

ARIZONA LOTTERY

Five-Year-Review Report

19 A.A.C. 3

Article 6: Annuity Assignments

December 2012

HISTORICAL OVERVIEW OF AGENCY

Agency Mission:

To support Arizona programs for the public benefit by maximizing net revenue in a responsible manner.

Agency Background:

The Arizona Lottery was approved by a statewide public initiative in November 1980, becoming the first state west of the Mississippi to have a legal, state-administered lottery. Although the initial approval margin was slim – 51 to 49 percent – subsequent referendums showed high public support. In November 1997, 68 percent of the voters approved the Lottery for five years and in November 2002, 73 percent of Arizonans voted to extend the Lottery for an additional 10 years. As a result of legislative action in the 2010 Legislative 6th Special Session, the original voter-established Lottery was replaced by a legislatively-established Lottery. This “new” Lottery began operations July 2012 and will be subject to sunset in 2035.

Lottery sales began July 1, 1981, with a single \$1 “Scratch it Rich” instant game that sold out 21.4 million tickets in 10 days! Scratchers remained the only product until 1984 when the Lottery introduced its first on-line (drawing) game, The Pick. Over the years, additional drawing games have been introduced and the number of instant ticket games has grown significantly. The Lottery currently offers seven drawing games, plus a periodic Raffle, and has more than 50 instant ticket games in market each year. As a result of legislation in the 2010 Legislative Session, the Lottery also became the provider of instant tab games that are sold by charitable organizations. These organizations earned approximately \$650,000 in commissions to help support charitable activities in FY12.

Since its inception, the Lottery’s mandate has been to maximize net revenue consonant with the dignity of the state. The Lottery is overseen by an Executive Director appointed by the Governor, in addition to a 5-member Commission, also appointed by the Governor. The Lottery is entirely self-supporting, receiving no General Fund monies. The Lottery sells products and redeems prizes through a state-wide network of approximately 2800 licensed retailers, who receive a

commission on each ticket sold.

A portion of Lottery proceeds is appropriated to pay for Lottery operating costs, and at least 50% of revenues must be utilized for payment of prizes. Remaining Lottery funds are statutorily directed to various benefiting funds including the General Fund. In FY10, the State issued bonds against future Lottery revenues in the amount of \$450 million. As a result, the Lottery is responsible for meeting bond debt service payments through 2029, in addition to traditional beneficiary obligations.

The Lottery has achieved record sales levels in recent years, despite challenging economic conditions. For FY12, total sales were \$646.7 million and transfers to state beneficiaries were \$164.7 million – both new record highs! FY12 also marked the fifth consecutive year of record sales and the third straight year that every designated Lottery beneficiary received full funding.

OVERVIEW OF 5-YEAR REVIEW

A.R.S. § 5-554(B) requires the Commission to authorize the Lottery Director to adopt rules in accordance with Title 41, Chapter 6. Rules adopted may include matters necessary or desirable for the efficient and economical operation and administration of the Lottery, as provided in A.R.S. § 5-554(B)(7). The Lottery may also adopt rules relating to the payment of prizes, including the purchase of annuities, as provided in A.R.S. § 5-554(B)(3). A.R.S. § 5-563(A)(3)(c) specifically addresses the voluntary assignment of a Lottery annuity to another party and authorizes a fee paid to the Lottery to defray the cost of processing the assignment.

19 A.A.C. 3, Article 6 became effective in July 2005 and has not been amended since that time. The rule sets forth provisions regarding the voluntary assignment of an annuity, including a fee due to the Lottery when a prize winner requests an assignment of all or a portion of the remaining installments of an annuity. The fee represents the Lottery's cost to process the assignment.

The review of this rule was conducted by Arizona Lottery staff and the Lottery's Assistant Attorney General. As a result of the evaluation, the agency proposes to retain the rule as currently written. Updating a statutory reference is the only necessary change and a request has already been sent to the Secretary of State's Office to make this technical edit in the next supplement of the Arizona Administrative Code. Otherwise, the procedures and provisions of the rule remain current and the fee still allows the agency to recover processing costs.

ANALYSIS OF INDIVIDUAL RULES

R19-3-601. Voluntary Assignment of Prizes Paid in Installments

1. Statutory authority:

General: A.R.S. § 5-554(B)

Specific: A.R.S. § 5-563(A)(3)(c)

2. Objective:

This rule explains the procedures for a Lottery prize winner to request an assignment of all or a portion of the remaining installments of an annuity.

3. Effectiveness in achieving the objective:

This rule is not entirely effective because of an outdated statutory reference in R19-3-601(B)(1). The Lottery has new statutes that became effective July 2012, and the reference should now be A.R.S. § 5-563(A)(3) instead of A.R.S. § 5-513(A)(3). A technical correction request has been sent to the Secretary of State's Office for inclusion in the next update to the Arizona Administrative Code. The rule will effectively achieve its objective once this update is made.

4. Consistency with state and federal statutes and rules:

This rule is consistent with Lottery statutes, specifically with A.R.S. § 5-563(A)(3)(c). There are no federal statutes applicable to this rule.

5. Agency enforcement of the rule:

The Lottery adheres to the rule as written. The rule is fairly and consistently enforced.

6. Clarity, conciseness and understandability:

The rule is generally clear, concise, and understandable, but R19-3-601(B)(1) must be updated to reflect new Lottery statutes as addressed in item #3. The outdated citation detracts from clarity and understandability.

7. Written criticisms:

No written criticisms of the rule have been received in the last five years.

8. Economic, small business and consumer impact comparison:

The last economic impact statement was prepared when this rule was initially filed with Council in March 2005. Upon review, the Lottery believes the actual economic impact of this rule has not differed significantly from the economic impact statement submitted in 2005.

The rule continues to primarily affect the agency and the prize winner (or assignee of the prize winner) requesting an annuity assignment. Costs to the Lottery include time spent by Lottery administrative staff and the Attorney General's Office to process the assignment. The established fee of \$235 was based on the average cost per assignment and after review, remains sufficient for the Lottery to recover administrative costs. The Attorney General's time no longer requires the use of a legal assistant due to the decreased volume of assignment cases. Although the Assistant Attorney General now handles all aspects of annuity assignments, the reduced volume allows for faster and more efficient processing per case. The Lottery's processing time has also decreased slightly due to the automation of previously more manual procedures. Revised cost calculations based on updated time allocations result in an overall increase of \$2.15. This slight difference would not merit a fee adjustment, especially since the number of cases filed and corresponding fees collected in any given year are minimal. It remains the responsibility of either the prize winner or assignee of the prize winner to pay the fee due to the Lottery.

The number of assignment cases continues to show a decline from earlier years. For the period July 2008 through June 2012, there were only 17 total assignment cases filed and nine of these were related to a "Cash Spectacular" instant ticket game that only offered annuity top prizes. All but one annuitant chose to assign their top prize winnings from this game. Given the high number of annuity assignments associated with the game, and the fact that assignments are typically not in the best interest of the prize winner, the Lottery made the decision to offer a cash option for subsequent instant ticket games of this type. The number of assignment cases is expected to remain comparable with the volume in recent years and may actually decline further as more prize winners choose the cash option and existing annuities reach the end of their terms.

The rule does not have an economic impact on political subdivisions of the state, private and public employment, or Lottery retailers. Consistent with the previous economic impact statement, the impact on state revenues has been minimal.

9. Analysis submitted by another person regarding business competitiveness:

No person has submitted an analysis to the agency regarding the rule's competitive impact on businesses in this state compared to the competitive impact on businesses in

other states.

10. Completion of course of action in previous five-year review:

The previous five-year review for this Article was approved by Council in February 2008. The rule was retained as written; therefore, no action was required.

11. Burden and costs to persons regulated by the rule:

The agency believes the rule imposes the least burden and cost to persons regulated by the rule. The assignment of a Lottery prize is voluntary and at the discretion of the prize winner. Annuity assignments create additional work and expenses for the Lottery that would not otherwise be incurred; the fee allows the agency to recover these costs.

12. Stringency of the rule compared to corresponding federal law:

There are no federal laws applicable to this rule.

13. Compliance with § 41-1037 regarding the issuance of permits:

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

14. Proposed course of action:

Except for the technical statutory correction in R19-3-601(B)(1), the Lottery proposes to retain the rule as currently written. The procedures and provisions remain current and total administrative processing costs have changed only minimally. The Lottery believes no action is warranted at this time.

ARIZONA LOTTERY

Five-Year-Review Report

19 A.A.C. 3

Article 10: Promotions

January 2016

HISTORICAL OVERVIEW OF AGENCY

Agency Mission:

To support Arizona programs for the public benefit by maximizing net revenue in a responsible manner.

Agency Background:

The Arizona Lottery was approved by a statewide public initiative in November 1980, becoming the first state west of the Mississippi to have a legal, state-administered lottery. Although the initial approval margin was slim – 51 to 49 percent – subsequent referendums showed high public support. In November 1997, 68 percent of the voters approved the Lottery for five years and in November 2002, 73 percent of Arizonans voted to extend the Lottery for an additional 10 years. As a result of legislative action in the 2010 Legislative 6th Special Session, the original voter-established Lottery was replaced by a legislatively-established Lottery. This “new” Lottery began operations July 2012 and will be subject to sunset in 2035.

Lottery sales began July 1, 1981, with a single \$1 “Scratch it Rich” instant game that sold out 21.4 million tickets in 10 days! Scratchers remained the only product until 1984 when the Lottery introduced its first on-line (draw) game, The Pick. Over the years, additional draw games have periodically been introduced and the number of instant ticket games has grown significantly. The Lottery currently offers seven draw games and has more than 50 instant ticket games in market each year. As a result of legislation in the 2010 Legislative Session, the Lottery also became the provider of instant tab games that are sold by charitable organizations. These organizations earned approximately \$1 million in commissions to help support charitable activities in FY15. Legislation passed in the 2015 Legislative Session authorized the Lottery to sell game products in age-restricted locations, with \$1 million of proceeds allocated to the Internet Crimes Against Children Fund and the Victim’s Rights Enforcement Fund.

Since its inception, the Lottery’s mandate has been to maximize net revenue consonant with the dignity of the state. The Lottery is overseen by an Executive Director appointed by the Governor,

in addition to a 5-member Commission, also appointed by the Governor. The Lottery is entirely self-supporting, receiving no General Fund monies. The Lottery sells products and redeems prizes through a state-wide network of approximately 2900 licensed retailers, who receive a commission on each ticket sold.

A portion of Lottery proceeds is appropriated to pay for Lottery operating costs, and at least 50% of revenues must be utilized for payment of prizes. Remaining Lottery funds are statutorily directed to various benefiting funds including the General Fund. In FY10, the State issued bonds against future Lottery revenues in the amount of \$450 million. As a result, the Lottery is responsible for meeting bond debt service payments through 2029, in addition to traditional beneficiary obligations.

The Lottery has achieved record sales levels in recent years, despite challenging economic conditions. For FY15, total sales were a record \$750 million and transfers to state beneficiaries were \$176 million.

OVERVIEW OF 5-YEAR REVIEW

A.R.S. § 5-554(B) requires the Commission to authorize the Lottery Director to adopt rules in accordance with Title 41, Chapter 6. Rules adopted may include matters necessary or desirable for the efficient and economical operation and administration of the Lottery, as provided in A.R.S. § 5-554(B)(7). The Lottery may adopt rules relating to the payment of prizes as provided by A.R.S. § 5-554(B)(3) and A.R.S. § 5-554(C)(3) specifically authorizes the Lottery Commission to approve orders pertaining to the sale of tickets for promotional purposes.

The most recent amendments to 19 A.A.C. 3, Article 10 were effective in September 2007. The Lottery submits rule amendments for this Article to the Attorney General's Office in accordance with A.R.S. § 41-1057(A)(4). The rules were primarily amended to improve efficiency by grouping a lengthy list of existing promotions into more general categories. The promotions rules set forth provisions unique to the conduct of Arizona Lottery promotions with the objective of stimulating sales, as well as public and retailer awareness of Lottery games and benefits.

The review of this rule was conducted by Arizona Lottery staff and the Lottery's Assistant Attorney General. The rules were reviewed for consistency with actual practice, for future promotional needs, and for overall clarity. As a result of the evaluation, the agency intends to amend the rules - although the rules continue to provide an adequate framework, the promotion approval process could be more efficient. The Lottery will strive to submit a final rulemaking package to the Attorney General by June 2018 provided the rulemaking moratorium has been lifted. The Lottery can request an exemption in order to complete the amendments, but recognizes the proposed changes may not sufficiently meet exemption requirements set forth in Executive Order.

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

1. **Statutory authority:**

General: A.R.S. § 5-554(B).

Specific: A.R.S. § 5-554(C).

4. **Consistency with state and federal statutes and other rules made by the agency:**

All rules are consistent with the Lottery's enabling legislation, A.R.S. §§ 5-551 *et seq.*, as well as other Lottery rules in 19 A.A.C. 3. There are no federal statutes applicable to these rules.

7. **Written criticisms:**

No written criticisms of the rules have been received within the last five years.

8. **Economic, small business and consumer impact comparison:**

The promotions rules were last approved by the Attorney General's Office in August 2007 and an economic impact statement was prepared at that time. After review, the Lottery believes the actual economic impact of the rules is consistent with the 2007 economic impact statement.

The rules continue to primarily affect the agency, Lottery retailers, Lottery players, and to some degree, state revenues. Costs to the Lottery include expenditures associated with cash or merchandise prizes, point-of-sale items, and any dedicated advertising related to promotions. These expenses continue to be included in the agency's annual appropriation. Consistent with the previous economic impact statement, the Lottery has not experienced any additional, unanticipated costs as a result of the rulemaking.

Promotions are used as a tool to expand knowledge and visibility of various game products. In FY15, the Lottery conducted 93 total promotions, which included a combination of game, retailer, and marketing promotions. The corresponding applicable playstyles for these promotions were: Second Chance Drawing – Player (3); Buy X and Get Y Free - Player (77); Media Promotion (11); Sell X and Get Y Free, Every Nth Transaction – Retailer (1); Retailer Incentive (1).

Lottery retailers were identified as the only businesses that would be impacted by these rules. Lottery promotions were expected to benefit retailers through the potential to earn incremental commissions and the Lottery believes the actual impact has been as projected. There are currently about 2900 licensed Lottery retailers that receive a

commission of 6.5% for each Lottery transaction. Although there is no practical way to separate commissions due to promotional activities, traditional retailers earned \$49.8 million in commissions in FY15 as compared to \$36.9 million five years ago in FY10. Charitable organizations earned approximately \$1.0 million in commission for FY15, but typically are not participants in targeted Lottery promotions.

As estimated in the previous economic impact statement, Lottery game promotions provide financial benefit to the state. Although not directly measurable, incremental revenues generated by promotions are revenues that would not have been realized otherwise. A percentage of Lottery game revenue is returned to the state to fund various beneficiary programs as specified in A.R.S. § 5-572. In FY15, the overall percentage returned to the state was about 23% of revenues, for a total of \$176 million.

As expected, these rules have not had any negative impact on consumers or the public. Player participation in Lottery promotions is voluntary, offering the potential to win promotional prizes. The rules have not had an identifiable economic impact on political subdivisions of the state or private and public employment.

9. Analysis submitted by another person regarding business competitiveness:

No person has submitted an analysis to the agency that compares the rules' competitive impact on businesses in this state to the competitive impact on businesses in other states.

10. Completion of course of action in previous five-year review:

No previous five-year review was prepared for this Article. These rules were reviewed by the Attorney General pursuant to A.R.S. § 41-1057(A)(4) and this is the first five-year review as mandated by Laws 2012, Chapter 352.

11. Probable benefit compared to burden and costs to persons regulated by the rule:

While the review report notes that individual rules can be improved, the agency has confidence that the rules as a whole impose the least burden and costs to persons regulated by the rules. These rules provide for fair and consistent procedures with respect to the conduct of Lottery promotions, while also serving to protect the interests of the Lottery and the state. Promotion costs are included in the agency's budget and player participation is voluntary.

12. Stringency of the rule compared to corresponding federal law:

There are no federal laws applicable to these rules.

13. Compliance with § 41-1037 regarding the issuance of a permit, license, or agency authorization:

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

ANALYSIS OF INDIVIDUAL RULES

R19-3-1001. Definitions

2. Objective/Purpose:

The objective of the rule is to define terms used in 19 A.A.C. 3, Article 10. The purpose is to clarify meanings that are not self-evident and to allow for consistent interpretation of Article requirements.

3. Effectiveness in achieving the objective:

The rule is mostly effective, but requires minor rewording for certain existing definitions.

5. Agency enforcement of the rule:

The Lottery adheres to the rule as written. The rule is fairly and consistently enforced.

6. Clarity, conciseness and understandability:

The rule is generally clear, concise, and understandable to the general public, but clarity could be improved by including “social media” in the definition for “media” and by redrafting the definition for “category.”

14. Proposed course of action:

The Lottery plans to amend this rule by revising the definition of “media.”

R19-3-1002. Promotion Profile

2. Objective/Purpose:

The objective of the rule is to explain that each promotion must have a promotion profile and to describe promotion profile requirements. The purpose is to provide a consistent format for all profiles.

3. Effectiveness in achieving the objective:

The rule does not effectively achieve its objective. In practice, the rule is burdensome to follow for every promotion. The rule could be more effective by allowing for some flexibility in promotional activities, such as providing separate criteria for marketing and game promotions, and establishing certain generic marketing promotion profiles that would not require Lottery Commission approval for every individual promotion.

5. Agency enforcement of the rule:

The Lottery does not enforce the rule as written for every promotion. The provision requiring Lottery Commission approval for each promotion profile would vitiate the Lottery's ability to conduct timely marketing promotions. As an interim solution, the agency has developed generic profiles approved by the Commission to accommodate these types of promotions. The official rules adopted under those generic profiles for each individual promotion are posted on the Lottery's website.

6. Clarity, conciseness and understandability:

The rule is partially clear, concise, and understandable to the general public, but requires additional provisions as described in item #3.

14. Proposed course of action:

The Lottery plans to amend this rule by restructuring promotion criteria in order to provide greater flexibility in developing and implementing promotions.

R19-3-1003. Promotion Playstyle – Promotion Type

2. Objective/Purpose:

The objective of the rule is to describe the various methods of play for Lottery promotions. The purpose is to disclose the types of promotions that may be utilized.

3. Effectiveness in achieving the objective:

The rule is mostly effective, but could be more effective by adding playstyles for “coupon” and “buy one, get one” promotions, in addition to redefining “public contest” to include contests that are related to specific Lottery games. This will enhance the Lottery’s ability to design effective promotions.

5. Agency enforcement of the rule:

The Lottery adheres to the rule as written. The rule is fairly and consistently enforced.

6. Clarity, conciseness and understandability:

The rule is somewhat clear, concise, and understandable to the general public, but subsections (C) and (D) can be deleted. These provisions are redundant because they are delineated in Promotion Profile requirements under R19-3-1002.

14. Proposed course of action:

The Lottery plans to amend this rule to add new playstyles and clarify existing language.

R19-3-1004. Determination of a Winning Promotion

2. Objective/Purpose:

The objective of the rule is to explain the mechanics of each promotion playstyle. The purpose is to clarify how to win the associated promotional prize.

3. Effectiveness in achieving the objective:

The rule is mostly effective, but could be more effective by adding descriptions for a new “coupon” promotion and a “buy one, get one” promotion, as well as redefining “public contest” to include contests that are related to specific Lottery games.

5. Agency enforcement of the rule:

The Lottery adheres to the rule as written. The rule is fairly and consistently enforced.

6. Clarity, conciseness and understandability:

The rule is partially clear, concise, and understandable to the general public, but clarity could be improved by generally ensuring term usage is consistent throughout the rule and rewriting the description for “customer service” to clarify this promotion playstyle pertains to generic customer service issues, such as instances where a retailer may not comply with a specific level of service dictated by the Lottery.

14. Proposed course of action:

The Lottery plans to amend this rule to add new playstyle language and clarify existing language.

R19-3-1005. Repealed

R19-3-1006. Repealed

R19-3-1007. Procedure for Claiming Prizes and Claim Period

2. Objective/Purpose:

The objective of the rule is to explain prize redemption procedures. The purpose is to clarify how to claim a prize for a particular promotion.

3. Effectiveness in achieving the objective:

The rule does not effectively achieve its objective. Claim procedures for a given promotion are no longer included in the Promotion Profile, but instead are part of the promotion's official rules that are posted on the Lottery's website. Language in this section should be revised to allow for official promotion rules that will govern the procedure for claiming a prize. This will provide consistency with proposed changes for R19-3-1002.

5. Agency enforcement of the rule:

The Lottery does not enforce the rule as written. Detailed claim procedures are posted to the Lottery website for each promotion as part of the promotion's official rules.

6. Clarity, conciseness and understandability:

The rule itself is generally clear, concise, and understandable to the general public, but is inconsistent with current practice. Clarity could be improved by amending the rule to address the issues identified in item #3. The inaccurate procedure detracts from clarity.

14. Proposed course of action:

The Lottery plans to amend this rule so provisions are consistent with actual practice.

R19-3-1008. Disputes Concerning a Promotion Ticket or a Promotion Winner

2. Objective/Purpose:

The objective of the rule is to describe the remedy the Director may authorize in the event of a dispute involving a promotion ticket, and explain that the Lottery is discharged from all liability upon payment and acceptance of a prize. The purpose is to protect the Lottery from liability.

3. Effectiveness in achieving the objective:

This rule is mostly effective, but language should be added that indicates a replacement ticket is the “sole and exclusive remedy” with respect to disputes. This mirrors current language in the Lottery’s instant game rules (A.A.C. R19-3-709) and serves to further limit liability.

5. Agency enforcement of the rule:

The Lottery adheres to the rule as written. The rule is fairly and consistently enforced.

6. Clarity, conciseness and understandability:

This rule is somewhat clear, concise and understandable to the general public, but clarity could be improved by addressing the issue in item #3.

14. Proposed course of action:

The Lottery plans to amend the rule by adding language that clarifies that a replacement ticket is the “sole and exclusive remedy” for disputes.

ARIZONA LOTTERY

Five-Year-Review Report

19 A.A.C. 3

Article 5: Procurements

March 2017

HISTORICAL OVERVIEW OF AGENCY

Agency Mission:

To support Arizona programs for the public benefit by maximizing net revenue in a responsible manner.

Agency Background:

The Arizona Lottery was voted into existence by a public initiative in November 1980, becoming the first state west of the Mississippi to have a legal, state-administered lottery. Although the initial approval margin was slim—51 to 49 percent—subsequent referendums showed high public support. In November 1997, 68 percent of the voters approved the Lottery for five years and in November 2002, voters extended the Lottery for another ten years with a 73 percent majority. As a result of legislation in the 2010 Legislative 6th Special Session, the existing Lottery will sunset July 2012, immediately replaced by a “new” Lottery that will terminate in 2035.

Lottery sales began July 1, 1981, with a single \$1 “Scratch it Rich” instant game that sold 21.4 million tickets in ten days! Instant ticket games remained the only product until 1984 when the Lottery introduced its first online (draw) game, The Pick. Over the years, additional draw games have periodically been introduced and the number of instant ticket games has grown significantly. The Lottery currently offers seven draw games and has more than 50 instant ticket games in market each year. As a result of legislation in the 2010 Legislative Session, the Lottery also became the provider of instant tab games that are sold by charitable organizations. These organizations earned approximately \$1 million in commissions to help support charitable activities in FY15. Legislation passed in the 2015 Legislative Session authorized the Lottery to sell game products in age-restricted locations, with \$1 million of proceeds allocated to the Internet Crimes Against Children Fund and the Victim’s Rights Enforcement Fund.

Since its inception, the Lottery’s mandate has been to maximize net revenue consonant with the dignity of the state. The Lottery is overseen by an Executive Director appointed by the Governor,

in addition to a five-member Commission, also appointed by the Governor. The Lottery is entirely self-supporting, receiving no monies from the state general fund. The Lottery sells products and redeems prizes through a state-wide network of approximately 2700 licensed retailers, who receive a commission on each ticket sold.

A portion of Lottery proceeds is appropriated to pay for Lottery operating costs, and at least 50% of revenues must be utilized for payment of prizes. Remaining Lottery funds are statutorily directed to various benefiting funds including the state general fund. In FY10, the State issued bonds against future Lottery revenues in the amount of \$450 million. As a result, the Lottery is responsible for meeting bond debt service payments through 2029, in addition to traditional beneficiary obligations.

The Lottery has achieved record sales levels in recent years. In fiscal year 2016, total sales exceeded \$870 million and transfers to statutory beneficiaries totaled \$205,828,826.

OVERVIEW OF 5-YEAR REVIEW

A.R.S. § 5-554 requires the Commission to authorize the Lottery Director to adopt rules in accordance with Title 41, Chapter 6. Rules adopted may include matters necessary or desirable for the efficient and economical operation and administration of the Lottery, as provided in A.R.S. § 5-554. A.R.S. § 41-2501(G) exempts the Lottery from provisions of the Arizona Procurement Code for procurements relating to the design and operation of the Lottery or purchase of Lottery equipment, tickets, and related materials and requires the Lottery Director to adopt rules substantially equivalent to the policies and procedures of the Arizona Procurement Code for these types of procurements.

A.A.C. Title 19, Chapter 3, Article 5, Procurements, sets forth the policies and procedures for procurements relating to the design and operation of the Lottery or purchase of Lottery equipment, tickets, and related materials. The most recent amendments to Article 5 were effective in November 2016. The rules were extensively amended to make them substantially equivalent to the policies and procedures of the Arizona Procurement Code as required in A.R.S. § 41-2501(G), and to conform with the 2015 approved changes to state procurement rules.

The review of these rules was conducted by Arizona Lottery procurement and legal staff. The rules were reviewed for consistency and conformity with state procurement rules, and for overall clarity. As a result of the evaluation, the agency plans to amend at least ten rules to address issues outlined in the report. The Lottery proposes to retain the majority of the rules as written since they remain consistent with the Arizona Procurement Code and state procurement rules, and are sufficiently clear and understandable. These rules continue to protect the interests of potential contractors, the Lottery, and the state. Because the Lottery's rules must be substantially equivalent to the State Procurement Code, any substantive amendments would include any recent revisions to state procurement statutes or rules. The Lottery anticipates submitting a final rulemaking package to Council by December 2018, provided the rulemaking moratorium has been lifted. The Lottery will request an exemption in order to complete the amendments, but recognizes that it may not sufficiently meet the requirements set forth in the Executive Order.

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

2. **Written criticisms:**

No written criticisms of the rules have been received in the last five years.

3. **Statutory authority:**

General: A.R.S. § 5-554.

Specific: A.R.S. § 41-2501(G).

6. **Economic, small business and consumer impact comparison:**

The last economic impact statement was prepared when these rules were amended and filed with Council in September 2016. After review, the Lottery believes the actual economic impact of the rules has not differed significantly from the economic impact statement submitted in 2016. The rules continue to primarily affect the agency and businesses that supply products or services to the Lottery. Lottery costs include time spent by procurement staff to process purchases and secure contracts, and the cost of the procurement itself. Procurement staff are supplied by the Arizona Department of Administration pursuant to an interagency services agreement. These costs continue to be included in the Lottery's annual appropriation. Consistent with the previous economic impact statement, the Lottery has not experienced any additional costs as a result of the rulemaking.

The rules were recently amended to provide consistency with policies and procedures of the Arizona Procurement Code, as required by A.R.S. § 41-2501(G). The rules provide for competition, consistency, and equal treatment of all contractors with respect to procurement procedures. The impact on small businesses should be positive. These businesses will benefit from procurements specifically targeted to small businesses as provided in R19-3-532, consistent with state procurement rules. As noted in the previous economic impact statement, the 2016 rulemaking is not anticipated to have any immediate measurable impact on state revenues or expenses.

7. **Analysis submitted by another person:**

No person has submitted an analysis to the agency that compares the rules' competitive impact on businesses in this state to the impact on businesses in other states.

9. **Burden and costs to persons regulated by the rule:**

While the review report notes that some individual rules can be improved, the agency

believes the rules as a whole impose the least burden and cost to persons regulated by the rules. As required by A.R.S. § 41-2501(G), these rules are substantially equivalent to the policies and procedures of the Arizona Procurement Code. Procurement procedures ensure fairness to potential vendors while providing the best value to the Lottery and the state. These benefits outweigh any necessary compliance costs.

10. Stringency compared with federal law:

There are no federal laws applicable to these rules.

11. Compliance with § 41-1037 regarding the issuance of a permit, license, or agency authorization:

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

13. Agency enforcement of the rules:

The Lottery follows the rules as written. The rules are fairly and consistently enforced.

14. Proposed course of action:

The Lottery completed a rulemaking on this article in 2016. Although some recommendations for improvements are included herein, the Lottery has no plans to pursue these changes through another rulemaking, given that one was just completed and Lottery has prioritized pursuing rules changes to other articles.

ANALYSIS OF INDIVIDUAL RULES

R19-3-501. Definitions

1. Objective and Effectiveness:

The rule defines terms used in 19 A.A.C. 3, Article 5, to clarify meanings that are not self-evident and to allow for consistent interpretation of Article requirements. The rule is partially effective but contains several unnecessary definitions. For example, the rule includes definitions for terms that are not used anywhere else in the Article.

4. Consistency with statutes and rules:

The rule is generally consistent with statutes and rules but needs a few changes. The definition for “Services” should be amended to mirror A.R.S. § 41-2503(35). The definition for “price data” should be amended to be consistent with the wording in the state procurement rules.

5. Clarity, conciseness and understandability:

The rule is generally clear, concise, and understandable, but could be improved by removing definitions for terms that are not used in Article 5 or refer to processes not used by the agency, such as “affiliate,” “governing instruments,” “multi-step sealed bidding,” “purchase request,” “reverse auction,” and “technical offer.” Clarity could also be improved by defining the term “aggregate dollar amount.”

8. Previous five-year-review:

The Lottery has completed two rulemakings since the 2012 five-year-review, one in 2013 and another in 2016. The Lottery added definitions to enhance effectiveness and removed unnecessary definitions, as recommended in the 2011 five-year-review.

R19-3-502. Written Determination

2. Objective and Effectiveness:

The rule requires that, when a written determination is required by law the procurement officer must include the basis for the action in the written determination. By requiring documentation of procurement decisions, the rule ensures transparency and accountability to interested parties and the public.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-503. Confidential Information

2. Objective and Effectiveness:

The rule outlines the procedures for an offeror to follow to request that information submitted in an offer, specification or protest be considered confidential information and not be disclosed. It also outlines the process the procurement officer should follow to determine whether the information is confidential. The rule protects offerors by providing a process in which an offeror can shield proprietary information that is included in an offer from public disclosure.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules

5. Clarity, conciseness and understandability:

The rules is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-504. General Provisions

2. Objective and Effectiveness:

The rule sets forth two general unrelated procurement provisions. Section A ensures that someone who acts as an advisor to the Lottery on a procurement does not benefit from the resulting contract. The meaning and objective of Section B is unclear as to whose fully approval the Director must obtain before paying for a material or service.

4. Consistency with statutes and rules:

The rule is generally consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is concise, but not clear or understandable. Section A should be removed from the “general provisions” section and added to R19-3-549 Conflict of Interest as Section C. Section B should be eliminated as an unnecessary provision. The process for Lottery purchases and expenditures is provided for in statute and other rules.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-505. Prospective Suppliers List

1. Objective and Effectiveness:

The rule authorizes the procurement officer to use the state procurement supplier list or create a list specifically for the Lottery. The rule allows the Lottery to create a suppliers list to ensure that prospective bidders who have expertise in providing lottery-specific services or materials receive notification of Lottery solicitations.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

The Lottery amended this rule to incorporate the changes recommended in the 2011 five-year-review.

R19-3-506. Source Selection Method: Determination Factors

1. Objective and Effectiveness:

The rule provides guidance to the procurement officer in determining the appropriate source selection method for a procurement. The rule ensures that the correct procurement method is based on the aggregate dollar amount of the contract and that sufficient funds are available for the procurement.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise, and understandable.

8. Previous five-year-review:

The Lottery amended this rule in 2016 to increase clarity, as recommended in the 2011 five-year review.

R19-3-507. Solicitation

2. Objective and Effectiveness:

The rule sets forth the minimum time period between the issuance of a solicitation and the offer due date and time. The rule ensures that offerors have sufficient time to respond to a solicitation but also permits the procurement officer to provide for a shorter time if justified by the circumstances.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-508. Bid Solicitation Requirements

2. Objective and Effectiveness:

The rule provides direction to the procurement officer regarding the required elements of a bid solicitation. The rule ensures that solicitation documents are uniform and comprehensive by requiring that standard terms and conditions be included and by fully informing interested parties of the offer submission requirements.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise, and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-509. Request for Proposal Solicitation Requirements

2. Objective and Effectiveness:

The rule provides direction to the procurement officer regarding the required elements of a proposal solicitation. It ensures that solicitation documents are uniform and comprehensive by requiring that standard terms and conditions be included and by fully informing interested parties of the offer submission requirements.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-510. Pre-Offer Conferences

2. Objective and Effectiveness:

This rule authorizes the procurement officer to conduct a pre-offer conference and provides direction regarding the timing of the conference. The rule allows for better and more complete offers by allowing potential offerors to ask questions and discuss the procurement requirements in advance of the offer due date.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

While portions of the rule are clear, concise, and understandable, the rule could be improved by removing or rewording confusing language related to the time needed to discuss procurement requirements and solicit comments from prospective offerors.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-511. Solicitation Amendment

2. Objective and Effectiveness:

The rule outlines the circumstances that require the procurement officer to issue a solicitation amendment. The rule ensures that offerors are responding to a correct and complete solicitation, and serves the best interests of the Lottery by allowing the procurement officer to extend the offer due date and time if advantageous to the Lottery.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-512. Modification or Withdrawal of Offer Before Offer Due Date and Time

2. Objective and Effectiveness:

The rule allows an offeror to modify or withdraw an offer before the due date. The rule ensures that, in evaluating offers, the Lottery considers only the most current offers and does not review offers from offerors that do not wish to be considered.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-513. Cancellation of a Solicitation Before Offer Due Date and Time

2. Objective and Effectiveness:

The rule authorizes the procurement officer to cancel a solicitation before the offer due date and time and provides that the procurement officer shall not open offers after cancellation. It protects the Lottery's best interests by allowing a solicitation to be cancelled when circumstances change and it is no longer beneficial to proceed with the solicitation.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-514. Receipt, Opening, and Recording of Offers

2. Objective and Effectiveness:

The rule provides direction to the procurement officer regarding the opening and recording of offers and ensures the integrity of the procurement process.

4. Consistency with state and federal statutes and rules:

This rule is not entirely consistent with state procurement rules or the Arizona Procurement Code. The rule should accurately reflect state procedures related to the opening and recording of solicitation offers.

5. Clarity, conciseness and understandability:

The rule is clear, concise, and understandable.

8. Previous five-year-review:

The Lottery amended this rule in 2016 to address inaccurate provisions, as recommended in the 2011 five-year review.

R19-3-515. Late Offers, Modifications, Withdrawals

2. Objective and Effectiveness:

The rule outlines the actions the procurement officer must take when an offer, modification, or withdrawal is received after the due date and time. The rule ensures fairness of the procurement by accepting only timely offers, but allowing the procurement officer to make an exception for offers that were untimely because of the action or inaction of the Lottery.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-516. Cancellation of Solicitation After Receipt of Offers and Before Award

2. Objective and Effectiveness:

The rule outlines the procedures the procurement officer must follow if a solicitation is canceled after offer due date and time. It protects the Lottery's best interests by allowing a solicitation to be cancelled when circumstances change and it is no longer beneficial to proceed with the solicitation.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-517. One Offer Received

2. Objective and Effectiveness:

The rule provides guidance to the procurement officer regarding the actions that may be taken when only one offer is received in response to a solicitation. The rule protects the Lottery's best interests by giving the procurement officer discretion to determine whether to award the contract to the offeror, resolicit for new offers, cancel the procurement, or use a different source selection method.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-518. Offer Mistakes Discovered After Offer Opening and Before Award

2. Objective and Effectiveness:

This rule outlines the actions the procurement officer and an offeror must take if a mistake is discovered in an offer after opening, but before contract award and is effective. The rule protects the Lottery's best interests and fair competition by allowing an offeror to correct minor informalities and errors rather than automatically deeming the offer nonresponsive.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed action.

R19-3-519. Extension of Offer Acceptance Period

2. Objective and Effectiveness:

The rule authorizes the procurement officer to extend the offer acceptance period and requires the procurement officer to notify all offerors. Allowing the offer acceptance period to be extended ensures that the Lottery can extend the time for acceptance when circumstances require an extension of time.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-520. Determination of Not Susceptible for Award

2. Objective and Effectiveness:

The rule provides criteria for the procurement officer to consider to determine if an offer is not susceptible for award. The rule ensures efficiency of the procurement process by allowing offers that are not susceptible for award to be eliminated from consideration.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-521. Bid Evaluation

2. Objective and Effectiveness:

The rule provides direction to the procurement officer and information to the public regarding the criteria and procedures used to evaluate bid offers. The rule requires that the procurement officer consider which offer provides the lowest cost, which protects the Lottery's budget and financial interests.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise, and understandable.

8. Previous five-year-review:

The Lottery amended this rule to address the issues noted in the 2011 five-year-review, and then recently amended it in 2016 to make it consistent with state procurement rules.

R19-3-522. Clarification of Proposal Offers

2. Objective and Effectiveness:

The rule authorizes the procurement officer to request clarification from offerors at any time after receipt of offers. The rule ensures that the Lottery is able to make the most informed decision on awarding a contract by providing a means for greater understanding of the offers.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-523. Proposal Negotiations with Responsible Offerors and Revisions of Offers

2. Objective and Effectiveness:

The rule provides direction to the procurement office and interested parties regarding the procedures for conducting negotiations with offerors and explains that offers may be revised during negotiations and is effective. It ensures fairness and confidentiality of proposal negotiations.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise, and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-524. Offer Revisions and Best and Final Offers

2. Objective and Effectiveness:

The rule provides direction to the procurement officer regarding procedures for requesting best and final offers. It also provides direction to the procurement officer and offerors regarding procedures to follow when a mistake in the award determination or the best and final offer. The rule ensures that the procurement officer uniformly handles offer revisions and also ensure fairness in the best and final offer process.

4. Consistency with statutes and rules:

This rule is not entirely consistent with state procurement rules or the Arizona Procurement Code. The rule should be updated to accurately reflect state procedures related to best and final offers.

5. Clarity, conciseness and understandability:

The rule is clear and understandable, but not concise. Sections A and B include redundant language and could be combined to address the procedure of all written revisions, including best and final offers.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-525. Evaluation of Proposal Offers

2. Objective and Effectiveness:

The rule provides direction to the procurement officer regarding the criteria and procedures for evaluating best and final offers. It ensures that the procurement officer does not evaluate an offer on criteria other than that outlined in the request for proposals.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise, and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-526. Responsibility Determinations

2. Objective and Effectiveness:

The rule outlines the factors a procurement officer shall consider in determining whether an offeror is responsible or nonresponsible and explains how the procurement officer should notify the offeror if the offeror is determined to be nonresponsible. It protects the Lottery interests by ensuring that only responsible offerors are awarded contracts and informs interested parties regarding the specific factors the procurement officer evaluates to make a responsible or nonresponsible determination.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is generally clear, concise and understandable. But the first sentence in section C could be reworded to be clearer and more understandable. Specifically, it should be reworded as follows: “If the procurement officer determines an offeror is nonresponsible, the procurement officer shall promptly notify the offeror, in writing, of the final determination that the offeror is nonresponsive, except when notification to the offeror would compromise the Lottery’s ability to negotiate with other offerors.”

8. Previous five-year-review:

There was no proposed course of action

R19-3-527. Bid Contract Award

2. Objective and Effectiveness:

The rule provides direction to the procurement officer regarding awarding a bid contract to an offeror and outlines the documentation the procurement officer must make regarding the award. It ensures consistency and fairness in making bid contract awards and informs interested parties regarding the criteria and procedure for awarding a bid contract.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-528. Proposal Contract Award

2. Objective and Effectiveness:

The rule provides direction to the procurement officer regarding awarding a proposal contract to an offeror and outlines the procedure for obtaining Lottery Commission approval. It ensures consistency and fairness in making proposal contract awards and informs interested parties regarding the criteria and procedure for awarding a proposal contract.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule clear, concise, and understandable.

8. Previous five-year-review:

The Lottery amended the rule to address the issues identified in the 2011 five-year-review.

R19-3-529. Mistakes Discovered After Bid Award

2. Objective and Effectiveness:

The rule outlines the procedures to follow when a mistake is discovered after a bid contract award. It provides information to offerors regarding how to request a correction, and it grants the procurement officer discretion to determine how to handle the mistake and the contract award so that Lottery's best interests are served in the contract award.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-530. Mistakes Discovered After Proposal Award

2. Objective and Effectiveness:

The rule outlines the procedures to follow when a mistake is discovered after a proposal contract award. It provides information to offerors regarding how to request a correction, and it grants the procurement officer discretion to determine how to handle the mistake and the contract award.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-531. Procurements not Exceeding the Amount Prescribed in A.R.S. § 41-2535

2. Objective and Effectiveness:

The rule requires the procurement officer to issue a request for quotation for purchases less than the amount specified in A.R.S. § 41-2535 unless certain circumstances apply. The rule ensures that the request for quotation process will be followed for purchases between \$10,000 and \$100,000 unless the purchase can be made from a state or agency contract, a set-aside organization or competition is impracticable.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable. However, there is some duplication of language with R19-3-532 and the rule refers to R19-3-532. The rule could be eliminated and its language incorporated into section A of R19-3-532. The remaining sections of R19-3-532 could be renumbered.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-532. Solicitation – Request for Quotation

2. Objective and Effectiveness:

This rule outlines the requirements the procurement officer must include in a solicitation for purchases exceeding \$10,000 but less than the amount specified in A.R.S. § 41-2535. The rule ensures that the solicitation requirements are clear to interested parties and that the Lottery is complying with state law requiring purchases or contracts to be awarded to small businesses if practicable.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules

5. Clarity, conciseness and understandability:

The rule is clear, concise, and understandable.

8. Previous five-year-review:

The Lottery amended the rule to incorporate the changes recommended in the 2011 five-year-review.

R19-3-534. Quotation Contract Award

2. Objective and Effectiveness:

The rule outlines procedures for the procurement officer to follow when awarding a quotation contract. It outlines a procedure for the Lottery to follow in the event only one responsive offer is received.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

The Lottery amended the rule to address the issues identified in the 2011 five-year-review.

R19-3-535. Sole Source Procurements

2. Objective and Effectiveness:

The rule provides direction to the procurement officer regarding the circumstances under which a sole source procurement is appropriate and outlines procedures for sole source procurements. It permits the Lottery to procure a material or service without a competitive process when there is only a single source or no reasonable source exists.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-536. Emergency Procurements

2. Objective and Effectiveness:

The rule permits the Lottery to proceed with an emergency procurement when the procurement is estimated to exceed the amount specified in A.R.S. § 41-2535 and defines the conditions that must be met to justify an emergency procurement. It permits the Lottery to procure materials or services when there is an immediate and serious need because of a serious threat to the functioning of the Lottery, the preservation or protection of property, or the health or safety of a person.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules

5. Clarity, conciseness and understandability:

The rules is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-537. Competition Impracticable Procurements

2. Objective and Effectiveness:

The rule authorizes the Lottery to procure goods or services outside of the typical solicitation process when competition is impracticable because of an unusual or unique situation or a lack of available vendors.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

The Lottery amended the rule to incorporate the change recommended in the 2011 five-year-review.

R19-3-538. Request for Information

2. Objective and Effectiveness:

The rule authorizes the procurement officer to issue a request for information for planning purposes and specifies that the responses are not offers and the time period that the information is confidential. The rule enables the Lottery to gather information in anticipation of a prospective procurement.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-539. Demonstration Projects

2. Objective and Effectiveness:

The rule authorizes the procurement officer to award contracts for demonstration projects and describes the requirements and procedures for demonstration projects. The rule is effective in providing the Lottery a means to explore a new product at no cost.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-540. General Services Administration Contracts

2. Objective and Effectiveness:

The rule outlines the conditions under which the procurement officer may purchase products or services using General Services Administration (“GSA”) schedules or contracts. The rule ensures that GSA contracts are used only when it is in the Lottery’s best interests.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-541. Contract Clauses

2. Objective and Effectiveness:

The rule directs the procurement officer to include all contract clauses necessary to ensure the Lottery's interests are addressed.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-542. Assignment of Rights and Duties

2. Objective and Effectiveness:

The rule prohibits a contractor from assigning or transferring a Lottery contract without the consent of the Director. The rule is effective in preventing a contractor from assigning transferring a contract when that assignment or transfer would not be advantageous to the Lottery or would be harmful to the Lottery's interests.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable. The rule could be eliminated by including similar language as a standard contract provision.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-543. Change of Name

2. Objective and Effectiveness:

The rule sets forth procedures to change a contractor's name on an existing Lottery contract. It allows the Lottery to make necessary changes when a contractor's business name is changed without affecting other contract terms and conditions.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is consistent with Lottery statutes, and state procurement statutes and rules. The rule could be eliminated by including similar language as a standard contract term.

8. Previous five-year-review:

This rule was not in effect when the 2011 five-year-review was done.

R19-3-544. Contract Change Orders and Amendments

2. Objective:

The rule provides direction to the procurement officer regarding the procedures for executing change orders or amendments to existing contracts. The rule establishes a check and balance system for change orders that exceed 25% of the original contract amount, ensuring that monies are budgeted for the expense and that the change is advantageous to the Lottery.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-545. Multi-term Contracts

2. Objective and Effectiveness:

The rule sets the maximum contract term as five years, but gives the procurement officer the ability to exceed the time period under certain circumstances. It is effective because the Lottery is better able to maximize revenue and standardize its products and services by entering into long-term contracts with its ticket vendors.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-546. Terms and Conditions

2. Objective:

This rule requires that uniform terms and conditions be used in Lottery contracts. It ensures consistency in contracts and reduces the possibility of negotiation that might negatively impact the Lottery's interests.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-547. Mandatory Statewide Contracts

2. Objective and Effectiveness:

The rule requires the Lottery to use existing Arizona state contracts for all non-Lottery specific materials and services. It ensures that the Lottery stays within its statutory exemption from the state procurement statutes and rules, and that resources are not wasted procuring materials and services that the state has already procured.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

This rule was not in effect when the 2011 five-year-review was done.

R19-3-548. Multiple Source Contracts

2. Objective and Effectiveness:

The rule is effective in limiting multiple award contracts to the least number of suppliers necessary to meet the Lottery's requirements.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

The rule was not in effect when the 2011 five-year-review was done.

R19-3-549. Conflict of Interest

2. Objective and Effectiveness:

The rule allows the procurement officer to waive conflicts of interest of persons involved in the preparation of specifications, plans or scopes of work for a procurement. The rule is effective in ensuring that even when a person has a conflict of interest, he or she may be involved when it is determined to be in the Lottery's best interest.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rules is clear, concise and understandable.

8. Previous five-year-review:

The rule was not in effect with the 2011 five-year-review was done.

R19-3-550. Determination of Fair and Reasonable Price

2. Objective and Effectiveness:

The rule outlines the requirements the procurement officer must use to determine whether a price is fair and reasonable for a contract or contract modification that exceeds \$100,000. The rule is effective in ensuring that, for contracts involving a significant dollar amount, the Lottery obtains a fair and reasonable price based on competition or objective criteria.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action. The rule was previously R19-3-547.

R19-3-551. Submission and Certification of Cost or Pricing Data

2. Objective and Effectiveness:

The rule requires that offerors submit certified cost or pricing data as specified by the procurement officer and keep all data submitted current until negotiations are concluded. The rule is effective in ensuring that the Lottery has current information during negotiations.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action. The rule was previously R19-3-548.

R19-3-552 Refusal to Submit Cost or Pricing Data

2. Objective and Effectiveness:

The rule outlines the actions the procurement officer may take if an offeror or contractor fails to submit cost or pricing data. It is effective in reducing costs by allowing the procurement officer to reject the proposed offer or contract modification.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action. The rule was previously R19-3-549.

R19-3-553. Defective Cost or Pricing Data

2. Objective and Effectiveness:

The rule sets forth the procedure for the procurement officer to determine that cost or pricing data is defective and for an offeror or contractor to appeal the procurement officer's determination. It is effective in ensuring lowest cost for the Lottery by allowing an adjustment where pricing data was effective.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action. The rule was previously R19-3-550.

R19-3-554. Protest of Solicitations and Contract Awards

2. Objective:

The rule outlines the requirements and procedures for an interested party to file a protest of a solicitation, a determination of not susceptible for award, or the award of a contract. The rule is effective in informing interested parties of the rights and the procedures for filing a protest.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise, and understandable.

8. Previous five-year-review:

There was no proposed course of action. This rule was previously R19-3-553.

R19-3-555. Stay of Procurements During the Protest

2. Objective:

The rule outlines the procurement officer's options and obligations when a protest is filed before a solicitation due date, before contract award, or before contract performance has begun. It also provides notice to protesters that they may request a stay from the Director if denied by the procurement officer.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action. This rule was previously R19-3-552.

R19-3-556. Resolution of Solicitation and Contract Award Protests

2. Objective:

The rule establishes the procurement officer's authority to resolve a protest and provides guidelines for issuing a written decision regarding a protest. It effectively outlines the procurement officer's required actions and provides information regarding the interested party's rights.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action. This rule was previously R19-3-553.

R19-3-557. Remedies by the Procurement Officer

2. Objective:

The rule authorizes the procurement officer to implement an appropriate remedy if a protest is sustained, outlines the factors to consider in determining the remedy, and describes the remedies that may be implemented. It is effective in providing information about appropriate remedies to the procurement officer and interested parties.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action. This rule was previously R19-3-554.

R19-3-558. Appeals to the Director Regarding Protest Decision

2. Objective and Effectiveness:

The rule provides direction to interested parties regarding the process and time frame for appealing the procurement officer's decision on a protest. It is effective in outlining the requirements for an appeal.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is generally clear, concise and understandable. Section A could be made clearer. It refers to "the decision entered or deemed to be entered by the procurement officer" and "the date the decision is received or deemed received under R19-3-556." Including a reference to R19-3-556(E) would make it clearer that "deemed to be entered" and "deemed received" refers to the situation where the procurement officer fails to issue a timely decision.

8. Previous five-year-review:

The 2011 five-year-review recommended that R19-3-559 Appeals and Reports to the Director be separated into two rules, one for protest procedures and one for contract claim procedures. The rules were amended to adopt this recommendation.

R19-3-559. Notice of Appeal to the Director Regarding Protests

2. Objective and Effectiveness:

The rule requires that the procurement officer promptly give notice of an appeal to all offerors. It ensures that all offerors know that an appeal has been filed and allows offerors to request a copy of the appeal.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-560. Stay of Procurement During Appeal to Director

2. Objective and Effectiveness:

The rule effectively provides direction to interested parties regarding the impact of filing an appeal during a stay of procurement under R19-3-555.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

This rule is concise and understandable. It could be made clearer by incorporating it into R19-3-555 so that only one rule addresses stays.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-561. Agency Report Regarding Protest Appeals

2. Objective and Effectiveness:

The rule outlines the time limit for and required contents of the procurement officer's agency report on an appeal. It also provides direction to interested parties regarding the process to file comments. It is effective in providing direction to the procurement officer and interested parties regarding the protest appeal process.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

The Lottery amended and reordered the rule to incorporate the changes recommended in the 2011 five-year-review. This rule was previously R19-3-555.

R19-3-562. Remedies by the Director

2. Objective and Effectiveness:

The rule outlines the remedies that may be imposed when the Director sustains an appeal in whole or part. It is effective in providing notice of potential remedies to interested parties.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-563. Informal Settlement Conference

2. Objective and Effectiveness:

The rule sets forth the procedure to be followed in setting and holding an informal settlement conference and the documentation required in the event a settlement agreement is reached. It is an effective method to shorten the dispute resolution process and allow disputes to be settled informally.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

The rule did not exist during the 2011 five-year-review.

R19-3-564. Dismissal Before Hearing

2. Objective and Effectiveness:

The rule provides direction to the Lottery Director regarding the circumstances under which he can dismiss an appeal. The rule is effective in outlining the Director's authority and in giving notice to claimants regarding the basis for dismissal of an appeal.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

The rule did not exist during the 2011 five-year-review.

R19-3-565. Controversies Involving Contract Claims Against the Lottery

2. Objective:

The rule outlines the time frame and requirements for a claimant to file a contract claim with the procurement officer. It is effective in providing direction to claimants regarding the procedure to resolve a claim.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action. The rule was previously R19-2-556.

R19-3-566. Procurement Officer's Decision Regarding Contract Claims

2. Objective and Effectiveness:

This rule outlines the requirements and procedures regarding the procurement officer's decision on a contract claim. It is effective in providing guidance to the procurement officer.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

The Lottery amended the rule to incorporate the change recommended in the 2011 five-year-review. The rule was previously R19-3-557.

R19-3-567. Appeals and Reports to the Director Regarding Contract Claims

2. Objective and Effectiveness:

The rule provides direction to claimants regarding the procedures for appealing a final procurement decision. It also outlines what actions the procurement officer must take after an appeal is filed. It is effective in giving guidance to claimants and the procurement officer regarding the appeals process.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

The Lottery amended the rule to incorporate the changes recommended in the 2011 five-year-review. Specifically, the 2011 five-year-review recommended that **R19-3-559 Appeals and Reports to the Director** be separated into two rules, one for protest procedures and one for contract claim procedures.

R19-3-568. Controversies Involving Lottery Claims Against the Contractor

2. Objective and Effectiveness:

The rule directs the procurement officer to seek resolution under A.R.S. § 41-1092.07 when the procurement officer is unable to resolve a claim against the Lottery by mutual agreement. It is effective in giving guidance to the procurement officer regarding available remedies.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is generally clear, concise and understandable, but it should refer to A.R.S. § 41-1092.02

8. Previous five-year-review:

There was no proposed course of action. This rule was previously R19-3-560 and has been renumbered since the 2011 five-year-review.

R19-3-569. Guidance

2. Objective and Effectiveness:

The rule allows the procurement officer to use state procurement statutes and rules as guidance in written determinations where the Lottery procurement rules do not address the procedure.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.