route sheets, or calendars;
 - c. Letters from persons with first-hand knowledge of the applicant's experience; and
 - d. An official transcript from an educational institution at which the applicant completed relevant course work;
 3. A complete set of fingerprints; and
 4. The fingerprint processing fee.
- D.** The Commission shall send a written notice to an applicant for a qualifying party license regarding the date and time that the applicant is to appear at a Commission meeting for an evaluation of the applicant's practical experience and to be authorized to schedule and take the licensing examination described under R4-29-205. The applicant shall appear as noticed.
- E.** The Commission shall issue an inactive license to an applicant who meets all of the qualifications in A.R.S. § 32-2314 and this Chapter and passes the licensing examination. Before working as the qualifying party of a licensed business, the licensee shall activate the license.
- F.** An active qualifying party license authorizes the licensee to qualify one licensed business until December 31. A qualifying party licensee may qualify the one licensed business in each category in which the qualifying party is licensed.
- G.** If a qualifying party applicant whose application is closed under R4-29-107(B)(3) or (C) submits a new application under subsections (B) and (C) within one year after the prior application closed, the Commission shall not require the applicant to appear before the Commission as described in subsection (D) unless the applicant was convicted of a felony or misdemeanor during the time between applications.

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

- A.** Under A.R.S. §§ 32-2312(C) and 32-2314(C), taking and passing an examination is a condition for licensure as an applicator or qualifying party.
- B.** An applicant who has received notice from the Commission that the applicant is approved to take the licensing examination shall make arrangements to take the examination by contacting the Commission or the examination service or testing vendor with which the Commission has contracted.
- C.** To assist an applicant to prepare for the licensing examination, the Commission shall maintain a list of study materials on

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its web site and may provide an examination training class. An applicant may also take an examination training class from a private vendor.

- D.** The licensing examination measures knowledge and understanding of both general and category-specific information. To be licensed, an applicant shall score at least 75 percent on the general standards (“core”) examination and the category-specific examination for each category in which the applicant seeks licensure.
- E.** Both the core and category-specific licensing examination for an applicator and qualifying party measure knowledge and understanding of the following content areas:
 - 1. Pesticide label and labeling and pesticide types and formulations;
 - 2. Pest identification, life cycles, and habits;
 - 3. Safety and environmental factors relating to the use, handling, and disposal of pesticides;
 - 4. Application techniques, calibration and dilution, and equipment types, uses, and maintenance; and
 - 5. Laws and rules.
- F.** The Commission or the examination service or testing vendor shall provide immediate, written notice to an applicant regarding whether the applicant passed a licensing examination.
- G.** An applicant shall not take the same examination more than once on the same day.
- H.** The Commission shall immediately close the application of an applicant that the Commission determines cheated on an examination.
- I.** If an application is closed under subsection (H), the score received on the examination is void.

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

- A.** An applicant for a business license to conduct pest management services shall submit the following information to the Commission on a form obtained from the Commission:
 - 1. About the qualifying party who will qualify the business:
 - a. Full name;
 - b. Physical address;
 - c. Mailing address, if different from the physical address;
 - d. Electronic mail address, if any;
 - e. Date of birth;
 - f. Social Security number;
 - g. Telephone number;
 - h. Qualifying party license number and applicator license number, if any;
 - i. License category of qualification; and
 - j. The dated signature of the qualifying party;
 - 2. About the business license applicant:
 - a. Full name;
 - b. Mailing address;
 - c. Electronic mail address, if any;
 - d. Telephone number;
 - e. Date of birth; and
 - f. Social Security number;
 - 3. About the business:
 - a. Business name;
 - b. Form of business organization and names of the following persons authorized to act on behalf of the business:
 - i. Owner if a sole proprietorship;
 - ii. Managing or general partner if a partnership;
 - iii. President, secretary, and statutory agent if a corporation;
 - iv. Manager or at least two members if a limited liability company;
 - v. Designated agent of an appointed or elected person or body if the state or a political subdivision; or
 - vi. Person authorized to make decisions for the business if any other type of business form;
 - c. Telephone number;
 - d. Fax number;
 - e. Physical address;
 - f. Mailing address, if different from physical address; and
 - g. Chemical storage address; and
 - 4. The business applicant’s dated signature affirming that the information provided is true and correct.
- B.** In addition to the form required under subsection (A), an applicant shall submit:
 - 1. The fee specified in R4-29-105;
 - 2. A completed Business License Application Supplement that includes the following information about the pest management business:
 - a. A description of how the qualifying party will manage the business;

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- b. A description of how the qualifying party will supervise the pest management services provided by the business;
- c. A description of plans to provide training for all licensed applicators employed by the business;
- d. A description of how the business will comply with the financial responsibility requirements in A.R.S. § 32-2313;
- e. The names of all individuals who own at least 10 percent of the business;
- f. The name of the statutory agent of the business; and
- g. If a corporation, the names of all corporate officers;
- 3. The following information on a completed Commission insurance certificate if the applicant will fulfill the financial responsibility requirements by purchasing liability insurance or a surety bond:
 - a. Name, address, and telephone number of the insured;
 - b. Existing business licenses held by the applicant;
 - c. Name, address, and telephone number of the insurer;
 - d. Name, address, and telephone number of the insurance producer or broker;
 - e. Number of the insurance policy or surety bond, effective and expiration dates, limits, and deductible, if any;
 - f. The categories of work covered by the insurance or bond; and
 - g. The dated signature and title of an agent of the insurer or producer or broker certifying that:
 - i. The company is authorized by the Arizona Department of Insurance to do business in Arizona;
 - ii. The insurance or bond has been issued to the insured for the period indicated;
 - iii. The insurance or bond complies with the Commission's statutes regarding coverage endorsements;
 - iv. The company will notify the Commission in writing within 30 days if the insurance or bond is cancelled, revoked, or falls below the legal limit or if the deductible exceeds \$10,000; and
 - v. The company will furnish information regarding the insurance or bond to the Commission upon request; and
- 4. A copy of the Articles of Incorporation, trade name certificate, partnership agreement, or other evidence of the form of business organization.
- C. The Commission shall deny use of a business license name that the Commission determines is similar to an existing business name and may cause a reasonable person to confuse the two businesses.
- D. If the Commission determines there may be cause to deny a license to an applicant, the Commission shall send a written notice to the applicant specifying the date and time for the applicant to appear at a Commission meeting and answer questions.
- E. The Commission shall issue a business license to an applicant that the Commission determines is qualified under A.R.S. § 32-2313 and this Chapter. The business license, which is valid until December 31, authorizes the licensee to operate a structural pest control business in each category in which the licensee employs a qualifying party licensed in the category.

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

- A. The Commission shall mail a renewal form to a licensee at the licensee's address of record, provide access to a downloadable renewal form, or provide access to online renewal. Timely license renewal is the responsibility of the licensee. Failure to receive notice of renewal does not justify failure to renew.
- B. If a licensee's renewal application is not administratively complete before the license expiration date, the Commission shall require the licensee to pay the penalty prescribed at R4-29-105(B).
- C. Renewal applications are due as follows:
 - 1. For an applicator license, May 1;
 - 2. For a qualifying party license, December 1; and
 - 3. For a business license, December 1.
- D. To renew an applicator or qualifying party license, the licensee shall:
 - 1. Submit the following information to the Commission on a completed renewal form:
 - a. A change in mailing address, if any;
 - b. Electronic mail address, if any;
 - c. Telephone number;
 - d. For a qualifying party, a statement whether the licensee wants to renew or inactivate each category in which the licensee is licensed. An applicator license cannot be inactivated by category but only in whole;
 - e. Name of employer;
 - f. Name of business for which the qualifying party provides qualification;
 - g. A statement whether the licensee has ever been convicted of a felony or a misdemeanor and if the answer is yes, a statement whether all felony convictions have been reviewed and voted on by the Commission and if the answer is no:
 - i. A completed Criminal Conviction Supplement form that includes information regarding the charge, date, jurisdiction and disposition of conviction, and current status;
 - ii. A copy of documents pertaining to each conviction including court orders and police, probation, and pre-sentence reports;
 - iii. A complete set of fingerprints; and

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- iv. The fee for fingerprint processing;
 - h. A statement whether the licensee has had a license or permit to practice pest management denied, revoked, or suspended during the last 12 months and if the answer is yes, date, jurisdiction taking the action, nature of the action, and explanation of the circumstances; and
 - i. The licensee's dated signature affirming that the licensee complied with the continuing education requirement under R4-29-215. If the licensee is renewing a license in inactive status, no continuing education is required; and
 - 2. Submit the fee required under R4-29-105.
- E. To renew a business license, the licensee shall:
 - 1. Submit the following information to the Commission on a completed renewal form:
 - a. A change in mailing address, if any;
 - b. Electronic mail address, if any;
 - c. Telephone number;
 - d. A statement whether the licensee wants to renew an active or inactive license;
 - e. Name of the qualifying party in each category in which the business provides structural pest control services;
 - f. A statement that the licensee maintains the insurance or surety bond required by A.R.S. § 32-2313; and
 - g. The dated signature of the authorized representative of the business; and
 - 2. Submit the fee required under R4-29-105.
- F. If the Commission determines there may be cause to deny a renewal, the Commission shall send a written notice to the applicant specifying the date and time for the applicant to appear at a Commission meeting and answer questions.
- G. An applicator, qualifying party, or business licensee that fails to submit a timely and complete renewal application shall not provide pest management services until the Commission provides written notice of the Commission's decision to grant or deny renewal.
- H. The Commission shall not renew a license that is expired for more than 30 days. The former licensee may apply for licensure as a new applicant.

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

- A. A licensed applicator who is employed by a business licensee may apply for a renewable, temporary qualifying party license if the qualifying party, who is not a temporary qualifying party, of the business has disassociated from the business within the last 45 days.
- B. A temporary qualifying party applicant shall submit the following information to the Commission on a form obtained from the Commission:
 - 1. About the business licensee:
 - a. Business name;
 - b. Business license number;
 - c. Physical address;
 - d. Mailing address, if different from the physical address;
 - e. Telephone number; and
 - f. Fax number;
 - 2. About the licensed applicator:
 - a. Full name;
 - b. Applicator license number;
 - c. Physical address;
 - d. Mailing address, if different from the physical address;
 - e. Telephone number;
 - f. Electronic mail address, if any;
 - g. Fax number;
 - h. A statement whether the applicant has ever been convicted of a felony or a misdemeanor and if the answer is yes, a statement whether all felony convictions have been reviewed and voted on by the Commission and if the answer is no;
 - i. A completed Criminal Conviction Supplement form that includes information regarding the charge, date, jurisdiction and disposition of conviction, and current status;
 - ii. A copy of documents pertaining to each conviction including court orders and police, probation, and pre-sentence reports;
 - iii. A complete set of fingerprints; and
 - iv. The fee for fingerprint processing;
 - i. A statement whether the applicant has ever had a license or permit to practice pest management denied, revoked, or suspended and if the answer is yes, date, jurisdiction taking the action, nature of the action, and explanation of the circumstances;
 - j. License category for which application is made; and
 - k. The applicant's dated signature affirming that the information provided is true and correct.

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- C.** In addition to the form required under subsection (B), an applicant shall submit:
1. The fee specified in R4-29-105;
 2. A written notice of disassociation from the qualifying party who previously qualified the business;
 3. A written request from the business licensee that an applicator licensed in the category in which the disassociating qualifying party qualified the business be granted a temporary qualifying party license. The Commission shall not issue a temporary qualifying party license to an applicator to qualify a business in a category different from the category in which the disassociating qualifying party qualified the business;
 4. A written statement from the business licensee that the business has not operated since the disassociation in the category for which the disassociated qualifying party qualified the business; and
 5. A written description of how the temporary qualifying party will:
 - a. Manage the pest management services provided by the business,
 - b. Supervise the pest management services provided by the business, and
 - c. Train and supervise all licensed and unlicensed applicators employed by the business.
- D.** The Commission shall issue a temporary qualifying party license to an applicant who is qualified under A.R.S. § 32-2314 and this Chapter. The temporary qualifying party license authorizes the licensee to qualify a licensed business for 60 days in each category in which the temporary qualifying party is licensed.
- E.** If a temporary qualifying party license expires, the business licensee qualified by the temporary qualifying party licensee shall not perform pest management services in the category for which the temporary qualifying party qualified the business.

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

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

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

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

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

1. Name;
2. Applicator license number;
3. Physical address;
4. Mailing address, if different from the physical address;
5. Electronic mail address, if any;
6. Date of birth;
7. Social Security number;
8. Telephone number; and
9. Dated signature of the licensee affirming that:
 - a. The information provided is true and correct; and
 - b. The licensee shall not perform pest management services in any category while the license is on inactive status.

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

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

1. The following information on a form obtained from the Commission:
 - a. Name;
 - b. Applicator license number;

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

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

- A.** To place a valid, active qualifying party license on inactive status, the licensee shall submit the following information to the Commission on a form obtained from the Commission:
- 1. Name;
 - 2. Qualifying party license number;
 - 3. Physical address;
 - 4. Mailing address, if different from the physical address;
 - 5. Electronic mail address;
 - 6. Date of birth;
 - 7. Social Security number;
 - 8. Telephone number;
 - 9. The license categories to be inactivated;
 - 10. Employer's name and telephone number; and
 - 11. Dated signature of the licensee affirming that:
 - a. The information provided is true and correct; and
 - b. The licensee shall not act to qualify a business in an inactive category without activating the license in that category.
- B.** An inactive qualifying party license expires on December 31 unless renewed. To renew an inactive license, the licensee shall comply with the renewal provisions at R4-29-207(C) and (D). There is no continuing education requirement to renew an inactive qualifying party license.
- C.** To activate an inactive qualifying party license and qualify a new business, the qualifying party licensee and the new business applicant shall:
- 1. Comply with R4-29-206.
 - 2. Submit both the fee required to activate a qualifying party license and apply for a business license, and
 - 3. Submit evidence described at R4-29-215(C) of the qualifying party completing six units of continuing education.
- D.** To activate an inactive qualifying party license and qualify an existing business, the qualifying party licensee and the business licensee shall:
- 1. Comply with R4-29-206.
 - 2. Submit the fee required to activate a qualifying party license, and
 - 3. Submit evidence described at R4-29-215(C) of the qualifying party completing six units of continuing education.
- E.** If the Commission determines there may be cause to deny activating a qualifying party license, the Commission shall send a written notice to the applicant specifying the date and time for the applicant to appear at a Commission meeting and

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answer questions.

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

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

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

- A.** A business licensee that wishes to do business from a branch office shall register the branch office with the Commission before doing any business from the branch office.
- B.** To register a branch office, the business licensee shall complete a form, that is available on the Commission's web site, and provide the following information:
1. About the business:
 - a. Name;
 - b. License number;
 - c. Telephone and fax numbers;
 - d. Physical address;
 - e. Mailing address, if different from physical address; and
 - f. Electronic mail address, if any;
 - g. Chemical storage address;
 2. About the branch office:
 - a. Name of manager;
 - b. Manager's applicator license number;
 - c. Telephone and fax numbers;
 - d. Physical address;
 - e. Mailing address, if different from physical address;
 - f. Electronic mail address, if any;
 - g. Chemical storage address; and
 - h. The pest management categories in which the branch office will do business;
 3. About the qualifying party:
 - a. Name;
 - b. Date of birth;
 - c. Mailing address;
 - d. Telephone number;
 - e. Electronic mail address, if any; and
 - f. Qualifying-party license number; and
 4. The dated signature of an authorized representative of the licensed business.
- C.** In addition to the form required under subsection (B), the business licensee shall submit the fee required under R4-29-105.
- D.** A branch office shall be owned by the business licensee. A branch office shall do business in the name of the licensed business.

R4-29-214. ~~Change in a Business Licensee~~

- A.** If a sole proprietor business licensee dies or becomes disabled, the spouse of the sole proprietor business licensee may

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apply to the Commission to have the business license transferred to the spouse. The Commission shall transfer the business license to the spouse of the dead or disabled sole proprietor business licensee if the spouse agrees to fulfill all the responsibilities of a business licensee and to honor all customer warranties provided by the business.

- B.** Except as provided in subsection (A), a business licensee shall stop providing pest management services and apply for a new business license immediately after the owner of a sole proprietorship changes.
- C.** If a business licensee changes the name or form of the business, the licensee shall provide the following information on a Business Name or Entity Change Application submitted to the Commission within 30 days of the change:
 - 1. Business ownership status;
 - 2. Name of business entity;
 - 3. Physical address of business entity;
 - 4. Mailing address of business entity, if different from the physical address;
 - 5. Current business name;
 - 6. Business license number;
 - 7. Telephone number;
 - 8. Fax number;
 - 9. Physical address of business;
 - 10. Mailing address of business, if different from the physical address;
 - 11. Electronic mail address, if any;
 - 12. Chemical storage address of business;
 - 13. New name requested, if any;
 - 14. Reason for name change, if applicable;
 - 15. Copy of the Registered Trade Name Certificate showing the new name or amended Articles of Organization or Incorporation; and
 - 16. Dated signature of the authorized representative of the business licensee affirming that the information provided is true and correct.

R4-29-215. Continuing Education Requirement for an Applicator or Qualifying Party

- A.** An applicator or qualifying party shall obtain six units of continuing education within the 13 months before a license renewal application is submitted under R4-29-207.
- B.** Continuing education units used to renew an applicator license may be used to renew the applicator's qualifying party license if the continuing education units were obtained within 13 months before the qualifying party license renewal application is submitted. Continuing education units used to renew a qualifying party license may be used to renew the qualifying party's applicator license if the continuing education units were obtained within 13 months before the applicator license renewal application is submitted.
- C.** To document attendance at a continuing education, an applicator or qualifying party shall obtain a verification of attendance from the continuing education provider that includes:
 - 1. The applicator's or qualifying party's name;
 - 2. The applicator's or qualifying party's license number;
 - 3. The name of the continuing education;
 - 4. The name of the continuing education provider;
 - 5. The date of the continuing education; and
 - 6. The number of continuing education units obtained.
- D.** An applicator and qualifying party shall maintain a verification of attendance for one year and make the verification of attendance at a continuing education available for review by the Commission upon request.
- E.** An applicator or qualifying party may earn one unit of continuing education each year for attending a regularly scheduled meeting of the Commission in its entirety. To ensure receipt of a verification of attendance, an applicator or qualifying party shall contact the Commission staff before attending a Commission meeting and sign the meeting sign-in sheet.
- F.** An applicator or qualifying party who teaches a continuing education may earn one unit of continuing education for each hour taught, not more than once during a calendar year.

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

- A.** Only continuing education approved by the Commission may be used to satisfy the continuing education requirement in R4-29-215. The Commission shall approve a continuing education only if it addresses:
 - 1. Pesticide labels and labeling;
 - 2. Safety, environmental factors, and consequences;
 - 3. Pesticide use and disposal;
 - 4. Laws and rules related to pest management and the business of pest management;
 - 5. Application techniques;
 - 6. Calibration and dilution;
 - 7. Equipment;

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8. Pest identification;
 9. Life cycles and habits;
 10. Calculation and measurements;
 11. New pest management technologies; or
 12. Licensee responsibilities.
- B.** An applicator, qualifying party, or continuing education provider may apply to the Commission for approval of continuing education.
- C.** A person applying for approval of continuing education shall submit the following to the Commission:
1. A continuing education approval application form, obtained from the Commission, that provides the following information:
 - a. Type of continuing education;
 - b. Name of continuing education provider;
 - c. Address and telephone number of continuing education provider;
 - d. Topic of continuing education;
 - e. Pest management category of continuing education;
 - f. Date, time, and location of the continuing education, if known at the time of the application. If this information is not known at the time of application, the person applying for approval of the continuing education shall submit this information when it is known;
 - g. Number of continuing education units;
 - h. Previous continuing education number, if any;
 - i. Level and type of instruction;
 - j. Description of learning activities;
 - k. Frequency at which the continuing education will be offered;
 - l. Method of proof of attendance in addition to online reporting; and
 - m. Dated signature of applicant;
 2. An instructor application or resumé that includes information about the instructor's education and experience relevant to pest management;
 3. An outline of the subject matter to be covered in the continuing education that demonstrates the continuing education will address at least one of the topics identified in subsection (A);
 4. A copy of any material that will be used or provided to those who attend;
 5. A copy of an examination, if any, used to measure learning; and
 6. A copy of promotional materials, if any.
- D.** The provider of an approved continuing education shall:
1. Provide a verification of attendance that meets the requirements of R4-29-215(C) to each individual who completes the continuing education;
 2. Enter attendance information using the Commission's online continuing education reporting tool within 10 days after the date of the continuing education; and
 3. Maintain a copy of the verification of attendance or original sign-in sheet that lists the attendees' names and license numbers for two years.
- E.** Unless otherwise indicated in the notice of approval, the Commission's approval of a continuing education is valid for two years.
- F.** Approval of continuing education is not renewable. To reapply for approval of a continuing education, a person shall comply with the requirements of subsection (C).
- G.** The provider of an approved continuing education shall provide notice and updated information to the Commission within 10 days after the subject matter or instructor of the approved continuing education changes.
- H.** To evaluate the effectiveness of a continuing education, the Commission may monitor an approved continuing education. Upon request by the Commission, a continuing education provider shall provide the Commission with the date and time that approved continuing education will be provided.
- I.** The Commission shall revoke its approval of continuing education if the Commission determines that the continuing education fails to meet the standards for approval listed in this Section, the continuing education provider provided false information on its application or false information pertaining to attendance, or the continuing education provider fails to comply with the Commission's statutes and this Chapter.

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

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

- A.** For the purpose of monitoring the provision pest management services, the Commission may make a written request of an applicator for a list of the time and location of pest management services that the applicator is scheduled to provide on a specified date that is at least 24 hours from the time of the request.
- B.** The applicator from whom information is requested under subsection (A) shall make the information available to the

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Commission within 24 hours after the request is made. The applicant may make the information available at the Commission office by hand delivery or fax or at another location acceptable to the Commission.

- C. If an applicant cannot timely comply with a request made under subsection (A), the applicant shall immediately provide written notice to the Commission, indicate the reason for noncompliance, and request greater specificity regarding the information to be made available or additional time in which to comply.
- D. The Commission shall:
 - 1. Modify the request made under subsection (A) if the Commission determines that the request lacks specificity necessary for a reasonable person to understand what is requested, or
 - 2. Provide additional time to respond to the request made under subsection (A) if the Commission determines the information requires more time to obtain and the request for more time is not solely for delay.
- E. Under A.R.S. § 32-2321(B), failure to comply with this Section is grounds for disciplinary action.

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

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

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

- A. Only an applicant licensed in both categories B-2 and B-8 and who has received the training required under A.R.S. § 32-2324(A) may perform a wood-destroying insect inspection.
- B. An applicant performing a wood-destroying insect inspection shall inspect all areas of a structure that are visible or accessible at the time of the inspection.
- C. An applicant performing a wood-destroying insect inspection may exclude from inspection an area that is permanently covered by a floor covering, wall covering, or built-in appurtenance such as a bookcase, cabinet, appliance, equipment, or furniture or that would require removing or marring finish work or moving furniture, appliances, or equipment. The applicant shall note on the WDIIR all areas that are not inspected and the reason the areas are not inspected.
- D. An applicant performing a wood-destroying insect inspection shall inspect all areas where there is evidence of current or previous infestation and where a condition conducive to infestation exists. A condition conducive to infestation includes:
 - 1. Faulty grade level. If a structure contains a slab or floor that is on or near grade, the existing earth level is considered grade level;
 - 2. Inaccessible sub-area such as an area with less than 18 inches of clear space between the bottom of a floor joist and grade level;
 - 3. Excessive cellulose debris. Cellulose debris is excessive when:
 - a. The debris can be raked into a pile of at least one cubic foot;
 - b. A stump or wood imbedded in a footing of the structure is in contact with earth, or
 - c. Firewood or a lumber pile is within six inches of the structure;
 - 4. Earth-to-wood contact, which involves wood that is part of a structure or that is attached to or securely abuts the structure and is in contact with the ground;
 - 5. Excessive moisture or evidence of a moisture condition in or around a structure; or
 - 6. Insufficient ventilation. Ventilation is insufficient when there are fewer than two areas to permit cross ventilation and prevent excessive moisture.
- E. To verify whether a corrective treatment was performed or a condition conducive to infestation was corrected, an applicant may conduct a supplemental inspection within 30 days after an original inspection. An inspection conducted more than 30 days after an original inspection is not a supplemental inspection.

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

- A. An applicant shall use only a pesticide that is currently registered for use by both the EPA and the Arizona Department of Agriculture.
- B. An applicant shall not misuse a pesticide or device. It is misuse of a pesticide or device if an applicant:
 - 1. Applies, handles, stores, or disposes of a pesticide or device in a manner that is inconsistent with the label or labeling;
 - 2. Provides a pest management service or handles a pesticide without wearing clothing and using the personal protective equipment required by the label or labeling to protect the applicant from pesticide exposure;
 - 3. Uses a pesticide in a manner that causes the pesticide to come into contact with a person, other than the applicant.

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- animal, or property, other than the property receiving the pest management service, unless the contact results from an accident beyond the reasonable control of the applicator;
4. Uses a pesticide in a food-handling establishment that the label or labeling recommends not be used in a food-handling establishment; and
 5. Uses a pesticide in a manner that contaminates food, feed, or drugs or equipment used to prepare or serve food, feed, or drugs.
- C.** While mixing a pesticide with water, an applicator shall protect the water supply from back-siphoning of the pesticide mixture. An applicator shall not add water to a tank in which a pesticide is mixed or from which a pesticide is dispensed by protruding a fill-pipe or hose connection into the tank. An applicator shall ensure that a fill-pipe or hose connection terminates at least two inches above the tank fill opening or is equipped with an effective anti-siphoning device.
- D.** An applicator shall ensure that all equipment, including auxiliary equipment such as a hose or metering device, used for mixing or applying a pesticide is in good repair and operating properly.
- E.** An applicator shall apply, store, or dispose of a pesticide designated by the EPA as restricted use only if the applicator is licensed, or working under the immediate supervision of a licensee licensed, in the category for which the restricted-use pesticide is applicable.
- F.** Unless consistent with the label and labeling, an applicator shall not apply a granulated pesticide that bears the statement "Keep out of the reach of children" in a manner that leaves exposed granules on a patio, step, porch, sidewalk, driveway, or floor.
- G.** An applicator shall clean a pesticide spill in accordance with the pesticide label and labeling and in a manner that minimizes exposure to humans and other non-target organisms. If a pesticide spill may endanger humans, an applicator shall clean the pesticide spill in accordance with recommendations by health and medical personnel and local authorities.
- H.** An applicator shall apply a pesticide at a rate provided by a Special Local Need registration issued by the Arizona Department of Agriculture and the pesticide labeling only if the applicator has both the Special Local Need registration and labeling in the applicator's possession at the time of application.
- I.** If information regarding provision of a particular pest management service is not available on the pesticide label or labeling or addressed in the Commission's statutes or this Chapter, an applicator shall comply with the pesticide manufacturer's recommendation and the general industry practice prevailing in the community at the time the pest management service is provided.
- J.** If there is a conflict between any provision in this Section and labeling instructions or a local ordinance, an applicator shall follow the more specific instruction.

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

- A.** An applicator shall not perform wood-destroying insect control or fumigation unless the applicator is licensed in Category B2 or B4, respectively, or working under the immediate supervision of an applicator or qualifying party who is licensed in Category B2 or B4, respectively.
- B.** An applicator shall not perform wood-destroying insect control until the business licensee that employs the applicator ensures that:
1. A wood-destroying insect inspection is performed under R4-29-303 by a licensed applicator qualified under A.R.S. § 32-2323(E).
 2. A treatment proposal is prepared on a form approved by the Commission and contains the information required under A.R.S. § 32-2323(B) and (C), and
 3. The treatment proposal is delivered to the person requesting the proposal.
- C.** An applicator shall apply a termiticide only in the quantity, strength, and dosage, and in the manner prescribed on the termiticide label unless otherwise specified by this Chapter or a Commission order.
- D.** Pretreatment for commercial or residential construction.
1. Unless a contract between the business licensee and customer specifies additional requirements, an applicator shall:
 - a. Establish a horizontal barrier of termiticide before any concrete slab under roof is poured or in conjunction with establishing the footings and supports for a raised foundation; and
 - b. Establish a vertical barrier of termiticide in all critical areas visible during the time of pretreatment. An area is critical at the time of pretreatment if the area is identified as critical by the termiticide label or if there is soil in the immediate vicinity of:
 - i. A penetration or protrusion through the slab;
 - ii. An observable preset for crack or joint control;
 - iii. A formed-up change of grade level;
 - iv. Abutting slabs;
 - v. A bath trap or tear-out;
 - vi. The interior of a foundation or stem wall; or
 - vii. A pier, pillar, pipe, or other object that extends from the soil to the structure.
 2. Except as specified in subsection (D)(3) and unless the termiticide label requires more, an applicator shall treat all critical areas during a pretreatment, including the final-grade portion of a pretreatment, at a rate of four gallons of

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chemical preparation per 10 linear feet for each foot of depth from grade level to the footer. If there is no adjacent footer, the applicator shall treat to a depth of one foot.

3. Unless the termiticide label requires more, an applicator is not required to treat a critical area during a pretreatment beyond a depth of four feet if:
 - a. Treating beyond a depth of four feet will, or reasonably may, cause an off-site application;
 - b. Access to the footer is not possible because of its distance below grade; or
 - c. Treating beyond a depth of four feet will, or reasonably may cause an environmental contamination.
 4. If an applicator does not treat a critical area during a pretreatment beyond a depth of four feet because the applicator determines that one of the exceptions in subsection (D)(3) is applicable, the applicator shall:
 - a. Apply the amount of termiticide possible without causing an off-site application or environmental contamination, and
 - b. Include evidence of the exception in the treatment record. Evidence of the exception may include:
 - i. A photograph of the interior grade and adjacent location that would or reasonably might be contaminated by treating beyond a depth of four feet.
 - ii. A photograph of the site after the pretreatment but before concrete placement.
 - iii. A written statement from the general contractor concerning the fill material and compaction rating.
 - iv. A written statement from the concrete subcontractor describing the depth of the footer as greater than four feet, or
 - v. A written compaction rating statement from the engineering subcontractor.
 5. If an applicator is advised before concrete is poured that a treated area is disturbed and the continuous horizontal or vertical chemical barrier established under subsection (D)(1) is broken, and if the applicator is provided an opportunity to re-treat the disturbed area, the applicator shall re-treat the disturbed area and re-establish a continuous horizontal and vertical chemical barrier.
 6. Immediately after completing a pretreatment, an applicator shall securely affix a tag to the pretreatment site. The applicator shall ensure that the tag is visible, readily available for inspection, and unlikely to be covered with concrete or soil. If there is a contractor's permit or inspection board at the pretreatment site, the applicator may affix the tag to the board. The applicator shall ensure that the tag contains the following information about the pretreatment:
 - a. Name of business licensee;
 - b. Address of business licensee;
 - c. Telephone number of business licensee;
 - d. License number of business licensee;
 - e. Location or address of project;
 - f. Date of pretreatment application;
 - g. Time that application was started (not time that applicator arrived at the site);
 - h. Time that application ended (not time that applicator left the site);
 - i. Trade name of pesticide used;
 - j. Percentage of active ingredient in the pesticide used;
 - k. Number of gallons of chemical preparation applied;
 - l. Square footage of area treated;
 - m. Linear footage of area treated;
 - n. Type of slab construction;
 - o. Name of applicator; and
 - p. License number of applicator or, if not licensed, the name and license number of the applicator or qualifying party providing immediate supervision.
 7. If it is necessary for an applicator to abandon a pretreatment site before completing the treatment, the applicator shall complete and affix the tag described in subsection (D)(6), representing the work completed, and after marking the tag "TREATMENT INCOMPLETE."
 8. If a contractor requires a copy of the tag described in subsection (D)(6) for the customer's file, an applicator shall prepare and provide the contractor with a duplicate tag that is clearly marked "DUPLICATE."
 9. An applicator shall leave a record of the final-grade treatment in an unlocked electrical or circuit-breaker box, if available. Otherwise, the applicator shall conspicuously post or leave the record with the property agent. The applicator shall ensure that the record of the final-grade treatment contains the information listed in subsection (D)(6) except the information required under subsections (D)(6)(l) and (D)(6)(n) is not required.
- E. New-construction treatment for commercial or residential construction.**
1. Unless specifically precluded by the termiticide label, an applicator shall treat all critical areas visible at the time of a new-construction treatment. An area is critical at the time of a new-construction treatment if the area is identified as critical by the termiticide label or if there is soil in the immediate vicinity of:
 - a. A penetration or protrusion through the slab;
 - b. An observable crack or joint;

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- c. Abutting slabs;
- d. A bath trap or tear-out;
- e. The interior of a foundation or stem wall; or
- f. A pier, pillar, pipe, or other object that extends from the soil to the structure.
- 2. An applicator shall comply with subsections (D)(2) through (D)(4) when treating a critical area during a new-construction treatment except that the treatment shall be at the labeled rate rather than at a rate of 4 gallons of chemical preparation per 10 linear feet for each foot of depth.
- 3. If an applicator is advised that a treated area is disturbed, the applicator shall re-treat the disturbed area.
- 4. Immediately after completing a new-construction treatment, an applicator shall securely affix a tag to the new-construction site in the manner described in subsection (D)(6). The applicator shall ensure that the tag contains the information listed in subsection (D)(6).
- 5. An applicator shall comply with subsections (D)(7) through (D)(9) when performing a new-construction treatment.
- F.** Post-construction treatment for commercial or residential construction.
 - 1. If an applicator uses a drilling and injecting application method for a post-construction treatment, the applicator shall space the treatment holes in each treated area no more than 24 inches apart or in accordance with the termiticide label, whichever is more restrictive. If an applicator determines that a structural feature makes it necessary to space treatment holes more than 24 inches apart, the applicator may space the treatment holes more than 24 inches apart if the greater distance is within the limits on the termiticide label.
 - 2. If the critical areas of a structure received neither a pretreatment nor a new-construction treatment, an applicator shall treat all critical areas visible at the time of post-construction treatment before issuing a builder's warranty regarding subterranean termite treatment. An area is critical at the time of a post-construction treatment if it is an area listed in subsection (D)(1)(b), a change of grade, or a crack greater than 1/16th of an inch.
 - 3. After completing a post-construction treatment using a drilling and injection application method, an applicator shall securely patch all treatment holes, including those in an unfinished basement, enclosed porch, garage, or workshop, with a material that is nonporous and non-cellulose.
- G.** An applicator who performs a pretreatment or new-construction treatment shall ensure that a copy of the information recorded on a tag required under subsection (D) or (E) is provided to the business licensee for inclusion in the business licensee's service records.

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

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

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the pesticide container is transported on a service vehicle.

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

- A.** An applicator shall timely make all records required by law and provide the records to the business licensee that employs the applicator. Under A.R.S. § 32-2321(B)(2), making a false or fraudulent record or report is grounds for disciplinary action.
- B.** Service records. An applicator shall make a record of each pest management service provided. The applicator shall include the following information in the service record:
1. Name and address of the customer;
 2. Specific site at which a pesticide was applied;
 3. Date of service;
 4. Target pest or purpose of service;
 5. Trade name or common name of pesticide applied;
 6. EPA registration number of any restricted-use pesticide applied;
 7. Percent active ingredient in the pesticide as applied;
 8. Amount of pesticide applied; and
 9. Name and license number of the applicator or if the applicator is unlicensed, name of the unlicensed applicator and the name and license number of the applicator providing supervision.
- C.** Pesticide purchase records. An applicator shall make a record of each restricted-use pesticide purchased or otherwise acquired. The applicator shall include the following information in the pesticide purchase record:
1. Date of purchase or acquisition;
 2. Trade name or common name of pesticide;
 3. EPA registration number of pesticide;
 4. Quantity of pesticide purchased or acquired; and
 5. Name and license number of the applicator making the pesticide purchase record or name of the business licensee.
- D.** Pesticide disposal records. An applicator shall make a record of each restricted-use pesticide disposed, sold, lost, or otherwise relinquished. The applicator shall include the following information in the pesticide disposal record:
1. Date of disposal;
 2. Trade name or common name of pesticide;
 3. EPA registration number of pesticide;
 4. Quantity of pesticide disposed;
 5. Name of the active ingredient in the pesticide disposed;
 6. Percent active ingredient in the pesticide disposed;
 7. Method of disposal;
 8. Location and type of disposal site or service; and
 9. Name and license number of the applicator making the pesticide disposal record or name of the business licensee.
- E.** WDIIR. An applicator who completes a wood-destroying insect inspection shall:
1. Compete a WDIIR, using a form approved by the Commission. A trademark or logo may be placed on the WDIIR if it does not alter the format or substance of the Commission-approved form;
 2. Submit an original WDIIR to the business licensee within seven days after completing the wood-destroying insect inspection;
 3. Submit a supplemental WDIIR to the business licensee within seven days after completing a supplemental wood-destroying insect inspection to verify that a corrective treatment was performed or a condition conducive was corrected. The applicator shall include the original inspection number on the supplemental WDIIR;
 4. If required by another state or federal agency, complete another WDIIR in addition to but not instead of the Commission-approved WDIIR; and
 5. Ensure that the following information is included on the WDIIR:
 - a. Name, address, telephone number, and license number of business licensee. This information may be pre-printed on the WDIIR;
 - b. Date of wood-destroying insect inspection, and the WDIIR number;
 - c. Purpose of the inspection report;
 - d. Whether the report is from an original or supplemental inspection;
 - e. Name of property owner or seller;
 - f. Address of inspected property;
 - g. Inspected and un-inspected structures at the site;
 - h. Areas of the structure not inspected because they were obstructed or inaccessible and the cause of the obstruction or inaccessibility;
 - i. Whether visible evidence of wood-destroying insects is observed;
 - j. Whether visible evidence of infestation from wood-destroying insects is observed and if so, the date on which a proper control measure is performed, if applicable;

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- k. Whether visible damage from wood-destroying insects is observed and if so, the insect causing the damage and the areas in which the damage is observed;
 - l. Whether visible evidence of previous treatment is observed and if so, the nature of the evidence;
 - m. If damage from wood-destroying insects is observed, whether or when the damage will be corrected and whether the damage will be corrected by the business licensee or another company;
 - n. Visible conditions conducive to infestation by wood-destroying insects;
 - o. Diagram or graph of the structure clearly indicating wood-destroying insects, damage, conducive conditions observed, and areas where further inspection is recommended, and a statement or indication on the diagram or graph clearly identifying inaccessible areas; and
 - p. Dated signature and license number of the individual making the inspection. The individual making the inspection shall sign the WDHIR by hand or electronically and shall not use a signature stamp or allow another individual to affix the signature.
- F.** Wood-destroying insect treatment proposal. An applicator who is qualified under A.R.S. § 32-2323(B) and (E) shall complete a wood-destroying insect treatment proposal using a form approved by the Commission and provide a copy of the proposal to the person requesting the proposal and the business licensee.
- G.** Upon written request by the Commission, an applicator shall make the records required under this Section available for review by the Commission. The applicator from whom records are requested shall make the records available to the Commission within 24 hours or by a later date specified by the Commission. The applicator shall make the records available at the Commission office by hand delivery, electronic mail, mail, or fax. The applicator shall be available to interpret the submitted records if requested by the Commission.
- H.** If an applicator cannot timely comply with a request made under subsection (G), the applicator shall immediately provide written notice to the Commission, indicate the reason for noncompliance, and request greater specificity regarding the information to be made available or additional time in which to comply.
- I.** The Commission shall:
- 1. Modify the request made under subsection (G) if the Commission determines that the request lacks specificity necessary for a reasonable person to understand what is requested, or
 - 2. Provide additional time to respond to the request made under subsection (G) if the Commission determines the information requires more time to obtain and the request for more time is not solely for delay.
- J.** Under A.R.S. § 32-2321(B), failure to comply with this Section is grounds for disciplinary action.

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

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

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

R4-29-502. ~~Repealed~~ Supervising an Applicator

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

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

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

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

- A.** A qualifying party shall ensure that an applicator employed by the business licensee, whether licensed or unlicensed, receives the supervision and training that the applicator requires to comply fully with the Commission's statutes and this Chapter and label and labeling directions.
- B.** A qualifying party who supervises the use, application, storage, or disposal of a pesticide shall hold an applicator license in the category applicable to the pesticide being used, applied, stored, or disposed.
- C.** A qualifying party shall not allow an unlicensed applicator to apply a pesticide for more than 90 days of employment. A qualifying party shall not allow a licensed applicator to apply a pesticide in a category for which the applicator is not licensed for more than 30 days.
- D.** A qualifying party shall ensure that an applicator employed by the business licensee has the protective clothing, safety supplies, and equipment specified by the label or labeling of each product used by the applicator and by the Commission's statutes and this Chapter. The qualifying party shall ensure that the applicator is instructed regarding how to use, maintain, clean, and store the protective clothing, safety supplies, and equipment.
- E.** A qualifying party shall be readily available to an applicator employed by the business licensee while the applicator provides pest management services.
- F.** To be active in the management of the licensed business that the qualifying party is qualifying, a qualifying party shall be physically present at the primary business office at least once every 30 days and ensure that all of the following are done:
 - 1.** Determine pesticide use by reviewing records of pesticide acquisitions, storage, disposal, and current inventory;
 - 2.** Review the pesticide inventory, including pesticides stored on a service vehicle, to determine compliance with labels, labeling, and the Commission's statutes and rules;
 - 3.** Review the training, supervision, and equipping of applicators employed by the business licensee to determine whether the training, supervision, and equipping is sufficient to enable the applicators to comply with labels, labeling, and the Commission's statutes and rules;
 - 4.** Review personnel records to determine whether an applicator employed by the business licensee is licensed in all applicable categories within the time-frames specified by A.R.S. § 32-2312;
 - 5.** Review office records and recordkeeping procedures to determine compliance with required recordkeeping and reporting; and
 - 6.** Ensure that any deficiency noted when the responsibilities listed in subsections (F)(1) through (F)(5) are performed is corrected.
- G.** A qualifying party shall develop a written plan that specifies how the duties and responsibilities of the qualifying party are to be fulfilled if the qualifying party is absent or unavailable for any reason. The qualifying party shall ensure that the plan is implemented when the qualifying party is absent or unavailable.
- H.** A qualifying party shall not delegate the responsibility to be physically present at least every 30 days at the primary business office of the licensed business the qualifying party is qualifying unless the qualifying party submits written documentation to the Commission from a licensed medical or mental health care professional that indicates the licensed medical or mental health care professional is treating the qualifying party and is of the opinion that the qualifying party is unable to fulfill the responsibility to be physically present at least every 30 days.
- I.** Notice to Commission of an incident. A qualifying party shall determine whether the business licensee qualified by the qualifying party complied with R4-29-605(C). If the qualifying party determines that the business licensee has yet to comply with R4-29-605(C), the qualifying party shall provide written notice to the Commission within one business day after one of the following incidents is confirmed by medical personnel or an applicable regulatory agency to be caused by a pesticide applied by the business licensee:
 - 1.** Death or illness of an individual or animal;
 - 2.** Contamination of food, feed, drugs, or water supply;
 - 3.** Contamination of a structure that results in the hospitalization of an occupant or evacuation of the structure; or
 - 4.** Contamination of the environment that results in evacuation of the area.

R4-29-505. Qualifying Party Recordkeeping

- A.** In addition to ensuring that the records required under R4-29-307 are made, a qualifying party shall ensure that records are made and maintained of the training, supervision, and equipping provided to an applicator. Under A.R.S. § 32-2321(B)(2), making a false or fraudulent record or report is grounds for disciplinary action.
- B.** Upon written request by the Commission, a qualifying party shall make the records required under this Section available for review by the Commission. The qualifying party from whom records are requested shall make the records available to the Commission within 24 hours or by a later date specified by the Commission. The qualifying party shall make the records available at the Commission office by hand delivery, electronic mail, mail, or fax. The qualifying party shall be available to interpret the submitted records if requested by the Commission.
- C.** If a qualifying party cannot timely comply with a request made under subsection (B), the qualifying party shall immediately provide written notice to the Commission, indicate the reason for noncompliance, and request greater specificity regarding the information to be made available or additional time in which to comply.
- D.** The Commission shall:

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

ARTICLE 6. BUSINESS LICENSEE DUTIES AND RESPONSIBILITIES

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

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

R4-29-603. Supervision of Qualifying Party

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

R4-29-604. Qualifying Party Required

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

R4-29-605. Business Management

A. Financial responsibility.

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

B. Use of business name and license number.

1. A business licensee shall prominently display the license issued by the Commission at the primary business office and each branch office.
2. A business licensee shall prominently display the business name and license number, as recorded on the license issued by the Commission, on:
 - a. Customer proposals or contracts for pest management services;
 - b. Service records;
 - c. Inspection reports;
 - d. Written materials provided to customers or potential customers;
 - e. Correspondence;
 - f. Advertisements; and
 - g. Service vehicles and trailers used in providing pest management services. The business licensee shall ensure that the business name and license number display on a service vehicle or trailer used in providing pest management services conforms to the following:
 - i. Is affixed to the service vehicle or trailer used in providing pest management services within 30 days after the Commission issues the license or issues a business license change under R4-29-214 or after the service vehicle or trailer is acquired, whichever is sooner.
 - ii. Is in a color that contrasts with the color of the service vehicle and trailer;
 - iii. Is on both sides of the service vehicle and trailer;
 - iv. Uses at least two-inch letters for the principal words in the business name and at least one and one-half inch letters for other words in the business name; and
 - v. Uses at least two-inch numbers for the license number.

3. A business licensee that always uses a service vehicle and trailer together is required to mark only the service vehicle or trailer as described in subsection (B)(2)(g). A business licensee that uses a vehicle only for sales, solicitations, or solely for inspections and does not carry a pesticide, and does not otherwise use the vehicle to provide a pest management service, is not required to mark the vehicle as described in subsection (B)(2)(g).
4. When complying with subsection (B)(2), a business licensee may use a slogan, trade name, or trade mark in addition to the business name and license number. When complying with subsection (B)(2), a business licensee may use a word or phrase to indicate its former licensed business name if it had a previously licensed business name.

- C. Notice to Commission of an incident.** A business licensee shall determine whether a qualifying party that qualifies the business licensee complied with R4-29-504(I). If the business licensee determines that the qualifying party has yet to

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comply with R4-29-504(I), the business licensee shall provide written notice to the Commission within one business day after one of the following incidents is confirmed by medical personnel or an applicable regulatory agency to be caused by a pesticide applied by the business licensee:

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

D. A business licensee shall not allow an unlicensed applicator to apply a pesticide for more than 90 days of employment. A business licensee shall not allow a licensed applicator to apply a pesticide in a category for which the applicator is not licensed for more than 30 days.

R4-29-606. Storing Pesticides and Devices

A. A business licensee shall provide a pesticide and device storage area that complies with all federal, state, and local laws. The storage area may include an area on a service vehicle.

B. A business licensee shall secure the storage area required under subsection (A) from unauthorized entry by equipping its entrance or access with a lock.

C. Immediately after storing a pesticide, a business licensee shall conspicuously post a sign at the entrance or access to a non-vehicle storage area and on a vehicle storage area indicating there is a pesticide, chemical, or poison stored inside.

D. A business licensee shall provide sufficient ventilation to the outside of the storage area required under subsection (A) to prevent build-up of odors and preclude chemical injury to an individual or animal.

E. A business licensee shall provide the following in or immediately adjacent to the storage area required under subsection (A), including a storage area on a service vehicle:

1. Electric or battery-powered lighting that is sufficient to read a pesticide label;
2. Fully charged and operational fire extinguisher or fire suppression system appropriate to each pesticide stored in the area;
3. First-aid kit that includes the supplies listed in R4-29-607(6);
4. Emergency medical information including the telephone number of the state or local poison control center;
5. Material capable of absorbing a spill or leak of at least one gallon;
6. Specimen label and MSDS for each pesticide stored in the area; and
7. Washing facilities that include fresh water, soap, and towels.

R4-29-607. Equipping a Service Vehicle

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

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

R4-29-608. Providing Termite Treatment

A. If a business licensee or an employee of a business licensee is advised before concrete is poured that a pretreatment area is disturbed and the continuous chemical barrier is broken and if an opportunity is provided to re-treat the disturbed area or is advised that a new-construction treatment area is disturbed, the business licensee shall ensure that the disturbed area is retreated.

B. A business licensee that performs a pretreatment or new-construction treatment shall establish vertical barriers at the exterior of foundation walls in stem-wall construction or the exterior of grade beam in monolithic construction after all grading and other construction-related soil disturbance is complete. This final-grade treatment, which may be completed after construction, is part of either the pretreatment or new-construction treatment.

C. A business licensee that provides a termite-treatment warranty shall ensure that the effective date of the warranty is the

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date on which treatment begins.

- D.** If subterranean termites occur in or on a residential or commercial structure within five years after a business licensee first performs a pretreatment or new-construction treatment of the structure, the business licensee shall re-treat the structure free of charge in accordance with the label specifications of a termiticide available for use. If subterranean termites occur in or on an addition that does not abut the slab of a residential or commercial structure within five years after a business licensee first performs a pretreatment or new-construction treatment of the non-abutting addition, the business licensee shall re-treat the non-abutting addition free of charge in accordance with the label specifications of a termiticide available for use. For the purpose of this subsection, the business licensee is the business licensee who performed the pretreatment or new-construction treatment or a successor that acquired the business assets pertaining to category B2 or B8.
- E.** If subterranean termites occur a third time on the exterior of a one or two unit residential structure within five years after a business licensee first performs a pretreatment or new-construction treatment, the business licensee shall re-treat the entire exterior perimeter of the structure free of charge.
 - 1.** As used in this subsection, exterior means a portion of a residential structure where termite activity originates and that is not livable and not a garage;
 - 2.** For the purpose of this subsection and subsection (F):
 - a.** A first occurrence means the first time evidence of subterranean termites exists after a pretreatment or new-construction treatment;
 - b.** A second occurrence means evidence of subterranean termites exists at least 25 feet away from the site of the first occurrence and at least 45 days after the date of re-treatment for the first occurrence; and
 - c.** A third occurrence means evidence of subterranean termites exists at least 25 feet away from the sites of both the first and second occurrences and at least 45 days after the date of re-treatment for the second occurrence.
- F.** If subterranean termites occur a third time on the interior of a one or two unit residential structure within five years after a business licensee first performs a pretreatment or new-construction treatment, the business licensee shall perform a post-construction treatment of the entire structure free of charge. As used in this subsection, interior means a portion of a residential structure where termite activity originates and that is livable or a garage.
- G.** A business licensee that performs a re-treatment under subsection (D) or (E) or a post-construction treatment under subsection (F) shall not charge the consumer for any expense incurred in providing the re-treatment or post-construction treatment to which the consumer is entitled under this Chapter.
- H.** If a business licensee goes to a structure to perform a re-treatment under subsection (D) or (E) or a post-construction treatment under subsection (F) and determines there is no evidence of subterranean termites, the business licensee may charge the consumer a reasonable amount for the expenses incurred in making the trip.
- I.** If a business licensee determines that a re-treatment or post-construction treatment is necessary because the continuous chemical barrier is disturbed, the business licensee may charge the reasonable cost of reestablishing the barrier.
- J.** If a customer refuses a re-treatment or post-construction treatment as described in this Section, access to the customer's property, or to allow drilling in an area where drilling is necessary, the business licensee shall obtain the customer's printed name and dated signature on a document evidencing that the business licensee:
 - 1.** Informed the customer of the right to a re-treatment or post-construction treatment at no charge,
 - 2.** Provided the customer with a copy of this Section and the termiticide label requirements,
 - 3.** Provided the customer with the Commission's telephone number, and
 - 4.** Explained to the customer the benefits of having and the detriments of not having a re-treatment or post-construction treatment.

R4-29-609. Business Licensee Recordkeeping

- A.** In addition to ensuring that the records required under R4-29-307 and R4-29-505 are made and maintained, a business licensee shall make and maintain records of the following:
 - 1.** The specimen label and MSDS for each registered pesticide currently used by an applicator employed by the business licensee;
 - 2.** The financial responsibility required under R4-29-605(A);
 - 3.** Purchase records of each pesticide purchased or otherwise acquired that include the following information:
 - a.** Date of purchase or acquisition;
 - b.** Trade name or common name of pesticide;
 - c.** Quantity of pesticide purchased or acquired; and
 - d.** Name of the business licensee;
 - 4.** Date on which a service vehicle or trailer is acquired;
 - 5.** Incident reports submitted to the Commission as required under R4-29-504(I) or R4-29-605(C);
 - 6.** A pest management service provided to a customer, including a service provided under a warranty;
 - 7.** The evidence of customer refusal of a re-treatment or post-construction treatment required under R4-29-608(J);
 - 8.** Written inspection reports;
 - 9.** Customer contracts for pest management services; and
 - 10.** Personnel records including for each employee of the business licensee;

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- a. Date of hire;
 - b. Date on which pest management services are first performed;
 - c. Copy of license issued by the Commission;
 - d. Training and continuing education received;
 - e. Supervision received;
 - f. Protective clothing, safety supplies, and equipment issued to employee;
 - g. Name of supervisor; and
 - h. Employment ending date.
- B.** A business licensee shall maintain the records as follows:
1. Records under subsection (A)(1), as long as the registered pesticide is used by the business licensee. The business license shall maintain the records required under subsection (A)(1) at the primary business office or branch office from which the registered pesticide is used or at which the registered pesticide is stored;
 2. Records under subsection (A)(2), current;
 3. Records under subsection (A)(3) or R4-29-307(C) and (D), three years from the date of purchase or disposal if the pesticide is not used in wood-destroying insect control and five years if the pesticide is used in wood-destroying insect control;
 4. Records under subsection (A)(4), as long as the service vehicle or trailer is owned by the business licensee;
 5. Records under subsection (A)(5), until the statute of limitation for possible legal action resulting from the incident is expired or until resulting legal action is completed;
 6. Records under subsection (A)(6), three years except five years for a pest management service involving wood-destroying insect control or wood-destroying insect or fungi inspection;
 7. Records under subsection (A)(7), five years;
 8. Records under subsections (A)(8) and (A)(9), three years from the date on the inspection report or customer contract;
 9. Records under subsection (A)(10), three years after the employment ending date;
 10. WDIIRs completed under subsection (C), five years. The business licensee shall consecutively number the WDIIRs and:
 - a. Maintain them in consecutive order; or
 - b. Maintain them in a different order and maintain a list of the WDIIRs in consecutive order that includes the date of the inspection and the heading under which each WDIIR is filed; and
 11. Records under subsections (A)(5) and (A)(6) that pertain to the use of a restricted-use pesticide shall be maintained separate from other records.
- C.** When an applicator employed by a business licensee submits a WDIIR, the business licensee shall record the following on the WDIIR:
1. TARF number,
 2. If the business licensee has the property under warranty:
 - a. Account number,
 - b. Target pest,
 - c. Date of initial treatment,
 - d. Date of warranty expiration, and
 3. The TARF number of each TARF completed regarding the property after the WDIIR is completed.
- D.** TARF. A business licensee shall:
1. Submit to the Commission a TARF, using a form approved by the Commission, within 30 days of completing a termite action specified under subsection (D)(3). For the purpose of reporting, a pretreatment or new-construction treatment is complete when no further preventative treatment is necessary until the final-grade treatment unless it is necessary to re-treat a disturbed continuous chemical barrier. In a multiple-unit project, a pretreatment or new-construction is complete when no further preventative treatment is necessary for the last unit at the project until the final-grade treatment unless it is necessary to re-treat a disturbed continuous chemical barrier;
 2. Include the fee specified under R4-29-105(D) with each TARF and, if applicable, the penalty required under R4-29-105(E);
 3. Unless exempt under subsection (D)(4), submit a TARF after completing each of the following:
 - a. Pretreatment, including pretreatment of an addition that does not abut the slab of a previously pretreated structure;
 - b. New-construction treatment, including new-construction treatment of an addition that does not abut the slab of a previously new-construction treated structure;
 - c. Final-grade treatment;
 - d. First corrective termite treatment at a site; and
 - e. Wood-destroying insect inspection.
 4. Not submit a TARF after completing the following:
 - a. First corrective termite treatment at a site if the business licensee;

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

ARTICLE 7. INSPECTIONS; INVESTIGATIONS; COMPLAINTS; DISCIPLINARY PROCEDURES

R4-29-701. General Provisions

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

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uments as described in subsection (D) on the attorney.

- F. Service by the Commission is complete on the date of personal delivery, the date on a return receipt, or five days after a first-class mail postmark date.
- G. To ensure timely receipt of all notices and documents served, a party to a proceeding involving the Commission shall provide written notice to the Commission of a change in address.

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

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

R4-29-703. Settlement Conferences

- A. If the Commission determines that it is in the best interest of the state, the Commission shall designate one or more individuals to conduct a settlement conference to negotiate a proposed resolution with an individual or entity against whom the Commission has filed a complaint.
- B. The Commission shall conduct a settlement conference informally. The Commission shall not place a witness under oath at a settlement conference and shall not issue a subpoena for attendance.
- C. The Commission shall not make an audio, video, or stenographic recording of a settlement conference. The Commission may make a general written record of a settlement conference.
- D. A party to a settlement conference shall not disclose to the Commission a settlement offer that does not result in a proposed resolution.
- E. A party to a settlement conference shall not introduce into evidence at a formal hearing a statement made at the settlement conference unless all parties agree to the introduction.
- F. Following a settlement conference, the Commission shall accept, reject, or modify the proposed resolution negotiated by participants in the settlement conference. If the Commission rejects a proposed resolution involving a licensee, the Commission shall dismiss the matter, conduct further investigation, renegotiate a proposed resolution, or send the matter to formal hearing. If the Commission rejects a proposed resolution involving an unlicensed individual or entity, the Commission shall dismiss the matter, conduct further investigation, renegotiate a proposed resolution, send the matter to formal hearing, or impose discipline as allowed by law.

R4-29-704. Consent Agreements

- A. After a settlement conference, the Commission may impose disciplinary action in a consent agreement and order. To determine the disciplinary action that is appropriate, the Commission shall consider the following:
 - 1. Prior violation resulting in discipline;
 - 2. Dishonest or self-serving motive;
 - 3. Amount of experience as a licensee;

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

R4-29-705. Hearing Procedures

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

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

- A.** The Commission shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.
- B.** Except as provided in subsection (J), a party is required to file a motion for rehearing or review of a decision of the Commission to exhaust the party's administrative remedies.
- C.** A party may amend a motion for rehearing or review at any time before the Commission rules on the motion.
- D.** The Commission may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings or an order or abuse of discretion that deprived the moving party of a fair hearing;
 2. Misconduct by the Commission, its staff, an administrative law judge, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;

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5. Excessive penalty;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
7. The Commission's decision is the result of passion or prejudice; or
8. The findings of fact or decision is not justified by the evidence or is contrary to law.
- E.** The Commission may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). The Commission shall specify the particular grounds for any order modifying a decision or granting a rehearing.
- F.** When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits.
- G.** Not later than 10 days after the date of a decision, after giving parties notice and an opportunity to be heard, the Commission may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Commission may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.
- H.** If a rehearing is granted, the Commission shall hold the rehearing within 60 days after the date on the order granting the rehearing.
- I.** The Commission may extend all time limits listed in this Section upon a showing of good cause. A party demonstrates good cause by showing that an extension of time will:
 1. Further administrative convenience, expedition, or economy; or
 2. Not cause undue prejudice to any party.
- J.** If the Commission makes a specific finding that a particular decision needs to be effective immediately to preserve the public peace, health, or safety and that a review or rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, the Commission shall issue the decision as a final decision without an opportunity for rehearing or review.

R4-29-707. Judicial Review of Commission Order

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

R4-29-708. Disciplinary Action

- A.** Following entry of a final order that a licensed or unlicensed individual or entity violated the Commission's statutes or this Chapter, the Commission shall impose discipline as allowed by A.R.S. §§ 32-2304, 32-2321, 32-2327, and 32-2329. In considering the discipline to impose, the Commission shall consider the factors identified in R4-29-704.
- B.** The Commission shall place a licensee on probation, as allowed by A.R.S. § 32-2321, if the Commission determines that probation will benefit the licensee or protect the public or environment. The Commission shall define probation requirements that benefit the licensee or protect the public or environment, which may include:
 1. Reporting by or monitoring of the licensee, or
 2. Participating in educational activities other than those required by the Commission's statutes or this Chapter.
- C.** The Commission shall impose a civil penalty on a licensee, as allowed by A.R.S. § 32-2321, for failure to file or late filing of a TARF if:
 1. The licensee has a prior violation of the same type; and
 2. The number of TARFs not filed or filed late equals or exceeds 10 percent of the TARFs that the licensee filed in the previous 12 months.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION

[R07-33]

PREAMBLE

1. Sections Affected

R9-22-701
R9-22-701.10
R9-22-703
R9-22-704
R9-22-705
R9-22-714
R9-22-716

Rulemaking Action

Amend
New Section
Amend
Repeal
Amend
Amend
Repeal

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. §§ 36-2903.01 and 36-2904

Implementing statute: A.R.S. §§ 36-2903.01, 36-2904, 36-2907, and 36-2908

3. The effective date of the rules:

April 7, 2007

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 2575, July 21, 2006

Notice of Proposed Rulemaking: 12 A.A.R. 3675, October 6, 2006

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

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

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

The rules include definitions that apply specifically to Standards of Payments and outline the provisions that apply to payments, including reimbursement to a provider, transferring payments, and contracting with entities for specialized services. R9-22-716 is being repealed since this information is maintained in contract. The rulemaking is intended to update these rules, ensuring that they represent the agency's current practice.

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:

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

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

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

In addition to the following changes, the Administration made the rules more clear, concise, and understandable by making grammatical, punctuation, and structural changes throughout the rules.

In R9-22-701.10, language was added to state that the Administration has no liability during the enrollment period of a member with a Contractor.

In R9-22-714 (B), the Administration clarified that the Exclusion list can be accessed at the Office of the Inspector General's (OIG) web site rather than viewed monthly on the *Federal Register*. This change was necessary since OIG recently posted in the *Federal Register* that it will no longer publish this listing.

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

The Administration did not receive any comments regarding the 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:

Not applicable

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

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION

ARTICLE 7. STANDARDS FOR PAYMENTS

Section

R9-22-701.	Standard for Payments Related Definitions
<u>R9-22-701.10</u>	<u>Scope of the Administration's and Contractor's Liability</u>
R9-22-703.	Payments by the Administration
R9-22-704.	Transfer of Payments <u>Repealed</u>
R9-22-705.	Payments by Contractors
R9-22-714.	Payments to Providers
R9-22-716.	Specialty Contracts <u>Repealed</u>

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-22-701. Standard for Payments Related Definitions

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

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

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

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

“Ancillary service” mean all hospital services for patient care other than room and board and nursing services, including but not limited to, laboratory, radiology, drugs, delivery room (including maternity labor room), operating room (including postanesthesia and postoperative recovery rooms), and therapy services (physical, speech, and occupational).

“APC” means the Ambulatory Payment Classification system under 42 CFR Part 419.31 used by Medicare for grouping clinically and resource-similar procedures and services.

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

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

“Capital costs” means costs as reported by the hospital to CMS as required by 42 CFR 413.20.

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

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

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

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

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

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

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

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

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

“Existing outpatient service” means a service provided by a hospital before the hospital files an increase in its charge master as defined in R9-22-712(G), regardless of whether the service was explicitly described in the hospital charge master before filing the increase, or how the service was described in the charge master before filing the increase.

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

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

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

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

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

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

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

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

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

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

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

“Non-IHS Acute Hospital” means a hospital that is not run by Indian Health Services, is not a free-standing psychiatric

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hospital, such as an IMD, and is paid under ADHS rates.

“Observation day” means a physician-ordered evaluation period of less than 24 hours to determine whether a person needs treatment or needs to be admitted as an inpatient.

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

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

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

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

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

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

“PPC” means prior period coverage. PPC is the period of time, prior to the member’s enrollment, during which a member is eligible for covered services. The time-frame is the first day of the month of application or the first eligible month, whichever is later, until the day a member is enrolled with a contractor.

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

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

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

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

“Rebase” means the process by which the most currently available and complete Medicare Cost Report data for a year and AHCCCS claim and encounter data for the same year, are collected and analyzed to reset the Inpatient Hospital Tiered per diem rates, or the Outpatient Hospital Capped Fee-For-Service Schedule.

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

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

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

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

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

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

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

The Administration shall bear no liability for providing covered services for any member beyond the date of termination of the member’s eligibility or during the member’s enrollment with a contractor. A contractor has no financial responsibility for services provided to a member beyond the last date of enrollment except as provided in Articles 2 and 5 of this Chapter and as specified in contract.

R9-22-703. Payments by the Administration

- A. General requirements. A provider shall enter into a provider agreement with the Administration that meets the requirements of A.R.S. § 36-2904 and 42 CFR 431.107(b) as of March 6, 1992, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street St., NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
- B. Timely submission of claims.

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1. Under A.R.S. § 36-2904, the Administration shall deem a paper or electronic claim ~~as to be~~ submitted on the date that it is received by the Administration. The Administration shall do one or more of the following for each claim it receives:
 - a. Place a date stamp on the face of the claim,
 - b. Assign a system-generated claim reference number, or
 - c. Assign a system-generated date-specific number.
 2. Unless a shorter time period is specified in contract, the Administration shall not pay a claim for a covered service unless the claim is initially submitted within one of the following time limits, whichever is later:
 - a. Six months from the date of service or for an inpatient hospital claim, six months from the date of discharge; or
 - b. Six months from the date of eligibility posting.
 3. Unless a shorter time period is specified in contract, the Administration shall not pay a clean claim for a covered service unless the claim is submitted within one of the following time limits, whichever is later:
 - a. Twelve months from the date of service or for an inpatient hospital claim, ~~twelve~~ 12 months from the date of discharge; or
 - b. Twelve months from the date of eligibility posting.
 4. Unless a shorter time period is specified in contract, the Administration shall not pay a claim submitted by an IHS or tribal facility for a covered service unless the claim is initially submitted within 12 months from the date of service, date of discharge, or eligibility posting, whichever is later.
- C. Claims processing.
1. The Administration shall notify the AHCCCS-registered provider with a remittance advice when a claim is processed for payment.
 2. The Administration shall reimburse a hospital for inpatient hospital admissions and outpatient hospital services rendered on or after March 1, 1993, as follows and in the manner and at the rate described in A.R.S. § 36-2903.01:
 - a. If the hospital bill is paid within 30 days from the date of receipt, the claim is paid at 99 percent of the rate.
 - b. If the hospital bill is paid between 30 and 60 days from the date of receipt, the claim is paid at 100 percent of the rate.
 - c. If the hospital bill is paid after 60 days from the date of receipt, the claim is paid at 100 percent of the rate plus a fee of one percent per month for each month or portion of a month following the 60th day of receipt of the bill until date of payment.
 3. A claim is paid on the date indicated on the disbursement check.
 4. A claim is denied as of the date of the remittance advice.
 5. The Administration shall process a hospital claim under this Article.
- D. Prior authorization.
1. An AHCCCS-registered provider shall:
 - a. Obtain prior authorization from the Administration for non-emergency hospital admissions and covered services as specified in Articles 2 and 12 of this Chapter,
 - b. Notify the Administration of hospital admissions under Article 2 of this Chapter, and
 - c. Make records available for review by the Administration upon request.
 2. The Administration shall reduce payment of or deny claims, if an AHCCCS-registered provider fails to obtain prior authorization or notify the Administration under Article 2 of this Chapter and this Article.
 3. If the Administration issues prior authorization for a specific level of care but subsequent medical review indicates that a different level of care was medically appropriate, the Administration shall ~~pay the claim,~~ or adjust the claim to pay for the cost of the appropriate level of care.
- E. Review of claims and coverage for hospital supplies.
1. The Administration may conduct prepayment and postpayment review of any claims, including but not limited to hospital claims.
 2. Personal care items supplied by a hospital, including but not limited to the following, are not covered services:
 - a. Patient care kit,
 - b. Toothbrush,
 - c. Toothpaste,
 - d. Petroleum jelly,
 - e. Deodorant,
 - f. Septi soap,
 - g. Razor or disposable razor,
 - h. Shaving cream,
 - i. Slippers,
 - j. Mouthwash,
 - k. Shampoo,
 - l. Powder,

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- m. Lotion,
 - n. Comb, and
 - o. Patient gown.
3. The following hospital supplies and equipment, if medically necessary and used by the member, are covered services:
- a. Arm board,
 - b. Diaper,
 - c. Underpad,
 - d. Special mattress and special bed,
 - e. Gloves,
 - f. Wrist restraint,
 - g. Limb holder,
 - h. Disposable item used instead of a durable item,
 - i. Universal precaution,
 - j. Stat charge, and
 - k. Portable charge.
4. The Administration shall determine in a hospital claims review whether services rendered were:
- a. Covered services as defined in R9-22-102;
 - b. Medically necessary;
 - c. Provided in the most appropriate, cost-effective, and least restrictive setting; and
 - d. For claims with dates of admission on and after March 1, 1993, substantiated by the minimum documentation specified in A.R.S. § 36-2903.01.
5. If the Administration adjudicates a claim, a person may file a claim dispute challenging the adjudication under 9 A.A.C. 34.
- F. Overpayment for AHCCCS services.
- 1. An AHCCCS-registered provider shall notify the Administration when the provider discovers the Administration made an overpayment.
 - 2. The Administration shall recoup an overpayment from a future claim cycle if an AHCCCS-registered provider fails to return the overpaid amount to the Administration.
 - 3. The Administration shall document any recoupment of an overpayment on a remittance advice.
 - 4. An AHCCCS-registered provider may file a claim dispute under 9 A.A.C. 34 if the AHCCCS registered provider disagrees with the a recoupment action.

R9-22-704. ~~Transfer of Payments Repealed~~

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

R9-22-705. Payments by Contractors

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- A. General requirements.** A contractor shall contract with providers to provide covered services to members enrolled with the contractor. The contractor is responsible for the reimbursement and coordination of care provided to a member. Except as provided in subsection (A)(2), a contractor is not required to reimburse a noncontracting provider for services rendered to a member enrolled with the contractor.
1. Providers. A provider shall enter into a provider agreement with the Administration that meets the requirements of A.R.S. § 36-2904 and 42 CFR 431.107(b) as of March 6, 1992, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street St., NW, Washington, DC; 20401. This incorporation by reference contains no future editions or amendments.
 2. A contractor shall reimburse a noncontracting provider for services rendered to a member enrolled with the contractor at the Administration's capped fee-for-service schedule rate if:
 - a. The contractor referred the member to the provider or authorized the provider to render the services and the claim is otherwise payable under this Chapter, or
 - b. The service is emergent under Article 2 of this Chapter.
- B. Timely submission of claims.**
1. Under A.R.S. § 36-2904, a contractor shall deem a paper or electronic claim as submitted on the date that the claim is received by the contractor. The contractor shall do one or more of the following for each claim the contractor receives:
 - a. Place a date stamp on the face of the claim,
 - b. Assign a system-generated claim reference number, or
 - c. Assign a system-generated date-specific number.
 2. Unless a shorter time period is specified in ~~contract~~ subcontract, a contractor shall not pay a claim for a covered service unless the claim is initially submitted within one of the following time limits, whichever is later:
 - a. Six months from the date of service or for an inpatient hospital claim, six months from the date of discharge; or
 - b. Six months from the date of eligibility posting.
 3. Unless a shorter time period is specified in ~~contract~~ subcontract, a contractor shall not pay a clean claim for a covered service unless the claim is submitted within one of the following time limits, whichever is later:
 - a. Twelve months from the date of service or for an inpatient hospital claim, ~~twelve~~ 12 months from the date of discharge; or
 - b. Twelve months from the date of eligibility posting.
- C. Date of claim.** A contractor's date of receipt of an inpatient or an outpatient hospital claim is the date the claim is received by the contractor as indicated by the date stamp on the claim, the system-generated claim reference number, or the system-generated date-specific number assigned by the contractor. A hospital claim is considered paid on the date indicated on the disbursement check. A denied hospital claim is considered adjudicated on the date of the claim's denial. For a claim that is pending for additional supporting documentation specified in A.R.S. §§ 36-2903.01 or 36-2904, the contractor shall assign a new date of receipt upon receipt of the additional documentation. For a claim that is pending for documentation other than the minimum required documentation specified in either A.R.S. §§ 36-2903.01 or 36-2904, the contractor shall not assign a new date of receipt. A contractor and a hospital may, through a contract approved as specified in R9-22-715, adopt a method for identifying, tracking, and adjudicating a claim that is different from the method described in this subsection.
- D. Payment for inpatient hospital services.** A contractor shall reimburse an in-state provider and a noncontracting provider for inpatient hospital services rendered with an admission date on or after March 1, 1993, at either a rate specified by subcontract or, in absence of the subcontract, the prospective tiered-per-diem amount in A.R.S. § 36-2903.01 and this Article. Subcontract rates, terms, and conditions are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715. This subsection does not apply to an urban contractor as specified in R9-22-718 and A.R.S. § 36-2905.01.
- E. Payment for outpatient hospital services.**
1. A contractor shall reimburse an in-state provider and a noncontracting provider for outpatient hospital services rendered on or after March 1, 1993 through June 30, 2005, at either a rate specified by a subcontract that complies with R9-22-715(A) or, in ~~the~~ the absence of a subcontract, as described in R9-22-712 or under A.R.S. § 36-2903.01, ~~as amended by Laws 2003, Chapter 268, § 3, and as amended by Laws 2004, Second Regular Session, Chapter 279, § 3.~~ Subcontract rates, terms, and conditions are subject to review, and approval or disapproval, under A.R.S. § 36-2904 and R9-22-715.
 2. A contractor shall reimburse an in-state provider and noncontracting provider for outpatient hospital services rendered on or after July 1, 2005, at either a rate specified by a subcontract or, in absence of a subcontract, as provided under R9-22-712.10, and A.R.S. § 36-2903.01 ~~as amended by Laws 2004, Second Regular Session, Chapter 279, § 3 and other Sections of this Article.~~ Subcontract rates, terms, and conditions are subject to review, and approval or disapproval, under A.R.S. § 36-2904 and R9-22-715.
- F. Inpatient and outpatient out-of-state hospital payments.** A contractor shall reimburse out-of-state hospitals for covered inpatient and outpatient ~~service services and associated professional fees~~ services and associated professional fees provided to an AHCCCS member at the lesser of the negotiated rate, or the rates as described under A.R.S. § 36-2903.01 and this Article.

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- G.** Payment for observation days. A contractor shall reimburse a provider and a noncontracting provider for the provision of observation days at either a rate specified by subcontract or, in the absence of a subcontract, as prescribed under R9-22-712, R9-22-712.10, and R9-22-712.45. An "observation day" means a physician-ordered evaluation period of less than 24 hours to determine the need of treatment or the need for admission as an inpatient.
- H.** Review of claims and coverage for hospital supplies.
1. A contractor may conduct a review of any claims submitted and recoup any payments made in error.
 2. A hospital shall obtain prior authorization from the appropriate contractor for nonemergency admissions. When issuing prior authorization, a contractor shall consider the medical necessity of the service, and the availability and cost effectiveness of an alternative treatment. Failure to obtain prior authorization when required is cause for nonpayment or denial of a claim. A contractor shall not require prior authorization for medically necessary services provided during any prior period for which the contractor is responsible. If a contractor and a hospital agree to a subcontract, the parties shall abide by the terms of the subcontract regarding utilization control activities. A hospital shall cooperate with a contractor's reasonable activities necessary to perform concurrent review and shall make the hospital's medical records pertaining to a member enrolled with a contractor available for review.
 3. Regardless of prior authorization or concurrent review activities, a contractor may make prepayment or post-payment review of all claims, including but not limited to a hospital claim. A contractor may recoup an erroneously paid claim. If prior authorization was given for a specific level of care, but medical review of a claim indicates that a different level of care was medically appropriate, a contractor shall adjust the claim and to pay ~~the claim to reflect~~ for the cost for the appropriate level of care. An adjustment in payment for a different level of care is effective on the date when the different level of care is medically appropriate.
 4. A contractor and a hospital may enter into a subcontract that includes hospital claims review criteria and procedures ~~and if the subcontract~~ meets the requirements of R9-22-715.
 5. Personal care items supplied by a hospital, including but not limited to the following, are not covered services:
 - a. Patient care kit,
 - b. Toothbrush,
 - c. Toothpaste,
 - d. Petroleum jelly,
 - e. Deodorant,
 - f. Septi soap,
 - g. Razor or disposable razor,
 - h. Shaving cream,
 - i. Slippers,
 - j. Mouthwash,
 - k. Disposable razor,
 - l. Shampoo,
 - m. Powder,
 - n. Lotion,
 - o. Comb, and
 - p. Patient gown.
 6. The following hospital supplies and equipment, if medically necessary and used by the member, are covered services:
 - a. Arm board,
 - b. Diaper,
 - c. Underpad,
 - d. Special mattress and special bed,
 - e. Gloves,
 - f. Wrist restraint,
 - g. Limb holder,
 - h. Disposable item used instead of a durable item,
 - i. Universal precaution,
 - j. Stat charge, and
 - k. Portable charge.
 7. The contractor shall determine in a hospital claims review whether services rendered were:
 - a. Covered services as defined in R9-22-102;
 - b. Medically necessary;
 - c. Provided in the most appropriate, cost-effective, and least restrictive setting; and
 - d. For claims with dates of admission on and after March 1, 1993, substantiated by the minimum documentation specified in A.R.S. § 36-2904.
 8. If a contractor adjudicates a claim or recoups payment for a claim, a person may file a claim dispute challenging the adjudication or recoupment as described under 9 A.A.C. 34.

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- I. Non-hospital claims. A contractor shall pay claims for non-hospital services in accordance with contract, or in the absence of a contract, at a rate not less than the Administration's capped fee-for-service schedule.
- J. Payments to hospitals. A contractor shall pay for inpatient hospital admissions and outpatient hospital services rendered on or after March 1, 1993, as follows and as described in A.R.S. § 36-2904:
 - 1. If the hospital bill is paid within 30 days from the date of receipt, the claim is paid at 99 percent of the rate.
 - 2. If the hospital bill is paid between 30 and 60 days from the date of receipt, the claim is paid at 100 percent of the rate.
 - 3. If the hospital bill is paid after 60 days from the date of receipt, the claim is paid at 100 percent of the rate plus a fee of 1 percent penalty of the rate for each month or portion of the month ~~thereafter~~ following the 60th day of receipt of the bill until date of payment.
- K. Interest payment. In addition to the requirements in subsection (J), a contractor shall pay interest for late claims as defined by contract.

R9-22-714. Payments to Providers

- A. Provider agreement. The Administration or a contractor shall not reimburse a covered service provided to a member unless the provider has signed a provider agreement with the Administration that establishes the terms and conditions of participation and payment under A.R.S. § 36-2904.
- B. Provider reimbursement. The Administration or a contractor shall reimburse a provider for a service furnished to a member only if:
 - 1. The provider personally furnishes the service to a specific member; For purposes of this Section, services personally furnished by a provider include:
 - a. Services provided by medical residents or dental students in a teaching environment; or
 - b. Services provided by a licensed or certified assistant under the general supervision of a licensed practitioner in accordance with 4 A.A.C. 24, 9 A.A.C. 16, 4 A.A.C. 43, or 4 A.A.C. 45;
 - 2. The provider verifies that individuals who have provided services described in subsection (B)(1) have not been placed on the List of Excluded Individuals/Entities (LEIE) maintained by the United States Department of Health and Human Services Office of the Inspector General (OIG), located at OIG's web site;
 - 23. The service contributes directly to the diagnosis or treatment of a specific the member; and
 - 34. The service ordinarily requires performance by the type of provider seeking reimbursement.
- C. The Administration or a contractor may make a payment for covered services only:
 - 1. To the provider;
 - 2. To anyone specified in a reassignment from the provider to a government agency or reassignment by a court order;
 - 3. To a business agent, if the agent's compensation for the service is:
 - a. Related to the cost of processing the billing;
 - b. Not related on a percentage or other basis to the amount that is billed or collected; and
 - c. Not dependent upon collection of the payment;
 - 4. To the employer of the provider, if the provider is required as a condition of employment to turn over the provider's fees to the employer;
 - 5. To the inpatient facility in which the service is provided, if the provider has a contract under which the inpatient facility submits the claim; or
 - 6. To a foundation, plan, or similar organization operating an organized health care delivery system, if the provider has a contract under which the foundation, plan or similar organization submits the claim.
- D. The Administration or a contractor shall not make a payment to or through a factor, either directly or by power of attorney, for a covered service furnished to a member by a provider.
- ~~E.~~ Reimbursement for a pathology service. Unless otherwise specified in a contract, the Administration or a contractor shall reimburse a pathologist for a pathology service furnished to a member only if the other requirements in this Section are met and the service is:
 - 1. A surgical pathology service;
 - 2. A specific cytopathology, hematology, or blood banking pathology service that requires performance by a physician and is listed in the capped fee-for-service schedule;
 - 3. A clinical consultation service that:
 - a. Is requested by the member's attending physician or primary care physician,
 - b. Is related to a test result that is outside the clinically significant normal or expected range in view of the condition of the member,
 - c. Results in a written narrative report included in the member's medical record,
 - d. Requires the exercise of medical judgment by the consultant pathologist, and
 - e. Is listed in the capped fee-for-service schedule; or
 - 4. A clinical laboratory interpretative service that:
 - a. Is requested by the member's attending physician or primary care physician,
 - b. Results in a written narrative report included in the member's medical record,
 - c. Requires the exercise of medical judgment by the consultant pathologist, and

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d. Is listed in the capped fee-for-service schedule.

R9-22-716. ~~Specialty Contracts~~ Repealed

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

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

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

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

[R07-32]

PREAMBLE

1. Sections Affected

- R9-31-107
- R9-31-701
- R9-31-701
- R9-31-701.10
- R9-31-702
- R9-31-703
- R9-31-704
- R9-31-705
- R9-31-707
- R9-31-709
- R9-31-710
- R9-31-711
- R9-31-713
- R9-31-714
- R9-31-715
- R9-31-716
- R9-31-718
- R9-31-719
- R9-31-1601
- R9-31-1616
- R9-31-1617
- R9-31-1618
- R9-31-1619
- R9-31-1620
- R9-31-1621
- R9-31-1624

Rulemaking Action

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

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. §§ 36-2904, 36-2903.01 and 36-2986
Implementing statute: A.R.S. §§ 36-2903.01, 36-2987, 36-2985, and 36-2989

3. The effective date of the rules:

April 7, 2007

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 2576, July 21, 2006
Notice of Proposed Rulemaking: 12 A.A.R. 3689, October 6, 2006

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

Name: Mariaelena Ugarte

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

Telephone: (602) 417-4693

Fax: (602) 253-9115

E-mail: AHCCCSRules@azahcccs.gov

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

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

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:

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

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 economic impact will be minimal since the majority of the rules have been repealed or amended to cross-reference Chapter 22 acute care rules. The same procedure is used for the KidsCare population as for the acute care population in these areas. The few amended rules have been updated for clarity and conciseness.

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

No significant changes were made between the proposed and final rules. The Administration made the rules more clear, concise, and understandable by making grammatical, punctuation, and structural changes throughout the rules.

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

The Administration did not receive any comments regarding the 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:

Not applicable

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

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

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

ARTICLE 1. DEFINITIONS

Section

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

ARTICLE 7. STANDARDS FOR PAYMENTS

Section

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

R9-31-701.10. General Requirements

R9-31-702. ~~Charges to Members~~ Repealed

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

ARTICLE 16. SERVICES FOR NATIVE AMERICANS

Section

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

ARTICLE 1. DEFINITIONS

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

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

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

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

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

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

ARTICLE 7. STANDARDS FOR PAYMENTS

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

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

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

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

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

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

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

R9-31-701.10. General Requirements

The following Sections of A.A.C. Chapter 22, Articles 2 and 7 are applicable to reimbursement for AHCCCS-covered services provided to a member under the KidsCare program, except that the term “Children’s Health Insurance Program Fund” shall be substituted for “AHCCCS fund” and “A.R.S. § 36-2986” shall be substituted for “A.R.S. § 36-2903”:

1. Scope of the Administration’s and Contractor’s Liability, R9-22-701.10;
2. Charges to Members, R9-22-702;
3. Payments by the Administration and Payments by Contractors, R9-22-703 and R9-22-705;
4. Payments for Newborns, R9-22-707;
5. Contractor’s Liability to Hospitals for the Provision of Emergency and Post-Stabilization Care, R9-22-709;
6. Payments for Non-hospital Services, R9-22-710;
7. Copayments, R9-22-711;
8. Specialty Contracts, R9-22-712 (G)(3), R9-22-712.01 (10) and Article 2;
9. Overpayment and Recovery of Indebtedness, R9-22-713;
10. Payments to Providers, R9-22-714;
11. Hospital Rate Negotiations, R9-22-715;
12. Contractor Performance Measure Outcomes, R9-22-719; and
13. Reinsurance, R9-22-720.

R9-31-702. ~~Charges to Members Repealed~~

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

R9-31-703. ~~Claims Repealed~~

- ~~A. Claims submission to contractors. An AHCCCS registered provider shall submit to a contractor all claims for services rendered to a member enrolled with the contractor as specified in R9-31-705.~~
- ~~B. Overpayments for AHCCCS Services.~~
- ~~1. An AHCCCS registered provider shall notify the Administration when the provider discovers an overpayment was made by the Administration.~~
 - ~~2. The Administration shall recoup an overpayment from a future claim cycle if an AHCCCS registered provider fails to return the incorrect payment amount to the Administration.~~

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

- ~~A. Billing agent. For purposes of this Section, a business agent is a firm such as a billing service or accounting firm that renders statements and receives payment in the name of the contractor or AHCCCS registered provider.~~
- ~~B. Allowable transfer of payments. The Administration or the contractor may make payments to other than the AHCCCS registered provider, and the Administration may make payments to other than the contractor after considering whether:~~

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1. There is an assignment to a government agency or an assignment under a court order; or
 2. A business agent's compensation is:
 - a. Related to the cost of processing the statements; and
 - b. Not dependent upon the actual collection of payment.
- ~~C.~~ Prohibition of transfer of payments to factors. The Administration shall not make payment for covered services furnished to a member by a contractor or an AHCCCS registered provider to, or through a factor, either directly, or by virtue of a power of attorney given to the factor.

R9-31-705. Payments by Contractors Repealed

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

R9-31-707. Payments for Newborns Repealed

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

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

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

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

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

R9-31-711. Copayments Repealed

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

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

- ~~A.~~ The Administration may make payments on behalf of a contractor in order to prevent a suspension or termination of AHCCCS services after considering whether:
1. A contractor does not adjudicate a valid accrued claim within the period set forth under subcontract, or
 2. A contractor does not adjudicate 99 percent of valid accrued claims within 90 days of receipt from the AHCCCS registered provider.
- ~~B.~~ If a contractor or a subcontracting provider receives an overpayment or otherwise becomes indebted to the Administration, the contractor or subcontracting provider shall immediately remit the amount of the indebtedness or overpayment to the Administration for deposit in the Children's Health Insurance Program Fund.
- ~~C.~~ The Administration may recover the indebtedness or overpayment from a contractor or a subcontracting provider in circumstances including the following:
1. Negotiation of a repayment agreement executed with the Administration;
 2. Withholding or offsetting against current or future prepayments or other payments to be paid to the contractor or subcontracting provider; or
 3. Enforcement of, or collection against, the performance bond, deposit, financial reserve, or other financial security under A.R.S. § 36-2986.
- ~~D.~~ Except as specifically provided for in this Article, the Administration is not liable for payment for medical expenses incurred by members enrolled with contractors.

R9-31-714. Payments to Providers Repealed

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

R9-31-715. Hospital Rate Negotiations Repealed

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

R9-31-716. Specialty Contracts Repealed

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

R9-31-718. Contractor Performance Measure Outcomes Repealed

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

R9-31-719. Reinsurance Repealed

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

ARTICLE 16. SERVICES FOR NATIVE AMERICANS

R9-31-1601. General Requirements

- A. A Native American who is a member may receive:
 - 1. Covered acute care services specified in this Chapter from:
 - a. ~~An IHS area office~~ Indian Health Service (IHS) under A.R.S. § 36-2982 ~~that if IHS has a signed IGA agreement with the Administration,~~
 - b. A Tribal Facility under A.R.S. § 36-2982, or
 - c. A contractor under A.R.S. § 36-2901.
 - 2. Covered behavioral health care services as specified in this Chapter from:
 - a. ~~An IHS area office~~ IHS under A.R.S. § 36-2982 ~~that if IHS has a signed IGA agreement with the Administration,~~
 - b. A Tribal Facility under A.R.S. § 36-2982, or
 - c. A RBHA or TRBHA.
- ~~B. In providing covered services to a member, IHS and a Tribal Facility shall comply with:~~
 - 1. Federal and state law;
 - 2. The IGA, if applicable; and
 - 3. This Chapter as applicable.
- ~~C. An individual or an entity that provides covered services for the IHS or a Tribal Facility shall be an AHCCCS registered provider.~~
- ~~D. The IHS and a Tribal Facility under 42 CFR 431.110 shall meet state requirements as a Medicaid provider. Medical records shall:~~
 - 1. Conform to 9 A.A.C. 20 for documentation of medical, diagnostic and treatment data;
 - 2. Include a detailed record of:
 - a. All medically necessary services provided to a member by the IHS or a Tribal Facility;
 - b. All emergency services provided by a provider or a noncontracting provider for a member enrolled with the IHS or receiving services from a Tribal Facility;
 - c. All covered services provided through a referral to a facility or provider outside the IHS or Tribal facility network; and
 - 3. Facilitate follow-up treatment.
- ~~E. As specified in A.R.S. §§ 36-2986 and 36-2992, the IHS or a Tribal Facility shall advise the Director or designee immediately, in writing, of any case of suspected fraud or abuse.~~
- B. IHS, a Tribal facility, or a referred provider shall meet the requirements in A.A.C. Chapter 22, Article 7 to receive reimbursement for AHCCCS-covered services. The following sections of A.A.C. Chapter 22, Article 2 and 7 are applicable to reimbursement for AHCCCS-covered services provided to a Native American member under the KidsCare program, except that the term "IHS", "Tribal facility", or "referred provider" is substituted for "provider":
 - 1. Scope of the Administration's Liability, R9-22-701.10;
 - 2. Charges to Members, R9-22-702;
 - 3. Prior authorization, R9-22-703 (D);
 - 4. Claims Review, R9-22-703 (E);
 - 5. Payments by the Administration, R9-22-703;
 - 6. Payments for Services Provided to Eligible Native Americans, R9-22-708;
 - 7. Payments to Providers, R9-22-714; and
 - 8. Specialty Contracts, R9-22-712 (G)(3), R9-22-712.01 (10).

R9-31-1616. Standards for Payments Repealed

- ~~A. The Administration has no financial responsibility for services provided to a member beyond the effective date of termi-~~

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nation of a member's eligibility. A contractor has no financial responsibility for services provided to a member beyond the last date of enrollment except as provided in 9 A.A.C. 22, Articles 2 and 5 and as specified in contract.

- ~~B.~~ The Administration shall make payments to IHS or a Tribal Facility as required under A.R.S. § 36-2987(A).
- ~~C.~~ The Administration shall pay inpatient and outpatient hospital services rendered by a provider under referral from the IHS or a Tribal Facility provider based on A.R.S. §§ 36-2987, 36-2903.01, and 9 A.A.C. 22, Article 7, as applicable. The Administration shall pay hospital claims using the discounts and penalties specified in A.R.S. § 36-2987(C).
- ~~D.~~ The Administration shall pay for non-hospital services as described in R9-22-710.

R9-31-1617. Prior Authorization Repealed

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

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

~~A.~~ Timely Submission of Claims:

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

~~B.~~ Claims Processing

- ~~1.~~ The Administration shall notify the IHS, a Tribal Facility, or a provider under referral with a remittance advice when a claim is processed for payment.
- ~~2.~~ The Administration shall pay valid clean claims in a timely manner according to 42 CFR 447.45, February 15, 1990, which is incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments:
 - ~~a.~~ 90 percent of valid clean claims shall be paid within 30 days of the date of receipt of the claim;
 - ~~b.~~ 99 percent of valid clean claims shall be paid within 90 days of the date of receipt of the claim; and
 - ~~c.~~ The remaining one percent of valid clean claims shall be paid within 12 months of the date of receipt of a claim.
- ~~3.~~ A claim is paid on the date indicated on the disbursement check.
- ~~4.~~ A claim is denied as of the date of the remittance advice.
- ~~5.~~ The Administration shall process a hospital claim according to R9-22-712.

~~C.~~ Overpayments for Title XXI Services:

- ~~1.~~ The IHS, a Tribal Facility, or a provider under referral shall notify the Administration when the provider discovers an overpayment was made by the Administration.
- ~~2.~~ The Administration shall recoup an overpayment from a future claim cycle if the IHS, a Tribal Facility, or a provider under referral fails to return the incorrect payment amount to the Administration.

~~D.~~ Postpayment Claims Review:

- ~~1.~~ The Administration shall conduct postpayment review of claims paid by the Administration if monies have been erroneously paid to the IHS, a Tribal Facility, or a provider under referral.
- ~~2.~~ The Administration shall recoup an overpayment from a future claim cycle if the IHS, a Tribal Facility, or a provider under referral fails to return the incorrect payment amount to the Administration.
- ~~3.~~ The Administration shall document any recoupment of an overpayment on a remittance advice.

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4. The IHS, a Tribal Facility, or a provider under referral may file a grievance or request for hearing under Article 8 of this Chapter if the AHCCCS registered provider disagrees with the recoupment action.

E. Claims Review

1. The IHS, a Tribal Facility, or a provider under referral shall:
 - a. Obtain prior authorization from the Administration for non-emergency hospital admissions and covered services as specified in Articles 2 and 12 of this Chapter;
 - b. Notify the Administration of hospital admissions under Article 2, and
 - c. Make records available for review by the Administration.
2. The Administration shall reduce payment of or deny a claim if the IHS, Tribal Facility, or a provider under referral fails to obtain prior authorization or to notify the Administration under Article 2 and this Article.
3. The Administration may conduct prepayment medical review and post-payment review on all hospital claims, including outlier claims.
4. If the Administration issues prior authorization for a specific level of care but subsequent medical review indicates that a different level of care was medically appropriate, the claim shall be paid, or adjusted to pay, for the cost of the appropriate level of care.
5. Post-payment reviews shall comply with A.R.S. § 36-2987.

R9-31-1619. Claims Review Repealed

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

R9-31-1620. Charges to Members Repealed

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

R9-31-1621. Transfer of Payments Repealed

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

R9-31-1624. Specialty Contracts Repealed

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

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

[R07-31]

PREAMBLE

- 1. Section Affected**

R15-5-135	Amend
R15-5-137	Amend
R15-5-138	Amend
R15-5-2330	Amend
R15-5-2334	Amend
- 2. The specific statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 42-1005
Implementing statute: A.R.S. §§ 42-5061, 42-5151, 42-5155
- 3. The effective date of the rules:**

April 7, 2007
- 4. A list of all previous notices appearing in the Register addressing the final rules:**

Notice of Rulemaking Docket Opening: 12 A.A.R. 3075, August 25, 2006
Notice of Proposed Rulemaking: 12 A.A.R. 3026, August 25, 2006
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Rick Swenson, Tax Analyst
Address: Tax Policy and Research Division
Arizona Department of Revenue
1600 W. Monroe, Rm. 810
Phoenix, AZ 85007
Telephone: (602) 716-6452
Fax: (602) 716-7995
E-mail: RSwenson@azdor.gov

Please visit the ADOR web site to track the progress of these rules and other agency rulemaking matters at:
<http://www.azdor.gov/ResearchStats/Proposedrules.htm#proprulemaking>
- 6. An explanation of the rules, including the agency's reasons for initiating the rules:**

The following rulemaking is pursuant to changes recommended in the latest five-year-review report of the rules in Chapter 5 of Title 15 applicable to transaction privilege taxes imposed under the retail classification. The Department is amending these rules to conform to current rulewriting standards and to delete unnecessary language. Some of the rules inappropriately use the passive voice, use inaccurate verbiage, or are unclear. Language in these rules is also deleted because it does not clarify the applicable statutes.

Two use tax rules are also amended for the some of the same reasons. These two rules are substantially similar to the three retail rules contained in this rulemaking.
- 7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the final rules and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

The Department did not review any study relevant to the rules.
- 8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules 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:**

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There should be little to no economic impact associated with amending these rules. The changes are intended to clarify the rules and make them more readable for taxpayers. The changes eliminate the passive voice, delete unnecessary language, or clarify existing ambiguities. For businesses and individuals subject to either use tax or transaction privilege tax under the retail classification, these changes may increase compliance and reduce error in reporting their tax liability. The increased clarity will also help businesses that provide services understand if and when they may be subject to transaction privilege tax. The Department may see a slight increase or decrease in revenues collected due to the increased clarity of these rules.

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

The Department has made a substantive, nonsubstantial change to the Notice of Proposed Rulemaking, 12 A.A.R. 3026, August 25, 2006. The Department proposes to replace “taxable” in proposed A.A.C. R15-5-138(B) with the term “subject to tax” so that this subsection is consistent with others in this rulemaking. Notice of Proposed Rulemaking, 12 A.A.R. 3028, August 25, 2006.

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

None

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. Were these rules previously adopted as an emergency rules?

No

15. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

ARTICLE 1. RETAIL CLASSIFICATION

Section

- R15-5-135. Sales of Restaurant Accessories
- R15-5-137. Warranty or Service ~~Contracts~~ Provisions and Tangible Personal Property Used in Conjunction with Warranty or Service Provisions
- R15-5-138. Warranty or Service Contracts and Tangible Personal Property Used in Conjunction with Warranty or Service Contracts

ARTICLE 23. USE TAX

Section

- R15-5-2330. Tangible Personal Property Used in Conjunction with Warranty or Service Contracts or Provisions
- R15-5-2334. Purchases of Restaurant Accessories

ARTICLE 1. RETAIL CLASSIFICATION

R15-5-135. Sales of Restaurant Accessories

- A. Gross receipts from the sale of disposable containers, paper napkins, and other similar food accessories to ~~a persons person~~ engaged in the restaurant business, which are transferred by the restaurant who, in the ordinary regular course of business, transfers these accessories to facilitate the consumption of the food, drink, or condiment provided, shall be are considered gross receipts from sales for resale.
- B. Gross receipts from the sale of matchbooks, advertisement fliers, and other similar tangible personal property to ~~a persons person~~ engaged in the restaurant business, that are transferred by the restaurant who transfers this property for the convenience, operation, or benefit of the restaurant business, are taxable subject to tax.

R15-5-137. Warranty or Service ~~Contracts~~ Provisions and Tangible Personal Property Used in Conjunction with Warranty or Service Provisions

- A. For purposes of this rule, a “~~warranty or service provision~~” means a manufacturer’s or vendor’s warranty provision which ~~automatically, and for no extra charge, applies to the tangible personal property when purchased. the following definitions apply:~~

Notices of Final Rulemaking

1. “Covered” means included in the warranty or service provision.
 2. “Warranty or service provision” means a manufacturer’s or vendor’s warranty that is sold automatically with tangible personal property and, for no extra charge, applies to any tangible personal property used in the servicing of the provision.
- B.** Gross receipts from the sale of warranty or service contracts shall not be taxable if such contracts are sold as a distinct and separate item and the charge for the warranty or service contract is stated separately on the sales invoice. An exclusion from gross receipts is not allowed for a warranty or service provision on the sale of tangible personal property if the property cannot be sold without the acceptance of the warranty or service provision.
- C.** A warranty or service provision shall not be is not considered a warranty or service contract under A.R.S. § 42-1310.01(A) 42-5061(A). An exclusion from gross receipts shall not be allowed for a warranty or service provision on the sale of tangible personal property when such property cannot be sold without the acceptance of the warranty or service provision.
- D.** Tangible personal property sold in conjunction with the servicing of a warranty or service provision, but not covered by the provision, is a sale of tangible personal property that is subject to tax under the retail classification unless statutorily exempt.
- E.** Tangible personal property that is covered under a warranty or service provision and used in the servicing of the provision is not subject to use tax as the transaction privilege tax was paid when the tangible personal property was acquired.

R15-5-138. Warranty or Service Contracts and Tangible Personal Property Used in Conjunction with Warranty or Service Contracts

- A.** For purposes of this rule, “covered” tangible personal property is that property which is the following definition applies: “Covered” means included in the charge for the warranty or service contract and for which the warranty or service contract holder is not additionally charged for such property does not pay a separate charge for any tangible personal property used in the servicing of the contract.
- B.** Tangible personal property sold in conjunction with the servicing of a warranty or service contract, but not covered by such a contract, is a sale of tangible personal property and, as such, shall be subject to tax under the retail classification, unless statutorily exempt. Gross receipts from the sale of warranty or service contracts are not subject to tax when the contracts are sold as a distinct and separate item and the charge for the warranty or service contract is stated separately on a sales invoice.
- C.** Tangible personal property which is covered under a warranty or service contract, and used in the servicing of such a contract, is subject to use tax unless transaction privilege tax was paid when the tangible personal property was acquired or unless otherwise statutorily exempt. Tangible personal property sold in conjunction with the servicing of a warranty or service contract, but not covered by the contract, is a sale of tangible personal property that is subject to tax under the retail classification unless statutorily exempt.
- D.** Tangible personal property that is covered under a warranty or service contract, and used in the servicing of the contract, is subject to use tax unless transaction privilege tax was paid when the tangible personal property was acquired or the tangible personal property is otherwise statutorily exempt.

ARTICLE 23. USE TAX

R15-5-2330. Tangible Personal Property Used in Conjunction with Warranty or Service Contracts or Provisions

- A.** For purposes of this rule, “covered” tangible personal property is that which is included in the charge for the warranty or service contract and the warranty or service contract holder is not additionally charged for such property. the following definition applies: “Covered” means covered as defined in R15-5-138 for tangible personal property under a warranty or service contract, or covered as defined in R15-5-137 for tangible personal property under a warranty or service provision.
- B.** A warrantor or service person shall be is liable for subject to use tax on the cost of covered tangible personal property which that is purchased for resale but which is subsequently taken out of inventory and is used in performing work under the servicing of a warranty or service contract.
- C.** Tangible personal property used in performing work under a warranty or service provision, as delineated in R15-5-137(B) shall not be subject to the tax. Tangible personal property that is covered under a warranty or service contract and used in the servicing of the contract is subject to use tax unless transaction privilege tax was paid when the tangible personal property was acquired or the tangible personal property is otherwise statutorily exempt.
- D.** Tangible personal property that is covered under a warranty or service provision and used in the servicing of the provision is not subject to use tax as the transaction privilege tax was paid when the tangible personal property was acquired.

R15-5-2334. Purchases of Restaurant Accessories

- A.** Purchases of If a person engaged in the restaurant business purchases disposable containers, paper napkins, and other similar food accessories by persons engaged in the restaurant business that are transferred by the restaurant and, transfers these accessories in the regular course of business to facilitate the consumption of the food, drink, or condiment provided, shall be the purchases are considered purchases for resale.

Notices of Final Rulemaking

- B. ~~Purchases of~~ If a person engaged in the restaurant business purchases matchbooks, advertisement fliers, and other similar tangible personal property ~~by persons engaged in the restaurant business that are transferred by the restaurant and transfers this property~~ for the convenience, operation, or benefit of the restaurant business, the purchases are taxable subject to tax.

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

[R07-35]

PREAMBLE

1. **Section Affected**

R15-5-180	<u>Rulemaking Action</u>
R15-5-182	Amend
R15-5-403	Amend
R15-5-406	Amend
2. **The specific authority for the rulemaking, including both the authorizing statutes (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 42-1005 and 42-5008
Implementing statute: A.R.S. §§ 42-5061 and 42-5073
3. **The effective date of the rules:**

April 7, 2007
4. **A list of all previous notices appearing in the Register addressing the final rules:**

Notice of Rulemaking Docket Opening: 12 A.A.R. 4107, November 3, 2006
Notice of Proposed Rulemaking: 12 A.A.R. 4057, November 3, 2006
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Len Heugly, Tax Analyst
Address: Tax Policy and Research Division
Arizona Department of Revenue
1600 W. Monroe, Rm. 810
Phoenix, AZ 85007
Telephone: (602) 716-6039
Fax: (602) 716-7995
E-mail: LHeugly@azdor.gov
Please visit the ADOR web site to track the progress of these rules and other agency rulemaking matters at www.azdor.gov/ResearchStats/draftdocuments.htm.
6. **An explanation of the rules, including the agency's reasons for initiating the rules:**

The following rulemaking is pursuant to changes recommended in the latest five-year-review report of the rules in Chapter 5 of Title 15 applicable to transaction privilege taxes imposed under the retail classification and amusement classification. The Department is amending these rules to conform to current rulewriting standards, to delete unnecessary language, to make correct statutory citation and to reflect statutory changes.
7. **A reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the final rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The Department did not review any study relevant to the rules.
8. **A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

Notices of Final Rulemaking

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

There should be little to no economic impact associated with amending these rules. The changes are intended to clarify the rules and make them more readable for taxpayers. The changes delete unnecessary language, correct statutory citation, and clarify Department policy. For nonprofit organizations qualifying for exemption from the transaction privilege tax under the retail classification, the change should clarify that the Department does not make a separate determination concerning the tax exempt status of an organization apart from the IRS recognition. Such nonprofit organizations no longer need to incur expense to approach the Department for an exempt status determination.

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

Only minor technical changes were made to the rules consistent with current rulewriting standards and to improve clarity and grammar. For nonprofit organizations qualifying for exemption from the transaction privilege tax under the retail classification, the change should clarify that the Department does not make a separate determination concerning the tax exempt status of an organization apart from the IRS recognition.

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

None

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. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 5. DEPARTMENT OF REVENUE
TRANSACTION PRIVILEGE AND USE TAX SECTION

ARTICLE 1. RETAIL CLASSIFICATION

Section

- R15-5-180. Sales by Businesses in Federal Areas
- R15-5-182. Nonprofit Organizations

ARTICLE 4. AMUSEMENT CLASSIFICATION

Section

- R15-5-403. Amusement Devices
- R15-5-406. Health or Fitness Establishments and Private Recreational Establishments

ARTICLE 1. RETAIL CLASSIFICATION

R15-5-180. Sales by Businesses in Federal Areas

Gross receipts from sales by businesses which are not operated by or as an agency of the Federal Government, located on military bases or other federal areas, are ~~taxable~~ subject to tax.

R15-5-182. Nonprofit Organizations

- A. Gross receipts from the sale of tangible personal property to nonprofit churches, schools, and other nonprofit organizations are ~~taxable~~ subject to tax unless otherwise exempt.
- B. Gross receipts from the sale of tangible personal property by a charitable nonprofit organization, recognized as such for income tax purposes by the Internal Revenue Service and the Department, are not ~~taxable~~ subject to tax.
- ~~C.~~ If an organization wishes to obtain tax exempt status by being recognized by the Department as a nonprofit charitable organization, it shall submit a letter to the Department requesting tax exempt status and shall include a copy of its Internal Revenue Service recognition as such an organization.
- ~~D.C.~~ For purposes of the statutory exemption and this rule, the Internal Revenue Service recognition of a charitable nonprofit organization is defined in Internal Revenue Code § 501(c)(3).

Notices of Final Rulemaking

ARTICLE 4. AMUSEMENT CLASSIFICATION

R15-5-403. Amusement Devices

Gross proceeds of sales or gross income from the operation of coin-operated and other devices which that provide amusement are included in the tax base under the amusement classification. Examples of such devices include: devices that play prerecorded music, electronic games, pinball games, and billiard tables.

- 1. The tax base from the business of operating amusement devices is the gross amount received from the amusement devices without deduction for commissions paid, rental cost for the equipment, or other expenses.
2. The individual having direct control of the funds generated by the amusement devices shall pay the tax to the Department.

R15-5-406. Health or Fitness Establishments and Private Recreational Establishments

A. The operator of a "health or fitness establishment" or a "private recreational establishment," as defined in A.R.S. § 42-1310.13(C) 42-5073(C), shall exclude from the tax base under the amusement classification all gross proceeds of sales or gross income from membership fees and initiation fees which provide charged for the right to use of the establishment, or any portion of the establishment, for 28 days or more, and fees charged for the use of the establishment by bona fide accompanied guests of members. Any other fees for the use of a health or fitness establishment or a private recreational establishment, or any portion of such an the establishment, are included in the tax base of the amusement classification.

B. The Department shall not consider the gross Gross proceeds of sales or gross income derived from other businesses that are located on the premises of a health, fitness, or recreational business shall not be considered when determining whether a health, fitness, or recreational business meets the qualifications of is a "health or fitness establishment" or a "private recreational establishment" if the other businesses are separate and independent from the health, fitness, or recreational business. Whether the other businesses are separate and independent depends upon the facts in each case. The Department considers several factors in making this determination including but not limited to the following:

- 1. Whether the business is open to both members and nonmembers;
2. Whether the primary purpose of the business is closely related to the primary purpose of the health, fitness, or recreational business;
3. Whether the business could exist without the health, fitness, or recreational business; and
4. Whether the business shares assets or employees with the health, fitness, or recreational business.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

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

[R07-44]

PREAMBLE

1. Sections Affected

- Article 7
R17-4-701
R17-4-702
R17-4-703
R17-4-704
R17-4-705
R17-4-706
R17-4-707
R17-4-708
R17-4-709
R17-4-710
R17-4-711

Rulemaking Action

- New Article
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
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 statute: A.R.S. § 28-366
Implementing statute: A.R.S. § 28-3103

Notices of Final Rulemaking

3. The effective date of the rules:

April 9, 2007

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 3076, August 25, 2006

Notice of Proposed Rulemaking: 12 A.A.R. 3790, October 13, 2006

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

Name: Janette M. Quiroz
Address: Arizona Department of Transportation
Administrative Rules Unit
1801 West Jefferson, MD 530M
Phoenix, AZ 85007
Telephone: (602) 712-8996
Fax: (602) 712-3081
E-mail: jmquiroz@azdot.gov

Please visit the Arizona Department of Transportation web site to track progress of these rules and any other Agency rulemaking matters at <http://www.azdot.gov/mvd/mvdrules/rules.asp>.

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

In accordance with 49 CFR 1572 and A.R.S. § 28-3103, MVD has created rules requiring applicants to successfully pass a Security Threat Assessment conducted by the U.S. Transportation Security Administration, before the Division will issue a Hazardous Materials Endorsement (HME) for a commercial driver license.

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

The Division did not review nor rely upon any study.

8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules 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:

This rulemaking would bring the state of Arizona rules into compliance with the federal government's new regulations mandating that all Commercial Driver License holders wishing to transport hazardous materials undergo a Security Threat Assessment, to be performed by the Transportation Security Administration, before issuance of an HME.

The new requirement governing the hauling of hazardous materials is an unfunded mandate. Therefore, ADOT incurred all cost associated with implementing the federal regulations.

Both the costs and benefits to ADOT in adopting these rules are substantial.

Arizona has funded all costs associated with implementation to include: System programming, driver notification, public and industry education, and other associated costs.

Arizona would stand to lose federal highway matching funds if the Arizona Legislature did not codify these requirements in statute, and administrative rules are not consequently adopted. Failure to implement the federal regulations could result in the state losing substantial federal funding, grant monies, and the ability to issue, renew, upgrade and transfer any Commercial Driver License.

The cost to commercial drivers wishing to obtain or renew an HME is minimal. Drivers will be required to pay an additional \$94 fee for fingerprint and background services obtained through a federal third party, which provides oversight of the collection activities.

These rules enhance the state's ability to identify and deter the shipment and use of hazardous materials by terrorists. Drivers that have been determined to pose a security threat will not be issued a hazardous materials endorsement.

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 by the Division and at the suggestion of staff of the Council to improve clarity.

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

Notices of Final Rulemaking

This rulemaking is the Division’s second attempt to promulgate these rules. During the public comment period for the first attempt, the Division received the following comment:

Section	Commenter	Comment	Division Response
R17-4-706. Fees	Mark Shumar, Government Affairs State Coordinator, International Brotherhood of Teamsters (IBT)	“...in an effort to prevent any possible problems that may arise from any employers that our organization has under a collective bargaining agreement and prevent any mis-construing of the intent of the rule language, IBT requested amendment to the rule language to add ‘...or applicants’ employer’ under Section R17-4-706 in order to codify the language from the <i>Federal Register</i> , page 23870.”	The Division agreed that while we have incorporated the CFR under this Article, the rule should be amended to mirror federal regulations. The language was changed as suggested.

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:

49 CFR 1572 (November 24, 2004), R17-4-702

14. Were these rules previously adopted as emergency rules?

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

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

ARTICLE 7. ~~RESERVED~~ HAZARDOUS MATERIALS ENDORSEMENT

Section

- R17-4-701. ~~Repealed~~ Repealed Definitions
- R17-4-702. ~~Repealed~~ Repealed Scope
- R17-4-703. ~~Repealed~~ Repealed General Provisions
- R17-4-704. ~~Repealed~~ Repealed Requirements for an HME
- R17-4-705. ~~Repealed~~ Repealed Required Testing
- R17-4-706. ~~Repealed~~ Repealed Fees
- R17-4-707. ~~Repealed~~ Repealed 60-Day Notice to Apply
- R17-4-708. ~~Repealed~~ Repealed Security Threat Assessment
- R17-4-709. ~~Repealed~~ Repealed Determination of Security Threat
- R17-4-710. ~~Repealed~~ Repealed Requests for Administrative Hearing
- R17-4-711. ~~Repealed~~ HME on CDL Learner’s Permit

ARTICLE 7. ~~RESERVED~~ HAZARDOUS MATERIALS ENDORSEMENT

R17-4-701. ~~Repealed~~ Repealed Definitions

In addition to the definitions contained in 49 CFR 1572.3, the following words and phrases apply to this Article:

1. “Applicant” means an individual who applies to obtain an original or renewal HME.
2. “CDL” means Commercial Driver License.
3. “HME” means Hazardous Materials Endorsement.
4. “TSA” means the U.S. Transportation Security Administration.
5. “Security Threat Assessment” means a check by TSA that includes a fingerprint-based criminal history records check, an intelligence-related background check, and final disposition.

R17-4-702. ~~Repealed~~ Repealed Scope

Notices of Final Rulemaking

This Article applies to commercial drivers who are applying for an original or renewal HME, in accordance with 49 CFR Part 1572 (November 24, 2004) incorporated by reference, on file with the Arizona Department of Transportation and available from the U.S. Government Printing Office's web page at www.gpo.gov. This incorporation by reference contains no future additions or amendments.

R17-4-703. Recodified General Provisions

- A.** An applicant for an HME shall comply with the provisions of 49 CFR 1572 (November 24, 2004), incorporated under R17-4-702 and A.R.S. § 28-3103.
- B.** The Division shall not issue or renew an HME unless the Division receives a determination of No Security Threat from TSA.

R17-4-704. Recodified Requirements for an HME

To receive an HME an applicant shall:

1. Possess a valid Arizona CDL.
2. Be at least 21 years of age.
3. Successfully complete all required testing under R17-4-705.
4. Pay all applicable fees under R17-4-706.
5. Make application to TSA for a Security Threat Assessment, and
6. Receive a Determination of No Security Threat from TSA.

R17-4-705. Recodified Required Testing

Original and renewal applicants shall successfully complete the testing requirements under A.R.S. § 28-3223.

R17-4-706. Recodified Fees

All applicable fees shall be paid as prescribed by:

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

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

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

R17-4-708. Recodified Security Threat Assessment

- A.** An applicant for an HME shall successfully pass a Security Threat Assessment every five years.
- B.** An applicant subject to any of the following actions, as defined under A.R.S. § 28-3001, shall obtain a new Security Threat Assessment and HME:
 1. Cancellation.
 2. Suspension for a period of one year or more.
 3. Expiration for a period of one year or more, and
 4. Revocation for a period of one year or more.

R17-4-709. Recodified Determination of Security Threat

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

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

R17-4-710. Recodified Requests for Administrative Hearing

- A.** The Division shall not accept a request for hearing for failure to qualify for an HME. In the event an applicant has failed to successfully complete the Security Threat Assessment, the applicant shall make appeal directly through TSA.
- B.** An applicant whose Arizona driving privileges have been canceled under R17-4-707 or R17-4-709 may request an administrative hearing under 17 A.A.C. 1, Article 5.

Notices of Final Rulemaking

R17-4-711. HME on CDL Learner's Permit

In accordance with 49 CFR 383.23, the Division shall not issue an HME to an individual in possession of a CDL Learner's Permit.