

## 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 3. AGRICULTURE

#### CHAPTER 3. DEPARTMENT OF AGRICULTURE ENVIRONMENTAL SERVICES DIVISION

*Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 3947.) The Governor's Office authorized the notice to proceed through the rulemaking process on April 12, 2013.*

[R13-201]

#### PREAMBLE

- 1. Article, Part, or Section Affected (as applicable)**      **Rulemaking Action**  
R3-3-207      Amend
- 2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**  
Authorizing statute: A.R.S. § 3-107(A)(1)  
Implementing statute: A.R.S. § 3-363
- 3. The effective date of the rule:**  
January 4, 2014
  - a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**  
Not applicable.
  - b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**  
Not applicable.
- 4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**  
Notice of Rulemaking Docket Opening: 19 A.A.R. 1929, July 26, 2013  
Notice of Proposed Rulemaking: 19 A.A.R. 1863, July 26, 2013
- 5. The agency's contact person who can answer questions about the rulemaking:**  
Name: Jack Peterson  
Address: Department of Agriculture  
1688 W. Adams Street  
Phoenix, AZ 85007  
Telephone: (602) 542-3575  
Fax: (602) 542-0466  
E-mail: jpeterson@azda.gov
- 6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

Notices of Final Rulemaking

The primary purpose of this rulemaking is to ease the regulatory burden of the current educational requirements for becoming a pest control advisor (PCA) at the recommendation of the industry. The new educational requirements offer more options and flexibility for licensure, while still maintaining standards to ensure that licensees are sufficiently qualified. The requirements are eased in six ways. One, the requirement of 45 semester hours is being lowered to 42. Two, an applicant with a bachelor's degree no longer needs that degree to be in a specific subject matter. Three, there are separate options available to applicants holding a master's degree or doctorate degree. Four, those without any degree may be licensed as a PCA if they have taken certain coursework and have had sufficient work experience. Under the existing rule, a person without a degree cannot obtain a PCA license. Five, the minimum number of credits from each individual core area is being reduced. Six, certain non-traditional courses, work experience, and crop advisor certificates are recognized as counting toward the 42 semester hour requirement.

The rulemaking also makes the rule more clear, concise and understandable. It eliminates a moot effective date, rephrases the language on when CEU credits may be earned to make clear that CEUs for two-year licenses can be earned anytime during the license period and not only during the second year of the license, and makes other minor changes for clarity. The rulemaking also reduces the number of opportunities to retake the licensing exam in a 12-month period from three to two.

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

None

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

Not applicable.

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

The eased requirements for obtaining a PCA license will allow more qualified individuals to obtain licensure without a material impact on the Department. This rulemaking will place a small additional burden on the Department to train employees on the new qualification options, but this will not require any additional Department employees. No other agency or political subdivision will be affected by this rulemaking. The rulemaking will likely result in a very small increase in state revenue based on application fees of individuals who could not qualify as a PCA under the existing law. An increase in licensed PCAs resulting from this rulemaking will likely cause some existing business of current PCAs to shift to the new PCAs. The increase in numbers of PCAs will probably benefit those who hire PCAs by increasing their availability and potentially lowering costs due to increased competition. Notably, Arizona's existing requirements are more onerous than California's requirements. This rulemaking makes Arizona's requirements less onerous than California.

The rulemaking also reduces the amount of opportunities a person can retake the exam within a 12-month period by one. In FY2010, only approximately two people retook any pesticide licensing exam a third time in a year. This change places a burden on the very few people who would pass the exam on the third retake (4th time overall), but not sooner; they will now have to wait to retake the test that additional time. The change also slightly reduces the burden on the Department with respect to the number of tests it must administer.

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

The Department has made three minor changes for clarity: replacing the word "person" with "individual," adding semi-colons to subsection (E)(1), and clarifying the subsection reference in subsection (H)(2). The Department also added underlining and strikeouts to comply with the *Arizona Rulemaking Manual* where a word went from being capitalized to not being capitalized and vice versa.

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

The Department received one public comment on this rulemaking during the Department's August 21 Advisory Council meeting. The commenter stated industry had been hearing questions from the Universities providing these qualifying courses about the challenges students had fitting into these narrowly designed curriculum and that the rulemaking is expanding the qualifying courses and mirroring California in that regard. One of the Advisory Council members asked whether the Department taught any of the courses, and the Department responded that it did not and that these are courses taught by colleges. The Department also received one written comment from the Arizona Crop Protection Association in support of the amendments included in this rulemaking.

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

Pursuant to A.R.S. § 3-104(F), the Department discussed this rulemaking with the ADA Advisory Council on August 21, 2013, and the Council voted in favor of the rulemaking.

Notices of Final Rulemaking

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

The rule maintains the requirement for PCAs to be licensed. A general permit (i.e. license) is not used because the issuance of a general permit would result in additional regulatory requirements being placed on the applicant. Every person who desires PCA licensure must pass a core exam and a category specific exam, such as weed control or nematode control. There are seven categories of licensure. Under a general permit, an applicant would have to pass the core exam and all seven category specific tests whereas now a PCA license can be issued by passing one category specific exam.

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

No

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

No

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

None

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

No

**15. The full text of the rule follows:**

**TITLE 3. AGRICULTURE**

**CHAPTER 3. DEPARTMENT OF AGRICULTURE  
ENVIRONMENTAL SERVICES DIVISION**

**ARTICLE 2. PERMITS, LICENSES, AND CERTIFICATION**

Section

R3-3-207. Agricultural Pest Control Advisor License; Examination; Fee; Renewal; Exemption

**ARTICLE 2. PERMITS, LICENSES, AND CERTIFICATION**

**R3-3-207. Agricultural Pest Control Advisor License; Examination; Fee; Renewal; Exemption**

- A.** An individual shall not act as a PCA without a valid PCA ~~license~~, license issued by the Department. To advise in any of the categories listed in subsection (I), a PCA shall pass the specific examination associated with the category.
- B.** An individual applying for a PCA license shall provide the following information on a form obtained from the Department:
1. ~~Name;~~ The applicant's name, address, e-mail address, daytime telephone number, social security number, and signature of the applicant;
  2. Date of the application;
  3. ~~Address, e-mail address, if applicable, and daytime telephone number of the applicant;~~
  4. ~~3.~~ License renewal period;
  5. ~~4.~~ Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the applicant's employer, if applicable;
  6. ~~5.~~ List, by category, the examinations Examinations that the applicant has passed by category; and
  7. ~~6.~~ Whether the applicant has had a similar license revoked, suspended, or denied in this or any other jurisdiction during the last three years, and the nature of the violation resulting in the revocation, suspension, or denial.
- C.** ~~Effective January 1, 2005, a person~~ An individual applying for a PCA license, except ~~a person~~ an individual who holds or has held a PCA license in this state within the previous five years shall ~~possess~~ meet one of the following five sets of qualifications:
1. A bachelor's degree (B.A. or B.S.) in the agricultural sciences, biological sciences, or pest management; or
  2. Forty-five semester units (67.5 quarter units) of college-level curricula as shown in the chart in subsection (D) and 24 months of technical experience.
1. College degree.
    - a. Possess a bachelor's degree (B.A. or B.S.), master's degree or doctorate degree in any subject; and
    - b. Have completed 42 semester hours (63 quarter units) of college-level curricula as specified in subsection (D).

**Notices of Final Rulemaking**

2. Master's degree in a biological science.
    - a. Possess a master's degree in a biological science;
    - b. Have 12 months of work experience related to a core area listed in subsection (D); and
    - c. Have a letter from the institution, a faculty member, or a supervisor where the individual obtained the work experience certifying the time spent and describing the type of experience obtained by the individual.
  3. Doctorate degree in a biological science.
    - a. Possess a doctorate degree in a biological science; and either
    - b. Meet the qualifications in subsection (C)(2)(b) and (C)(2)(c); or
    - c. Have a letter of recommendation from the faculty member that supervised the dissertation or the division head of the discipline.
  4. Other education with unlicensed experience.
    - a. Have completed 42 semester hours (63 quarter units) of college-level curricula as specified in subsection (D);
    - b. Have 24 months of work experience related to a core area listed in subsection (D); and
    - c. Have a letter from the institution, a faculty member, or a supervisor where the individual obtained the work experience certifying the time spent and describing the type of experience obtained by the individual.
  5. Other education with licensed experience.
    - a. Be currently licensed as a pest control advisor (PCA) or equivalent in another state; and
    - b. Have completed 42 semester hours (63 quarter units) of college-level curricula as specified in subsection (D), except that each year of verifiable licensed experience under subsection (C)(5)(a) within the previous 5 years qualifies for two semester hours up to 10 hours. The semester hours based on licensed experience do not reduce the minimum hours required from each individual core area.
    - c. The applicant shall provide proof of the equivalency of a license from another state.
- D.** The 42 semester hours (63 quarter units) of college-level curricula specified in subsections (C)(1) and (2) shall include at least 45 semester units (67.5 quarter units) as shown in the following table; subsection (C) shall come from the core areas shown in the following table, with at least the minimum indicated hours (or units) coming from each individual core area. A single course shall not count toward the minimum hours of more than one core area. At least one course from the pest management systems and methods core area shall emphasize integrated pest management principles.

<b>Area of Study</b>	<b>Semester Units</b>	<b>Quarter Units</b>
<del>Physical and biological sciences, such as introduction to inorganic chemistry, organic chemistry, biochemistry, plant biology or botany, ecology, soils, irrigation, genetics, plant physiology, entomology, and zoology.</del>	<del>45</del>	<del>22.5</del>
<del>Crop health, such as vegetative management or weeds, plant pathology, entomology, plant nutrition or fertility, nematology, and vertebrate management.</del>	<del>12</del>	<del>18</del>
<del>Pest management systems and methods, with at least one course in pest management systems and one course in pest management methods. Pest management systems subjects include agricultural chemical applications, properties of pesticides, mode of action of agricultural chemicals, toxicology, environmental impact of pesticides, and biological control.</del>	<del>9</del>	<del>13.5</del>
<del>Production systems, such as environmental horticulture, horticulture, ornamental horticulture, forestry, agronomy, crop science, vegetable crops, animal science, or other production systems.</del>	<del>9</del>	<del>13.5</del>
<b>Total Units Required</b>	<b>45</b>	<b>67.5</b>

**Notices of Final Rulemaking**

<b><u>Core Area</u></b>	<b><u>Examples of Subjects</u></b>	<b><u>Sem. Hours</u></b>	<b><u>Qtr. Units</u></b>
<u>Physical, biological, and earth sciences, and mathematics</u>	<u>Inorganic chemistry; organic chemistry; biochemistry; plant biology or botany; general ecology; biology; genetics; plant physiology; zoology; post-algebra mathematics</u>	<u>12</u>	<u>18</u>
<u>Crop health</u>	<u>Soils and irrigation; vegetation management or weed science; plant pathology; entomology; plant nutrition or fertility; nematology; vertebrate management</u>	<u>6</u>	<u>9</u>
<u>Pest management systems and methods</u>	<u>Applied courses in entomology, plant pathology, vegetation management or weed science, and other pest management disciplines; pesticides or use of pesticides; pest control equipment systems; alternative cropping systems; sustainable or organic agricultural systems; biological control</u>	<u>3</u>	<u>4.5</u>
<u>Production systems</u>	<u>Horticulture; viticulture; forestry; agronomy; crop, vegetable, fruit or animal sciences; other production systems (e.g., wildlife production, cattle production)</u>	<u>3</u>	<u>4.5</u>

**E. Alternative curricula credits.**

1. A current crop advisor certificate issued by the American Society of Agronomy qualifies for three semester hours in one of the following core areas: physical, biological and earth sciences and mathematics; crop health; or production systems.
2. Non-traditional courses such as a senior project, an internship, cooperative work experience, independent study, a dissertation or a thesis qualify for three semester hours in one of the core areas of crop health, pest management systems and methods, or production systems, as applicable.
3. For applicants with a bachelor's, master's, or doctorate degree, at least one year of full-time related work experience qualifies for three semester hours in one of the core areas of pest management systems and methods or production systems, as applicable.

**E.F. An** ~~In addition to the information required by subsection (B), an applicant shall submit to the Associate Director an~~ **Department:**

1. An official transcript verifying the courses completed and the degrees granted to the applicant. ~~In addition, an applicant qualifying under subsection (C)(2) shall submit employment records, a statement from an employer, or other similar proof of technical experience to the Associate Director.~~
2. Documentation verifying alternative curricula relied on under subsection (E). Documentation of subsection (E)(2) and (E)(3) shall include a letter certifying completion and describing the activity from the institution, a faculty member or supervisor.
3. If applicable, the letter required for licensure under subsection (C).

~~F.4. The applicant shall submit the completed application to the Department, accompanied by a \$50 fee.~~

**G.** A PCA license is not transferable, expires on December 31, and is:

1. Issued for up to one year as an initial license;
2. Renewed every one or two years, depending on the renewal period selected by the applicant; and
3. Renewed for all categories of license under subsection (I) for the same renewal period.

**H.** Renewal.

1. The continuing education requirement in subsection (H)(5) is not applicable to an individual who passes the examination prescribed in subsection (I) and who applies for a PCA license between October 1 and December 31 of the test year.

Notices of Final Rulemaking

2. Upon renewal, a PCA license is valid for one or two years, depending on the renewal period selected by the applicant, provided the applicant meets the criteria prescribed under ~~this~~ subsection (H).
  3. An applicant shall submit the completed application, accompanied by a \$50 fee for each licensing year or portion of the year during which the license is valid.
  4. Renewal; expired license.
    - a. An applicant may renew an expired license without retaking the written examinations under subsection (I) ~~under the following conditions provided the applicant:~~
      - i. ~~The applicant complies~~ Complies with the CEU requirements in subsection (H)(5),
      - ii. ~~The applicant submits~~ Submits a completed application and fee within 30 days after the expiration date, and
      - iii. ~~The applicant does~~ Does not provide any pest control-related service from the date the license expired until the date the renewal is effective.
    - b. All other applicants for renewal shall retake the applicable written examinations prescribed in subsection (I).
  5. The Department shall not renew a PCA license unless, before the expiration of the current license, the ~~advisor licensee~~ licensee completes 15 CEUs for each year of the renewal period or passes any applicable examination prescribed in subsection (I). ~~An advisor~~ The licensee shall complete CEU credit ~~from January 1 through December 31 during the calendar years the current license is in effect.~~ CEUs earned ~~in a year~~ that are in excess of the requirements do not carry forward for use ~~in with future years renewals.~~
  6. To obtain credit, the applicant shall provide the Department with documentation of completion of the CEU course.
- I. Examinations.**
1. The Department shall administer examinations by appointment at every Environmental Services Division office. In addition to the core examination required in R3-3-202, an applicant shall demonstrate knowledge and understanding of integrated pest management in any of the following categories by scoring at least 75 percent on a written examination:
    - a. Weed control,
    - b. ~~Insect and mite~~ Invertebrate control,
    - c. Nematode control,
    - d. Plant pathogen control,
    - e. Vertebrate pest control,
    - f. Plant growth regulators, or
    - g. Defoliation.
  2. An individual who fails the examination may retake it no more than ~~three~~ two times in a 12-month period and shall not retake an examination until at least seven days have elapsed from the date of the last examination.
- J. Exemption.** An individual operating in an official capacity for a college or university, providing recommendations in a not-for-profit capacity, or ~~who merely furnishes~~ furnishing information concerning general and labeling usage of a registered pesticide is not considered an authority or general advisor for the purposes of this Chapter.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE  
PLANT SERVICES DIVISION

*Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 3947.) The Governor's Office authorized the notice to proceed through the rulemaking process on July 19, 2012.*

[R13-200]

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R3-4-101	Amend
R3-4-107	Repeal
Table 1	Amend
R3-4-201	Renumber
R3-4-201	New Section
R3-4-202	Renumber
R3-4-204	Amend
R3-4-218	Amend

Notices of Final Rulemaking

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

Authorizing statute: A.R.S. § 3-107(A)(1)

Implementing statute: A.R.S. §§ 3-107(B)(5), 3-201.01(A)(2), 3-202, 3-204(G), 3-205(G) and 3-211

**3. The effective date of the rule:**

January 4, 2014

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

Not applicable.

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

Not applicable.

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

Notice of Rulemaking Docket Opening: 18 A.A.R. 1922, August 10, 2012

Notice of Proposed Rulemaking: 19 A.A.R. 1868, July 26, 2013

**5. The agency's contact persons who can answer questions about the rulemaking:**

Name: Brian McGrew

Address: Department of Agriculture  
1688 W. Adams Street  
Phoenix, AZ 85007

Telephone: (602) 542-0955

Fax: (602) 542-1004

E-mail: bmcgrew@azda.gov

or

Name: Casey Cullings

Address: Department of Agriculture  
1688 W. Adams Street  
Phoenix, AZ 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420

E-mail: casey.cullings@azag.gov

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

The rulemaking amends rule 101 by moving several definitions to new rule 201 because those terms only apply to Article 2 and not the entire Chapter. Three definitions are being removed because they are no longer needed. The definition of "bulk container" now refers to a "container" instead of a "package," which is helpful because container is defined and package is not. The definition of "certificate" now says issued by the Department instead of issued by an inspector of the Department. In the definition of "commodity," the term "appliance" has been removed and the term "produce" added; appliance is being removed to make the term distinct from a commodity and produce is being added for clarity and completeness. Also, in two instances the phrase "crop pest" is being changed to "plant pest" for clarity. Finally, a definition for "cotton stubble" is being added, a phrase which appears in statute but not any rule, and the definition for "stub cotton" is being simplified.

The rulemaking repeals rule 107 because the Department is concerned it lacks specific statutory authority to enforce the rule.

The rulemaking amends Table 1 by (i) removing unnecessary references to A.R.S. § 3-201.01, (ii) adding time frames for rule 204 and rule 228, (iii) removing time frames for citrus nursery stock pests and scale insect pests licenses because those rules do not provide for licenses, (iv) renaming and reordering the general nursery stock inspection time frames, (v) adding time frames for various special nursery stock inspections, and (vi) separating the time frame for ozonium root rot method of growing into new and renewal. The nursery inspection program under rule 301 is voluntary, so time frames are not actually required; however, the Department feels the time frames are helpful.

Notices of Final Rulemaking

The rulemaking creates new rule 201 for definitions of terms used in Article 2. New rule 201 will consist of definitions moved from rule 101 as well as entirely new definitions in order to clarify the rules in Article 2.

The rulemaking rennumbers existing rule 201 to rule 202 so that the new definitions rule appears first in the Article.

The rulemaking amends rule 204 in ten respects. First, it updates the USDA Treatment Manual incorporated by reference from the 1998 version to the 2013 version. Second, it changes the phrase “covered commodities” to “regulated commodities and appliances” for consistency with the other rules in the Article. For the same reason, the phrase “movement of covered commodities” is being changed to “restrictions.” Third, references to the Director are being switched to the Associate Director. Fourth, the allowed treatment for cotton gin trash is being updated from the 1979 USDA Program Manual to the current USDA Treatment Manual. Fifth, subsection (F) pertaining to the advisory committee will be reduced to just the Cotton Growers Association, the Cotton Research and Protection Council, and anyone else necessary. The Department feels the expansive makeup of the current advisory committee is unnecessary and it is burdensome to get a quorum for a meeting. Sixth, it rephrases subsection (E)(4)(b) so that the cross-reference is not necessary and rephrases 30 days before the planting date to 15 days before the tillage deadline, which is actually the same date. Seventh, it rephrases the language in subsection (D) for clarity and consistency with the other rules and adds that a person may act in accordance with a compliance agreement and includes that boll weevil treatment, as well as pink bollworm treatment, will be done according to the USDA Treatment Manual. Eighth, it amends the title of the rule to distinguish it from rule 218, which relates to the same pests. Ninth, it clarifies in subsections (E)(2) and (E)(7) that the responsibility to remove stub, soca and volunteer cotton rests with the grower when the land is being leased; the new phrase in subsection (E)(7) matches the language in A.R.S. § 3-205(G). Tenth, it amends the cultural zones, extends some tillage deadlines, and adjusts planting dates to create a consistent 15-day host-free period and to reflect current practices.

The rulemaking amends rule 218 in seven respects. First, it adds the pink bollworm as a pest and re-titles the rule accordingly. Second, it eliminates the definition of terms that are already defined in rule 201, clarifies two other definitions, and adds a definition for “pest.” Third, it rephrases subsections (B) & (C) to make them consistent with the other rules in this Article and shrinks the quarantine area for boll weevil from almost nationwide to just certain areas of Texas. Fourth, it rephrases and reorders subsections (D) & (E) into subsection (D) to make them consistent with the other rules in this Article. For example, current subsections (D)(2)(a)(iv), (D)(2)(c), (E)(1) & (E)(3) will now be subsection (D)(2)(a) and current subsection (D)(2)(b) will now be subsection (D)(2)(c). Fifth, it updates the requirements in revised subsection (D). This includes dropping references to a special permit and a permit application in current subsections (D)(1) & (D)(3); updating the fumigation options for used cotton appliances and gin trash to the current USDA Treatment Manual, which is incorporated by reference in rule 201; reducing the treatment options for cottonseed to just those listed in the Treatment Manual and dropping current subsections (D)(2)(a)(i)-(iii); eliminating the listed fumigation treatment option for Spanish moss in subsection (E)(2) because the Appendix does not actually contain a fumigation treatment option for Spanish moss; and adding a way for importation of cotton plants and hibiscus. Sixth, it eliminates subsection (G), which is covered by A.R.S. § 3-210. Seventh, it eliminates subsection (F) and the Appendix, which are no longer applicable. Rule 218 has not been updated for about 22 years and still refers to the old Agriculture and Horticulture Commission instead of the Department of Agriculture.

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

None

8. **A showing of good cause why the rule is necessary to promote a statewide interest if the rulemaking 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:**

Rules 101 and 201 are definitions and do not have an economic impact by themselves. Repealed rule 107 was not used, so its repeal should have no impact.

The changes to Table 1 add time frames for certain Department approvals. The time frames will provide certainty to the Department and to industry about how long the Department has to respond to a request for approval. The changes also eliminate time frames for rules that don't have approvals tied to them, so there is no impact from those deletions.

Two of the changes to rule 204 may have an economic impact. First, the rule updates the incorporation by reference of the USDA Treatment Manual to the March 2013 version. This updates the reference in subsection (C) by over 33 years and the reference in existing subsection (D)(2) by almost 15 years. For the treatment of gin trash referred to in subsection (C), the treatment method indicated in the current rule is not being used. The incorporated by reference material on file with the Department pertaining to existing subsection (D)(2) is substantially similar to options included in the latest version of the Treatment Manual, so in that case, the effect of updating is to make it easier for industry to obtain the relevant portion of the Manual. Second, there are some modifications to the tillage and planting dates. Specifically, growers in cultural zones A, C and E will now have an extra month to till their fields. This benefits growers by making it less likely that they will miss the deadline (and miss the opportunity for an assessment rebate from the Cotton Research and Protection Council) and by giving growers more time to grow their cotton crop. Also, under the current rule, growers who missed the tillage deadline could replant as soon as everyone else, potentially



**Notices of Final Rulemaking**

even the next day, but the rulemaking will require those delinquent growers to wait 15 days to replant, which is what people who timely comply have to do. For growers who are late on tilling their cotton crop and who choose to immediately follow one cotton crop with another cotton crop, there could be an economic impact from planting later than other growers.

Some of the changes to rule 218 will have an economic impact. First, the rulemaking amends current subsection (E), which will become subsection (D)(2)(a), by changing the treatment options for used cotton appliances and gin trash from those listed in the Appendix to those listed in the current USDA Treatment Manual and by removing fumigation as a treatment option for Spanish moss because neither the Appendix nor the Treatment Manual contains a fumigation treatment for Spanish moss. This updates the treatment procedures by about 23 years. The rulemaking also amends current subsection (D)(2)(a), which will also become part of new subsection (D)(2)(a), by reducing the nearly 23 years old treatment options for cottonseed to just fumigation methods listed in the Treatment Manual. The current rule is so outdated that the current practice in the industry is already to follow USDA Treatment Manual, so for those companies already doing so, there will be no economic impact from this rule change. Second, the rulemaking adds new subsection (D)(2)(b), which provides an entry option for treated cotton plants and hibiscus not formerly available under the rule. In fact, the Department's current practice is to allow entry of hibiscus anyway. The Department does not expect a significant change in the importation of treated cotton plants and hibiscus as a result of this rule change. Third, the rulemaking eliminates the exemptions for entry in current subsection (F) for Spanish moss and potted hibiscus plants intended for private use when found pest free by a Department inspector because it is no longer practical for the Department to perform these inspections without operating port inspection stations. Now all Spanish moss and potted hibiscus plants will need to be treated before they can be imported. Fourth, the rulemaking reduces the area quarantined for boll weevil from most of the United States to just parts of Texas, but also adds the pink bollworm as a regulated pest when the commodity or appliance comes from Texas, New Mexico or parts of California. However, the new pink bollworm requirement matches existing federal law, so this part of the rule change does not increase the cost for importers. For regulated commodities and appliances coming from most states (all except California, Texas, and New Mexico), there will no longer be a requirement to treat for boll weevil, thus saving the industry that cost.

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

The Department added strikeout text and underlining to the definitions of bulk container, certificate, and commodity in rule 101 to comply with the *Arizona Rulemaking Manual*. The Department corrected the statutory reference for the definition of nursery in rule 101. The Department added "or crop" to the definition of plant in rule 101 so that the definition accurately quotes the referenced statute. The Department added an 'a' to rule 204(D)(1) before "compliance agreement" for additional clarity. To comply with the *Arizona Rulemaking Manual*, final rule 218(A)(6) now shows, using strikeout and underlining, that the word "usneoides" was not italicized originally. The Department also notes that Table 1 in the published Notice of Proposed Rulemaking only refers to "Garden Snail" instead of "Brown Garden Snail," even though the Department's Notice of Proposed Rulemaking submission for publication said "Brown Garden Snail."

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

The Department received no comments on the rule other than a vote of approval from the Department's Advisory Council.

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

Pursuant to A.R.S. § 3-104(F), the Department discussed this rulemaking with the ADA Advisory Council on August 21, 2013, and the Council voted in favor of the rulemaking. In addition, the Department developed the amendments to rule 204 in consultation with the Advisory Committee described in subsection (F) of that rule.

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

Rules 204 and 218 refer to permits and other authorizations to import or move regulated commodities and appliances. The permits and authorizations all qualify as general permits except the "limited permit." A limited permit is a one-time authorization to move a regulated commodity or appliance to a specific place and under certain conditions. A limited permit is used where a person has not complied with the requirements of a general permit or a general permit would not sufficiently protect the State from the infestation or spread of regulated pests.

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

Federal law, namely 7 CFR 301.52, is applicable to the interstate movement of commodities and appliances from areas quarantined for pink bollworm and therefore would apply to commodities and appliances entering Arizona. Rule 218, which addresses this issue, is not more stringent than federal law.

Notices of Final Rulemaking

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

No

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and their location in the rules:  
7 CFR 301.52 et seq. (Jan. 2013) at R3-4-218(D)(1).

USDA-APHIS-PPQ Treatment Manual, T301—Cotton and Cotton Products, revised March 2013. The Treatment Manual is incorporated by reference in rule 201 and is referred to in rules 204(C), 204(D)(4), and 218(D)(2)(a).

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

No

15. The full text of the rule follows:

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE  
PLANT SERVICES DIVISION

ARTICLE 1. GENERAL PROVISIONS

Section

- R3-4-101. Definitions  
R3-4-107. ~~Experimental Purposes Repealed~~  
Table 1. Time-frames (Calendar Days)

ARTICLE 2. QUARANTINE

Section

- R3-4-201. Definitions  
~~R3-4-201~~ R3-4-202. Transportation and Packaging  
R3-4-204. ~~Pink Bollworm and the Cotton Boll Weevil Complex~~ and Pink Bollworm Pests: Interior Quarantine  
R3-4-218. ~~Cotton Boll Weevil Pest~~ and Pink Bollworm Pests: Exterior Quarantine

ARTICLE 1. GENERAL PROVISIONS

**R3-4-101. Definitions**

In addition to the definitions provided in A.R.S. §§ 3-201, 3-231, 3-441, and 3-481, the following ~~terms~~ definitions apply to this Chapter:

1. "Air plant (Epiphyte)" ~~means a plant that grows on another plant or object but does not require the other plant or object as a source of nutrients.~~
2. "Appliance" means any box, tray, container, ladder, tent, vehicle, implement, or any article or thing that is or may be used in growing, harvesting, handling, packing, or transporting any agricultural commodity.
3. "Aquatic" means living or growing in or on water.
4. "Bulk container" means a ~~package~~ container used solely for transporting a commodity in bulk quantities.
5. "Carrier" means any plant or thing that can transport or harbor a ~~crop~~ plant pest.
6. "Certificate" means an original document issued by ~~an inspector of the Department, the United States Department of Agriculture, or authorized officer of the state of origin, stating name, quantity, and nature of the regulated commodity, and the information required by a specific regulation.~~
7. "Commodity" means any plant, ~~appliance~~ produce, soil, material, or thing that ~~is~~ may be subject to federal and state laws and rules.
8. ~~"Common carrier" means any person transporting a commodity for compensation or commercial purpose.~~
9. ~~"Consumer container" means a package that is produced or distributed for retail sale or for consumption by an individual.~~
10. "Container" means any box, crate, lug, chest, basket, carton, barrel, keg, drum, can, sack, or other receptacle for a commodity.
11. ~~"Cotton harvesting machine" means any machine used to pick or harvest raw cotton in a field.~~
12. "Cotton lint" means the remnant produced when cottonseed is processed in a gin.

**Notices of Final Rulemaking**

13. "Cotton plant" means all parts of *Gossypium* spp. whether wild or domesticated, except manufactured cotton products.
14. "Cotton products" include seed cotton, cotton lint, cotton linters, motes, cotton waste, gin trash, cottonseed, and cotton hulls.  
"Cotton stubble" means the basal part of a cotton plant that remains attached to the soil after harvest.
15. "Cotton waste" includes all waste products from the processing of cotton at gins and cottonseed-oil mills, in any form or under any trade designation.
16. "Defoliate" means to remove the leaves from a plant.
17. "Diseased" means an abnormal condition of a plant resulting from an infection.
18. ~~"Fumigate" means to apply a gaseous substance to a commodity in a closed area to eradicate a pest.~~
19. "Gin trash" means organic waste or materials resulting from ginning cotton.
20. "Head leaves" means all leaves that enfold the compact portion of a head of lettuce or cabbage.
21. "Host" means a plant on or in which a pest can live or reproduce, or both.
22. ~~"Hull" means the dry outer covering of a seed or nut.~~
23. "Husk" means the membranous outer envelope of many seeds and fruit, such as an ear of corn or a nut.
24. ~~"Infected" means any plant or other material on or in which a disease is found.~~
25. "Infested" means any plant or other material on or in which a pest is found.
26. "Inspector" means an employee of the Department or other governmental agency who enforces any law or rule of the Department.
27. "Label" means all tags and other written, printed, or graphic representations in any form, accompanying or pertaining to a plant or other commodity.
28. "Lot" means any one group of plants or things, whether or not containerized that is set apart or is separate from any other group.
29. *"Nursery" means real property or other premises on or in which nursery stock is propagated, grown, or cultivated or from which source nursery stock is offered for distribution or sale. (A.R.S. § 3-201(6)) (A.R.S. § 3-201(5))*
30. "Permit" means an official document authorizing the movement of a host plant and carrier.
31. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character, or another agency.
32. *"Plant" or "crop" includes every kind of vegetation, wild or domesticated, and any part thereof, as well as seed, fruit or other natural product of such vegetation. (A.R.S. § 3-201(8))*
33. ~~"Private carrier" means any person transporting a commodity for a noncommercial purpose.~~
34. ~~"Quarantine holding area" means a site approved by the Department to hold plant material originating from an area infested with imported fire ants or nematode pests.~~
35. "Reshipment" means the shipment of a commodity after receipt from another shipping point.
36. "Sell" means to exchange for money or its equivalent including to offer, expose, or possess a commodity for sale or to otherwise exchange, barter, or trade.
37. "Serious damage" means any injury or defect rising from any circumstance, natural or mechanical, that affects the appearance or the edible or shipping quality of a commodity, or lot.
38. "Soil" means any non-liquid combination of organic, or organic and inorganic material in which plants can grow.
39. ~~"Standard container" means a receptacle used to pack a specific commodity.~~
40. ~~"Stub or soca cotton" means cotton stalks of a previous crop that begin to show signs of growing by displaying buds, which swell or send out shoots of plant growth, either white or green growth.~~
41. "Subcontainer" means any container being used within another container.
42. "Transport" means moving an article from one point to another.
43. "Treatment" means an application of a substance as either a spray, mist, dust, granule, or fumigant; or a process in which a substance or procedure is used to control or eradicate a crop plant pest.
44. ~~"Warning Hold for Agricultural Inspection" means an official Department notice given to a common carrier or private carrier to place a commodity under quarantine.~~
45. "Vector" means an organism (usually an insect) that may carry a pathogen from one host plant to another.
46. "Vehicle" means an automotive device, such as a car, bus, truck, or private or recreational vehicle.
47. "Volunteer cotton" means a sprout from seed of a previous crop.
48. "Wrapper leaves" means all leaves that do not closely enfold the compact portion of the head of lettuce or cabbage.

**R3-4-107. Experimental Purposes Repealed**

~~Commodities covered by any regulation may be imported for experimental purposes by any authorized governmental or private organization under special permit from the Director.~~

**Notices of Final Rulemaking**

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

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
<b>QUARANTINE</b>						
<u>Boll Weevil and Pink Bollworm</u>	<u>R3-4-204(D)</u>	<u>14</u>	<u>14</u>	<u>30</u>	<u>30</u>	<u>44</u>
<u>Small-Grain Crop Approval</u>	<u>R3-4-204(E)(4)(b)</u>	<u>14</u>	<u>14</u>	<u>30</u>	<u>30</u>	<u>44</u>
<u>Cotton Boll Weevil Pest and Pink Bollworm</u>	<u>A.R.S. § 3-201.01 R3-4-218</u>	14	14	30	30	44
Citrus Fruit Surface Pest	<u>A.R.S. § 3-201.01 R3-4-219</u>	14	14	60	30	74
<u>Citrus Nursery Stock Pests</u>	<u>A.R.S. § 3-201.01 R3-4-220</u>	<del>14</del>	<del>14</del>	<del>30</del>	<del>30</del>	<del>44</del>
<u>European Corn Borer</u>	<u>R3-4-228</u>	<u>14</u>	<u>14</u>	<u>30</u>	<u>30</u>	<u>44</u>
<u>Lettuce Mosaic Pest</u>	<u>A.R.S. § 3-201.01 R3-4-233</u>	14	14	30	30	44
Noxious Weeds Regulated and Restricted Prohibited	<u>A.R.S. § 3-201.01 R3-4-244 R3-4-245</u>	14	14	30	30	44
<u>Seale Insects Pests</u>	<u>A.R.S. § 3-201.01 R3-4-226</u>	<del>14</del>	<del>14</del>	<del>30</del>	<del>30</del>	<del>44</del>
<u>Plum Curculio and Apple Maggot</u>	<u>A.R.S. § 3-201.01 R3-4-240</u>	14	14	60	30	74
Colored Cotton	<u>A.R.S. § 3-205.02 R3-4-501</u>	14	0	0	0	14
<b>NURSERY</b>						
<u>General Nursery Stock Inspection</u>	<u>R3-4-301(B)</u>	<u>30</u>	<u>14</u>	<u>1 yr</u>	<u>14</u>	<u>1 yr, 30 days</u>
<u>Special Nursery Stock Inspection: Ozonium Root Rot</u>	<u>A.R.S. § 3-201.01 A.R.S. § 3-217 R3-4-303 R3-4-301(C)</u>	<u>7</u>	<u>14</u>	<u>60</u>	<u>14</u>	<u>67</u>
• Method of Growing New Renewal		7	14	30	14	37
• Indicator Crop Planted on Applicant's Property		7	14	4 yrs	14	4 yrs, 7 days
• Indicator Crop Planted in Surrounding Area		7	<del>14</del>	<del>5 yrs</del>	<del>14</del>	<del>5 yrs, 7 days</del>
<u>Other Certification-Inspections</u>	<u>A.R.S. § 3-201.01 A.R.S. § 3-217</u>	<u>30</u>	<u>14</u>	<u>1 yr</u>	<u>14</u>	<u>1 yr, 30 days</u>
• Nursery Inspection						
<u>Special Nursery Stock Inspection: Rose Mosaic</u>	<u>R3-4-301(C)</u>	<u>7</u>	<u>14</u>	<u>180</u>	<u>14</u>	<u>187</u>
<u>Special Nursery Stock Inspection: Brown Garden Snail</u>	<u>R3-4-301(C)</u>	<u>7</u>	<u>14</u>	<u>30</u>	<u>14</u>	<u>37</u>
<u>Special Nursery Stock Inspection: Other</u>	<u>R3-4-301(C)</u>	<u>7</u>	<u>14</u>	<u>30</u>	<u>14</u>	<u>37</u>
Phytosanitary Field Inspection	<u>A.R.S. § 3-233(A)(7) R3-4-407</u>	30	7	210	7	240
<b>STANDARDIZATION</b>						
Experimental Pack and Product for Fruit and Vegetables	<u>A.R.S. § 3-487 R3-4-740</u>	7	7	7	7	14
Experimental Pack and Product for Citrus Fruit	<u>A.R.S. § 3-445 R3-4-814</u>	7	7	7	7	14

**Notices of Final Rulemaking**

Citrus Fruit Dealer, Packer, or Shipper License	A.R.S. § 3-449	14	14	14	14	28
Fruit and Vegetable Dealer, Packer, or Shipper License	A.R.S. § 3-492	14	14	14	14	28
<b>SEED DEALERS AND LABELERS</b>						
Seed Dealer	A.R.S. § 3-235 R3-4-408	14	14	14	14	28
Seed Labeler	A.R.S. § 3-235 R3-4-408	14	14	14	14	28

**ARTICLE 2. QUARANTINE**

**R3-4-201. Definitions**

The following definitions apply to this Article:

“Associate Director” means the Associate Director of the Plant Services Division.

“Common carrier” means any person transporting a commodity or appliance for compensation or commercial purpose.

“Compliance agreement” means a written agreement or permit between a person and the Department for the purpose of allowing the movement or production of a regulated commodity or appliance from a quarantined area of this state and containing demonstrated safeguarding measures to ensure compliance with the purposes of A.R.S. Title 3, Chapter 2, Article 1.

“Consumer container” means a container that is produced or distributed for retail sale or for consumption by an individual.

“Cotton harvesting machine” means any machine used to pick or harvest raw cotton in a field.

“Designated treatment area” means an area temporarily approved by the Department for the holding and treatment of a commodity or appliance for a pest in cases where a quarantine holding area does not exist.

“Epiphytically” means the function of a plant growing on another plant or object but that does not require the other plant or object as a source of nutrients.

“Fumigate” means to apply a gaseous substance to a commodity or appliance in a closed area to eradicate a pest.

“Hull” means the dry outer covering of a seed or nut.

“Infected” means any plant or other material on or in which a disease is found.

“Limited permit” means a permit issued by the Department to a common carrier or responsible party to transport a commodity or appliance that would otherwise be restricted.

“Master permit” means a permit issued by the Department to another state department of agriculture that gives that other state authority to certify, in accordance with the terms of the permit, that a regulated commodity or appliance may enter Arizona without a quarantine compliance certificate.

“Origin inspection agreement” means a permit issued by the Department to a person that specifies terms to ship or transport a regulated commodity or appliance into Arizona, which importation would otherwise be prohibited by this Article, and that the origin state department of agriculture agrees with.

“Package” means (i) any box, bag, or envelope used for the shipment of a commodity or appliance through postal and parcel services or (ii) individual packets of seeds for planting.

“Pest free” means apparently free from all regulated plant pests, as determined by an inspection.

“Phytosanitary certificate” means a certificate issued by a regulatory official for the purpose of certifying a commodity or appliance as pest free.

“Private carrier” means any person transporting a commodity or appliance for a noncommercial purpose.

“Quarantine compliance certificate” means a certificate issued by a plant regulatory official of the originating state that establishes that a commodity or appliance has been treated or inspected to comply with Arizona quarantine rules and orders and includes a certificate of inspection.

“Receiver” means any person or place of business listed on a bill of lading, manifest, or freight bill as a consignee or destination for a commodity or appliance.

“Regulated plant pest” means all live life stages of an arthropod, disease, plant, nematode, or snail that is regulated or considered under quarantine by a state or federal law, rule or order enforced by the Department.

“Responsible party” means a common carrier, person, or place of business that is legally responsible for the possession of a commodity or appliance.

Notices of Final Rulemaking

“Treatment Manual” means the USDA-APHIS-PPO Treatment Manual, T301—Cotton and Cotton Products, revised March 2013. The Treatment Manual is incorporated by reference, does not include any later amendments or editions, and is available from the Department and online at [http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/treatment.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf).

**~~R3-4-201~~R3-4-202. Transportation and Packaging**

- A. No change
- B. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
  - 6. No change
- C. No change
  - 1. No change
  - 2. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
- D. No change
  - 1. No change
  - 2. No change
    - a. No change
      - i. No change
      - ii. No change
    - b. No change
      - i. No change
      - ii. No change
      - iii. No change
    - c. No change
      - i. No change
      - ii. No change
      - iii. No change
      - iv. No change
      - v. No change
  - 3. No change
  - 4. No change
  - 5. No change
  - 6. No change
- E. No change
  - 1. No change
  - 2. No change
- F. No change
  - 1. No change
    - a. No change
    - b. No change
    - c. No change
  - 2. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change

**R3-4-204. ~~Pink Bollworm and the Cotton~~ Boll Weevil Complex and Pink Bollworm Pests: Interior Quarantine**

- A. Definitions. ~~In addition to the definitions provided in A.R.S. § 3-201 and R3-4-101, the~~ The following terms apply to this Section:
  - 1. “Crop remnant” means the stalks, leaves, bolls, lint, pods, and seeds of cotton;
  - 2. “Pests” means ~~the pink~~ any of the following:

**Notices of Final Rulemaking**

- a. Pink bollworm, *Pectinophora gossypiella* (Saunders), and the boll (Saunders); or
  - b. Boll weevil complex, *Anthonomus grandis* Boheman (Boheman) complex.
- B. Covered Regulated commodities and appliances. The following commodities are host plants or carriers of the pests:
  1. Cotton, all parts;
  2. Cotton gin trash;
  3. Used cotton harvesting machines; and
  4. Other materials, products, and equipment that are means of disseminating or proliferating the pests.
- C. ~~Processing cotton~~ Cotton gin trash. Any person operating an Arizona cotton gin shall daily destroy cotton gin trash by using a disposal fan as method prescribed by the United States Department of Agriculture Domestic Program Manual, M301.52 Regulatory Procedures (II)(C)(4), revised December 1979 in the Treatment Manual. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.
- D. Movement of covered commodities: Restrictions.
  1. ~~No covered commodity produced or located within an area infested with the pests may be moved out of that area unless a permit is issued by the Director. A person shall not ship or transport a regulated commodity or appliance from an area infested with pests except pursuant to a limited permit issued by or a compliance agreement with the Department.~~
  2. Any person intending to ~~move, transport, or allow the movement of~~ ship or transport a ~~covered~~ regulated commodity pursuant to a limited permit or compliance agreement shall provide the Department with the following information before the date of movement or shipment:
    - a. The quantity of the ~~covered~~ regulated commodity or appliance to be moved;
    - b. The location of the commodity or appliance;
    - c. The names and addresses of the consignee and consignor;
    - d. The method of shipment; and
    - e. The scheduled date of the shipment.
  - 2-3. ~~The shipper shall attach all permits and compliance agreements to the manifest, waybill, or bill of lading which shall accompany the shipment.~~
  4. ~~Permits and compliance agreements shall specify the manner of handling or treating the host plant or a regulated commodity or appliance. Pink bollworm and boll weevil treatment shall be under official supervision and applied as prescribed for cotton products in the USDA Treatment Manual, revised April 1998. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.~~
- E. Cultural practices.
  1. Arizona's cultural zones are:
    - a. Zone "A" -- Yuma County west of a line extended directly north and directly south of Avenue 58E.
    - b. Zone "B" -- Cochise County, Graham County, and Greenlee County.
    - c. Zone "C" -- Mohave County, ~~County and~~ La Paz County, except ~~the Cibola Valley, and for the following:~~ T6N, R11W, 12W, 13W; T5N, ~~R13W, R12W, 13W;~~ T4N, R12W, 14W, 15W; T3N, R10W, 11W; and T2N, R11W.
    - d. Zone "D" -- ~~Pima County and County;~~ the following portions of Pinal County: T10S, R10E, section 34, 35, and 36; sections 34-36; T10S, R11E, section 31, 31; T7S, ~~R16E, R16E;~~ T6S, ~~R16E, R16E;~~ T5S, ~~R15E, R15E;~~ T5S, R16E and T4S, ~~R14E, R14E;~~ and the following portions of the Aguila area: T6N, R8W; T7N, ~~R8W and T7N, R9W and T7N, R10W and R8W, 9W, 10W; T7N, R11W to the western boundary of section 35, 26, and 23 R11W, other than sections 24, 25 and 36; and T8N, R9W, sections 31-36.~~
    - e. ~~Zone "E" -- The following portions of La Paz County: Cibola Valley T1N, R23W and T1N, R24W and T1S, R23W and T1S, R24W.~~
    - ~~f.e.~~ Zone "E" -- All portions of the state not included in zones "A", "B", "C", ~~"D", and "E."~~ and "D."
  2. No stub, soca, or volunteer cotton shall be grown in or allowed to grow in the state. The landowner or grower shall be responsible for eliminating stub, soca, or volunteer cotton.
  3. Tillage deadline. Except as provided in subsection (E)(4), a grower shall ensure that a crop remnant of a host plant remaining in the field after harvest is shredded and the land tilled to destroy the host plant and its root system so no stalks remain attached to the soil before the following dates or before planting another crop, whichever occurs earlier: Zone "A", ~~December~~ January 15; Zone "B", March 1; Zone "C", ~~January~~ February 15; Zone "D", March 1; Zone "E", ~~January~~ February 15; Zone "F", February 15.
  4. Rotational crop following cotton harvest.
    - a. If a grower elects to plant a small-grain crop following a cotton harvest, the grower may, after the host plant is shredded, irrigate and plant with wheat, barley, or oats (or other similar small-grain crops approved in writing by the Associate Director before planting) instead of tilling as prescribed in subsection (E)(3). The small-grain crop shall be planted before the following dates: Zone "A", ~~December~~ January 30; Zone "B", March 1; Zone "C", ~~January~~ February 30; Zone "D", March 1; Zone "E", ~~January~~ February 31; Zone "F", ~~February~~ March 15 tillage deadline for the zone.

**Notices of Final Rulemaking**

- b. The Associate Director shall approve ~~other~~ small-grain crops ~~not specifically listed in subsection (E)(4)(a); other than wheat, barley, and oats,~~ if the planting, growth, and harvest cycles of the small-grain crop prevents the maturation of stub, soca, or volunteer cotton. A grower shall submit a written request for approval of a small-grain crop, other than wheat, barley, or oats, at least 30 15 days before the planting date tillage deadline for the zone. The written request shall include the scientific and common name of the proposed small-grain crop and the estimated date of harvest.
  - c. If a grower elects to plant a crop other than an approved small-grain crop following a cotton harvest, the requirements specified in subsection (E)(3) apply.
5. Planting dates.
- a. A grower who meets the tillage deadline specified in subsection (E)(3) for the preceding cotton crop year shall not plant cotton ~~before the following dates: Zone "A", February 1; Zone "B", March 15; Zone "C", March 1; Zone "D", March 15; Zone "E", March 1; Zone "F", March 1~~ earlier than 15 days after the tillage deadline for the zone.
  - b. A grower who does not meet the tillage deadline specified in subsection (E)(3) for the preceding cotton crop year shall not plant cotton ~~before the following dates: Zone "A", February 15; Zone "B", March 15; Zone "C", March 15; Zone "D", March 15; Zone "E", March 1; Zone "F", March 1~~ on a farm until 15 days after the grower ensures that all crop remnants of a host plant remaining in the fields after harvest are shredded and the land tilled to destroy the host plant and its root system so no stalks remain attached to the soil.
6. Dry planting. Any grower who ~~uses the practice of dry planting may~~ meets the tillage deadline for the zone may dry plant cotton ~~10 days before the planting date~~ five days after the tillage deadline for that zone, but shall not water until ~~the planting date~~ 15 days after the tillage deadline for that zone.
7. An inspector shall give written notice to any ~~landowner~~ owner or person in charge or control of the nuisance found in violation of subsection (E). The processes established in subsections (E)(3) and (E)(4) shall be repeated, as necessary, to destroy the pests.
- F. Advisory Committee. The Director, ~~as necessary,~~ shall appoint an advisory committee ~~consisting composed of one representative from each of the following organizations, and the committee shall the nominated representatives of the Arizona Cotton Growers Association and the Arizona Cotton Research and Protection Council and such other individuals as may be necessary~~ to make recommendations to the Department on amendments to this Section: Section.
- ~~The Arizona Cotton Growers Association;  
The Arizona Farm Bureau Federation;  
The Arizona Crop Protection Association;  
The Southwest Indian Agricultural Association;  
The University of Arizona Experiment Station;  
The University of Arizona Extension Service;  
USDA Research;  
USDA APHIS;  
The Department of Agriculture; and  
A grower from each of the six zones.~~

**R3-4-218. Cotton Boll Weevil Pest and Pink Bollworm Pests: Exterior Quarantine**

**A. Definitions**

1. "Cotton appliance" means a container used in handling cotton, including sacks, bags, tarps, boxes, crates, and machinery used in planting, harvesting and transporting cotton.
2. "Cotton lint" means ~~the remnant produced when cottonseed is processed in a gin.~~
3. "Cotton plant" means ~~all parts of Gossypium spp., whether wild or domesticated.~~
4. "Cottonseed" means a seed derived from cotton plants which is destined for propagation or other use.
5. "Fumigation certificate" means ~~a document for a prohibited product signed by a state or U.S.D.A. agricultural inspector, which~~ quarantine compliance certificate that specifies the fumigation chemical used, the treatment schedule, and the commodity treated.
6. "Gin trash" means ~~organic waste or materials resulting from the ginning of cotton.~~
7. "Hibiscus" means all parts of *Hibiscus* spp.
5. "Pest" means any of the following:
  - a. Boll weevil, *Anthonomus grandis* (Boheman); or
  - b. Pink bollworm, *Pectinophora gossypiella* (Saunders).
8. "Prohibited products" means ~~any cotton product as defined in subsection (A).~~
9. "Spanish moss" means all parts of ~~*Tillandsia usneoides*~~ *Tillandsia usneoides*.

**B. Quarantine Area under quarantine.**

1. A quarantine is established against the Cotton Boll Weevil, *Anthonomus grandis* ~~Boheman~~. Boll weevil. In the state of Texas, the following counties: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Blanco, Bosque, Bowie, Brazoria, Brazos, Brooks, Burleson, Burnett, Caldwell, Calhoun, Cameron, Camp, Cass, Chambers,



**Notices of Final Rulemaking**

Cherokee, Collin, Colorado, Comal, Cooke, Coryell, Dallas, Delta, Denton, De Witt, Dimmit, Duval, Ellis, Falls, Fannin, Fayette, Fort Bend, Franklin, Freestone, Frio, Galveston, Gillespie, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hamilton, Hardin, Harris, Harrison, Hays, Henderson, Hidalgo, Hill, Hood, Hopkins, Houston, Hunt, Jack, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Johnson, Karnes, Kaufman, Kendall, Kenedy, Kinney, Kleberg, Lamar, Lampasas, La Salle, Lavaca, Lee, Leon, Liberty, Limestone, Live Oak, Llano, Madison, Marion, Matagorda, Maverick, McLennan, McMullen, Medina, Milam, Mills, Montague, Montgomery, Morris, Nacogdoches, Navarro, Newton, Nueces, Orange, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Shelby, Smith, Somervell, Starr, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Uvalde, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Williamson, Wilson, Wise, Wood, Zapata, and Zavala.

2. ~~The area under quarantine shall apply to cotton producing states, with the exception of California.~~ Pink bollworm, New Mexico, Texas, and the following counties of California: Fresno, Imperial, Inyo, Kern, Kings, Los Angeles, Madera, Merced, Orange, Riverside, San Bernardino, San Benito, San Diego, and Tulare.

C. ~~Prohibited Products. Except as provided in subsections (D), (E), and (F), the following cotton products shall be prohibited from entering Arizona.~~ Regulated commodities and appliances.

1. ~~Gin trash,~~
2. ~~Cotton lint,~~
3. ~~Cottonseed,~~
4. ~~Used cotton appliances which that have any cotton plants attached or contained therein.~~ therein.
5. ~~Cotton plants,~~
6. ~~Spanish Moss moss, and~~
7. ~~Hibiscus plants.~~

~~D. Special permits~~

1. ~~Individuals may apply to the Director of the Commission of Agriculture and Horticulture for a special permit for shipment of prohibited products into Arizona from the quarantine area. Applicants for the special permit shall submit a letter to the Commission which includes the following information:~~

- a. ~~Quantity of prohibited product to be shipped into Arizona.~~
- b. ~~County and state of origin of prohibited product.~~
- c. ~~Shipper's name, address, and phone number.~~
- d. ~~Carrier's name, address, and phone number.~~
- e. ~~Arizona destination receiver, address, and phone number.~~
- f. ~~Treatments or processing techniques at place of origin, including name of processor.~~
- g. ~~Final disposition of prohibited product in Arizona.~~
- h. ~~Calendar period during which shipments are to be made.~~
- i. ~~Method of shipment, i.e., truck, rail, etc.~~
- j. ~~Route by which prohibited product will be shipped.~~

2. ~~Applicants may apply for a special permit for the following:~~

- a. ~~Cottonseed which has been treated by one of the following methods:~~
  - i. ~~Acid or flame process in a gin;~~
  - ii. ~~Machine processed by grinding or pulverizing;~~
  - iii. ~~Heat treatment as specified in attached Appendix; or~~
  - iv. ~~Fumigation;~~

~~D. Restrictions. A person shall not ship or transport into Arizona from an area under quarantine:~~

1. ~~For the pink bollworm, any regulated commodity or appliance that is not accompanied by a permit or certificate required by 7 CFR 301.52 et seq., revised January 1, 2013. This incorporation by reference does not include any later amendments or editions and is available from the Department and online at <http://www.gpo.gov/fdsys/>.~~

2. ~~For the boll weevil,~~

- a. ~~Gin trash, cotton lint, cottonseed, or used cotton appliances that have any cotton plants attached or contained therein unless the commodity or appliance is accompanied by an original fumigation certificate attesting the commodity or appliance has been fumigated as prescribed in the Treatment Manual.~~
- b. ~~Cotton plants or hibiscus plants unless the commodity is accompanied by an original quarantine compliance certificate attesting the commodity was treated with a chemical to kill the pest and was visually inspected and found free of all live life stages of the pest within five days of shipment.~~
- b-c. ~~Spanish Moss which has been treated moss, unless the commodity is accompanied by an original quarantine compliance certificate attesting the commodity was treated by one of the following methods:~~
  - i. ~~Commercial drying; or~~
  - ii. ~~Chemical treatment using a pesticide which is registered and labeled for use on such commodities the commodity to kill boll weevil; all live life stages of the pest.~~
- e. ~~Cotton lint which has been impact fan treated in a gin.~~

**Notices of Final Rulemaking**

3. ~~A special permit shall be issued by the Director upon a determination that the treatments or processing techniques specified in subsection (D)(2) which have been used on the prohibited products will prevent the entry of the Cotton Boll Weevil pest into Arizona. A transporter may not transport a prohibited product into Arizona without first receiving a special permit. Said special permit shall be presented on demand.~~
- E. Certificate of Fumigation.** The following products shall be allowed entry into Arizona if accompanied by a Certificate of Fumigation demonstrating compliance with fumigation procedures specified in the attached Appendix:
  1. ~~Used cotton appliances which have cotton plants attached or contained therein.~~
  2. ~~Spanish Moss.~~
  3. ~~Gin trash.~~
- F. Special Shipments.** The following prohibited products shall be allowed entry into Arizona without a special permit or Certificate of Fumigation:
  1. ~~Spanish Moss in quantities of less than one pound which is intended for private decorative use and which has been found free of pests by a Commission inspector.~~
  2. ~~Potted Hibiscus plants, fewer than 12 in number, transported in private vehicles which have been found free of pests by a Commission inspector.~~
- G. Violations.** Products shipped into or moved within the state of Arizona in violation of this rule shall, at the option and expense of the owner or authorized agent, be sent out of the state or destroyed in accordance with A.R.S. §§ 3-207, 3-208, 3-209, and 3-210.

**Appendix to R3-4-218**

**A.** ~~Cottonseed, sacked or packaged, Methyl Bromide fumigation, vacuum method. This method may be used for the treatment of small lots of cottonseed samples only. A sustained vacuum equivalent to 24.5 inches of mercury shall be maintained.~~

Type of Enclosure	Exposure Period	Dosage Temperature (°F) 40° or above	lbs/100 cu. ft. 4 lbs.	Exposure Period 2 hours
	Chamber Vacuum			

**B.** ~~Cottonseed, sacked or packaged, by Methyl Bromide fumigation, atmosphere fumigation method.~~

Type of Enclosure	Average Load	Temperature (°F)	Exposure Period Dosage		Circulation Period
			12 hours Lbs/1000 cu. ft.	24 hours Lbs/1000 cu. ft.	
Chamber or Tanks	60° or above	6	6	3	30 min.
			7	4	30 min.
Freight Cars and Vans	Below 60°	-	-	7	30 min.
			-	8	30 min.
Tarpaulins	Below 60°	7	7	5	60 min.
			8	6	60 min.
	Below 40°				120 min.

~~Limitations: The sacks or packages containing the prohibited product shall not be composed of a nonpermeable layer such as a polyethylene or cellophane film, wax paper or tar.~~

**C.** ~~Bulk cottonseed, cottonseed hulls, gin trash, and Methyl Bromide fumigation, atmospheric pressure method.~~

Type of Enclosure	Average Load	Temperature (°F)	Exposure Period Dosage		Circulation Period
			12 hours Lbs/1000 cu. ft.	24 hours Lbs/1000 cu. ft.	
Chamber or Tanks	60° or above	6	6	4	15 min.
			7	5	15 min.
Freight Cars and Vans	Below 60°	-	-	7	15 min.
			-	8	15 min.
Tarpaulins	Below 60°	7	7	5	30 min.
			8	6	15 min.
	Below 40°				30 min.

~~Limitations: When treating bulk commodities, the depth of the commodities shall be kept under five feet unless an approved forced circulation system is used to assure satisfactory distribution of fumigant.~~

**Notices of Final Rulemaking**

**D. Bulk propagative cottonseed, Methyl Bromide fumigation, atmospheric pressure method.**

Type of Enclosure	Exposure Period Dosage	Circulation Period
Plastic and neoprene coated nylon bags	1-20 cc ampule	24 hours
2 1/2 feet x 6 feet	2-20 cc ampules	12 hours

**E. Cotton appliances, Methyl Bromide fumigation, atmospheric pressure method.**

		Exposure Period Dosage			Circulation Period
		3 hours	4 hours	12 hours	
Type of Enclosure	Average Load	Lbs/1000	Lbs/1000	Lbs/100	
Chamber or Tanks	Temperature (°F)	cu. ft.	cu. ft.	cu. ft.	
	40° or above	8	-	4	30 min.
	30°-39°	-	-	5	30 min.
Freight Cars and Vans	Below 30°	8	-	4	30 min.
	40° or above	9	-	5	30 min.
	30°-39°	-	9	5	30 min.
	Below 30°	8	-	4	30 min.
Tarpaulins	40° or above	9	-	5	30 min.
	30°-39°	-	9	5	30 min.
	Below 30°				30 min.

**F. Cotton sacks or small appliances, Methyl Bromide fumigation, atmospheric pressure method.**

Type of Enclosure	Exposure Period Dosage	Circulation Period
Plastic and neoprene coated nylon bags	1-20 cc ampule 1/2 loaded bag	3 hours
2 1/2 feet x 6 feet	2-20 cc ampules more than 1/2 loaded bag	3 hours

**G. Bulk cottonseed, heat treatment method. Heat to core temperature of 150° F minimum and hold at that temp. for 30 seconds minimum.**

**NOTICE OF FINAL RULEMAKING**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS**

*Editor's Note: The following Notice of Final Rulemaking was exempt Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 3947.)*

[R13-204]

**PREAMBLE**

- Article, Part or Section Affected (as applicable)**  

R4-11-101	Amend
R4-11-1202	Amend
R4-11-1203	Amend
R4-11-1204	Amend
R4-11-1205	Amend
R4-11-1206	Amend
R4-11-1207	Amend
R4-11-1209	Amend
- Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**  
 Authorizing statute: A.R.S. § 32-1207(A)(1) and (B)(3)  
 Implementing statute: A.R.S. §§ 32-1236, 32-1287, and 32-1297.06
- The effective date of the rule:**  
 January 5, 2014

Notices of Final Rulemaking

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

Notice of Rulemaking Docket Opening: 19 A.A.R. 1599, June 14, 2013

Notice of Proposed Rulemaking: 19 A.A.R. 1519, June 14, 2013

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

Name: Elaine Hugunin, Executive Director

Address: State Board of Dental Examiners  
4205 N. 7th Ave., Suite 300  
Phoenix, AZ 85013

Telephone: (602) 242-1492

Fax: (602) 242-1445

E-mail: elaine.hugunin@azdentalboard.us

Web site: www.azdentalboard.us

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

The Board is opening a docket to amend Article 1 and Article 12 to meet the changes enacted by the legislature by H.B. 2155 in 2011, including the continuing education requirements regarding remote learning in Section 12 of H.B. 2155.

The rulemaking will include the following changes to Article 1 and Article 12:

- Add more CE sponsors to the definition "Recognized continuing dental education."
- Change CPR to CPR Healthcare Provider and add Advanced Cardiac Life Support and Pediatric Advanced Life Support as options.
- Change the length of time a licensee or certificate holder must maintain documentation to the most recently completed renewal period.
- Clarify when the Board may audit a licensee or certificate holder (in addition to random audits).
- Add dental recordkeeping, pain management and dental public health to the first category for all license types.
- Add a separate category for CPR and address online courses for all license types.

Add a separate category for three credit hours in ethics and/or Arizona dental jurisprudence for Dentists and Denturists.

- To maintain the total number of CE hours required for Dentists, Dental Hygienists and Restricted Permit Holders, the number of hours within each category will be recalculated.
- Increase the total number of hours required for Denturists to 36 and add removable prosthetics and new technology in dentistry to category 1.
- Add remote learning language in R4-11-1209(A)(2).
- Update language in R4-11-1209(A)(4)(a) through (f).
- Delete the definition for "triage" from Article 1.

The rulemaking will include format, style, and grammar necessary to comply with the current rules of the Secretary of State and the Governor's Regulatory Review Council.

The Board believes that approval of these rules will benefit the public health and safety by clearly establishing the requirements for continuing education for dentists, dental hygienists, denturists, dental consultants, and restricted permit holders.

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

The agency did not review or rely on any study relevant to the rule.

**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, licensees and the public.

Notices of Final Rulemaking

The rules' impact on established Board of Dental Examiners' procedures and office related costs will realize a one-time expense to reconfigure business rules of the online renewal process to include new continuing education categories, changes to the minimum number of hours required per category, and category descriptions. All continuing education affidavit forms must be updated. The rules net economic impact for the Board is minimal.

The rules' impact on the licensee includes the cardiopulmonary resuscitation (CPR) healthcare provider level course. The cost of the course is about equal to a basic life support course which is now required. The rules add educational topics, giving the licensee a broader choice of continuing education. Additional changes by license type:

R4-11-1203 Dentists and dental consultants. Two required categories added; a specific category for CPR and a specific category for ethics and Arizona dental jurisprudence. The total number of 72 hours did not change.

R4-11-1204 Dental Hygienists. One required category is added; a specific category for CPR. The total number of 54 hours did not change.

R4-11-1205 Denturists. Two required categories added; a specific category for CPR and a specific category for ethics and Arizona dental jurisprudence. The total number of required hours increased from 24 to 36. The twelve hour increase over a three year period equals three hours per year which the equivalent of one course.

R4-11-1206 Restricted Permit Holders Dental. Two required categories added; a specific category for CPR and a specific category for ethics and Arizona dental jurisprudence. The total number of 24 hours did not change.

R4-11-1207 Restricted Permit Holders Dental Hygiene. One required category added; a specific category for CPR. The total number of 18 hours did not change.

The rules' net economic impact for the licensee is minimal.

The rules' impact on the public would not increase costs or cause a decrease in revenue. Most entities offering basic CPR offer healthcare provider level. There will now be more topic choices for the licensee, which is opportunity for CE providers to expand their catalog. The economic impact for the public is minimal.

The Board, licensees, and the public benefit from rules that are clear, concise, and understandable. The rules benefit the public health and safety by clearly establishing the requirements for continuing education for dentists, dental hygienists, denturists, dental consultants, and restricted permit holders.

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

There are no substantial changes in the final rules from the proposed rules. In the Notice of Proposed Rulemaking, there was a typographical error in the section number for the rule in Article 1 (R4-11-101 Definitions). The rule was incorrectly numbered as (R4-11-110). The error was discovered and corrected while preparing the Notice of Final Rulemaking. GRRC staff identified statutory citation errors in the definitions for "business entity" and "dental laboratory technician". The final rule reflects the correct citation. In the Notice of Proposed Rulemaking, the definitions for "informal interview" and "investigative interview" were accidentally left out of the definitions. Those definitions are included in the Notice of Final Rulemaking. GRRC staff requested that the term "other than a controlled substance," be deleted from the fourth subsection of the definition for "prescription-only drug" in R4-11-101, because the term appears in the stem of the definition. In the definition for "recognized continuing dental education," GRRC staff recommended adding the words "state, district, or territorial" between the words "other" and "dental" in the last sentence to clarify that the education cannot come from an international source. The words "record keeping" appear in R4-11-1203, R4-11-1204, and R4-11-1205. GRRC staff recommended a change to the one word form "recordkeeping" to be consistent with other rules. The Notice of Final Rulemaking reflects the change. In R4-11-1203(5), R4-11-1204(5), and R4-11-1205(5), the words "cardiopulmonary resuscitation," "advanced cardiac life support," and "pediatric advanced life support" are abbreviated to "CPR," "ACLS," and "PALS" and the words "there is a required" are replaced with the words "the course requires" to reduce unnecessary verbiage and increase clarity. R4-11-1201 and R4-11-1208 were removed from the Notice of Final Rulemaking because no changes were made to those sections. Finally, the definition of "direct supervision," for the purposes of Article 13, was added to R4-11-101 in the Notice of Final Rulemaking. This definition should have been included as part of the base text of the rule but was inadvertently omitted. Other changes to style, format, grammar, and punctuation were made as requested by GRRC staff.

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

A public hearing was held July 22, 2013. No one attended the hearing and no written comments were received.

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

Not applicable

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

The rules do not require a permit.

Notices of Final Rulemaking

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

The agency has determined that there is no corresponding federal law.

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

No

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

None

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

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

ARTICLE 1. DEFINITIONS

Section

R4-11-101. Definitions

ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS

Sections

R4-11-1202. Continuing Education Compliance and Renewal Requirements  
R4-11-1203. Dentists and Dental Consultants  
R4-11-1204. Dental Hygienists  
R4-11-1205. Denturists  
R4-11-1206. Restricted Permit Holders – Dental  
R4-11-1207. Restricted Permit Holders – Dental Hygiene  
R4-11-1209. Types of Courses

ARTICLE 1. DEFINITIONS

**R4-11-101. Definitions**

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

“Analgesia” means a state of decreased sensibility to pain produced by using nitrous oxide (N<sub>2</sub>O) and oxygen (O<sub>2</sub>) with or without local anesthesia.

“Application” means, for purposes of Article 3 only, forms designated as applications and all documents and additional information the Board requires to be submitted with an application.

“Business Entity” means a business organization that offers to the public professional services regulated by the Board and is established under the laws of any state or foreign country, including a sole practitioner, partnership, limited liability partnership, corporation, and limited liability company, unless specifically exempted by A.R.S. § 32-1213~~(H)~~~~(J)~~.

“Calculus” means a hard mineralized deposit attached to the teeth.

“Certificate holder” means a denturist who practices denture technology under A.R.S. Title 32, Chapter 11, Article 5.

“Charitable Dental Clinic or Organization” means a non-profit organization meeting the requirements of 26 U.S.C. 501(c)(3) and providing dental or dental hygiene services.

“Clinical evaluation” means a dental examination of a patient named in a complaint regarding the patient's dental condition as it exists at the time the examination is performed.

“Closed subgingival curettage” means the removal of the inner surface of the soft tissue wall of a periodontal pocket in a situation where a flap of tissue has not been intentionally or surgically opened.

“Controlled substance” has the meaning prescribed in A.R.S. § 36-2501(A)(3).

“Credit hour” means one clock hour of participation in a recognized continuing dental education program.

**Notices of Final Rulemaking**

“Deep sedation” is a drug-induced depression of consciousness during which a patient cannot be easily aroused but responds purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. The patient may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is maintained.

“Dental laboratory technician” or “dental technician” has the meaning prescribed in A.R.S. § 32-1201~~(6)~~(7).

“Dentist of record” means a dentist who examines, diagnoses, and formulates treatment plans for a patient and may provide treatment to the patient.

“Designee” means a person to whom the Board delegates authority to act on the Board’s behalf regarding a particular task specified by this Chapter.

“Direct supervision” means, for purposes of Article 7 only, that a licensed dentist is present in the office and available to provide immediate treatment or care to a patient and observe a dental assistant’s work.

“Direct supervision” means, for purposes of Article 13 only, that a licensed dentist is physically present in the operator and actually performing dental procedures.

“Disabled” means a dentist, dental hygienist, or denturist has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism due to a permanent medical disability and based on a physician’s order.

“Dispense for profit” means selling a drug or device for any amount above the administrative overhead costs to inventory.

“Documentation of attendance” means documents that contain the following information:

Name of sponsoring entity;

Course title;

Number of credit hours;

Name of speaker; and

Date, time, and location of the course.

“Drug” means:

Articles recognized, or for which standards or specifications are prescribed, in the official compendium;

Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in the human body;

Articles other than food intended to affect the structure of any function of the human body; or

Articles intended for use as a component of any articles specified in this definition but does not include devices or components, parts, or accessories of devices.

“Emerging scientific technology” means any technology used in the treatment of oral disease that is not currently generally accepted or taught in a recognized dental or dental hygiene school and use of the technology poses material risks.

“Epithelial attachment” means the layer of cells that extends apically from the depth of the gingival (gum) sulcus (crevice) along the tooth, forming an organic attachment.

“Ex-parte communication” means a written or oral communication between a decision maker, fact finder, or Board member and one party to the proceeding, in the absence of other parties.

“General anesthesia” is a drug-induced loss of consciousness during which the patient is not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. The patient often requires assistance in maintaining a patent airway, and positive-pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

“General supervision” means, for purposes of Article 7 only, a licensed dentist is available for consultation, whether or not the dentist is in the office, regarding procedures or treatment that the dentist authorizes and for which the dentist remains responsible.

“Homebound patient” means a person who is unable to receive dental care in a dental office as a result of a medically diagnosed disabling physical or mental condition.

“Informal interview” means a proceeding conducted under A.R.S. § 32-1263.02, during which a Board member, acting as an informal interviewing officer, and other investigators, hear testimony from a complainant, licensee, or certificate holder, and any witnesses, and receive and review evidence relating to a complaint to form findings of fact, conclusions of law, and a recommended disposition for presentation to the full Board.

“Investigative interview” means a proceeding conducted under A.R.S. § 32-1263.02, during which an investigator or investigative panel hears testimony from a complainant, licensee, or certificate holder, and any witnesses, and receives and reviews evidence relating to a complaint to form findings of fact, conclusions of law, and a recommended disposition for presentation to the full Board.

“Irreversible procedure” means a single treatment, or a step in a series of treatments, that causes change in the affected hard or soft tissues and is permanent or may require reconstructive or corrective procedures to correct the changes.

“Jurisdiction” means the Board’s power to investigate and rule on complaints that allege grounds for disciplinary

*Arizona Administrative Register / Secretary of State*  
**Notices of Final Rulemaking**

---

action under A.R.S. Title 32, Chapter 11 or this Chapter.

“Licensee” means a dentist, dental hygienist, dental consultant, retired licensee, or person who holds a restricted permit under A.R.S. §§ 32-1237 or 32-1292.

“Local anesthesia” is the elimination of sensations, such as pain, in one part of the body by the injection of an anesthetic drug.

“Minimal sedation” is a minimally depressed level of consciousness that retains a patient’s ability to independently and continuously maintain an airway and respond appropriately to light tactile stimulation, not limited to reflex withdrawal from a painful stimulus, or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be modestly impaired, ventilatory and cardiovascular functions are unaffected. In accord with this particular definition, the drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.

“Moderate sedation” is a drug-induced depression of consciousness during which a patient responds purposefully to verbal commands either alone or accompanied by light tactile stimulation, not limited to reflex withdrawal from a painful stimulus. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is maintained. The drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Repeated dosing of a drug before the effects of previous dosing can be fully recognized may result in a greater alteration of the state of consciousness than intended by the permit holder.

“Nitrous oxide analgesia” means nitrous oxide (N<sub>2</sub>O/O<sub>2</sub>) used as an inhalation analgesic.

“Nonsurgical periodontal treatment” means plaque removal, plaque control, supragingival and subgingival scaling, root planing, and the adjunctive use of chemical agents.

“Official compendium” means the latest revision of the United States Pharmacopeia and the National Formulary and any current supplement.

“Oral sedation” is the enteral administration of a drug or non-drug substance or combination inhalation and enterally administered drug or non-drug substance in a dental office or dental clinic to achieve minimum or moderate sedation.

“Parenteral sedation” is a minimally depressed level of consciousness that allows the patient to retain the ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and is induced by a pharmacological or non-pharmacological method or a combination of both methods of administration in which the drug bypasses the gastrointestinal tract.

“Patient of record” means a patient who has undergone a complete dental evaluation performed by a licensed dentist.

“Periodontal examination and assessment” means to collect and correlate clinical signs and patient symptoms that point to either the presence of or the potential for periodontal disease.

“Periodontal pocket” means a pathologic fissure bordered on one side by the tooth and on the opposite side by crevicular epithelium and limited in its depth by the epithelial attachment.

“Plaque” means a film-like sticky substance composed of mucoidal secretions containing bacteria and toxic products, dead tissue cells, and debris.

“Polish” means, for the purposes of A.R.S. § 32-1291(B) only, a procedure limited to the removal of plaque and extrinsic stain from exposed natural and restored tooth surfaces that utilizes an appropriate rotary instrument with rubber cup or brush and polishing agent. A licensee or dental assistant shall not represent that this procedure alone constitutes an oral prophylaxis.

“Prescription-only device” means:

Any device that is restricted by the federal act, as defined in A.R.S. § 32-1901, to use only under the supervision of a medical practitioner; or

Any device required by the federal act, as defined in A.R.S. § 32-1901, to bear on its label the legend “Rx Only.”

“Prescription-only drug” does not include a controlled substance but does include:

Any drug that, because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;

Any drug that is limited by an approved new drug application under the federal act or A.R.S. § 32-1962 to use under the supervision of a medical practitioner;

Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; or

Any drug, ~~other than a controlled substance~~, required by the federal act to bear on its label the legend “RX Only.”

“President’s designee” means the Board’s executive director, an investigator, or a Board member acting on behalf of the Board president.

“Preventative and therapeutic agents” means substances used in relation to dental hygiene procedures that affect the hard or soft oral tissues to aid in preventing or treating oral disease.

“Prophylaxis” means a scaling and polishing procedure performed on patients with healthy tissues to remove coronal plaque, calculus, and stains.



Notices of Final Rulemaking

“Public member” means a person who is not a dentist, dental hygienist, dental assistant, denturist, or dental technician.

“Recognized continuing dental education” means a program whose content directly relates to the art and science of oral health and treatment, provided by a recognized dental school as defined in A.R.S. § 32-1201~~(47)~~ (18), recognized dental hygiene school as defined in A.R.S. § 32-1201~~(46)~~ (17), or recognized denturist school as defined in A.R.S. § 32-1201~~(48)~~ (19), or sponsored by a national or state dental, dental hygiene, or denturist association, American Dental Association, Continuing Education Recognition Program (ADA CERP) or Academy of General Dentistry, Program Approval for Continuing Education (AGD PACE) approved provider, dental, dental hygiene, or denturist study club, governmental agency, ~~or commercial dental supplier, non-profit organization, accredited hospital, or programs or courses approved by other state, district, or territorial dental licensing boards.~~

“Restricted permit holder” means a dentist who meets the requirements of A.R.S. § 32-1237 or a dental hygienist who meets the requirements of A.R.S. § 32-1292 and is issued a restricted permit by the Board.

“Retired” means a dentist, dental hygienist, or denturist is at least 65 years old and has totally withdrawn from the active practice of dentistry, dental hygiene, or denturism.

“Root planing” means a definitive treatment procedure designed to remove cementum or surface dentin that is rough, impregnated with calculus, or contaminated with toxins or microorganisms.

“Scaling” means use of instruments on the crown and root surfaces of the teeth to remove plaque, calculus, and stains from these surfaces.

“Section 1301 permit” means a permit to administer general anesthesia and deep sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1302 permit” means a permit to administer parenteral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Section 1303 permit” means a permit to administer oral sedation, employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist under Article 13.

“Section 1304 permit” means a permit to employ or work with a physician anesthesiologist, or employ or work with a Certified Registered Nurse Anesthetist (CRNA) under Article 13.

“Study club” means a group of at least five Arizona licensed dentists, dental hygienists, or denturists who provide written course materials or a written outline for a continuing education presentation that meets the requirements of Article 12.

“Treatment records” means all documentation related directly or indirectly to the dental treatment of a patient.

~~“Triage” means a review during which investigators examine a complaint, the licensee’s response, and dental records to form a recommended disposition for presentation to the full Board.~~

**ARTICLE 12. CONTINUING DENTAL EDUCATION AND RENEWAL REQUIREMENTS**

**R4-11-1202. Continuing Education Compliance and Renewal Requirements**

- A. When applying for a renewal license, certificate, or restricted permit, ~~holder~~ a licensee, certificate holder, or restricted permit holder shall complete a renewal application provided by the Board.
- B. Before receiving a renewal license or certificate, each licensee or certificate holder shall possess a current form of one of the following:
  1. A current cardiopulmonary resuscitation (CPR) Healthcare Provider certificate from the American Red Cross, the American Heart Association, or another certifying agency ~~that follows the same procedures, standards, and techniques for CPR training and certification as the American Red Cross or American Heart Association.~~
  2. Advanced cardiac life support (ACLS) course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application; or
  3. Pediatric advanced life support (PALS) course completion confirmation from the American Heart Association or another agency. The confirmation must indicate that the course was completed within two years immediately before submitting a renewal application.
- C. A licensee or certificate holder shall include a written affidavit affirming the licensee’s or certificate holder’s completion of the prescribed credit hours of recognized continuing dental education with a renewal application. A licensee or certificate holder shall include on the affidavit the licensee’s or certificate holder’s name, license or certificate number, and the number of hours completed in each category.
- D. A licensee or certificate holder shall submit a written request for an extension before the June 30 deadline. If a licensee or certificate holder fails to meet the credit hour requirement because of military service, dental or religious missionary activity, residence in a foreign country, or other extenuating circumstances as determined by the Board, the Board, upon written request, may grant an extension of time to complete the recognized continuing dental education credit hour requirement.
- E. The Board shall:

**Notices of Final Rulemaking**

1. Only accept recognized continuing dental education credits accrued during the prescribed period immediately before license or certificate renewal, and
  2. Not allow recognized continuing dental education credit accrued in a renewal period in excess of the amount required in this Article to be carried forward to the next renewal period.
- F.** A licensee or certificate holder shall maintain documentation of attendance for each program for which credit is claimed that verifies the recognized continuing dental education credit hours the licensee or certificate holder participated in during the ~~preceding two renewal periods~~ most recently completed renewal period.
- G.** Each year, the Board shall audit continuing education affidavits on a random basis or when ~~the documentation submitted by the licensee or certificate holder does not appear to comply with this Article~~ information is obtained which indicates a licensee or certificate holder may not be in compliance with this Article. A licensee or certificate holder whose affidavit is selected for audit shall provide the Board with documentation of attendance in support of the affidavit within 60 days from the date the licensee or certificate holder received notice, ~~by certified mail~~, of the audit by certified mail.
- H.** If a licensee or certificate holder makes a false statement in an affidavit, the Board shall suspend, revoke, or deny renewal of a license or certificate, or take any other disciplinary action authorized by A.R.S. Title 32, Chapter 11.

**R4-11-1203. Dentists and Dental Consultants**

Dentists and dental consultants shall complete 72 hours of recognized continuing dental education in each renewal period as follows:

1. At least ~~45~~ 42 credit hours of ~~recognized continuing dental education in one or more~~ any of the following areas: Dental and medical health, ~~cardiopulmonary resuscitation~~, ~~preventative~~ preventive services, dental diagnosis and treatment planning, dental recordkeeping, dental clinical procedures, ~~administration of oral sedation~~, managing medical emergencies ~~in addition to CPR~~, pain management, dental public health, and courses in corrective and restorative oral health and basic dental sciences, which may include current research, new concepts in dentistry, and behavioral and biological sciences that are oriented to dentistry. A licensee who holds a permit to administer general anesthesia, ~~semi-conscious sedation~~, deep sedation, ~~conscious~~ parenteral sedation, or oral ~~conscious~~ sedation who is required to obtain continuing education pursuant to Article 13 may apply those credit hours to the requirements of this Section;
2. No more than 18 credit hours of ~~recognized continuing dental education~~ in the following areas: Dental practice organization and management, patient management skills, and methods of health care delivery;
3. At least three credit hours of ~~recognized continuing dental education~~ in chemical dependency, which may include tobacco cessation; ~~and~~
4. At least ~~six~~ three credit hours of ~~recognized continuing dental education~~ in infectious diseases ~~and or~~ infectious disease control;
5. At least three credit hours in CPR healthcare provider, ACLS and PALS. Coursework may be completed online if the course requires a physical demonstration of skills; and
6. At least three credit hours in ethics or Arizona dental jurisprudence.

**R4-11-1204. Dental Hygienists**

**A.** A dental hygienist shall complete 54 credit hours of recognized continuing dental education in each renewal period as follows:

1. At least ~~34~~ 31 credit hours of ~~recognized continuing dental education in one or more~~ any of the following areas: Dental and medical health, ~~cardiopulmonary resuscitation~~, and dental hygiene services, periodontal disease, care of implants, maintenance of cosmetic restorations and sealants, radiology safety and techniques, managing medical emergencies ~~in addition to CPR~~, pain management, dental recordkeeping, dental public health, and new concepts in dental hygiene;
2. No more than 14 credit hours of ~~recognized continuing dental education~~ in one or more of the following areas: Dental hygiene practice organization and management, patient management skills, and methods of health care delivery;
3. At least ~~two~~ three credit hours of ~~recognized continuing dental education~~ in one or more of the following areas: chemical dependency, tobacco cessation, ethics, risk management, ~~and or Arizona dental jurisprudence~~; ~~and~~
4. At least ~~four~~ three credit hours of ~~recognized continuing dental education~~ in infectious diseases ~~and or~~ infectious disease control; ~~and~~
5. At least three credit hours in CPR healthcare provider, ACLS and PALS. Coursework may be completed online if the course requires a physical demonstration of skills.

**B.** A licensee who performs dental hygiene services under an affiliated practice relationship who is required to obtain continuing education under R4-11-609 may apply those credit hours to the requirements of this Section.

**R4-11-1205. Denturists**

Denturists shall complete ~~24~~ 36 credit hours of recognized continuing dental education in each renewal period as follows:

1. At least ~~15~~ 21 credit hours of ~~recognized continuing dental education in one or more~~ any of the following areas: Medical and dental health, ~~cardiopulmonary resuscitation~~, laboratory procedures, ~~and clinical procedures~~, dental recordkeeping, removable prosthetics, pain management, dental public health, and new technology in dentistry;
2. No more than six credit hours of ~~recognized continuing dental education~~ in one or more of the following areas: Den-

Notices of Final Rulemaking

- turist practice organization and management, patient management skills, and methods of health care delivery;
3. At least one credit hour ~~of recognized continuing dental education~~ in chemical dependency, which may include tobacco cessation; ~~and~~
  4. At least two credit hours ~~of recognized continuing dental education~~ in infectious diseases ~~and~~ or infectious disease control;
  5. At least three credit hours in CPR healthcare provider, ACLS and PALS. Coursework may be completed online if the course requires a physical demonstration of skills; and
  6. At least three credit hours in ethics or Arizona dental jurisprudence.

**R4-11-1206. Restricted Permit Holders - Dental**

In addition to the requirements in ~~R4-23-1202~~ R4-11-1202, a dental restricted permit holder shall comply with the following requirements:

1. When applying for renewal under A.R.S. § 32-1238, the restricted permit holder shall provide information to the Board that the restricted permit holder has completed 24 credit hours of recognized continuing dental education yearly.
2. To determine whether to grant the renewal, the Board shall only consider recognized continuing dental education credits accrued between July 1 and June 30 immediately before the restricted permit holder submits the renewal application.
3. A dental restricted permit holder shall complete the 24 hours of recognized continuing dental education before renewal as follows:
  - a. At least ~~15~~ 12 credit hours ~~of recognized continuing dental education~~ in one or more of the subjects enumerated in R4-11-1203(1);
  - b. No more than six credit hours ~~of recognized continuing dental education~~ in one or more of the subjects enumerated in R4-11-1203(2);
  - c. At least one credit hour ~~of recognized continuing dental education~~ in the subjects enumerated in R4-11-1203(3); ~~and~~
  - d. At least ~~two~~ one credit hours ~~of recognized continuing dental education~~ in the subjects enumerated in R4-11-1203(4).
  - e. At least three credit hours in the subjects enumerated in R4-11-1203(5); and
  - f. At least one credit hour in the subjects enumerated in R4-11-1203(6).

**R4-11-1207. Restricted Permit Holders – Dental Hygiene**

In addition to the requirements in R4-11-1202, a dental hygiene restricted permit holder shall comply with the following:

1. When applying for renewal under A.R.S. § 32-1292, the restricted permit holder shall provide information to the Board that the restricted permit holder has completed 18 credit hours of recognized continuing dental education yearly.
2. To determine whether to grant renewal, the Board shall only consider recognized continuing dental education credits accrued between July 1 and June 30 immediately before the restricted permit holder submits the renewal application.
3. A dental hygiene restricted permit holder shall complete the 18 hours of recognized continuing dental education before renewal as follows:
  - a. At least ~~12~~ 9 credit hours ~~of recognized continuing dental education~~ in one or more of the subjects enumerated in R4-11-1204(1);
  - b. No more than three credit hours ~~of recognized continuing dental education~~ in one or more of the subjects enumerated in R4-11-1204(2);
  - c. At least one credit hour ~~of recognized continuing education~~ in the subjects enumerated in R4-11-1204(3); ~~and~~
  - d. At least two credit hours ~~of continuing dental education~~ in the subjects enumerated in R4-11-1204(4); and
  - e. At least three credit hours in the subjects enumerated in R4-11-1204(5).

**R4-11-1209. Types of Courses**

A. A licensee or certificate holder shall obtain recognized continuing dental education from one or more of the following activities:

1. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry; ~~or~~
2. Seminars, symposiums, lectures, or programs designed to provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry by means of audio-video technology in which the licensee is provided all seminar, symposium, lecture or program materials and the technology permits attendees to fully participate; or
- ~~2-3.~~ Curricula designed to prepare for specialty board certification as a specialist or recertification examinations or advanced training at an accredited institution as defined in A.R.S. Title 32, Chapter 11; and
- ~~3-4.~~ Subject to the limitations in subsection (B), any of the following activities that provide an understanding of current developments, skills, procedures, or treatment related to the practice of dentistry:

Notices of Final Rulemaking

- a. A correspondence course, ~~videotape video~~, distance learning course, internet or similar self-study course, if the course includes an examination and the licensee or certificate holder passes the examination;
  - b. Participation on the Board, ~~or in Board complaint investigations including clinical evaluations; and investigative interviews, peer review, or quality of care or utilization review in a hospital, institution, or governmental agency; or anesthesia and sedation permit evaluations;~~
  - c. Participation in peer review of a national or state dental, dental hygiene, or denturist association or participation in quality of care or utilization review in a hospital, institution, or governmental agency;
  - e-d. Providing dental-related instruction to dental, dental hygiene, or denturist students, or allied health professionals in a recognized dental school, recognized dental hygiene school, or recognized denturist school, or providing dental-related instruction sponsored by a national, ~~or state,~~ or local dental, dental hygiene, or denturist association;
  - d-e. Publication or presentation of a dental paper, report, or book authored by the licensee or certificate holder that provides information on current developments, skills, procedures, or treatment related to the practice of dentistry. A licensee or certificate holder may claim credit hours:
    - i. Only once for materials presented;
    - ii. Only if the date of publication or original presentation was during the applicable renewal period; and
    - iii. One credit hour for each hour of preparation, writing, and presentation; or
  - e-f. Providing dental, dental hygiene, or denturist services in a Board-recognized charitable dental clinic or organization.
- B. The following limitations apply to the total number of credit hours earned per renewal period in any combination of the activities listed in subsection (A)(~~3~~)(4):
1. Dentists and Dental Hygienists, no more than 24 hours;
  2. Denturists, no more than 12 hours;
  3. Retired or Restricted Permit Holder Dentists or Dental Hygienists, no more than nine hours; and
  4. Retired Denturists, no more than three hours.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 1. RADIATION REGULATORY AGENCY

*Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 3947.) The Governor's Office authorized the notice to proceed through the rulemaking process on April 2, 2013.*

[R13-199]

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|--|--------------------------|
| R12-1-602  | Amend                    |
| R12-1-603  | Amend                    |
| R12-1-605  | Amend                    |
| R12-1-606  | Amend                    |
| R12-1-607  | Amend                    |
| R12-1-608  | Amend                    |
| R12-1-610  | Amend                    |
| R12-1-610.01   | New Section              |
| R12-1-611  | Amend                    |
| R12-1-612  | Amend                    |
| R12-1-614  | Amend                    |
| R12-1-615  | Amend                    |
2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):  
Authorizing statute: A.R.S. § 30-654(B)(5).  
Implementing statutes: A.R.S. §§ 30-651, 30-654, 30-657, 30-671, 30-672, 30-673, 30-681, 30-687, 30-688, and 30-689.
3. The effective date of the rule:  
January 4, 2014
4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the

Notices of Final Rulemaking

**proposed rule:**

Notice of Rulemaking Docket Opening: 19 A.A.R. 895, April 26, 2013

Notice of Proposed Rulemaking: 19 A.A.R. 1475, June 7, 2013

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

Name: Jerry W. Perkins  
Address: Arizona Radiation Regulatory Agency  
4814 S. 40th St.  
Phoenix, AZ 85040  
Telephone: (602) 255-4845, ext. 272  
Fax: (602) 437-0705  
E-mail: jperkins@azrra.gov  
Web site: www.azrra.gov

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

This rulemaking package amends and adds two rules to ensure that Arizona radiation compliance addresses recent safety issues related to Computed Tomography (CT) scans and emergent technical advances in equipment, and digital developing techniques that lower the expected radiation dose to the public when used correctly. In some cases, the rules are amended to reduce the regulatory burden on businesses that are already accredited by other entities.

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

None

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

Not applicable

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

There is little or minimal economic impact from any of the rules in this rulemaking. Currently, all registrants pay an annual fee which covers the administrative cost and inspection fees for each facility registration number. This package has no fee increase or new requirements that would markedly change the way businesses operate with radiation safety concerns in mind. The amendments in this rulemaking address recent safety issues related to CT scans and emergent technical advances in equipment, and developing techniques that lower the expected radiation dose to the public when used correctly. No new FTEs were needed for this rulemaking package so additional notice was not sent to the Joint Legislative Budget Committee (JLBC).

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

Several grammatical, clarifying, and formatting changes were made to the proposed rules following the suggestions of the Office of the Secretary of State. A clarification definition for CTDI vol and DLP in R12-1-612 was suggested and accepted by the Board and other physicists present during the oral hearing in order to be more clear for the regulated community as to the measurements used by physicists in evaluating estimated CT dose rates.

The Agency bifurcated the rulemaking by filing a notice of supplemental proposed rulemaking on R12-1-611.01 and R12-1-611.02 in order to re-open the record for these two therapy rules.

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

Agency received comments that were used to begin the rulemaking process as well as the request of the governor's office. Additional comments were received after the docket was opened and before the oral hearing took place. Because of the comments received, and in an effort to gather additional comments, the Agency branched the rulemaking by filing a notice of supplemental proposed rulemaking on R12-1-611.01 and R12-1-611.02.

On July 17<sup>th</sup> Roland Wong, Sc.M presented two comments specific to definitions used for CT dose evaluation that clarified the measurement with current scientific nomenclature. The Agency accepted both suggestions and the rules were modified to demonstrate this clarification.

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

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

**Notices of Final Rulemaking**

The Agency believes that it is exempt from A.R.S. §§ 41-1037 due to paragraph (A)(2) as the issuance of an alternative type of permit is authorized under the statutory requirement of A.R.S. §§ 30-672 to protect the public health and safety.

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

The rule amendments are compatible with existing federal regulations and are not more stringent in sections that have a federal equivalent. Currently the regulation of radiation producing equipment is conducted at the state level and federal regulations in Title 21 of the Code of Federal Regulations only govern the manufacture of radiation producing electronic devices with the exception of mammography screening facilities. Facilities that screen for mammography are dually regulated as a Mammography Quality Standards Act and Program (MQSA) facility for federal insurance reimbursement as well as under the rules of the Agency. The federal rules governing MQSA are located in 21 CFR 900.12 and are incorporated in the rules of the Agency.

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

No analysis has been submitted as the regulated community must be in compliance with either federal regulations if accepting Medicare insurance, or if certified as a MQSA mammography facility.

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

<u>Rule</u>	<u>Incorporated Material</u>
R12-1-614(B)(2)	21 CFR 900.12(d)(1), and (e)(1) through (e)(10)
R12-1-615(A)(1)(a)	21 CFR 900.12(a)(1)
R12-1-615(A)(1)(b)	21 CFR 900.12(a)(2)
R12-1-615(A)(1)(c)	21 CFR 900.12(a)(3)

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

Not applicable

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

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 1. RADIATION REGULATORY AGENCY**

**ARTICLE 6. USE OF X-RAYS IN THE HEALING ARTS**

Section

R12-1-602.	Definitions
R12-1-603.	Operational Standards, Shielding, and Darkroom Requirements
R12-1-604.	General Procedures
R12-1-605.	X-ray Machine Standards
R12-1-606.	Fluoroscopic and Fluoroscopic Treatment Simulator Systems
R12-1-607.	Additional X-ray Machine Standards, Shielding Requirements, and Procedures, Except <u>Mobile</u> Fluoroscopic, <u>Dental Panoramic, Cephalometric, Dental CT, or</u> <del>and</del> Dental Intraoral Radiographic Systems
R12-1-608.	Mobile Diagnostic Radiographic and <u>Mobile</u> Fluoroscopic Systems, Except <u>Dental Panoramic, Cephalometric, Dental CT, or</u> Dental Intraoral Radiographic Systems
R12-1-610.	Dental Intraoral Radiographic Systems
<u>R12-1-610.01.</u>	<u>Hand-held Intraoral Dental Radiographic Unit Requirements For Use</u>
R12-1-611.	Therapeutic X-ray Systems of Less Than 1 MeV
R12-1-612.	<del>Computerized Tomographic</del> <u>Computed Tomography</u> Systems
R12-1-614.	Mammography Systems
R12-1-615.	<del>Repeated</del> <u>Mammography Personnel</u>

**ARTICLE 6. USE OF X-RAYS IN THE HEALING ARTS**

**R12-1-602. Definitions**

The following definitions apply in this Article, unless the context otherwise requires:

"Accessible surface"	No change
"Added filter"	No change

**Notices of Final Rulemaking**

"Aluminum equivalent"	No change
<u>"Annual" means annually within two months of the anniversary due date as determined by the original installation date, inspection date, survey date, or a reset date created by conducting a full survey before the anniversary date has arrived.</u>	
"Assembler"	No change
"Attenuation block"	No change
<u>"Automatic exposure control" means a device that automatically controls one or more technique factors in order to obtain, at a preselected location or locations, a required quantity of radiation.</u>	
"Barrier"	No change
"Beam axis"	No change
"Beam-limiting device"	No change
"C-arm x-ray system"	No change
"Changeable filter"	No change
"Cinefluorography"	No change
"Coefficient of variation"	No change
"Collimator"	No change
"Compression device"	No change
"Computed tomography"	No change
"Contact therapy system"	No change
"Control panel"	No change
"Cooling curve"	No change
"CT gantry"	No change
"Dead-man switch"	No change
"Diagnostic source assembly"	No change
"Diagnostic x-ray system"	No change
"Direct scattered radiation"	No change
<u>"Electronic brachytherapy" means a method of radiation therapy where an electrically generated source of ionizing radiation is placed in or near the tumor or target tissue to deliver therapeutic radiation dosage.</u>	
"Entrance exposure rate"	No change
"Equipment"	No change
"Filter"	No change
"Fluoroscopic imaging assembly"	No change
"Fluoroscopic system"	No change
"Focal spot"	No change
"General purpose radiographic x-ray system"	No change
"Gonadal shield"	No change
"Grid"	No change
"Half-value layer" or "HVL"	No change
"Healing arts radiography"	No change
"Healing arts screening"	No change
"Image intensifier"	No change
"Image receptor"	No change
"Inherent filtration"	No change
"Kilovolts peak" or "kVp"	No change
<u>"Lateral fluoroscope" means the x-ray tube and image receptor combination in a biplane system dedicated to the lateral projection. It consists of the lateral x-ray tube housing assembly and the lateral image receptor that are fixed in position relative to the table with the x-ray beam axis parallel to the plane of the table.</u>	
"Lead equivalent"	No change
"Leakage radiation"	No change
"Leakage technique factors"	No change
"mA"	No change
"Mammographic x-ray system"	No change
"mAs"	No change
"Mobile equipment"	No change
"Peak tube potential"	No change
"Phantom"	No change
"Phototimer"	No change
"Portable equipment"	No change
"Primary protective barrier"	No change
"Protective apron"	No change

**Notices of Final Rulemaking**

"Protective barrier"	No change
"Protective glove"	No change
"Radiologic physicist" means an individual who:	
Is certified by the American Board of Radiology, American Board of Medical Physics, or the American Board of Health Physics;	
Possesses documentation of state approval;	
Holds a master's degree or higher in a physical science; and	
Meets the training and certification requirements in <del>R12-1-614(C)(1)(e)</del> <u>R12-1-615(A)(1)(c)</u> .	
"Scattered radiation"	No change
"Screen" or "intensifying screen"	No change
"Secondary protective barrier"	No change
"Shutter"	No change
"Source"	No change
"Source-to-image receptor distance" or "SID"	No change
"Spot check"	No change
"Stationary equipment"	No change
"Stray radiation"	No change
"System"	No change
"Technique chart"	No change
"Technique factors"	No change
"Treatment simulator"	No change
"Tube"	No change
"Tube housing assembly"	No change
"Tube rating chart"	No change
"Useful beam"	No change
"Visible area"	No change
"X-ray equipment" means an x-ray system, subsystem, or component described further by the following terms:	
<u>"Hand-held" means x-ray equipment designed to be held by an operator while being used.</u>	
"Mobile" means x-ray equipment mounted on a permanent base with wheels or casters for moving while completely assembled.	
"Portable" means x-ray equipment designed to be hand-carried, <u>but used with a cord or delayed timer system that allows the operator to be six feet or more away from the useful beam.</u>	
"Stationary" means x-ray equipment installed in a fixed location.	
"Transportable mobile" means x-ray equipment installed in a vehicle or trailer.	
"X-ray system"	No change
"X-ray tube"	No change

**R12-1-603. Operational Standards, Shielding, and Darkroom Requirements**

- A. No change
- B. A registrant shall direct the operation of x-ray machines under the registrant's control and assure that all of the following provisions are met in the operation of x-ray machines:
  - 1. The registrant shall not permit any individual to engage in the practice of "Healing Arts Radiography" using equipment under the registrant's control, unless the individual possesses ~~a valid, and displays in the primary employer's facility, an official~~ certificate issued by, or is exempt from, the Medical Radiologic Technology Board of Examiners that contains an original signature of its Director or designee. A copy of the certificate shall be posted at any secondary employment location with documentation that verifies that the employer has physically seen the official certificate and has annotated on the copy the location where the official certificate may be viewed by Agency staff.
  - 2. The registrant shall maintain records documenting compliance with subsection (B)(1) for each individual practicing "Healing Arts Radiography" using equipment under the registrant's control ~~practicing "Healing Arts Radiography."~~
  - 3. No change
- C. Shielding
  - 1. No change
  - 2. No change
  - 3. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
  - 4. A registrant shall also meet the structural shielding requirements in R12-1-607(C), if the x-ray system in question is



**Notices of Final Rulemaking**

not a mobile fluoroscopic unit, dental panoramic, cephalometric, dental CT, or intraoral radiographic system.

**D. Film Processing and Darkroom Requirements.** A registrant shall:

1. Ensure that the darkroom is light-tight and use proper safe-lighting, ~~so such~~ that any film type in use is exposed in a cassette to x-ray radiation sufficient to produce an optical density from 1 to 2 when processed; shall not suffer an increase in density greater than 0.1 (0.05 for mammography) when the film is exposed in the darkroom for two minutes; and exposure will not produce an increase in optical density greater than 0.1 (0.05 for mammography) with all safe-lights illuminated. (A processor with a daylight loader satisfies this requirement.);
2. No change
3. No change
4. No change
5. No change
6. No change
7. Ensure that film processing solutions are prepared and maintained in accordance with the directions of the manufacturer; ~~and~~
8. No change
9. Follow manufacturer's recommendations for cleaning or inspection of computed radiography (CR) cassettes, but not less than annually;
10. Follow manufacturer's recommendations for preventive maintenance on digital radiography panels or cassettes, but not less than annually; and
11. Maintain documentation that demonstrates that requirements of this subsection are being met for three years for agency review from the date of inspection.

**R12-1-605. X-ray Machine Standards**

**A.** No change

**B.** No change

**C.** Beam quality.

1. The registrant shall prevent the useful beam half-value layer (HVL) for diagnostic x-ray given x-ray tube potential from falling below the values shown in Table I. If it is necessary to determine the ~~half-value layer~~ HVL at an x-ray tube potential that is not listed in Table I, the registrant shall use linear interpolation or extrapolation to make the determination.

<b>Table I</b>				
<i>Design operating range (kilovolts peak)</i>	<i>Measured potential (kilovolts peak)</i>	<del>Half-value layer HVL</del> (millimeters of aluminum) <i>Dental Intraoral Units manufactured after December 1, 1980</i>	<i>Medical X-ray Units manufactured before June 10, 2006 and Dental Intraoral Units manufactured on or before December 1, 1980</i>	<i>Medical X-ray Units manufactured on or after June 10, 2006</i>
Below 51	30	<del>0.3</del> <u>1.5</u>	<u>0.3</u>	<u>0.3</u>
	40	<del>0.4</del> <u>1.5</u>	<u>0.4</u>	<u>0.4</u>
	50	<del>0.5</del> <u>1.5</u>	<u>0.5</u>	<u>0.5</u>
	51 to 70	<del>1.2</del> <u>1.5</u>	<u>1.2</u>	<u>1.3</u>
Above 70	60	<del>1.3</del> <u>1.5</u>	<u>1.3</u>	<u>1.5</u>
	70	1.5	<u>1.5</u>	<u>1.8</u>
	71	2.1	<u>2.1</u>	<u>2.5</u>
	80	2.3	<u>2.3</u>	<u>2.9</u>
	90	2.5	<u>2.5</u>	<u>3.2</u>
	100	2.7	<u>2.7</u>	<u>3.6</u>
	110	3.0	<u>3.0</u>	<u>3.9</u>
	120	3.2	<u>3.2</u>	<u>4.3</u>
	130	3.5	<u>3.5</u>	<u>4.7</u>
	140	3.8	<u>3.8</u>	<u>5.0</u>
	150	4.1	<u>4.1</u>	<u>5.4</u>

2. No change
3. No change
4. No change
5. No change

**D.** No change

Notices of Final Rulemaking

E. No change

F. No change

G. No change

**R12-1-606. Fluoroscopic and Fluoroscopic Treatment Simulator Systems**

A. No change

1. No change

2. No change

3. No change

4. No change

5. No change

B. No change

1. No change

2. No change

3. No change

4. No change

a. No change

b. No change

c. No change

C. No change

1. No change

2. No change

a. No change

b. No change

3. No change

a. No change

b. No change

c. No change

d. No change

e. No change

f. For a ~~lateral-type~~ lateral fluoroscope, measure the exposure rate 15 centimeters (5.9 inches) from the centerline of the x-ray table and in the direction of the x-ray source with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement. If the tabletop is movable, it shall be positioned as closely as possible to the lateral x-ray source, with the end of the beam-limiting device or spacer no closer than 15 centimeters (5.9 inches) to the centerline of the x-ray table.

D. No change

1. No change

2. No change

3. No change

4. No change

E. No change

1. No change

2. No change

3. No change

F. No change

1. No change

2. No change

3. No change

4. No change

G. No change

H. No change

1. No change

2. No change

3. No change

4. No change

5. No change

**R12-1-607. Additional X-ray Machine Standards, Shielding Requirements, and Procedures, Except Mobile Fluoroscopic, Dental Panoramic, Cephalometric, Dental CT, or ~~and~~ Dental Intraoral Radiographic Systems**

A. No change

Notices of Final Rulemaking

1. No change
2. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
3. No change
- B.** No change
  1. No change
  2. No change
  3. No change
  4. No change
    - a. A device (usually a ~~milliammeter~~ milliamp meter) that will give a positive indication during radiation production; and
    - b. No change
- C.** No change
  1. No change
  2. No change
  3. No change
  4. No change
- D.** No change
  1. No change
  2. No change
  3. No change
  4. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
  5. Provide documentation ~~in the order specified~~ of the following items:
    - a. No change
    - b. No change
    - c. No change
    - d. The number of projections (if applicable), or on-time, or dose factors depending upon the unit; and
    - e. No change
  6. No change

**R12-1-608. Mobile Diagnostic Radiographic and Mobile Fluoroscopic Systems, Except Dental Panoramic, Cephalometric, Dental CT, or Dental Intraoral Radiographic Systems**

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

**R12-1-610. Dental Intraoral Radiographic Systems**

- A.** No change
  1. No change
  2. No change
  3. No change
  4. No change
  5. No change
  6. No change
  7. No change
  8. No change

**Notices of Final Rulemaking**

- a. No change
- b. No change
- 9. Use technique factors, where deviation of measured ~~or~~ values from indicated values for kVp and exposure time do not exceed the limits specified by the manufacturer. In the absence of the manufacturer's specifications, the deviation shall not exceed plus or minus 10 percent of the indicated value for kVp and plus or minus 20 percent for exposure time duration.
- 10. For a digital system that uses an electronic sensor, use digital radiography techniques that permit reducing x-ray beam on-time to 25 percent of the exposure time required for "D" speed film or lower, reducing radiation to the patient by the same rate.
- 11. For a computed radiography (imaging plate (IP) made of photostimulable phosphor) system that uses an imaging plate, use radiography techniques that permit reducing x-ray beam on-time to 50 percent of the exposure time required for "D" speed film or lower, reducing radiation to the patient by the same rate.
- B. No change
  - 1. Provide dental installations with primary and secondary barriers to ensure compliance with the personnel exposure requirements in Article 4 of this Chapter; (Note: In many cases, structural materials of ordinary walls suffice as a protective barrier without addition of special shielding material.)
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change

~~Note: In many cases structural materials of ordinary walls suffice as a protective barrier without addition of special shielding material.~~
- C. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change

**R12-1-610.01. Hand-held Intraoral Dental Radiographic Unit Requirements For Use**

- A. Registrants are subject to the following requirements for Intraoral dental radiographic units designed to be operated as a hand-held unit:
  - 1. For all uses:
    - a. Operators of hand-held intraoral dental radiographic units shall be specifically trained to operate such equipment.
    - b. A hand-held intraoral dental radiographic unit shall be held without any motion during a patient examination. A tube stand may be utilized to immobilize a hand-held intraoral dental radiographic unit during patient examination.
    - c. The operator shall ensure there are no bystanders within a radius of at least six feet from the patient being examined with a hand-held intraoral radiographic unit.
  - 2. Additional requirements for operatories in permanent facilities:
    - a. Hand-held intraoral dental radiographic units shall be used for patient examinations in dental operatories that meet the structural shielding requirements specified by the Agency or by a qualified health or medical physicist.
    - b. Hand-held intraoral dental radiographic units shall not be used for patient examinations in hallways and waiting rooms.
- B. Hand-held units may only be used in a manner as specified on the registration issued by the Agency.

**R12-1-611. Therapeutic X-ray Systems of Less Than 1 MeV**

- A. No change
  - 1. Leakage radiation. ~~A registrant shall ensure that:~~ When the x-ray tube is operated at its maximum rated tube current for the maximum kVp, the leakage air kerma rate shall not exceed the value specified at the distance specified for that classification of therapeutic radiation machine. For each therapeutic radiation machine, the registrant shall determine, or obtain from the manufacturer, the leakage radiation existing at the positions specified:
    - a. Contact therapy systems. Leakage radiation does not exceed 25.8 microcoulombs per kilogram (100 milliroentgens) per hour at 5 centimeters (2 inches) from the surface of the tube housing assembly. 5-50 kVp Systems. The leakage air kerma rate measured at any position 5 centimeters from the tube housing assembly shall not exceed 1 mGy (100 mrad) in any one hour.
    - b. 0-150 kVp systems. Systems that are manufactured or installed before January 2, 1996, have a leakage radiation that does not exceed 258 microcoulombs per kilogram (1 roentgen) in one hour at 1 meter (3.3 feet) from the source. Greater than 50 kVp and less than 1MeV Systems. The leakage air kerma rate measured at a distance of 1 meter from the target in any direction shall not exceed 1 centigray (1 rad) in any 1 hour. This air kerma rate mea-

**Notices of Final Rulemaking**

surement may be averaged over areas no larger than 100 square centimeters (100 cm<sup>2</sup>). In addition, the air kerma rate at a distance of 5 centimeters from the surface of the tube housing assembly shall not exceed 30 centigray (30 rad) per hour.

- e. ~~0-150 kVp systems. Systems that are manufactured on or after January 2, 1996, have a leakage radiation that does not exceed 25.8 microcoulombs per kilogram (100 milliroentgens) in one hour at 1 meter from the source.~~
- d. ~~Above 150 kVp. The leakage radiation does not exceed 258 nC/kg (1 roentgen) in one hour at 1 meter (3.3 feet) from the source except systems that operate in excess of 500 kVp may have a leakage radiation at 1 meter from the source equivalent to the exposure within one hour of the useful beam at 1 meter (3.3 feet) from the source multiplied by a factor of 0.001.~~
- 2. Permanent beam limiting devices. A registrant shall ensure that fixed diaphragms or cones used for limiting the useful beam provide the same or higher degree of protection attenuation as required for the tube housing assembly.
- 3. No change
  - a. No change
  - b. ~~Adjustable beam limiting devices installed before the effective date of this Section, for the portion of the x-ray beam to be blocked by these devices, transmit not more than 5 percent of the useful x-ray beam at maximum kilovoltage and maximum treatment filter. When adjustable beam limiting devices are used, the position and shape of the radiation field shall be indicated by a light beam.~~
- 4. No change
  - a. No change
  - b. For equipment installed after January 1, 2011, an interlock system prevents irradiation if the proper filter is not in place;
  - c. The air kerma rate escaping from the filter slot shall not exceed 1 centigray (1 rad) per hour at one (1) meter under any operating conditions; and
  - ~~b.d.~~ Each filter is marked regarding its material of construction and its thickness or wedge angle for wedge filters; ~~and~~
  - e. ~~It is possible for the operator to determine the presence or absence of each filter and the orientation of each wedge filter in the useful beam if the operator is at the control panel, either by display at the control panel or by direct observation.~~
- 5. X-ray tube immobilization. A registrant shall ensure that the tube housing assembly is capable of being immobilized during stationary treatments and the x-ray tube shall be so mounted that it cannot accidentally turn or slide with respect to the housing aperture.
- 6. No change
- 7. No change
  - a. Provide a timer that has a display at the treatment control panel. ~~The timer shall be graduated in minutes and fractions of minutes.~~ The timer shall have a preset time selector and an elapsed time indicator;
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change
- 8. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change
- 9. No change
  - a. No change
  - b. No change
  - c. No change
- 10. No change
- 11. No change
  - a. No change
  - b. No change
- 12. No change
- B.** No change
  - 1. No change
  - 2. No change

Notices of Final Rulemaking

3. No change
4. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
- C. No change
  1. No change
  2. The person conducting the survey reports the ~~person's~~ survey findings in writing to the individual in charge of the facility and maintains a copy of the survey report for inspection by the Agency.
  3. No change
- D. No change
  1. The calibration of ~~an~~ a therapeutic x-ray system includes, but is not limited to, the following determinations:
    - a. No change
    - b. No change
    - c. No change
    - d. No change
  2. The calibration of an x-ray system is performed at intervals not to exceed ~~12 months~~ annually and after any change or replacement of components that could cause a change in the radiation output;
  3. No change
  4. No change
  5. Records of calibration performed under subsection (D)(3) are maintained for at least ~~two~~ three years after completion of the calibration and are made available for inspection by the Agency; and
  6. No change
- E. Spot checks. A registrant shall ensure that spot checks are performed on therapeutic x-ray systems capable of operation at greater than 150 kVp. The registrant shall ensure that spot checks meet the following requirements:
  1. The spot-check procedures are in writing and have been developed by a qualified expert person;
  2. No change
  3. No change
  4. No change
  5. No change
- F. No change
  1. No change
  2. No change
  3. No change
  4. No change
- G. Electronic Brachytherapy units are exempt from the requirements of this Section.

**R12-1-612. ~~Computerized Tomographic~~ Computed Tomography Systems**

- A. Definitions:
  1. "CT" means ~~computerized~~ computed tomography.
  2. "CT conditions of operation" means all selectable parameters governing the operation of a CT including, ~~but not limited to,~~ nominal tomographic section thickness, and technique factors.
  3. No change
  4. "CTDI vol" means a value of a volume-weighted tomography dose index. The unit of the CTDI vol is Gray or sub-units of the Gray. The value of the CTDI vol for patient scan is used to trigger a notification when the value exceeds or will exceed a threshold value.
  - ~~4-5.~~ "CTN" means CT number, the number used to represent the x-ray attenuation associated with each elemental area of the CT image.
  - ~~5-6.~~ "Dose profile" means the dose as a function of position along a line.
  7. "DLP" means the dose-length product. The DLP is the mathematical product of the CTDI vol and the length of the scan. The unit DLP is the Gray-cm of subunits of the Gray-cm. The DLP is used to trigger a notification when the value exceeds or will exceed a threshold value.
  - ~~6-8.~~ "Elemental area" means the smallest area within a tomogram for which the x-ray attenuation properties of a body are depicted.
  - ~~7-9.~~ "Multiple tomogram system" means a CT system that obtains x-ray transmissions data simultaneously during a single scan to produce more than one tomogram.
  - ~~8-10.~~ "Nominal tomographic section thickness" means the full width at half-maximum of the sensitivity profile taken at the center of the cross section volume over which x-ray transmission data are collected.
  - ~~9-11.~~ "Reference plane" means a plane that is displaced from and parallel to the tomographic plane.

Notices of Final Rulemaking

~~40-12.~~ "Scan" means the complete process of collecting x-ray transmission data for the production of a tomogram. Data can be collected simultaneously during a single scan for the production of one or more tomograms.

**B.** No change

1. No change
2. No change

**C.** No change

1. No change
  - a. No change
  - b. No change
2. No change
  - a. No change
  - b. No change
3. No change
  - a. No change
  - b. No change
  - c. No change
4. No change
5. No change
6. No change
7. No change
8. No change

**D.** No change

1. No change
2. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. A written or electronic log that contains the information required in R12-1-607(D)(5) as well as an entry in the record of any displayed values for the exam from either a CTDI vol or DLP measurement for each patient exam completed on equipment manufactured on or after January 1, 2011.
3. No change

**E.** No change

1. Incorporates the use of a CT performance phantom ~~that indicates: that is compatible with an approved accreditation program approved by the Medicare Improvements for Patients and Providers Act (MIPPA) or supplied by or approved for use by the manufacturer of the unit.~~
  - a. ~~Contrast scale;~~
  - b. ~~Nominal tomographic section thickness;~~
  - c. ~~Resolution capability of the system for low and high contrast objects; and~~
  - d. ~~The mean CTN for water or other reference materials.~~
2. Is followed in the evaluation of the CT's operation, that the interval between tests does not exceed those set forth in the application for accreditation or quarterly if not accredited by an organization approved by (MIPPA) two months, and that system conditions are specified by the registrant's qualified expert.
3. No change
4. No change
5. Requires that any Alerts and Notification settings using CTDI vol or DLP are reviewed against preloaded techniques in the system and any missing fields are reviewed with the staff radiologist and noted in the annual report.
- ~~5-6.~~ Requires the quality control test procedure and records of quality control tests performed be maintained for three years for Agency inspection.

**F.** No change

1. No change
2. No change
  - a. No change
  - b. No change
  - c. A complete evaluation of a CT unit, performed before the annual due date shall clearly list if the new survey changes the annual due date for the unit. It shall be clearly noted on all documentation for the next three years that the survey has established a new annual due date based upon the date of the new survey.
3. No change
  - a. No change

Notices of Final Rulemaking

- b. No change
- 4. CT dosimetry phantoms used in determining radiation output are compatible with an approved accreditation program approved by (MIPPA) or supplied by or approved for use by the manufacturer of the unit ~~meet the requirements specified by the CT manufacturer or a qualified expert who is responsible for maintaining proper operation;~~ and
  - a. No change
  - b. No change
- 5. No change
- G. CT units designated for simulator use, veterinary use, dental use, podiatry use, and non-diagnostic use on humans ~~con-junctive use in a positron emission tomography (PET) unit~~ are exempt from the annual requirements in ~~subsection~~ subsec-tions (E) and (F) provided an initial evaluation is conducted by a qualified expert and the output does not exceed the manufacturers specified limits. The initial evaluation shall be maintained for Agency review.

**R12-1-614. Mammography Systems**

- A. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
  - 6. No change
  - 7. No change
    - a. No change
    - b. Is capable of compressing the breast with a force of at least 25 pounds, but not more than ~~47~~ 45 pounds, and maintaining the compression for at least three seconds; and
    - c. No change
  - 8. No change
    - a. No change
    - b. No change
  - 9. No change
  - 10. No change
  - 11. No change
  - 12. No change
  - 13. No change
  - 14. No change
  - 15. No change
  - 16. No change
  - 17. A radiologic physicist who meets the requirements in ~~R12-1-614(C)(1)(e)~~ R12-1-615(A)(1)(c) evaluates the opera-tion of a mammographic x-ray system:
    - a. No change
    - b. No change
    - c. No change
- B. No change
  - 1. Each mammographic facility has a quality assurance program, and that the quality assurance program includes per-formance and documentation of the quality control tests in subsection (B)(2), conducted at the required time intervals. Test results shall fall within the specified limits in subsection (B)(2) or the registrant shall take corrective action and maintain documentation that the results are within specified limits before performing or processing any further exam-inations using the system that failed. A radiologic physicist, as defined in ~~R12-1-614(C)(1)(e)~~ R12-1-615(A)(1)(c), shall review the program and make any recommendations necessary for the facility to comply with this Section;
  - 2. The quality assurance program meets federal requirements (Contained in 21 CFR 900.12(d)(1), and (e)(1) through (e)(10), revised April 1, ~~2008-2013~~, incorporated by reference and available under R12-1-101. This incorporated material contains no future editions or amendments.); or the following requirements:
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
    - f. No change
    - g. No change
    - h. No change
    - i. No change



**Notices of Final Rulemaking**

- i. No change
- ii. No change
- iii. No change
- iv. No change
- v. No change
- vi. No change
- vii. No change
- viii. No change
- ix. No change
- x. No change
- xi. No change
- xii. No change
- j. For systems with image receptor modalities other than screen film, ~~the quality assurance and quality control program meets or exceeds the recommendations by the manufacturer; and:~~
  - i. The quality assurance and quality control program for the acquisition system meets or exceeds the recommendations by the manufacturer; and
  - ii. The quality assurance and quality control program for the printer meets or exceeds the recommendations by the image receptor manufacturer. In the absence of recommendations by the image receptor manufacturer for the specified printer, the quality control and assurance program meets or exceeds the recommendations of the printer manufacturer; and
  - iii. The quality assurance and quality control program for the interpretation monitors meets or exceeds the recommendations by the image receptor manufacturer. In the absence of recommendations by the image receptor manufacturer for the specified monitor or monitors, the quality control and assurance program meets or exceeds the recommendations of the interpretation monitor or monitors manufacturer; and
- k. No change

**C. Personnel:**

- 1. Each registrant shall require personnel who perform mammography, which includes the production, processing, and interpretation of mammograms and related quality assurance activities, to meet the following requirements:
  - a. ~~An interpreting physician shall meet federal requirements (Contained in 21 CFR 900.12(a)(1), revised April 1, 2008, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.); or~~
    - i. ~~Be licensed under A.R.S. Title 32, Chapters 13 or 17;~~
    - ii. ~~Have initially completed 40 hours of medical education credits in mammography;~~
    - iii. ~~Be certified by the American Board of Radiology or the American Osteopathic Board of Radiology or be approved by the Arizona Medical Board or the Arizona Board of Osteopathic Examiners as qualified to read and interpret mammogram images;~~
    - iv. ~~Have interpreted or reviewed an average of 300 mammograms per year during the preceding two years or have completed a radiology residency that included mammogram image interpretation;~~
    - v. ~~Have completed 15 hours of continuing medical education credits in mammography during the preceding three years; and~~
    - vi. ~~Have received at least eight hours of training specific to each mammographic modality before engaging in independent interpretation.~~
  - b. ~~A mammographic technologist shall meet federal requirements (Contained in 21 CFR 900.12(a)(2), revised April 1, 2008, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.); or~~
    - i. ~~Possess a valid mammographic technologist certificate issued by the Medical Radiologic Technology Board of Examiners, as required in A.R.S. § 32-2841, or be pursuing mammography certification by training under the direct supervision of a technologist who possesses a valid mammographic technologist certificate;~~
    - ii. ~~Have performed at least 200 mammographic examinations in the preceding two years;~~
    - iii. ~~Have completed 15 hours of continuing medical education credits in mammography during the preceding three years; and~~
    - iv. ~~Have received at least eight hours of training specific to each mammographic modality to be used by the technologist in performing mammographic examinations.~~
  - c. ~~A radiologic physicist shall meet federal requirements (Contained in 21 CFR 900.12(a)(3), revised April 1, 2008, incorporated by reference and available under R12-1-101. This incorporated material contains no future editions or amendments.); or~~
    - i. ~~Be certified by the American Board of Radiology, American Board of Medical Physics, or the American Board of Health Physics;~~
    - ii. ~~Possess documentation of state approval;~~

Notices of Final Rulemaking

- iii. ~~Hold a master's degree or higher in a physical science;~~
  - iv. ~~Have, upon initial employment as a radiologic physicist, experience conducting, at least one mammographic facility survey and evaluating at least 10 mammographic units;~~
  - v. ~~Have, after completing the experience requirements in subsection (C)(1)(c)(iv), continuing experience surveying two mammographic facilities and evaluating six mammographic units during the preceding two years;~~
  - vi. ~~Have completed 15 hours of continuing medical education credits in mammography during the three preceding years;~~
  - vii. ~~Have received at least eight hours of training specific to any modality surveyed; and~~
2. ~~Each registrant shall maintain records documenting the requirements in subsection (C)(1) for three years from the date the requirement is met and make the records available for Agency inspection.~~

~~D.C.~~ Mammographic films and reports.

- 1. No change
- 2. No change

**R12-1-615. ~~Repealed Mammography Personnel~~**

**A. Personnel.**

- 1. Each registrant shall require personnel who perform mammography, which includes the production, processing, and interpretation of mammograms and related quality assurance activities, to meet the following requirements:
  - a. An interpreting physician shall meet federal requirements (Contained in 21 CFR 900.12(a)(1), revised April 1, 2013, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.); or
    - i. Be licensed under A.R.S. Title 32, Chapters 13 or 17;
    - ii. Have initially completed 40 hours of medical education credits in mammography;
    - iii. Be certified by the American Board of Radiology or the American Osteopathic Board of Radiology or meet the requirements of the mammography quality standards act regulations for quality standards of interpreting physicians;
    - iv. Have interpreted or reviewed an average of 300 mammograms per year during the preceding two years or have completed a radiology residency that included mammogram image interpretation in the preceding two years;
    - v. Have completed 15 hours of continuing medical education credits in mammography during the preceding three years; and
    - vi. Have received at least eight hours of training specific to each mammographic modality before engaging in independent interpretation.
  - b. A mammographic technologist shall meet federal requirements (Contained in 21 CFR 900.12(a)(2), revised April 1, 2013, incorporated by reference, and available under R12-1-101. This incorporated material contains no future editions or amendments.); or
    - i. Possess a valid mammographic technologist certificate issued by the Medical Radiologic Technology Board of Examiners, as required in A.R.S. § 32-2841, or be pursuing mammography certification by training under the direct supervision of a technologist who possesses a valid mammographic technologist certificate;
    - ii. Have performed at least 200 mammographic examinations in the preceding two years;
    - iii. Have completed 15 hours of continuing medical education credits in mammography during the preceding three years; and
    - iv. Have received at least eight hours of training specific to each mammographic modality to be used by the technologist in performing mammographic examinations.
  - c. A radiologic physicist shall meet federal requirements (Contained in 21 CFR 900.12(a)(3), revised April 1, 2013, incorporated by reference and available under R12-1-101. This incorporated material contains no future editions or amendments.); or
    - i. Be certified by the American Board of Radiology, American Board of Medical Physics, or the American Board of Health Physics;
    - ii. Possess documentation of state approval;
    - iii. Hold a master's degree or higher in a physical science;
    - iv. Have, upon initial employment as a radiologic physicist, experience conducting, at least one mammographic facility survey and evaluating at least 10 mammographic units;
    - v. Have, after completing the experience requirements in subsection (A)(1)(c)(iv), continuing experience surveying two mammographic facilities and evaluating six mammographic units during the preceding two years;
    - vi. Have completed 15 hours of continuing medical education credits in mammography during the three preceding years;
    - vii. Have received at least eight hours of training specific to any modality surveyed; and

Notices of Final Rulemaking

2. Each registrant shall maintain records documenting the requirements in subsection (A)(1) for three years from the date the requirement is met and make the records available for Agency inspection.
- B. Radiologic physicists shall apply for and renew their certification on agency approved forms. In addition to Agency supplied forms, applicants must also submit documentation showing education, mammography specific training, education, and board certification. Upon renewal, an applicant must submit documentation showing current continuing education requirements are met.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

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

*Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 3947.) The Governor's Office authorized the notice to proceed through the rulemaking process on November 16, 2010.*

[R13-202]

PREAMBLE

1. Article, Part, or Section Affected (as applicable)      Rulemaking Action  
R17-4-404      Amend
2. Citations to the agency's statutory rulemaking authority to include both the authorizing statutes (general) and the implementing statutes (specific):  
Authorizing statute: A.R.S. §§ 28-366 and 32-2352  
Implementing statutes: A.R.S. Title 32, Chapter 23
3. The effective date of the rule:  
January 4, 2014
  - a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):  
Not applicable
  - b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):  
Not applicable
4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:  
Notice of Rulemaking Docket Opening: 19 A.A.R. 1929, July 26, 2013  
Notice of Proposed Rulemaking: 19 A.A.R. 1881, July 26, 2013
5. The agency's contact person who can answer questions about the rulemaking:  
Name: John Lindley, Administrative Rules  
Address: Department of Transportation  
Government Relations and Policy Development Office  
206 S. 17th Ave., Mail Drop 140A  
Phoenix, AZ 85007  
Telephone: (602) 712-8804  
Fax: (602) 712-3232  
E-mail: jlindley@azdot.gov  
Web site: Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at [www.azdot.gov/about/GovernmentRelations](http://www.azdot.gov/about/GovernmentRelations).
6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

Notices of Final Rulemaking

A.R.S. § 32-2352(C) authorizes the Director of the Arizona Department of Transportation (Director) to contract with a private entity to conduct inspections and administer the licensure process for professional driver training schools in accordance with rules adopted by the Director. Traffic survival schools are a type of professional driver training school. The Director has entered into a contract with a private entity to perform the statutorily prescribed functions. These amendments are necessary to facilitate the performance of the private entity's contract requirements.

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

The Department did not review or rely on any study relevant to the rule.

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

Not applicable

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

Before the private entity contractor began administering the traffic survival school program, the Department had licensed 74 traffic survival schools and 143 traffic survival school instructors. There were 112 traffic survival school license applicants on a wait list. Since the private entity contractor began administering the traffic survival school program on February 10, 2013, 26 additional schools have been licensed, 60 additional branch sites have been licensed, and 29 additional instructors have been licensed.

In fiscal year 2012, 60.9% of the individuals assigned to traffic survival schools completed traffic survival school courses. In fiscal year 2013, the completion rate was 65%. The completion rate during the five months since the private entity contractor began administering the program is 70.9%.

The private entity contracted pursuant to A.R.S. § 32-2352(C) was selected through the state procurement process and is fulfilling the terms of the contract by providing a revised course curriculum and training instructors on the curriculum; providing all enrollees with a student workbook for the traffic survival school course; handling traffic survival school related phone calls from assigned individuals, including individuals residing out-of-state; printing and mailing all traffic survival school assignments and suspension orders; allowing new schools to apply for licensure; allowing previously licensed traffic survival schools to expand their operations; and developing electronic course enrollment and course completion processes. This proposed rulemaking amends the rule relating to the licensure and administration of traffic survival schools to facilitate the performance of the private entity's contract requirements.

The Department will realize regular annual savings that include no longer having to print course completion forms, traffic survival school assignments, and suspension orders; purchase office and operational supplies; and pay postage fees and archival fees. The Department will also achieve the annual efficiency of employee work hours saved because of manual processes that have been eliminated.

Licensed traffic survival schools will save substantial time by no longer having to request, complete, mail, and store paper forms for enrollees, and schools will save money by eliminating shipping and handling costs previously associated with processing the paper forms. This rulemaking and the contract it facilitates will also benefit licensed traffic survival schools because the electronic enrollment process will allow the schools to verify that prospective enrollees are in fact required to attend traffic survival school. Without that process, licensed traffic survival schools previously had to turn individuals away from their courses if the individuals could not provide proof they were required to attend traffic survival school. Some licensed schools may have to purchase a computer, a printer, and printing supplies in order to use the electronic processes and teach the required curriculum.

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

In R17-4-404, subsections (C), (D), and (F), the phrase "contracted pursuant to A.R.S. § 32-2352(C)" was replaced with the phrase "under contract with the Department" in preparation for implementation of Laws 2013, Chapter 129, effective July 1, 2014, or was deleted as unnecessary.

In R17-4-404(F)(2) the following changes were made:

In the first sentence, " , or on an individual's attendance of," and " , unless the individual has paid the enrollee fee in advance" were added.

In the third sentence, "48 hours" was replaced with "four business days".

A fourth sentence, which reads as follows, was added: "If a licensed traffic survival school does not timely remit the enrollee fees, the Department may notify the traffic survival school that its prospective future enrollees will be required to prepay the enrollee fees until remittances are current."

R17-4-404(F)(3) was rewritten as follows:

"Immediately following each enrollee's satisfactory completion of a traffic survival school course, a licensed traffic survival school shall electronically transmit proof of course completion to the Department for the enrollee in a manner and with the basic computer equipment prescribed by the Department and shall provide a record of satisfactory completion to the enrollee at the conclusion of class, printed from the web site of the Department's

**Notices of Final Rulemaking**

private entity contractor or the Department's website as applicable. At a minimum, the computer equipment must be able to temporarily store, and electronically transmit over the internet, the certificates of course completion required by the Department."

R17-4-404(F)(5), which reads as follows, was added:

"The private entity under contract with the Department may develop and administer a web site that allows individuals who are assigned to traffic survival school to locate and enroll in traffic survival school courses."

In R17-4-404(G), in the last sentence, ", including a computer, a PowerPoint compatible projector, a DVD player, and a display monitor" was added.

In R17-4-407(H)(3), the language was expanded to clarify what the Department considers an acceptable driving record. An acceptable driving record is clear of suspensions, revocations, and traffic survival school assignments.

In addition, minor grammatical and technical changes were made.

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

Company/Individual	Comment	Department's Response
National Traffic Safety Institute (NTSI)/Alex Smith	Regarding R17-4-404(F)(2), we are not opposed to the collection of the contractor's enrollee fee in general, as long as the authorization exists for schools to collect any such fee.	No comment necessary. The authorization requested by the commenter is provided in this rulemaking under R17-4-404(F)(2).
NTSI/Alex Smith	Regarding R17-4-404(F)(2), once the rule is approved and implemented we are not opposed to collecting the records fee.	No comment necessary. The authorization requested by the commenter is provided in this rulemaking under R17-4-404(F)(2).
NTSI/Alex Smith	Oppose the addition of the proposed language to R17-4-404(F)(2) relating to payment of the enrollee fee in advance, because once the rules are effective only one entity should be collecting the enrollee fee. The new language would cause too much confusion for the students.	The addition of this language is not confusing and provides the Department with an option if schools fail to remit the fees. Regardless of where the enrollee fee is paid, an individual cannot enroll until the fee is paid. In order to clarify the authority of the Department regarding potential prepayment of enrollee fees, the fourth sentence was added to R17-4-404(F)(2).
NTSI/Alex Smith	It is impractical to require payment of the enrollee fee at the time an individual enrolls in a class. Many students choose to pay at the class.	The Department has modified R17-404(F)(2) to allow payment of the enrollee fee on enrollment in, or attendance of, a course. The Department's records fee is not due on enrollment, rather it is due and payable before attendance of a course if a corrective action notice is searched for or printed.
NTSI/Alex Smith	Remittance of fees within 48 hours is impractical. The Defensive Driving School (DDS) Program requires that fees be remitted within 11 calendar days. We believe that the Department should adopt a timeline between class completion and remittance of fees of at least 10 calendar days.	The Department has modified R17-404(F)(2) to change the remittance requirement to 4 business days after an individual completes a TSS course. The Arizona DDS program differs significantly from the Department's Traffic Survival School (TSS) program. Remittance under the DDS program is much more complex and is much more highly regulated by the Administrative Office of the Courts. There are numerous different lower courts involved, currently over 160 in 15 different counties, and they charge diversion fees in widely varying amounts. Currently, they range from \$35 to \$150. Therefore, under the DDS program, the extra remittance time may be necessary from an accounting perspective to ensure the correct remittance in the proper amount to the proper lower court. In contrast, the administrative burden for TSS remittance is much less complex. The amount of the enrollee fee does not vary, nor does the records fee. Moreover, a TSS only needs to remit to one entity (the Department's contractor).

**Notices of Final Rulemaking**

NTSI/Alex Smith	<p>Immediate reporting of student completion is inconsistent with industry standards, including those in Florida and Michigan. DDS rules require reporting within 3 days. Previously we have had 5 days to report. The proposed rules do not provide for having certificates of completion printed onsite the day of the class.</p>	<p>Again, the DDS program differs from the TSS program. DDS classes must be completed at least 7 days before an upcoming court date to allow for dismissal of a traffic violation. The 3 days allowed for reporting under the DDS program provides plenty of time for the court to receive the class completion information before hearing the case. The other states cited appear to have programs more similar to Arizona's DDS program. TSS students are different. They have been ordered to attend TSS because of specific moving violations or because of an accumulation of points on their driving record. They often have already had their driver licenses suspended. The immediate reporting requirement benefits the TSS enrollees. The technology is available and in use for immediate reporting. The technology has freed up TSS staff from having to handwrite paper certificates of completion, which was a time-consuming process. The TSS is also saving postage costs by not having to mail certificates of completion. The real-time promptness of reporting is paramount because, once the course completion is reported to the Department, an enrollee may reinstate the enrollee's driver license online or by going to a Department field office. The public interest is protected by allowing individuals with suspended driver licenses to reinstate as soon as possible, and that is certainly the student's expectation.</p>
NTSI/Alex Smith	<p>While the Department is saving funds by contracting out the administration of this program, the burden of printing the certificates is now placed on schools; many of which have purchased printers to print the certificates at the end of the class. This is a direct result of the developed Electronic Process that has included little input from the schools. While the specifics of these Electronic Processes aren't directly outlined in these rules, the schools have already been imposed with these burdens.</p>	<p>The proposed language in R17-4-404(F)(3) already requires that immediately following each enrollee's satisfactory completion of a TSS course that a licensed traffic survival school provide a record of that satisfactory completion to the enrollee. The Department has added a clarification that it must now be an electronically printed record that is immediately provided. The cost of printing a certificate is not much more than a one-time equipment investment. The immediate reporting requirement benefits the TSS enrollees. The technology is available and in use for immediate electronic reporting. The technology has freed up TSS staff from having to handwrite paper certificates of completion, which was a time-consuming process. The TSS is also saving postage costs by not having to mail certificates of completion.</p>
NTSI/Alex Smith	<p>The change to R17-4-404(G) is not clear regarding what the Department requires in presentation of the curriculum. The added language should be more specific or be removed. Printers are currently required in each classroom solely for the purpose of printing certificates at the end of the class. This is part of the implemented electronic processes, but has no apparent benefit towards the presented curriculum.</p>	<p>In R17-4-404(G), the Department has added a list of equipment required to present the uniform curriculum. The Department has added clarification under R17-4-404(F)(3) regarding prescribed equipment and the requirement that records of completion be electronically printed.</p>

**Notices of Final Rulemaking**

NTSI/Alex Smith	<p>Concerns about the private contractor's web site for registration of individuals who have been ordered to attend TSS were expressed. Specific concerns include the use of a zip code search for individuals to locate schools near them and the private contractor invading the schools marketing arena. The suggestion was presented that the private entity contractor implement a rotating list by county.</p>	<p>The purposes of online enrollment are to encourage more individuals to enroll in and complete TSS courses and to increase access to a more simplified enrollment process. Individuals assigned to TSS are now able to use the web site of the Department's contracted entity to search for nearby classes by entering their exact address or zip code, and filter by date. Enrollment and completion of TSS classes has consistently increased since implementation of the new process by the Departments contracted private entity in February 2013.</p> <p>The private entity contractor is not performing any marketing function. The contractor is simply providing an electronic method for individuals ordered to attend TSS to locate and enroll in TSS courses as provided under the contract between the Department and the private entity. In order to make it clear that the web site is authorized, the Department added R17-4-404(F)(5).</p> <p>The Department believes that facilitating re-education of these drivers enhances the safety of Arizona motorists and their passengers. Online enrollment through the web site of the Department's contracted entity does not replace or invade the marketing arena of any school. A TSS is free to continue its own advertising and marketing strategies any way it chooses. A TSS can still accept walk-in students and register others using their own web site. However, some schools have indicated to the Department that they are grateful for the chance to enroll students without also having to expend otherwise limited resources on additional marketing strategies to capture the attention of eligible students.</p> <p>The only restriction on the size of a class is the safe fire capacity of the room where the class is held. Enrollment in a TSS course through the web site of the Department's contracted entity basically reserves a spot for the student in that class. A TSS is later able to adjust class sizes if under- or overbooked by asking students to move to different days and times as necessary. At the same time they can offer discounts for doing so, or for other reasons, as part of their marketing strategy at that moment.</p> <p>The Department considered the suggestion of a rotating list of schools by county, but later determined that the current search options, as listed above, can best provide potential students the ability to locate the closest or most convenient TSS classroom location to the student's address.</p>
NTSI/Alex Smith	<p>At the public comments meeting we heard several smaller schools comment that the new web-site is preferred because it "levels the playing field." We suggest such intentional "leveling" by a government contractor is simply inappropriate in this private competitive market.</p>	<p>The rules do not restrict TSS marketing in any way. The Department's private entity contractor provides a convenient means for students to enroll in a class through their web site. The student picks a school, registers, and is added to the class roster. This process does not in any way limit a student's ability to register for a class using a school's web site, or by calling a school directly, or by walking-in on the day of class. A TSS can still market to their students before and after the student enrolls in a class on the web site of the Department's private entity contractor. "Leveling the playing field" between existing schools is not the purpose of these rules. The purpose of these rules is to increase student enrollment and completion of TSS by expanding methods of consumer choice and making school information and enrollment easier.</p>

**Notices of Final Rulemaking**

NTSI/Alex Smith	<p>Even now, schools have received notice that special programming will be implemented against them based on the un-codified collection of the Enrollee Fee; the specifics of which were released by the Department. While schools are not required to collect any fee at the moment, certain schools will be held to a different standard until they collect and remit this fee.</p>	<p>The Department currently has no authority by statute or administrative rule to require a licensed school or instructor to collect and remit enrollee fees authorized under A.R.S. § 32-2352(C)(2). However, lack of an administrative rule requiring the electronic remittance of a fee currently authorized by statute does not mean that the fee is not due.</p> <p>Until these rules are enacted, schools will remain free to choose between collecting and remitting the enrollee fee to the contractor or having their students prepay the contractor. The special programming to which the commenter refers affects only the few schools that collected but failed to remit the statutory enrollee fee. Therefore, while a licensed school is delinquent in enrollee fee remittances, its prospective students must prepay their enrollee fee when registering for a class on the contractor's web site. There were six school owners that received such notice. The vast majority did not, because they remit timely.</p> <p>The new programming is seamless from the viewpoint of the prospective students and makes it possible for them to go online independently and directly pay their enrollee fees to the Department's private entity contractor, with no indication at all that prepayment is required because of the school they have chosen.</p> <p>These rules, once enacted, will <i>require</i> the schools to collect and remit enrollee fees to the Department's private entity contractor, so that in the future the above referenced special programming will only be necessary in situations where schools are delinquent in their fee remittances.</p>
<p>Andy M. Kvesic representing the following clients: Anastasia Keller, d/b/a Fix A Dent Traffic School, d/b/a Absolutely Just My Luck, d/b/a But Officer I'm Innocent Four Phx Loc TSS, d/b/a Aghh Gotch Again, d/b/a A Espanol Entodas Las Escuelas, d/b/a But It Was Yellow!, d/b/a Totally Innocent, d/b/a Smile &amp; Say Cheese, d/b/a A Likely Story, d/b/a I've Been Framed Traffic School, d/b/a It Wasn't Me!, d/b/a Busted Traffic School, d/b/a West Valley TSS; Facts and Fun, Inc.; NTSI; and Tucson's Fun Traffic Survival School (Clients)</p>	<p>Regarding the requirement under R17-4-404(F)(2) that the enrollee fee and records fee be paid, after the rule amendment effective date that issue is resolved.</p>	<p>No comment necessary. The authorization requested by the commenter is provided in this rulemaking under R17-4-404(F)(2).</p>
<p>Andy M. Kvesic, representing Clients</p>	<p>Concerns regarding timing issues. The remittance time frame and the issuance of certificates of completion time frame should both be longer and consistent with the DDS program time frames.</p>	<p>The Department has modified R17-404(F)(2) to change the remittance requirement to four business days after an individual completes a TSS course. The Department believes that, given the nature of TSS and the enrollees, the public and enrollees are best served by the requirement that proof of satisfactory completion of a TSS course be immediately electronically transmitted to the Department and that the enrollee be immediately provided with an electronically printed record of that completion. Having just completed a class, TSS students reasonably expect that they can immediately take steps to adjust their driver license status with the Department.</p>



**Notices of Final Rulemaking**

Andy M. Kvesic, representing Clients	Equipment requirements should be specified.	In R17-4-404(G), the Department has added a list of equipment required to present the uniform curriculum. The Department has added clarification under R17-4-404(F)(3) regarding prescribed equipment and the requirement that records of completion be electronically printed.
Andy M. Kvesic, representing Clients	Concerns were raised about how this rulemaking will be impacted by Laws 2013, Chapter 129 (HB 2183).	The Department will address the requirements of HB 2183 early next year in a subsequent exempt rulemaking pursuant to the expressed terms of HB 2183. At the time of the exempt rulemaking, stakeholder input will again be solicited.
Andy M. Kvesic, representing Clients	Significant issues with the way the contracted private entity is operating the web site, including the zip code search function that is not based on the potential student's actual address, not all available course options are readily apparent on the web site because they currently reside in a drop down menu and the method of delivery is invading the ability of the schools he represents to compete. His clients have invested significant capital in advertising and marketing themselves through fair competition for the purpose of obtaining business from students. Suggested the use of randomized lists.	<p>The private entity contractor is not performing any marketing function. The contractor is simply providing an electronic method for individuals ordered to attend TSS to locate and enroll in TSS courses as provided under the contract between the Department and the private entity. In order to make it clear that the web site is authorized, the Department added R17-4-404(F)(5).</p> <p>Individuals assigned to TSS are now able to use the web site of the Department's contracted entity to search for nearby classes by entering their exact address or zip code and filtering by class date, which can now provide students with the closest, most convenient location to the student's address. The purposes of online enrollment are to encourage more individuals in Arizona to enroll in and complete TSS courses and to increase access to a more simplified enrollment process. This has been successful, as participation rates are increasing. Re-educating these drivers enhances the safety of Arizona motorists and their passengers. Online enrollment through the web site of the Department's contracted entity does not replace or invade the marketing arena of any school. A TSS is free to continue its own advertising and marketing strategies any way it chooses. A TSS can still accept walk-in students and register other enrollees using their own web site.</p>
AZTS/Dave Worley	Regarding printing certificates at the end of class. My instructors used to spend every free moment writing certificates because they had to get them done by the end of the day. One mistake and they would have to reprint the whole thing again. Some instructors had to be there until 6:00 at night trying to write the certificates out. This [new] program had its bumps just like anything else, we were concerned with programming changes no going right, but once you get into it, we have laptops, we have projectors because we don't want to subject our students to sitting there looking at a 16" television from 40' away. It's called quality, we run a quality program, and I'm sure all schools do the same, so it wasn't much of a jump to say hey guys go out and get a \$40 printer and here is a ream of paper. They [the students] come in, we check them in online, they're done. The instructor can actually talk to them during breaks and do more one-on-one with them without having to worry about getting those certificates out of the way.	The Department agrees. No further comment necessary.

**Notices of Final Rulemaking**

AZTS/Dave Worley	<p>As far as the zip code [search function], I think it's ingenious, I wish the Supreme Court would do it, it took out all the DBAs. When someone [a school] comes in with 14 DBAs it's all a marketing ploy, a marketing tool schools use. The unfortunate thing is that it is the student, it's the public, who suffer from it because the schools are fighting amongst themselves. Every school meeting I go to I try to get that changed, but I'm glad to see this [the rulemaking] occurring because everybody goes to a zip code. If you've got a location there then fine, we're serving the public, we can't lose sight of our end product. Let the schools do the fighting elsewhere. I guess I like this [process] better than the [DDS process used by the] Supreme Court actually, I have no problem.</p>	<p>Individuals assigned to TSS are now able to use the web site of the Department's contracted entity to search for nearby classes by entering their exact address or zip code and filter by class date, which can now provide students with the closest, most convenient location to the student's address.</p>
AZTS/Dave Worley	<p>Since coming off contract with the Arizona Supreme Court in 2008, and having to go to online, where we were once around 14 to 17 schools, we saw that [number] increased to roughly 80 or 85 schools, a lot of those are Doing Business As (DBAs), I call it "buying a spot on the list." So what we are faced with in the driving school arena is, for example, Navajo County, or Coconino County, I'm up there, one school, Arizona Traffic School, but then you have six schools owned by the same person and they are taking all those six classes and putting them into one classroom. So we get complaints from students, they'll call in and say "I called school A, school B, school C, school D, and they all go to the same classroom." "They ask me if I am in that same classroom." I have fought to at least take all the DBAs and at least identify them as being DBAs.</p>	<p>Individuals assigned to TSS are now able to use the web site of the Department's contracted entity to search for nearby classes by entering their exact address or zip code and filter by class date, which can now provide students with the closest, most convenient location to the student's address.</p>

**Notices of Final Rulemaking**

<p>Bruce Thornhill, Instructor</p>	<p>My impression from what appears to be a minority of TSS operators is that their view is all about the operation of their business and not the service of the driving public. It is important to shift the responsibility for taking care of the issues that hamper the full compliance of those who are assigned to TSS classes. The web portal changes made as a result of Arizona Chapter National Safety Council has a dramatic impact on the positive feedback I have been getting from my TSS students. As I stated, about half of those in class have a currently suspended license and have nothing but praise for the system change that allows them to reinstate their license on the same day (excluding other issues). This change eliminates excuses from errant drivers for not taking care of the mandatory class.</p> <p>The fact is that the TSS curriculum has been selected, approved and is well received by the students who attend. Of course, the TSS instructors/schools have 90 minutes of the course to add material as they see fit within the guidelines established. The notion that the instructor/school has not had any input into the process is absurd. In fact, as one of the people who made suggestions as ACNSC was developing their web portal, some of what I suggested actually ended up in the final product. It should be noted that ACNSC has not charged the instructors or the schools for <b>ANY</b> of the <b>materials that they are using currently</b> as well as the instructor classes. So, any of the discontent from the mal-content schools about costs is really pretty groundless. It makes more sense to concentrate on delivering a quality service to the student with technology that is available.</p> <p>Now, I think TSS schools should be given enough time to process payments (3 to 5 business days), but that is an easy fix. The rules do not have enough enforcement "teeth" in any case. Lastly, the zip [code] information [on the contractor's web site] is important in getting the student to the class and the class to the student.</p>	<p>The Department has modified R17-404(F)(2) to change the remittance requirement to four business days after an individual completes a TSS course.</p> <p>To enhance the contractor's web site search functions and choices an exact address search feature is now available for prospective students to find the closest, most convenient location to the student's address. However, schools remain free to have their own web sites and to design them as they wish in order to market to prospective TSS students.</p>
<p>Arizona State TSS/Lewis Green</p>	<p>The new system is user friendly. We have the ability to receive and report information in real-time. We like the fact that we can print the certificates of completion on completion as opposed to completing the certificates by hand. The equipment issues have not been a problem. All instructors are using a laptop and printer in the classroom. The process has been streamlined. We still market the program separate from the new system. The zip code system is beneficial. The DDS system is an unfair system.</p>	<p>The zip code search functionality is still available on the contractor's web site if a potential student wants a broader geographical search range that is still somewhat close to their point of inquiry. However, the exact address feature allows them to accomplish a more pinpointed search. In addition, the traditional list functionality of searching through the list of schools as they have chosen to name themselves still exists, and it is accessible from the same web page as the other two search methods. In light of these multiple search methods, the DDS system of having rotating lists of schools by name, sorted by county, seems to be unnecessary given the fact that there are superior search choices available on the contractor's web site. The Department and its contractor believe that a variety of search choices make it easier for potential TSS students to find information about schools and to sign-up for classes offered by those schools.</p>

**Notices of Final Rulemaking**

<p>Anastasia Keller, d/b/a Fix A Dent Traffic School, d/b/a Absolutely Just My Luck, d/b/a But Officer I'm Innocent Four Phx Loc TSS, d/b/a Aghh Gotch Again, d/b/a A Espanol Entodas Las Escuelas, d/b/a But It Was Yellow!, d/b/a Totally Innocent, d/b/a Smile &amp; Say Cheese, d/b/a A Likely Story, d/b/a I've Been Framed Traffic School, d/b/a It Wasn't Me!, d/b/a Busted Traffic School, d/b/a West Valley TSS</p>	<p>Likes some things about the program, but feels like input was not sought from the licensees. Likes the certificates of completion issued at the end of the day. The curriculum is working out now, but it took some time. Registration online takes all registration authority away from the schools. Leveling the playing field is not right.</p>	<p>The Department and its private entity contractor have provided significant outreach to the regulated community throughout the implementation of the private entity contract and continue to solicit input from the regulated community in order to improve the TSS program.</p> <p>The Department's private entity contractor provides a convenient means for students to enroll in a class through their web site. The system offers the same schools and class choices as those offered or made available prior to implementation of the new system. The student picks a school, registers, and is added to the school's class roster. This process does not in any way limit a student's ability to register for a class using a school's web site, or by calling a school directly, or by walking-in on the day of class. A TSS can still market to their students before and after the student enrolls in a class on the web site of the Department's private entity contractor. "Leveling the playing field" between existing schools is not the purpose of these rules. The purpose of these rules is to increase student enrollment and completion of TSS by expanding methods of consumer choice and making school information and enrollment easier. The only restriction on the size of a class is the safe fire capacity of the room where the class is held. Enrollment in a TSS course through the web site of the Department's contracted entity basically reserves a spot for the student in that class. A TSS is later able to adjust class sizes if under- or overbooked by asking students to move to different days and times as necessary. At the same time they can offer discounts for doing so, or for other reasons, as part of their marketing strategy at that moment.</p>
<p>Statewide Traffic Survival School/ Alex Eribes, Business Operations Manager</p>	<p>No objections to any of the rules proposed, except that the 48 hour period to post a remittance should be 48 business hours.</p>	<p>The Department has modified R17-404(F)(2) to change the remittance requirement to 4 business days after an individual completes a TSS course.</p>

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

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

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

A traffic survival school or instructor license is a "general permit" since the activities and practices authorized by each type of license are the same for all licensed traffic survival schools or instructors.

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

The rule is not more stringent than any applicable federal law because federal law is not applicable to this rule.

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

No analysis was submitted to the Department.

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

This rulemaking incorporates no materials by reference.

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

Not applicable

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

Notices of Final Rulemaking

TITLE 17. TRANSPORTATION

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

ARTICLE 4. DRIVER LICENSES

Section

R17-4-404. Driver Point Assessment; Traffic Survival Schools

ARTICLE 4. DRIVER LICENSES

**R17-4-404. Driver Point Assessment; Traffic Survival Schools**

- A. Point assessment. The ~~Division~~ Department shall assign points to a driver, as prescribed under Table 1, Driver Point Valuation, for each violation resulting in a conviction or judgment.
- B. Actions after point assessment. Under A.R.S. § 28-3306(A)(3), if a driver accumulates eight or more points in ~~the~~ a twelve-month period, the ~~Division~~ Department shall:
1. Order the driver to successfully complete the curriculum of a licensed traffic survival school; or
  2. Suspend the driver's Arizona driver license or driving privilege.
- C. Traffic survival school order of assignment. The ~~Division~~ Department or the private entity under contract with the Department shall send a dated order of assignment to traffic survival school, as prescribed under A.R.S. § 28-3318, to a driver who accumulates 8 to 12 points in ~~the~~ a twelve-month period, and who did not ~~previously~~ complete a traffic survival school course in the previous twenty-four-month period.
1. The order of assignment shall:
    - a. Instruct the driver to submit any hearing request to the ~~Division~~ Department within 15 days after the date of the order of assignment; and
    - b. Instruct the driver that failure to successfully complete traffic survival school within 60 days after the date of the order of assignment will result in the ~~Division~~ Department issuing a six-month order of suspension.
  2. The ~~Division~~ Department shall record that a driver completed traffic survival school if:
    - a. A licensed traffic survival school reports that the driver successfully completed the curriculum; ~~or~~
    - b. The driver presents to the ~~Division~~ Department an original certificate of completion issued by a licensed traffic survival school, within 30 days of issuance of the certificate.
- D. Suspension for failure to complete traffic survival school. The ~~Division~~ Department or the private entity under contract with the Department shall mail a driver a six-month order of suspension, as prescribed under A.R.S. § 28-3318, if the driver failed to establish completion of traffic survival school in accordance with subsection (C). The order of suspension shall:
1. Specify the period within which the driver may submit a hearing request to the ~~Division~~; Department, and
  2. Specify the effective date of the suspension.
- E. Suspension for accumulation of excessive points. The ~~Division~~ Department shall mail an order of suspension as prescribed under A.R.S. § 28-3318 to a driver who accumulates an excessive amount of points. The order of suspension shall:
1. Specify the length of the suspension as follows:
    - a. ~~A three-month suspension for accumulation of 13 to 17 points in the twelve-month period;~~
    - b. a. A three-month suspension for accumulation of 8 to 12 points in the a twelve-month period and if a traffic survival school course was successfully completed in the previous twenty-four-month period;
    - b. A three-month suspension for accumulation of 13 to 17 points in a twelve-month period;
    - c. A six-month suspension for accumulation of 18 to 23 points in ~~the~~ a twelve-month period; and
    - d. ~~A 12-month~~ twelve-month suspension for accumulation of 24 or more points in ~~the~~ a thirty-six-month period;
  2. Specify the period within which the driver may submit a hearing request to the ~~Division~~ Department; and
  3. Specify the effective date of the suspension.
- F. Licensed schools.
1. ~~Under the provisions of A.R.S. § 28-3307, the Division~~ The Department shall assign an individual only to a traffic survival school licensed by the Director.
  2. ~~Governmental agencies, corporations, or other individuals conducting training and educational sessions designed to improve the safety and habits of drivers may, upon request, receive the approval of the Director when they offer the approved curriculum taught by qualified instructors.~~
  2. On enrollment of an individual in, or on an individual's attendance of, a traffic survival school course, a licensed traffic survival school shall collect the statutory enrollee fee, unless the individual has paid the enrollee fee in advance. The licensed traffic survival school also shall collect the records fee prescribed by A.R.S. § 28-446, if applicable,

**Notices of Final Rulemaking**

before the individual attends the traffic survival school course. The licensed traffic survival school shall fully remit these fees to the private entity under contract with the Department within four business days after an individual completes the traffic survival school course. If a licensed traffic survival school does not timely remit the enrollee fees, the Department may notify the traffic survival school that its prospective future enrollees will be required to prepay the enrollee fees until remittances are current. The amount of the enrollee fee charged by the private entity shall be negotiated by the Department and the private entity and shall be set forth in the contract.

3. Immediately following each enrollee's satisfactory completion of a traffic survival school course, a licensed traffic survival school shall electronically transmit proof of course completion to the Department for the enrollee in a manner and with the basic computer equipment prescribed by the Department and shall provide a record of satisfactory completion to the enrollee at the conclusion of class, printed from the web site of the Department's private entity contractor or the Department's website as applicable. At a minimum, the computer equipment must be able to temporarily store, and electronically transmit over the internet, the certificates of course completion required by the Department.
  4. The private entity under contract with the Department may monitor the performance of any licensed traffic survival school and report results to the Department. The Department or the private entity may conduct audits and inspections the Director deems necessary to determine a licensed traffic survival school's compliance with applicable statutes and rules.
  5. The private entity under contract with the Department may develop and administer a web site that allows individuals who are assigned to traffic survival school to locate and enroll in traffic survival school courses.
- G. Approved curriculum. The Director shall approve, and may modify, in writing a uniform curriculum that the traffic survival school shall teach to individuals assigned to school. The curriculum will shall be selected and approved on the basis of effectiveness in improving the safety and habits of drivers. Each licensed traffic survival school must use all equipment required by the Department to present the uniform curriculum to individuals assigned to the school, including a computer, a PowerPoint compatible projector, a DVD player, and a display monitor.
- H. Qualified instructors. Only those persons who meet the following qualifications will may be deemed qualified instructors and allowed to teach individuals assigned by the ~~Division~~ Department to approved licensed schools:
1. An instructor shall be a high school graduate and shall have successfully completed an examination given for qualifications of instructors by the ~~Division~~ Department.
  2. An instructor shall complete a curriculum workshop approved by the Director. An instructor may be temporarily certified if the instructor successfully completes, as a student, a course using ~~Division~~ the Department approved curriculum and agrees to attend the next available curriculum workshop for complete orientation.
  3. An instructor shall be at least 21 years of age, ~~have an acceptable personal driving record~~, be accepted for employment by an approved a licensed school, ~~have a driving record clear of suspensions, revocations, and traffic survival school assignments~~, and be of good moral character.
- I. ~~Withdrawal of approval. The Cancellation, suspension and revocation of licenses. After conducting a hearing, the Director is authorized, after affording a party a hearing, to withdraw approval of any training and education may suspend, cancel or revoke a traffic survival school license and is authorized to withdraw the approval of any or instructor when license if satisfactory evidence shows that a school or instructor, individually or collectively, has failed to maintain comply with the approved licensing standards provided under applicable statutes or rules, or has given provided false or misleading information to the ~~Division~~ false information Department in their either the school's or instructor's application for approval licensure or in response to an audit or inspection conducted pursuant to subsection (F)(4).~~
- J. Conflict of interest. ~~No~~ A full-time employee of the state of Arizona shall not receive any direct pecuniary payments from registration any fees paid by those who attend approved schools a licensed school.