D-1

ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION (F-16-0203)

Title 12, Chapter 17, Arizona Navigable Stream Adjudication Commission, Article 1, Hearings

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: May 5, 2016 **AGENDA ITEM: D-1**

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: Chris Kleminich, Staff Attorney

DATE: April 15, 2016

SUBJECT: **ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION (F-16-0203)**
Title 12, Chapter 17, Article 1, Hearings

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Navigable Stream Adjudication Commission (Commission) is to determine whether rivers, streams, and other watercourses in Arizona were navigable as of February 14, 1912. The Commission's aim is to help clear more than 100,000 clouded Arizona property titles to the land beneath Arizona's 39,039 rivers and streams. If a body of water was navigable on the date of Arizona statehood, the title to the bed of the watercourse is held by the state under the Public Trust Doctrine. If the watercourse was not navigable at the time of statehood, the ownership of the bed remains as it was prior to statehood.[i]

The Commission was created in 1987 as part of the Land Department, and became an independent body in 1992. Over the next few years, the Commission held hearings to determine the navigability of each of the state's watercourses. A 2002 Arizona Court of Appeals ruling, however, determined that the Commission's criteria for determining navigability were biased, which necessitated rehearings. The Commission is currently scheduled to sunset on June 30, 2020.[ii]

This five-year-review report covers ten rules in A.A.C. Title 12, Chapter 17, Article 1, which relate to procedures for the Commission's hearings.

Article Contents, Including the Subject Matter of Each Rule in the Report

Article 1 contains ten rules, related to hearings, which address petitions to modify priorities; computation of time; service of documents; notices of appearance as a party; evidence;

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[i] *See* http://www.ansac.az.gov/
[ii] *See* http://www.azleg.gov/jlbc/psnav.pdf

hearings; hearing records; legal memoranda; hearings to identify public trust values; and hearing logs.

Year that Each Rule was Last Amended or Newly Made

All of the rules became effective on October 1, 2005.

Proposed Action

The Commission is not proposing any action on the rules at this time.

Summary of Reasons for the Proposed Action

The Commission indicates that the rules are effective, are consistent with other rules and statutes, are enforced as written, and are clear, concise, and understandable.

Exemption or Request and Approval for Exception from the Moratorium

The Commission does not plan to request an exception from the moratorium.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

   Yes. The Commission has certified that it is in compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

   Yes. The Commission indicates that the rules are effective in achieving their objectives.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

   No. The Commission has not received any written criticisms of the rules during the last five years.

4. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Commission cites to A.R.S. § 37-1122 as general and specific authority for the rules. Under A.R.S. § 37-1122(A)(1), the Commission shall "[a]dopt administrative rules that in its discretion it considers to be necessary and proper to carry out the provisions and purposes of this chapter [A.R.S. Title 37, Chapter 7, State Claims to Streambeds]."

5. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes. The Commission indicates that the rules are consistent with other rules and statutes.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Commission indicates that the rules are enforced as written.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Commission indicates that the rules are clear, concise, and understandable.

8. Stringency of the Rules:

a. Are the rules more stringent than corresponding federal law?

No. The Commission indicates that the rules are not more stringent than any federal laws.

b. If so, is there statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010:

a. Do the rules require issuance of a regulatory permit, license or agency authorization?

Not applicable. None of the rules were made after July 29, 2010.

b. If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. No action was proposed in the previous five-year-review report.

11. Has the agency included a proposed course of action?

Yes. No action is planned on the rules.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: May 5, 2016 **AGENDA ITEM: D-1**

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: GRRC Economic Team

DATE: April 15, 2016

SUBJECT: **ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION (F-16-0203)**
Title 12, Chapter 17, Article 1, Hearings

I have reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

The economic, small business, and consumer impact statement (EIS) from the most recent Commission rulemaking was not available for Article 2.

The rules reviewed address procedures involved in the hearings conducted by the Commission. The Commission has completed hearings on twelve major rivers and 39,039 minor watercourses. The Commission has five cases that are still pending because the Arizona Court of Appeals remanded these cases for additional work. The Commission plans to complete these hearings in 2016, and then it is scheduled to Sunset on June 30, 2020, barring unforeseen lawsuits.

The rivers still pending final adjudication are the:

- San Pedro River
- Santa Cruz River
- Gila River
- Verde River
- Salt River

The Commission indicates that no one is directly regulated by these rules. Staff would note that the rules do provide some form of regulation, insofar as they provide a legal framework to permit aggrieved parties to dispute the Commission's determinations. The Commission concludes that the rules in the Articles cited do not have any direct economic impact.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Commission has determined that the rules are effective as written, and as such, impose the least burden and costs to persons regulated by the rules. These rules have not changed, and these rules have been the same rules for all of the Commission's prior hearings.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the Commission by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

STATE OF ARIZONA
NAVIGABLE STREAM ADJUDICATION COMMISSION
1700 West Washington, Room B-54, Phoenix, Arizona 85007
Phone (602) 542-9214 FAX (602) 542-9220
E-mail: **nav.streams@ansac.az.gov** Web Page: **http://www.ansac.az.gov**

DOUGLAS A. DUCEY
Governor

GEORGE MEHNERT
Executive Director

April 13, 2016

Nicole A. Ong, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th, Avenue, Suite 402
Phoenix, AZ 85007

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APR 13 2016
GRRC

RE: Updated Cover Letter

Dear Ms. Ong:

The Arizona Navigable Stream Adjudication Commission (ANSAC) submits this updated cover letter and states that ANSAC believes its report complies with the requirements of A.R.S. §41-1056.

Additionally, ANSAC certifies that ANSAC is in compliance with A.R.S. §41-1091.

If you need any further information please contact me at (602) 542-9214.

Sincerely,

George Mehnert
Director

ARIZONA
NAVIGABLE STREAM
ADJUDICATION COMMISSION

FIVE-YEAR REVIEW REPORT

Title 12 Natural Resources
Chapter 17

December 2015

INTRODUCTION

The Arizona Navigable Stream Adjudication Commission has two primary purposes; one is to determine the navigability or non-navigability of Arizona watercourses as of the time of statehood, February 14, 1912, and the other is to determine the public trust values of those watercourses that are determined to have been navigable. Having a limited, specific, and temporary mission, the Commission is scheduled to Sunset June 30, 2020, absent any lawsuits that might require continuation beyond that date.

ANSAC has gone through a few different iterations and is presently engaged in conducting river and stream evidentiary navigability hearings regarding five major watercourses. (There were six cases but just a few months ago the Commission consolidated the Upper Salt River and the Lower Salt River into a single case, known as the Salt River). Hearings on these five rivers are what remain of similar hearings regarding twelve additional major rivers and more than 39,039 small and minor watercourses. One of six cases on appeal in the State Court system was returned to ANSAC by the Arizona Court of Appeals in October 2011 for additional work. The other cases on appeal, facing the same legal issues were also returned to ANSAC for additional hearings by agreement of the parties. At the time the single case, the Lower Salt River, was returned to the Commission with the recommendations of the Arizona Court of Appeals, a United States Supreme Court Case, generally known as PPL Montana, had been decided and since some issues in the PPL Montana case apply to the cases returned to ANSAC as a result of the Arizona Court of Appeals decision the Commission also decided to consider the relevant issues involved in the U.S.S.C. PPL Montana case. The rivers returned to ANSAC as a result of the Arizona Court of Appeals decision are the San Pedro, Santa Cruz, Gila, Verde, Lower Salt and Upper Salt (Of course the Lower Salt and Upper Salt are now a single case, the Salt River).

The current round of hearings regarding the five remaining cases is resulting in between eight and sixteen days of hearings for each case and thousands of more pages of evidence than were submitted during earlier rounds of hearings. In the past hearings lasted for only one or two days in any instance. Consequently there are five river cases (San Pedro, Santa Cruz, Gila, Verde, and Salt) that are in various stages of hearing and

navigability determination processes. ANSAC is hoping to complete these hearings during calendar 2016, and the rules governing these hearings are no different than those that have governed the 150+ earlier hearings.

The following rules R12-17-101 through R12-17-110 are the bases under which the Commission operates. There have been no other rules adopted by ANSAC and none are anticipated.

Rules

R12-17-101. Petition to Modify Priorities
R12-17-102. Computation of Time
R12-17-103. Service of Documents
R12-17-104. Notice of Appearance as a Party
R12-17-105. Evidence
R12-17-106. Hearings
R12-17-107. Hearing Record
R12-17-108. Legal Memoranda
R12-17-109. Hearing to Identify Public Trust Values
R12-17-110. Hearing Log

TITLE 12. NATURAL RESOURCES

CHAPTER 17. ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION

ARTICLE 1. HEARINGS

TITLE 12. NATURAL RESOURCES

R12-17-101. Petition to Modify Priorities

If a person is aggrieved by the undetermined navigability status of a watercourse and submits a petition under A.R.S. § 37-1123(F), the Commission shall meet within 30 days following receipt of the petition to consider whether to
modify the priorities listed in A.R.S. § 37-1123(E).

R12-17-102. Computation of Time

The Commission shall consider any period of time prescribed or allowed under this Article as calendar days.

R128-17-103. Service of Documents

When a party has appeared by an attorney, service upon the attorney is deemed service upon the party.

1. Method of service.

a. Hand delivery with receipt or certificate of delivery,

b. Legible facsimile with confirmed receipt,

c. Personal service, or

d. By regular mail.

2. Service is deemed made at the time of personal service of the document or five days after deposit of
the document in the United States mail, postage prepaid, in a sealed envelope, and addressed to the
person being served, at the last known address of record.

R12-17-104. Notice of Appearance as a Party

A person may appear as a party at a Commission hearing by:

1. Providing notice to the Commission in writing before or at the hearing,

2. Appearing at the hearing, or

3. Filing a post hearing opening legal memorandum or a response legal memorandum.

R12-17-105. Evidence

A. Submission of evidence.

1. Any person may submit evidence to the Commission in person or by mail to the Arizona Navigable

Stream Adjudication Commission, 1700 West Washington, Suite 304, Phoenix, Arizona 85007, on or
before the published hearing date.
2. A person may submit evidence at the hearing for which the evidence is intended.
3. A person is not required to resubmit evidence previously submitted to the Commission before August
9, 2002 that relates to the navigability of a particular watercourse.
4. A person submitting evidence shall submit an original and seven copies of the evidence.
a. The evidence shall, where practical, be printed on one side of 8-1/2 x 11-inch paper.
b. For computer-generated presentations, such as PowerPoint, only paper printouts of the
presentation slides are accepted.
5. All evidence submitted, including maps, charts, photographs, transparencies, audiotapes, and
videotapes are the property of the Commission.
B. Evidence review. A person may review any evidence submitted for a hearing and may request, at the person's
expense, a copy of any item suitable for copying.
C. Objection to an item of evidence.
1. Any person may object to the admission or exclusion of an item of evidence by making the objection
on the record at the public hearing at which the item of evidence is offered.
2. The Commission shall admit the evidence, decline the evidence, or take the matter under advisement
for later determination.
D. Record keeping. The Commission shall maintain all relevant evidence submitted for each hearing.

R12-17-106. Hearings

A. Evidence.
1. The Commission shall receive, review, and consider only evidence relevant to the matter being heard.
2. The Presiding Officer shall announce the time for which evidence is no longer accepted for consideration.
B. Any person acting as a party may be represented by legal counsel or may proceed without legal counsel.
C. A party may respond and present evidence and arguments on all relevant issues.
1. The Presiding Officer may exclude evidence if its probative value is outweighed by the danger of

unfair prejudice, by confusion of the issues, or by considerations of undue delay, waste of time, or
needless presentation of cumulative evidence.
2. If any Commissioner objects to a ruling by the Presiding Officer regarding the exclusion of evidence, the entire Commission shall vote on the ruling.
D. The Presiding Officer shall exercise reasonable control over the manner and order of examining witnesses
and presenting evidence to ascertain the truth, to avoid needless consumption of time, and to protect
witnesses from harassment or undue embarrassment. The Presiding Officer shall determine:
1. The order in which a party will testify,
2. The time limit for testimony, if any, and
3. The order and duration a party may question a witness.
E. If any Commissioner objects to the Presiding Officer's ruling on a procedural motion, the entire Commission
shall vote on the motion.
F. The Commission shall, as a whole, rule on any motion involving a matter of law or fact.
G, The Presiding Officer may, for good cause, continue or reschedule any hearing before the Commission
H. Public participation.
1. The Commission shall provide an opportunity for public comment to any item on the meeting agenda.
2. The Presiding Officer may establish time limits for public comments.
3. The Presiding Officer may exclude any person if the person disrupts or obstructs a hearing, or
willfully refuses to comply with an order of the Presiding Officer.

R12-17-107. Hearing Record

A. The Presiding Officer shall ensure that a record is created of the proceeding. The Presiding Officer may tape
record or secure a court reporter to produce a record of the proceedings. The Commission shall retain the
original audiotape recording or the court reporter's transcript of the hearing, whichever method is used.
B. A person may obtain a duplicate copy of an audiotape recording of a hearing by requesting a copy of the
audiotape and by providing the Commission with replacement blank audiotapes. The Commission will not

provide a transcript of the hearing.
C. A person may obtain a copy of a court reporter's transcript by making arrangements directly with the court
reporter.

R12-17-108. Legal Memoranda

A. Opening legal memoranda.
1. A party may file an opening legal memorandum with the Commission within 30 days, or as
determined by the Presiding Officer, after conclusion of the hearing.
2. The party shall serve a copy of its opening legal memorandum upon all other parties to the hearing and
shall file proof of service with the Commission.
3. Unless allowed by the Commission, an opening legal memorandum may not exceed 25 typewritten
pages.
B. Response memoranda.
1. A party may file a response legal memorandum with the Commission within 20 days, or as determined
by the Presiding Officer, after service of the opening legal memorandum.
2. The party shall serve a copy of its response legal memorandum upon all other parties appearing before
the Commission at the hearing and shall file proof of service with the Commission.
3. Unless allowed by the Commission, a response legal memorandum may not exceed 15 typewritten
pages.

R12-17-109. Hearing to Identify Public Trust Values

If the Commission determines that a watercourse was navigable as of February 14, 1912, the Commission shall,
within 90 days of its final determination, hold a hearing to identify any trust values associated with the watercourse.

R12-17-110. Hearing Log

The Commission shall maintain a log of all Commission hearings and shall assign a number to each hearing
regarding a particular watercourse. The hearing log shall include:
1. The hearing number,
2. The name and date of the hearing,
3. The final determination date,
4. The Commission report date; and
5. The county recording or close date.

Rules Analysis

Rule 12-17-101 **Petition to Modify Priorities**

1. Authorization of the rule by existing statute
This rule is authorized by A.R.S. § 37-1122.

2. The purpose of the rule
The purpose of the rule is to provide procedures for modifying priorities pertaining to holding hearings. This rule complies with the intended purpose.

3. Analysis of effectiveness in achieving the objective
This rule is effective in achieving its purpose.

4. Analysis of consistency with state and federal statutes and rules
This rule is consistent with A.R.S. § 37-1122, and utilizes the definitions contained in A.R.S. § 37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule
The rule is enforced by the Commission as written without difficulty.

6. Analysis of clarity, conciseness, and understandability
The rule is clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years
There have been no written criticisms of the rule received during the last five years.

8. Economic, small business, and consumer impact comparison
There is no economic, small business or consumer impact related to this rule.

9. Summary of business competitiveness analyses of the rules
There is no business competitiveness regarding these rules.

10. Status of the completion of action indicated in the previous five-year-review report
There was no action contemplated in the previous five-year review report.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective
There is no one regulated by the Commission and there is no regulatory objective to this rule.

12. Analysis of the stringency compared to federal laws
This rule is not more stringent than federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037
The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action
The Commission does not plan to amend the rule until a substantive issue arises.

Rule 12-17-102 **Computation of Time**

1. Authorization of the rule by existing statute
This rule is authorized by A.R.S. § 37-1122.

2. The purpose of the rule

The purpose of the rule is to provide procedures for computing time for filing various legal documents including post hearing legal memorandums. This rule complies with the intended purpose.

3. Analysis of effectiveness in achieving the objective

This rule is effective in achieving its purpose.

4. Analysis of consistency with state and federal statutes and rules

This rule is consistent with A.R.S. § 37-1122, and utilizes the definitions contained in A.R.S. § 37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The rule is enforced by the Commission as written without difficulty.

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12. Analysis of the stringency compared to federal laws
This rule is not more stringent than federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037
The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action
The Commission does not plan to amend the rule until a substantive issue arises.

Rule 12-17-103 **Service of Documents**

1. Authorization of the rule by existing statute
This rule is authorized by A.R.S. § 37-1122.

2. The purpose of the rule
The purpose of the rule is to provide procedures for service of documents to the Commission. This rule complies with the intended purpose.

3. Analysis of effectiveness in achieving the objective
This rule is effective in achieving its purpose.

4. Analysis of consistency with state and federal statutes and rules
This rule is consistent with A.R.S. § 37-1122, and utilizes the definitions contained in A.R.S. § 37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule
The rule is enforced by the Commission as written without difficulty.

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This rule is not more stringent than federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037
The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action
The Commission does not plan to amend the rule until a substantive issue arises.

Rule 12-17-104 **Notice of Appearance as a Party**

1. Authorization of the rule by existing statute
This rule is authorized by A.R.S. § 37-1122.

2. The purpose of the rule

The purpose of the rule is to provide procedures for appearing at hearings as a party to the proceedings. This rule complies with the intended purpose.

3. Analysis of effectiveness in achieving the objective

This rule is effective in achieving its purpose.

4. Analysis of consistency with state and federal statutes and rules

This rule is consistent with A.R.S. § 37-1122, and utilizes the definitions contained in A.R.S. § 37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The rule is enforced by the Commission as written without difficulty.

6. Analysis of clarity, conciseness, and understandability

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12. Analysis of the stringency compared to federal laws
This rule is not more stringent than federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037
The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action
The Commission does not plan to amend the rule until a substantive issue arises.

Rule 12-17-105 **Evidence**

1. Authorization of the rule by existing statute
This rule is authorized by A.R.S. § 37-1122.

2. The purpose of the rule
The purpose of the rule is to provide procedures for receiving and handling evidence. This rule complies with the intended purpose.

3. Analysis of effectiveness in achieving the objective
This rule is effective in achieving its purpose.

4. Analysis of consistency with state and federal statutes and rules
This rule is consistent with A.R.S. § 37-1122, and utilizes the definitions contained in A.R.S. § 37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule
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12. Analysis of the stringency compared to federal laws
This rule is not more stringent than federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037
The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action
The Commission does not plan to amend the rule until a substantive issue arises.

Rule 12-17-106 **Hearings**

1. Authorization of the rule by existing statute
This rule is authorized by A.R.S. § 37-1122.

2. The purpose of the rule
The purpose of the rule is to provide procedures determining the conduct of hearings. This rule complies with the intended purpose.

3. Analysis of effectiveness in achieving the objective

This rule is effective in achieving its purpose.

4. Analysis of consistency with state and federal statutes and rules

This rule is consistent with A.R.S. § 37-1122, and utilizes the definitions contained in A.R.S. § 37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The rule is enforced by the Commission as written without difficulty.

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The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action
The Commission does not plan to amend the rule until a substantive issue arises.

Rule 12-17-107 **Hearing Record**

1. Authorization of the rule by existing statute
This rule is authorized by A.R.S. § 37-1122.

2. The purpose of the rule
The purpose of the rule is to provide procedures for creating a hearing record. This rule complies with the intended purpose.

3. Analysis of effectiveness in achieving the objective
This rule is effective in achieving its purpose.

4. Analysis of consistency with state and federal statutes and rules
This rule is consistent with A.R.S. § 37-1122, and utilizes the definitions contained in A.R.S. § 37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule
The rule is enforced by the Commission as written without difficulty.

6. Analysis of clarity, conciseness, and understandability
The rule is clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years
There have been no written criticisms of the rule received during the last five years.

8. Economic, small business, and consumer impact comparison
There is no economic, small business or consumer impact related to this rule.

9. Summary of business competitiveness analyses of the rules
There is no business competitiveness regarding these rules.

10. Status of the completion of action indicated in the previous five-year-review report
There was no action contemplated in the previous five-year review report.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective
There is no one regulated by the Commission and there is no regulatory objective to this rule.

12. Analysis of the stringency compared to federal laws
This rule is not more stringent than federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037
The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action
The Commission does not plan to amend the rule until a substantive issue arises.

Rule 12-17-108 **Legal Memoranda**

1. Authorization of the rule by existing statute
This rule is authorized by A.R.S. § 37-1122.

2. The purpose of the rule
The purpose of the rule is to provide procedures for parties filing legal memoranda. This rule complies with the intended purpose.

3. Analysis of effectiveness in achieving the objective
This rule is effective in achieving its purpose.

4. Analysis of consistency with state and federal statutes and rules

This rule is consistent with A.R.S. § 37-1122, and utilizes the definitions contained in A.R.S. § 37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The rule is enforced by the Commission as written without difficulty.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years

There have been no written criticisms of the rule received during the last five years.

8. Economic, small business, and consumer impact comparison

There is no economic, small business or consumer impact related to this rule.

9. Summary of business competitiveness analyses of the rules

There is no business competitiveness regarding these rules.

10. Status of the completion of action indicated in the previous five-year-review report

There was no action contemplated in the previous five-year review report.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

There is no one regulated by the Commission and there is no regulatory objective to this rule.

12. Analysis of the stringency compared to federal laws

This rule is not more stringent than federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action
The Commission does not plan to amend the rule until a substantive issue arises.

Rule 12-17-109 **Hearing to Identify Public Trust Values**

1. Authorization of the rule by existing statute
This rule is authorized by A.R.S. § 37-1122.

2. The purpose of the rule
The purpose of the rule is to provide procedures for holding public trust value hearings. This rule complies with the intended purpose.

3. Analysis of effectiveness in achieving the objective
This rule is effective in achieving its purpose.

4. Analysis of consistency with state and federal statutes and rules
This rule is consistent with A.R.S. § 37-1122, and utilizes the definitions contained in A.R.S. § 37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule
The rule is enforced by the Commission as written without difficulty.

6. Analysis of clarity, conciseness, and understandability
The rule is clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years
There have been no written criticisms of the rule received during the last five years.

8. Economic, small business, and consumer impact comparison
There is no economic, small business or consumer impact related to this rule.

9. Summary of business competitiveness analyses of the rules
There is no business competitiveness regarding these rules.

10. Status of the completion of action indicated in the previous five-year-review report

There was no action contemplated in the previous five-year review report.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective
There is no one regulated by the Commission and there is no regulatory objective to this rule.

12. Analysis of the stringency compared to federal laws
This rule is not more stringent than federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037
The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action
The Commission does not plan to amend the rule until a substantive issue arises.

Rule 12-17-110 **Hearing Log**

1. Authorization of the rule by existing statute
This rule is authorized by A.R.S. § 37-1122.

2. The purpose of the rule
The purpose of the rule is to provide instructions for maintaining a Hearing Log of all Cases considered by the Commission. This rule complies with the intended purpose.

3. Analysis of effectiveness in achieving the objective
This rule is effective in achieving its purpose.

4. Analysis of consistency with state and federal statutes and rules
This rule is consistent with A.R.S. § 37-1122, and utilizes the definitions contained in A.R.S. § 37-1101. This rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule
The rule is enforced by the Commission as written without difficulty.

6. Analysis of clarity, conciseness, and understandability
The rule is clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years
There have been no written criticisms of the rule received during the last five years.

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There is no economic, small business or consumer impact related to this rule.

9. Summary of business competitiveness analyses of the rules
There is no business competitiveness regarding these rules.

10. Status of the completion of action indicated in the previous five-year-review report
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There is no one regulated by the Commission and there is no regulatory objective to this rule.

12. Analysis of the stringency compared to federal laws
This rule is not more stringent than federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037
The rule was adopted prior to 2010 and has not been changed.

14. Proposed course of action
The Commission does not plan to amend the rule until a substantive issue arises.

Arizona Navigable Stream Adjudication Commission
Rules Matrix

RULE NUMBER	RULE TITLE	PROPOSED RULE ACTION		
		No Change	Amend	Repeal

12-17-101	Petition to Modify Priorities	X		
12-17-102	Computation of Time	X		
12-17-103	Service of Documents	X		
12-17-104	Notice of Appearance as a Party	X		
12-17-105	Evidence	X		
12-17-106	Hearings	X		
12-17-107	Hearing Record	X		
12-17-108	Legal Memoranda	X		
12-17-109	Hearing to Identify Public Trust Values	X		
12-17-110	Hearing Log	X		

Commission Members

Wade Noble, Chair
Jim Henness, Vice Chair
Jim Horton, Member
Bill Allen, Member
Commission Member, Vacant

Staff Members

George Mehnert, Director
Matthew Rojas, Legal Counsel
(Legal Counsel Must be Outside)
Vacant, Research Analyst

Commission Address

1700 West Washington, Suite B54
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TITLE 12. NATURAL RESOURCES

CHAPTER 17. ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION

Editor's Note: 12 A.A.C. 17 consists of new rules for the Arizona Navigable Stream Adjudication Commission that were made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

Editor's Note: 12 A.A.C. 17, which formerly contained the rules of the Arizona Navigable Streambed Adjudication Commission, expired under A.R.S. § 41-1056(E) at 9 A.A.C. 4135, effective July 31, 2003. The rescinded Chapter is on file in the Office of the Secretary of State (Supp. 03-3).

ARTICLE 1. HEARINGS

Article 1, consisting of R12-17-101 through R12-17-110, made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

Section
R12-17-101. Petition to Modify Priorities
R12-17-102. Computation of Time
R12-17-103. Service of Documents
R12-17-104. Notice of Appearance as a Party
R12-17-105. Evidence
R12-17-106. Hearings
R12-17-107. Hearing Record
R12-17-108. Legal Memoranda
R12-17-109. Hearing to Identify Public Trust Values
R12-17-110. Hearing Log

ARTICLE 1. HEARINGS

R12-17-101. Petition to Modify Priorities
If a person is aggrieved by the undetermined navigability status of a watercourse and submits a petition under A.R.S. § 37-1123(F), the Commission shall meet within 30 days following receipt of the petition to consider whether to modify the priorities set in accordance with A.R.S. § 37-1123(E).

Historical Note
New Section made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

R12-17-102. Computation of Time
The Commission shall consider any period of time prescribed or allowed under this Article as calendar days.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

R12-17-103. Service of Documents
If a party has appeared by an attorney, service upon the attorney is deemed service upon the party.
1. Method of service.
   a. Hand delivery with receipt or certificate of delivery,
   b. Legible facsimile with confirmed receipt,
   c. Personal service, or
   d. Regular mail.
2. Service is deemed made at the time of personal service of the document or five days after deposit of the document in the United States mail, postage prepaid, in a sealed envelope, addressed to the person being served at the last known address of record.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

R12-17-104. Notice of Appearance as a Party
A person may appear as a party at a Commission hearing by:
1. Providing notice to the Commission in writing before or at the hearing,
2. Appearing at the hearing, or
3. Filing a post hearing opening legal memorandum or a response legal memorandum.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

R12-17-105. Evidence
A. Submission of evidence.
1. Any person may submit evidence to the Commission in person or by mail to the Arizona Navigable Stream Adjudication Commission, 1700 West Washington, Suite 304, Phoenix, Arizona 85007, on or before the published hearing date.
2. A person may submit evidence relevant to a matter that is being heard.
3. A person is not required to resubmit evidence previously submitted to the Commission before August 9, 2002 that relates to the navigability of a particular watercourse.
4. A person submitting evidence shall submit an original and seven copies of the evidence.
   a. The evidence shall, where practical, be printed on one side of 8 1/2 x 11-inch paper.
   b. For computer-generated presentations, such as PowerPoint, only paper printouts of the presentation slides are accepted.
5. All evidence submitted, including maps, charts, photographs, transparencies, audiotapes, and videotapes are the property of the Commission.

B. Evidence review. A person may review any evidence submitted for a hearing and may request, at the person's expense, a copy of any item that can be copied.

C. Objection to an item of evidence.
1. Any person may object to the admission or exclusion of an item of evidence by making the objection on the record at the public hearing at which the item of evidence is offered.
2. The Commission shall admit the evidence, exclude the evidence, or take the matter under advisement for later determination.

D. Recordkeeping. The Commission shall maintain a permanent record for all relevant evidence submitted for each hearing.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

R12-17-106. Hearings
A. Evidence.
1. The Commission shall receive, review, and consider only evidence relevant to the matter being heard.
2. At the beginning of the hearing, the Presiding Officer shall announce the time when evidence will no longer be accepted for consideration.

B. Any person acting as a party may be represented by legal counsel or may proceed without legal counsel.

C. A party may respond and present evidence and arguments on all relevant issues.

1. The Presiding Officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice; confusion of the issues; or considerations of undue delay, waste of time, or needless presentation of cumulative evidence.
2. If any Commissioner objects to a ruling by the Presiding Officer regarding the exclusion of evidence, the entire Commission shall vote on the ruling.

D. The Presiding Officer shall exercise reasonable control over the manner and order of examining witnesses and presenting evidence to ascertain the truth, avoid needless consumption of time, and protect witnesses from harassment or undue embarrassment. The Presiding Officer shall determine:
1. The order in which parties will testify,
2. The time limit for testimony, if any, and
3. The order and duration of questions that a party may ask a witness.

E. If any Commissioner objects to the Presiding Officer's ruling on a procedural motion, the entire Commission shall vote on the motion.

F. The Commission shall, as a whole, rule on any motion involving a matter of law or fact.

G. The Presiding Officer may, for good cause, continue or reschedule any hearing before the Commission.

H. Public participation.
1. The Commission shall provide an opportunity for public comment regarding any item on the hearing agenda.
2. The Presiding Officer may establish time limits for public comments.
3. The Presiding Officer may exclude any person if the person disrupts or obstructs a hearing or willfully refuses to comply with an order of the Presiding Officer.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

R12-17-107. Hearing Record

A. The Presiding Officer shall ensure that a record of the proceeding is created. The Presiding Officer may tape record or secure a court reporter to produce a record of the proceeding. The Commission shall retain the original audiotape recording or the court reporter's transcript of the hearing, whichever method is used.

B. A person may obtain a copy of an audiotape recording of a hearing by requesting a copy of the audiotape and by providing the Commission with a blank audiotape.

C. A person may obtain a copy of a court reporter's transcript by making copying arrangements directly with the court reporter.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

R12-17-108. Legal Memoranda

A. Opening legal memoranda.
1. A party may file an opening legal memorandum with the Commission within 30 days, or within another reasonable period of time after conclusion of the hearing, as determined by the Presiding Officer.
2. The party shall serve a copy of the opening legal memorandum upon all other parties to the hearing and file proof of service with the Commission.
3. Unless allowed by the Commission, a party shall not submit an opening legal memorandum that exceeds 25 pages.

B. Response memoranda.
1. A party may file a response legal memorandum with the Commission within 20 days, or within another reasonable period of time after service of the opening legal memorandum, as determined by the Presiding Officer.
2. The party shall serve a copy of the response legal memorandum upon all other parties to the hearing and file proof of service with the Commission.
3. Unless allowed by the Commission, a party shall not submit a response legal memorandum that exceeds 15 pages.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

R12-17-109. Hearing to Identify Public Trust Values

If the Commission determines that a watercourse was navigable as of February 14, 1912, the Commission shall, within 90 days of its final determination, hold a hearing to identify any trust values associated with the watercourse.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

R12-17-110. Hearing Log

The Commission shall maintain a log of all Commission hearings and shall assign a number to each hearing regarding a particular watercourse. The hearing log shall include:
1. The hearing number,
2. The name and date of the hearing,
3. The final determination date,
4. The Commission report date; and
5. The county recording or close date.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 3300, effective October 1, 2005 (Supp. 05-3).

37-1122. General powers and duties of the commission

A. The commission shall:

1. Adopt administrative rules that in its discretion it considers to be necessary and proper to carry out the provisions and purposes of this chapter.

2. Assemble and distribute information to the public relating to the commission's determination of navigability or nonnavigability of any watercourse and the commission's other activities.

3. Conduct inquiries or hearings in performing the commission's powers and duties. The commission shall conduct its proceedings informally without adherence to judicial rules of procedure or evidence. The commission shall facilitate participation by persons who are not represented by legal counsel and shall not require a person to file documents or notices in order to be heard and participate in proceedings before the commission.

4. Exercise such other powers as may be necessary to fully carry out its responsibilities imposed by this chapter.

B. The commission may employ subject to title 41, chapter 4, article 4 or contract for legal counsel, independent from the attorney general, and other professional and administrative services. Legal counsel retained by the commission may advise and represent the commission in connection with legal matters before other departments and agencies of this state and represent the commission in litigation concerning the affairs of the commission. Contracts for legal and professional services are exempt from section 41-192 and title 41, chapter 23.

D-2

ARIZONA STATE RETIREMENT SYSTEM (F-16-0402)

Title 2, Chapter 8, Article 6, Public Participation in Rulemaking

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: May 5, 2016 **AGENDA ITEM: D-2**

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: Matthew Rippentrop, Legal Intern

DATE: April 15, 2016

SUBJECT: **ARIZONA STATE RETIREMENT SYSTEM (F-16-0402)**
Title 2, Chapter 8, Article 6, Public Participation in Rulemaking

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The Arizona State Retirement System (ASRS) provides for retirement planning and benefits for state employees and teachers. The ASRS is directed by the governor-appointed ASRS Board (Board). The Board consists of nine members and is responsible for supervising the administration of the ASRS, including the defined contribution plan, defined benefit plan, long-term disability income plan, and health benefit supplement plan. At the end of Fiscal Year 2014-15 there were approximately 558,136 ASRS members.

A.A.C. Title 2, Chapter 8, Article 6 titled "Public Participation in Rulemaking" contains seven rules relating to procedures governing public input on the rulemaking process.

Section Content and Subject Matter

R2-8-601 titled "Definitions" provides notice to the public of how the ASRS is using certain terms throughout its rules.

R2-8-602 titled "Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements" provides notice of how the ASRS rulemaking records may be viewed at the ASRS's offices.

R2-8-603 titled "Petition for Rulemaking" provides notice to the public of how to petition the ASRS to make or amend a rule.

R2-8-604 titled "Review of a Rule, Agency Practice, or Substantive Policy Statement" provides notice to the public of how to request a review of an ASRS rule or substantive policy statement.

R2-8-605 titled "Objection to Rule Based Upon Economic, Small Business and Consumer Impact" provides notice to the public on how to submit a petition to the ASRS objecting to an ASRS rule based on actual economic impact.

R2-8-606 titled "Oral Proceedings" provides notice to the public on how to request an oral proceeding.

R2-8-607 titled "Petition for Delayed Effective Date" provides notice to the public of how to request a delayed effective date for an ASRS rule.

Year Each Rule was Last Amended or Newly Made

- December 5, 2015: Section 601
- March 7, 2006: Sections 602, 603, 604, 605, 606, and 607

Proposed Action

The ASRS indicates that it will amend all of the rules except Section 601 by December of 2016. Amendments include updating terminology to better reflect statutory language and changing public petition response timing to properly reflect state statutory procedure.

Summary of Reasons for Proposed Actions

The ASRS indicates amendments will make the rules clear, concise, and understandable, and will ensure consistency with corresponding statutes.

Analysis of the Agency's Report Pursuant to Criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The ASRS has certified its compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. The ASRS indicates the rules are effective in achieving their objectives, with the exception of Section 605 which should reflect, pursuant to A.R.S. § 41-1056.01(A)(3), that a person may object to a rule believed to not be the least burdensome costly alternative.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

No. The ASRS indicates no written criticisms have been received.

4. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The enabling statutes for the Board are set forth in A.R.S. Title 38, Chapter 5, Articles 1 "Social Security for Public Officers and Employees" and 2 "Arizona State Retirement System".

Specific authorizing statutes for the rules include A.R.S. §§ 41-1001 relating to definitions, 41-1023(C) relating to oral proceedings, 41-1029 setting forth agency rulemaking record requirements, 41-1032 prescribing effective rule date procedure, 41-1033 allowing "[a]ny person… [to] petition an agency requesting the making of a final rule", 41-1056.01 prescribing rules appeal procedure, and 41-1091(C) prescribing an agency "shall publish at least annually a directory summarizing the subject matter of all currently applicable rules and substantive policy statements."

5. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes. The ASRS indicates Sections 603, 604, and 605 could be made more consistent with corresponding statutes. Sections 603 and 604 should reflect a statutory requirement of a 60-day timeframe for the ASRS to take action on a petition, while Section 605 should reflect that a person may object to a rule believed not to be the least burdensome costly alternative.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. With the exception of Section 605, the rules are currently enforced as written. Section 605 currently does not reflect that a person may object to a rule believed not to be the least burdensome costly alternative.

7. **Has the agency analyzed whether the rules are clear, concise, and understandable?**

Yes. With the exception of Section 601, the rules could be made more clear, concise, and understandable. The ASRS provides that updating rule language will better reflect statutory language by amending "individual" to "person" in Sections 602-607 and "objection" to "petition" in Section 605. Further, Section 606 could be made clearer by reflecting that a "person" may represent an "entity", including another individual, at an oral proceeding.

8. **Stringency of the Rules:**

   a. **Are the rules more stringent than corresponding federal law?**

No. The ASRS indicates that there are no corresponding federal laws for the rules.

b. <u>If so, is there statutory authority to exceed the requirements of federal law?</u>

Not applicable.

9. <u>For rules adopted after July 29, 2010:</u>

a. <u>Do the rules require issuance of a regulatory permit, license or agency authorization?</u>

No. The ASRS does not issue permits or licenses.

b. <u>If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?</u>

Not applicable.

10. <u>Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?</u>

The ASRS did not complete the course of action proposed in the previous five-year-review report. The previous report from June of 2011 proposed amendment to Section 605 to be completed by final rulemaking by June of 2013.

11. <u>Has the agency included a proposed course of action?</u>

Yes. With the exception of Section 601, the ASRS proposes amendments to each rule as discussed above.

<u>Conclusion</u>

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: May 5, 2016 **AGENDA ITEM: D-2**

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: GRRC Economic Team

DATE: April 15, 2016

SUBJECT: **ARIZONA STATE RETIREMENT SYSTEM (F-16-0402)**
Title 2, Chapter 8, Article 6, Public Participation in Rulemaking

---

I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the rules contained in the five-year-review report.

The rules provide the authority for public participation in the ASRS rulemaking process. The public benefits from having rules that provide a consistent process for viewing the public record, and otherwise participating in the rulemaking process. Having clear and concise rules benefits the agency by requiring less staff time to answer questions from the public. Members of the public who wish to engage in the rulemaking process may do so by submitting written and oral comments, as well as petitions, to the ASRS and/or GRRC.

ASRS believes the economic impact has been as predicted for the rules in Article 6. R2-8-601 through R2-8-607 have no effect on the ASRS contribution rate, nor do they have any economic impact on small business or directly affect private persons, consumers or state revenues. Furthermore, the estimated economic impact in the Economic, Small Business, and Consumer Impact Statement provided to GRRC with the 2006 Notice of Final Rulemaking for R2-8-602 through R2-8-607 has not changed since it was provided to GRRC and no A.R.S. §§ 41-1033 or 41-1056.01 petitions have been received.

At the end of Fiscal Year 2014-2015 there were approximately 558,136 ASRS members.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

ASRS has determined that the rules impose the least burden and costs to persons regulated by the rules once they are amended in accordance with the proposed course of action.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

ARIZONA STATE RETIREMENT SYSTEM

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Paul Matson
Director

January 21, 2016

Nicole A. Ong, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Ave., Ste. 402
Phoenix, AZ 85007

RE: Five-year-review Report for Article 6

In compliance with A.R.S. § 41-1056(A), the Arizona State Retirement System (ASRS) has reviewed all of the rules in A.A.C. Title 2, Chapter 8, Article 6 and submits the enclosed report to the Council for approval. The ASRS does not intend for any rules in Article 6 to expire at this time and the ASRS certifies that it is in compliance with A.R.S. § 41-1091. The ASRS contact person for this report is Jessica Ross, Rules Writer, who may be reached at (602) 240-2039.

Sincerely,

Paul Matson
Director
Arizona State Retirement System

Enclosure

FIVE-YEAR-REVIEW REPORT

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING

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FIVE-YEAR-REVIEW SUMMARY

The state legislature created the Arizona State Retirement System (ASRS) in 1953 in order to provide defined contribution retirement (defined contribution plan) benefits for state employees and teachers, as well as employees of political subdivisions that elected coverage. The defined contribution plan was closed to new members in 1972. At that time, members of the defined contribution plan who elected to, and all new members, became part of the defined benefit plan. At the end of Fiscal Year 2014-2015 there were approximately 558,136 ASRS members.

The ASRS Board (Board) is appointed by the Governor. The Board consists of nine members who qualify according to A.R.S. § 38-713. The Board is responsible for supervising the administration of the ASRS, including the defined contribution plan, defined benefit plan, long-term disability income plan, and health benefit supplement plan. Investment responsibilities include:

1. Prescribing investment goals, objectives, and policies;
2. Allocating assets to meet investment goals;
3. Adopting specific policy directives for the guidance of investment management;
4. Appointing investment managers;
5. Prescribing investment diversification programs; and
6. Assigning investment responsibilities.

The enabling statutes for the Board are set forth in A.R.S. §§ Title 38, Chapter 5, Articles 1 and 2. The Board currently implements its statutes with rules located at A.A.C. Title 2, Chapter 8. This report covers all seven rules in 2 A.A.C. 8, Article 6 and all seven rules were made by final rulemaking effective March 7, 2006. R2-8-601 was last amended by final rulemaking effective December 5, 2015.

FIVE-YEAR-REVIEW REPORT

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING

R2-8-601.	Definitions
R2-8-602.	Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements
R2-8-603.	Petition for Rulemaking
R2-8-604.	Review of a Rule, Agency Practice, or Substantive Policy Statement
R2-8-605.	Objection to Rule Based Upon Economic, Small Business and Consumer Impact
R2-8-606.	Oral Proceedings
R2-8-607.	Petition for Delayed Effective Date

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

The following information is the same for all of the rules and is not restated in the analysis of each rule:

3. Analysis of effectiveness in achieving the objective

With the exception of R2-8-605, the rules are effective in achieving their objectives.

5. Status of enforcement of the rule

With the exception of R2-8-605, the rules are enforced as written.

7. Analysis of any written criticisms the agency received on the rule

No written criticisms were received.

8. Estimated economic, small business, and consumer impact statement comparison

Analysis of the economic impact statement for the rules is included as Exhibit 1.

9. Analysis of any analyses the agency received regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states

No analyses were received.

10. Whether the agency completed the course of action proposed in the previous Five-year-review Report

With the exception of R2-8-605, this analysis is not applicable because the agency did not propose a course of action in the previous five-year-review report.

12. Determination that the rule is not more stringent than a corresponding federal law

There is no corresponding federal law for the rules.

13. Whether the rule complies with A.R.S. § 41-1037

The ASRS does not issue permits or licenses.

14. Proposed course of action

With the exception of R2-8-601, the ASRS plans to amend all the rules by December 2016 to address the issues identified in this report.

INFORMATION THAT IS IDENTICAL WITHIN GROUPS OF RULES

R2-8-601 and R2-8-602

11. Determination that the probable benefits of the rule outweigh the probable costs and the rule imposes the least burden and costs

The rule imposes least burden and costs on the public.

R2-8-603 through R2-8-607

11. Determination that the probable benefits of the rule outweigh the probable costs and the rule imposes the least burden and costs

The rule will impose the least burden and costs on the public when the issues identified in this report are addressed.

R2-8-601, R2-8-602, R2-8-606, and R2-8-607

4. Analysis of consistency with state and federal statutes and rules

The rule is consistent with state and federal statutes and rules.

ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING

R2-8-601. Definitions

1. <u>Authorization of the rule by existing statute</u>

A.R.S. § 41-1001

2. <u>Objective</u>

The objective of the rule is to provide notice to the public of how the ASRS is using certain terms throughout its rules.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable.

14. <u>Proposed course of action</u>

The ASRS does not intend to amend this rule at this time.

R2-8-602. Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements

1. <u>Authorization of the rule by existing statute</u>

A.R.S. §§ 41-1029, 41-1091(C)

2. <u>Objective</u>

The objective of the rule is to provide notice to the public of how the ASRS rulemaking records may be viewed at the ASRS offices.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable. It could be clearer by changing "individual" to "person" to better reflect statutory language.

R2-8-603. Petition for Rulemaking

1. <u>Authorization of the rule by existing statute</u>

A.R.S. § 41-1033

2. <u>Objective</u>

The objective of the rule is to provide notice to the public of how to petition the ASRS to make or amend a rule.

4. Analysis of consistency with state and federal statutes and rules

The rule is mostly consistent with state and federal statutes and rules. The rule could be more consistent if subsection (B) reflected that the ASRS must take action on the petition within 60 days pursuant to A.R.S. § 41-1033(A), instead of 30 days.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable. It could be clearer by changing "individual" to "person" to better reflect statutory language in A.R.S. § 41-1033.

R2-8-604. Review of a Rule, Agency Practice, or Substantive Policy Statement

1. Authorization of the rule by existing statute

A.R.S. § 41-1033

2. Objective

The objective of the rule is to provide notice to the public of how to request a review of an ASRS rule or an ASRS substantive policy statement.

4. Analysis of consistency with state and federal statutes and rules

The rule is mostly consistent with state and federal statutes and rules. The rule could be more consistent if subsection (B) reflected that the ASRS must take action on the petition within 60 days pursuant to A.R.S. § 41-1033(A), instead of 30 days.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable. It could be clearer by changing "individual" to "person" to better reflect statutory language in A.R.S. § 41-1033.

7. Estimated economic, small business, and consumer impact statement comparison

Analysis of the economic impact statement for the rules is included as Exhibit 1.

R2-8-605. Objection to Rule Based Upon Economic, Small Business and Consumer Impact

1. Authorization of the rule by existing statute

A.R.S. § 41-1056.01

2. Objective

The objective of the rule is to provide notice to the public of how to submit a petition to the ASRS objecting to an ASRS rule based on actual economic impact.

4. <u>Analysis of consistency with state and federal statutes and rules</u>

The rule is mostly consistent with state and federal statutes and rules. It could be more consistent by changing "objection" to "petition" to better reflect statutory language. Also, subsection (A)(3) needs to reflect that pursuant to A.R.S. § 41-1056.01(A)(3), a person may object to a rule if the person believes that the agency did not select the least burdensome and costly alternative.

5. <u>Status of enforcement of the rule</u>

The rule is enforced to the extent it is consistent with statute.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable. It could be clearer by changing "individual" to "person" to better reflect statutory language.

10. <u>Whether the agency completed the course of action proposed in the previous Five-year-review Report</u>

No. The agency did not complete the proposed course of action due to the rulemaking moratorium and staff resources prioritized to other projects.

R2-8-606. Oral Proceedings

1. <u>Authorization of the rule by existing statute</u>

A.R.S. § 41-1023(C)

2. <u>Objective</u>

The objective of the rule is to provide notice to the public of to request an oral proceeding.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable. It could be clearer by changing "individual" to "person" to better reflect statutory language. The rule could also be clearer by reflecting that a "person" may represent any "entity," including another individual at an oral proceeding.

R2-8-607. Petition for Delayed Effective Date

1. <u>Authorization of the rule by existing statute</u>

A.R.S. § 41-1032

2. <u>Objective</u>

The objective of the rule is to provide notice to the public of how to request a delayed effective date for an ASRS rule.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable. It could be clearer by changing "individual" to "person" to better reflect statutory language.

ECOMONIC IMPACT STATEMENT
Arizona State Retirement System

Title and its heading: Title 2, Administration
Chapter and its heading: Chapter 8, State Retirement System Board
Article and its heading: Article 6, Public Participation in Rulemaking
Section Numbers: R2-8-601 through R2-8-607

A.R.S. Title 41, Chapter 6, Article 1, Arizona Revised Statutes, provides the authority for public participation in the agency rulemaking process. The public benefits from having rules that provide a consistent process for viewing the public record, and otherwise participating in the rulemaking process. Having clear and concise rules benefits the agency by requiring less staff time to answer questions from the public. Members of the public who wish to engage in the rulemaking process may do so by submitting written and oral comments, as well as petitions, to the ASRS and/or the Governor's Regulatory Review Council (GRRC). Such comments and petitions are addressed and maintained as part of the public rulemaking record pursuant to these rules and statutes.

R2-8-601

R2-8-601, Definitions, was last amended by final rulemaking on December 5, 2015. However, this rule has no effect on the ASRS contribution rate, nor does it have any economic impact on small business or directly affect private persons, consumers or state revenues. Furthermore, the estimated economic impact in the Economic, Small Business, and Consumer Impact Statement provided to GRRC with the 2015 Notice of Final Rulemaking for this rule has not changed since it was provided to GRRC and no A.R.S. §§ 41-1033 or 41-1056.01 petitions have been received.

R2-8-602 through R2-8-607

R2-8-602, Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements; R2-8-603, Petition for Rulemaking; R2-8-604, Review of a Rule, Agency Practice, or Substantive Policy Statement; R2-8-605, Objection to Rule Based Upon Economic, Small Business and Consumer Impact; R2-8-606, Oral Proceedings; and R2-8-607, Petition for Delayed Effective Date, were all established by final rulemaking on March 7, 2006. These rules have no effect on the ASRS contribution rate, nor does it have any economic impact on small business or directly affect private persons, consumers or state revenues. Furthermore, the estimated economic impact in the Economic, Small Business, and Consumer Impact Statement provided to GRRC with the 2006 Notice of Final Rulemaking for this rule has not changed since it was provided to GRRC and no A.R.S. §§ 41-1033 or 41-1056.01 petitions have been received.

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Authority: A.R.S. § 38-701 et seq.

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

Section

R2-8-101. Repealed
R2-8-102. Repealed
R2-8-103. Repealed
R2-8-104. Definitions
R2-8-105. Repealed
R2-8-106. Reserved
R2-8-107. Reserved
R2-8-108. Reserved
R2-8-109. Reserved
R2-8-110. Reserved
R2-8-111. Reserved
R2-8-112. Reserved
R2-8-113. Emergency Expired
R2-8-114. Emergency Expired
R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death; Payment of Survivor Benefits Upon the Death of a Member
R2-8-116. Expired
R2-8-117. Repealed
R2-8-118. Application of Interest Rates
R2-8-119. Expired
R2-8-120. Designating a Beneficiary; Spousal Consent to Designation
R2-8-121. Repealed
R2-8-122. Remittance of contributions
R2-8-123. Actuarial Assumptions and Actuarial Value of Assets
Table 1. Expired
Table 2. Expired
Table 3. Repealed
Table 3A. Expired
Table 3B. Expired
Table 4. Expired
Table 4A. Repealed
Table 4B. Repealed
Table 4C. Repealed
Table 5. Expired
Table 6. Expired
Table 7. Expired
R2-8-124. Repealed
R2-8-125. Repealed
R2-8-126. Calculating Benefits
Table 1. Repealed
Table 2. Repealed
Table 3. Repealed
Table 4. Repealed
Table 5. Repealed
Table 6. Repealed
Table 7. Repealed
Table 8. Repealed
Table 9. Repealed
Table 10. Repealed
Table 11. Repealed
Exhibit A. Repealed
Exhibit B. Repealed
Table 1. Repealed
Table 2. Repealed

Table 3. Repealed
Exhibit C. Repealed
Exhibit D. Repealed
Table 1. Repealed
Table 2. Repealed
Table 3. Repealed
Table 4. Repealed
Table 5. Repealed
Table 6. Repealed
Exhibit E. Repealed
Table 1. Repealed
Table 2. Repealed
Table 3. Repealed
Table 4. Repealed
Table 5. Repealed
Table 6. Repealed
Exhibit F. Repealed
Table 1. Repealed
Table 2. Repealed
Table 3. Repealed
Table 4. Repealed
Table 5. Repealed
Table 6. Repealed
Exhibit G. Repealed
Exhibit H. Repealed
Exhibit I. Repealed
Exhibit J. Repealed
Exhibit K. Repealed
Exhibit L. Repealed
Table 1. Repealed
Table 2. Repealed
Table 3. Repealed
Table 4. Repealed
Table 5. Repealed
Table 6. Repealed
Table 7. Repealed
Exhibit M. Repealed
Table 1. Repealed
Table 2. Repealed
Table 3. Repealed
Table 4. Repealed
Table 5. Repealed
Table 6. Repealed

ARTICLE 2. STATE RETIREMENT DEFINED CONTRIBUTION PROGRAM

Article 2, consisting of R2-8-201 through R2-8-207, made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2).

Section
R2-8-201. Definitions
R2-8-202. Expired
R2-8-203. Expired
R2-8-204. Expired
R2-8-205. Expired
R2-8-206. Expired
R2-8-207. Return of Contributions

ARTICLE 3. RESERVED

ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

Article 4, consisting of R2-8-401 through R2-8-405, made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

Section
R2-8-401. Definitions
R2-8-402. General Procedures
R2-8-403. Request for a Hearing of an Appealable Agency Action
R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings
R2-8-405. Rehearing; Review of a Final Decision

ARTICLE 5. PURCHASING SERVICE CREDIT

Article 5, consisting of R2-8-501 through R2-8-521, made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

R2-8-501. Definitions
R2-8-502. Request to Purchase Service Credit and Notification of Cost
R2-8-503. Requirements Applicable to All Service Credit Purchases
R2-8-504. Service Credit Calculation for Purchasing Service Credit
R2-8-505. Restrictions on Purchasing Overlapping Service Credit; Transfers
R2-8-506. Cost Calculation for Purchasing Service Credit
R2-8-507. Required Documentation and Calculations for Forfeited Service Credit
R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit
R2-8-509. Required Documentation and Calculations for Military Service Credit
R2-8-510. Required Documentation and Calculations for Presidential Call-up Service Credit
R2-8-511. Required Documentation and Calculations for Other Public Service Credit
R2-8-512. Purchasing Service Credit by Check, Cashier's Check, or Money Order
R2-8-513. Purchasing Service Credit by Irrevocable Payroll Deduction Authorization
R2-8-513.01. Irrevocable Payroll Deduction Authorization and Transfer of Employment to a Different ASRS Employer
R2-8-513.02. Termination Date
R2-8-514. Purchasing Service Credit by Direct Rollover
R2-8-515. Purchasing Service Credit by Trustee-to-Trustee Transfer
R2-8-516. Purchasing Service Credit by Indirect IRA Rollover
R2-8-517. Purchasing Service Credit by Distributed Rollover Contribution
R2-8-518. Repealed
R2-8-519. Purchasing Service Credit by Termination Pay Distribution
R2-8-520. Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable Payroll Deduction Authorization
R2-8-521. Adjustment of Errors

ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING

Article 6, consisting of R2-8-601 through R2-8-607, made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

Section
R2-8-601. Definitions
R2-8-602. Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements
R2-8-603. Petition for Rulemaking
R2-8-604. Review of a Rule, Agency Practice, or Substantive Policy Statement
R2-8-605. Objection to Rule Based Upon Economic, Small Business, and Consumer Impact
R2-8-606. Oral Proceedings
R2-8-607. Petition for Delayed Effective Date

ARTICLE 7. CONTRIBUTIONS NOT WITHHELD

Article 7, consisting of R2-8-701 through R2-8-709, made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

Section
R2-8-701. Definitions
R2-8-702. General Information
R2-8-703. ASRS Employer's Discovery of Error
R2-8-704. Member's Discovery of Error
R2-8-705. ASRS' Discovery of Error
R2-8-706. Determination of Contributions Not Withheld
R2-8-707. Submission of Payment
R2-8-708. Dispute of an ASRS Determination Regarding Contributions Not Withheld
R2-8-709. Nonpayment of Contributions

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

R2-8-101. Repealed

Historical Note

Former Rule, Social Security Regulation 1; Former Section R2-8-01 renumbered as Section R2-8-101 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (A) and (C) effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

R2-8-102. Repealed

Historical Note

Former Rule, Social Security Regulation 2; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-02 renumbered as Section R2-8-102 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A), (B), and (D), amended effective April 12, 1984 (Supp. 84-2). Correction, subsection (B), as amended effective April 12, 1984 (Supp. 84-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

R2-8-103. Repealed

Historical Note

Former Rule, Social Security Regulation 3; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-03 renumbered as Section R2-8-103 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A) thru (C), amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

R2-8-104. Definitions

A. Proprietary functions: Services performed in a single proprietary function for a political subdivision are those services normally carried on by private enterprises. These include, but are not limited to, municipal water departments, municipal transportation departments, municipal housing and airport authorities. For other political subdivisions such as school districts, these functions include cafeteria workers and bookstore employees. School district bus drivers engaged in transporting students without charge are not engaged in a proprietary function. Hospitals operated for the care of the indigent sick by political subdivisions constitute a governmental function, and the employees in such a hospital, therefore, are not performing services in proprietary functions.

B. Who are employees:

1. Every individual is an employee if the political subdivision for which he performs services has the right to control and direct him not only as to what shall be done but how it shall be done. It is not necessary that the political subdivision actually control or direct the manner in which the services are performed; it is sufficient if the subdivision has the right to do so. The right to discharge strongly implies the right to control.
2. Officers of a political subdivision are its employees. So are any individuals performing services under contract in the exercise of a governmental function. Individuals such as physicians, dentists, and lawyers, engaged in an independent profession in which they offer their services to the public, are employees if their services include the exercise of a governmental function. If not, they may or may not be employees depending upon the degree to which they are subject to control by the political subdivision.
3. Whether the individual is an employee depends upon the actual facts of his relationship with the political subdivision. A juror is not an employee since he is not a public officer and is not subject to control as to how he votes on a verdict. A physician who contracts with a county Board of Supervisors to furnish medical services to the indigent sick is an employee when the duty of caring for indigent sick is by law placed in the Board.

C. Mandatory exclusion: Prior to the 1967 Social Security Amendments, the state had the option of excluding emergency services. Beginning January 1, 1968, services performed by an individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency are mandatorily excluded. This mandatory exclusion is applicable to services for groups already covered as well as to services for groups which may be covered in the future.

D. Elective positions: Elective positions as used in agreements excluding such positions from coverage means those positions filled by a vote of a legislative body, a board or committee, or by the qualified electorate at large for the subdivision or instrumentality covered by the agreement, which would constitute an election under the law of Arizona.

E. Class or classes of part-time positions: Services performed in a position which does not require more than 150 hours of service in a calendar quarter are services in a part-time position. If a position is established during a calendar quarter and if such position would require more than 150 hours of service if it had been in existence for the entire quarter, such position would not be a part-time position and services in such a position would not be excluded under the state's definition. The time requirements of the position itself, and not the number of hours worked by an individual, is the determinative factor. For example, an individual may be employed and compensated for only a few hours in only one day of a calendar quarter and such individual may be subject to coverage if the position is one which requires more than 150 hours of service.

F. Class or classes of positions the compensation for which is on a fee basis:

1. Compensation is considered to be on a salary basis when the payments are made at regular and fixed intervals based on services for definite and regular periods of time; and on a fee basis when made for particular services rendered at irregular and uncertain periods. Persons performing personal services of a governmental nature for a political subdivision are employees regardless of whether compensation is on a salary or fee basis. The services of such a person may be excluded, however, if compensated on a fee rather than a salary basis and the agreement between the Arizona State Retirement System Board and the subdivision excludes positions on a fee basis.
2. Individuals performing governmental services in the practice of their profession, such as doctors or lawyers, may be on either a fee or salary basis depending on the nature of their contract of employment with the political subdivision. For example, a city attorney working full time for a regular monthly salary is not on a fee basis. An attorney employed by the city for special services to be rendered at irregular and uncertain periods for a fixed amount (even though weekly, monthly or other partial advances may be made) is compensated on a fee basis. When, as with some justices of the peace or tax collectors, the compensation is derived in part from fees and part from salary, the position is to be considered as on a fee basis if fees constitute the primary source of compensation. The fees may be received from either the public or the political subdivision. If the fee-basis exclusion is taken and if the position is a fee-basis position, all fees and salary received for services in such a position are not to be reported. If the exclusion is not exercised, all fees received, whether from the political subdivision or other sources, are to be reported.
3. Beginning January 1, 1968, services performed by state and local employees in positions compensated solely by fees, which are not covered under an agreement, are compulsorily covered as self-employment. However, an individual occupying such a fee-basis position in 1968 could elect not to have his fees covered as self-employment income, if he filed a certificate of election of exemption with the Internal Revenue Service on or before the due date of his 1968 federal income tax return.
4. An entity may modify its agreement to extend coverage to services performed after 1967 in any class or classes of positions compensated solely by fees not covered under an agreement prior to 1968. However, the entity must specifically include such services where this coverage is desired. Such coverage shall be effective with respect to services in such fee-basis positions performed beginning with the first day of the year after the year in which the agreement is approved.
5. An entity may at any time after 1967 modify its agreement to exclude services performed in any class or classes of positions compensated solely by fees. Such an exclusion from coverage is effective the first day of the year following the year in which the agreement is approved. If any class or classes of positions are so excluded, the entity cannot at a later date modify its agreement to again cover the services.

G. Exclusion by class or classes of positions:
1. Basic classifications may be made within either elective, part-time, or fee-basis positions according to a class or classes of positions having common characteristics or attributes, and exclusions limited to such classes. A class of positions includes all of the positions in the coverage group which have these common characteristics. Services in one or more classes or combinations of classes may be excluded. Positions may be excluded in one class and covered in another. For example, in a coverage group there may be excluded services in all elective positions or the exclusion could be limited to services in all elective positions except elective judicial positions and except part-time elective positions.
2. Positions in a single organizational unit of the coverage group do not constitute a class of positions. Therefore, while all of the part-time maintenance workers of a county could be excluded under the part-time option, the exclusion could not be limited to all or any class or part-time maintenance workers in the Office of the County Clerk, which is an organizational unit of the county.

H. Agricultural labor which would be excluded if performed for a private employer:
1. Under the federal Social Security Act, when the agricultural exclusion has been taken, tests as to services which are excluded should be applied to all reports covering reporting quarters beginning on or after January 1, 1957. Cash remuneration paid to an employee for agricultural services should be reported only if:
   a. Such remuneration paid the employee during a calendar year (even though part of it was for services performed in a previous calendar year) amounts to $150 or more; or
   b. The employee performs agricultural services for the employer on some part of a day on at least 20 days during a calendar year for cash remuneration computed on a time basis, as by the hour, day, or week; in which event the amount of cash remuneration is immaterial in determining if the services are covered.
2. Services performed by individuals lawfully admitted from any foreign country on a temporary basis to perform agricultural labor are excluded.

I. Student service exclusion: Only those student services which would be mandatorily excluded if performed for a private employer fall within this exclusion. Where this exclusion is taken, the following services are not covered:
1. Services performed by a student regularly enrolled and attending classes in the employ of his school, college, or university. This means the employing entity and not necessarily the individual institution. The exclusion applies only during periods of regular school attendance. Thus, the exclusion does not apply to work done during summer vacation unless the student is attending a summer session. This is true even though the student was enrolled and regularly attending classes in the school during the previous year and expects to return to school the following year. Services performed on holidays and weekends falling within the academic year when classes are not scheduled, on the other hand, are excluded.
2. Services performed as a student nurse in the employ of a hospital or nurses' training school by an individual who is enrolled and regularly attending classes in a nurses' training school chartered or approved pursuant to state law. It is not necessary that the nurses' training school in which the student nurse is enrolled and attending classes be located within the approving

state as long as the school meets the educational standards established by state law for the approval of schools within the state.

J. Services performed by election officials or election workers if remuneration paid in a calendar quarter is less than $50:

1. Prior to the 1967 amendments to the Social Security Act, there was no provision for a specific exclusion of the services of election officials or election workers. The exclusion of such services was possible, however, by exclusion of a class of services for which an exclusion was permitted, i.e., exclusion of election officials and election workers as a class of part-time or fee-basis positions.
2. This optional exclusion of services performed by election officials or election workers is dependent on the amount paid in a calendar quarter for such services, e.g., if the remuneration paid in the third calendar quarter of a year amounts to $50 or more, the services are covered and must be reported regardless of the fact that the remuneration paid in any other calendar quarter for election officials' or election workers' services amount to $49.99 or less and is not reportable.
3. These services may continue to be excluded as a class of part-time or fee-basis positions without regard to the amount paid for such services. These services would, of course, be excluded already if a part-time or fee-basis position exclusion in broad enough terms was previously exercised. The purpose of the optional exclusion of services performed by election officials or election workers if remuneration in a calendar quarter is less than $50 is to permit the exclusion to be taken where one was not previously taken. The effective date of exclusion for these services may not be earlier than the last day of the calendar quarter in which the modification to state's Social Security agreement is mailed to the Secretary of Health and Human Services.
4. On or after January 1, 1978, a political entity can modify its agreement to specifically exclude the services of election officials or election workers if the remuneration paid in a calendar year is less than $100. A change to $100 in a year from $50 in a calendar quarter requires the execution of a new modification. For modification executed after December 31, 1977, the $100 in a year test must be used.

K. "Wages" -- (A.R.S. § 38-701(8)) means all remuneration paid to employees whose services are covered under an agreement in a calendar year not in excess of the maximum reportable wages on which social security contributions are due.

1. Wages include the cash value of remuneration paid to employees other than money, for example, the value of room and board. The valuation of room and board furnished an employee by a political entity shall be computed at the same valuation as computed by the Industrial Commission for payment of workmen's compensation premiums.
2. If, as a part of the employment, it is understood that the employee is entitled to meals and the employer is to furnish them, the value of such meals is wages and should be reported. If there is no understanding (either orally or in writing) that meals will be furnished the employee, but they are in fact provided, the value of the meals would be wages if it is substantial. The value of meals may be considered as not substantial if it is less than five percent of the cash pay.
3. The employer's report of wages paid for each calendar quarter to the Arizona State Retirement System Board shall include for each employee both the cash wages and the value of room and board as a lump sum for the quarter for which the report is made.
4. The employee tax shall be deducted from the wages paid in accordance with the method of including the value of remuneration paid in any medium other than cash in each pay period or in a single pay period in the calendar quarter.
5. The value of meals and lodging furnished by, or on behalf of an employer to an employee, the employee's spouse, or any of the employee's dependents is not wages for Social Security purposes if:
   a. The meals or lodging are furnished on the business premises of the employer, and
   b. The meals or lodging are furnished for the convenience of the employer, and
   c. The employee is required to accept such lodging as a condition of employment.

Historical Note

Former Rule, Social Security Regulation 4; Former Section R2-8-04 renumbered as Section R2-8-104 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (G), (J), and (K) effective April 12, 1984 (Supp. 84-2). Typographical error corrected in subsection (5)(c) "reqired" corrected to "required" (Supp. 97-1).

R2-8-105. Repealed

Historical Note

Former Rule, Social Security Regulation 5; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-05 renumbered as Section R2-8-105 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

R2-8-106. Reserved
R2-8-107. Reserved
R2-8-108. Reserved
R2-8-109. Reserved
R2-8-110. Reserved
R2-8-111. Reserved
R2-8-112. Reserved
R2-8-113. Emergency Expired

Historical Note

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

R2-8-114. Emergency Expired

Historical Note

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death; Payment of Survivor Benefits Upon the Death of a Member

A. The following definitions apply to this Section unless otherwise specified:

1. "ASRS" means the same as in A.R.S. § 38-711.
2. "ASRS employer" has the same meaning as "employer" in A.R.S. § 38-711.
3. "Authorized employer representative" means an individual specified by the ASRS employer to provide the ASRS with information about a member who previously worked for the ASRS employer.
4. "Beneficiary" means the individual specified by a member to receive the balance of the member's account or, if applicable, selected benefits upon the death of the member.
5. "Contribution" means:
   a. Amounts required by A.R.S. Title 38, Chapter 5, Article 2 to be paid to ASRS by a member or an employer on behalf of a member other than amounts attributed to the long-term disability program;
   b. Any voluntary amounts paid by a System member to ASRS to be placed in the System member's account; and
   c. Any amount credited to a non-retired System member's employer account or to a retired System member's non-guaranteed benefit as determined by Section 24(B) of Arizona Session Laws 1995, Chapter 32, Section 24, as amended by Arizona Session Laws 1999, Chapter 66, Section 1.
6. "Court" means a superior, appellate, or the Supreme court of this state, a corresponding court of another state of the United States, or a federal court of the United States.
7. "Designated beneficiary" has the same meaning as in A.R.S. § 38-762(H).
8. "Domestic relations order" has the same meaning as in A.R.S. § 38-773(G).
9. "Eligible retirement plan" has the same meaning as in A.R.S. § 38-770(C)(3).
10. "Employer number" means a unique identifier the ASRS assigns to a member employer.
11. "Employer plan" means the types of eligible retirement plans specified in A.R.S. § 38-770(C)(3)(c), (d), (e), and (f).
12. "Fiscal year" means July 1 of one year to June 30 of the next year.
13. "Individual retirement account" means the types of eligible retirement plans specified in A.R.S. § 38-770(C)(3)(a) and (b).
14. "Lump-sum payment" means a member receives the total amount in the member's ASRS account to which the member is entitled by law.
15. "Member" has the same meaning as in A.R.S. § 38-711.
16. "Personal representative" means a person who is authorized by law to represent the estate of a deceased individual.
17. "Process date" means the calendar day the ASRS generates contribution withdrawal documents to be sent to a member.
18. "Service year" has the same meaning as in A.R.S. § 38-711.
19. "System" means the same as "defined contribution plan" as defined in A.R.S. § 38-769, and which is administered by the ASRS.
20. "Terminate employment" means to end the employment relationship between a member and an ASRS employer with the intent that the member not return to employment with that ASRS employer.
21. "Trustee" means an individual who holds monetary assets in an eligible retirement plan under the Internal Revenue Code for the benefit of the member.
22. "United States" means the same as in A.R.S. § 1-215.
23. "Warrant" means a voucher authorizing payment of funds due to a member.

B. A member who terminates from all ASRS employment by other than retirement or death and desires a return of the member's contributions, including amounts received for the purchase of service, any employer contributions authorized under A.R.S. § 38-740, and interest on the contributions, shall request from the ASRS, in writing or verbally, the documents necessary to apply for the withdrawal of the member's contributions.

C. Upon receipt of the request, the ASRS shall provide the member with:

1. An Application for Withdrawal of Contributions and Termination of Membership form,
2. An Ending Payroll Verification - Withdrawal of Contribution and Termination of Membership form, and
3. The process date.

D. The member shall complete and return to the ASRS the Application for Withdrawal of Contributions and Termination of Membership form that includes the following information:

1. The member's full name;
2. The member's Social Security number;
3. The member's current mailing address;
4. The member's daytime telephone number, if applicable;
5. The member's birth date;

6. The date of termination;
7. Dated signature of the member certifying that the member:
    a. Is no longer employed by any ASRS employer;
    b. Is neither under contract nor has any verbal or written agreement for future employment with an ASRS employer;
    c. Is not currently in a leave of absence status with an ASRS employer;
    d. Understands that each of the member's former ASRS employers' payroll departments will complete a payroll verification form if payroll transactions occurred with the ASRS employer within the six months before the process date;
    e. Has read and understands the Special Tax Notice Regarding Plan Payments the member received with the application;
    f. Understands that the member is forfeiting all future retirement rights and privileges of membership with the ASRS;
    g. Understands that long-term disability benefits will be canceled if the member elects to withdraw contributions while receiving or electing to receive long-term disability benefits;
    h. Understands that if the member elects to roll over all or any portion of the member's distribution to another employer plan, it is the member's responsibility to verify that the receiving employer plan will accept the rollover and, if applicable, agree to separately account for the pre-tax and post-tax amounts rolled over and the related subsequent earnings on the amounts;
    i. Understands that if the member elects to roll over all or any portion of the member's distribution to an individual retirement account, it is the member's responsibility to separately account for pre-tax and post-tax amounts; and
    j. Understands that if the member elects a rollover to another employer plan or individual retirement account, any portion of the distribution not designated for rollover will be paid directly to the member and any taxable amounts will be subject to 20% federal income tax withholding and 5% state tax withholding;
8. Specify that:
    a. The entire amount of the distribution be paid directly to the member,
    b. The entire amount of the distribution be transferred to an eligible retirement plan, or
    c. An identified amount of the distribution be transferred to an eligible retirement plan and the remaining amount be paid directly to the member; and
9. If the member selects all or a portion of the withdrawal be paid to an eligible retirement plan, specify;
    a. The type of eligible retirement plan;
    b. The eligible retirement plan account number, if applicable; and
    c. The name and mailing address of the eligible retirement plan.

E. If a payroll transaction for the member occurred with any ASRS employer within six months before the process date the member shall complete and return to the ASRS an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form for each ASRS employer that includes the following information:
1. Filled out by the member:
    a. The member's full name, and
    b. The member's Social Security number; and
2. Filled out by each ASRS employer:
    a. The member's termination date,
    b. The member's final pay period ending date;
    c. The final amount of contributions, including any adjustments or corrections, but not including any long-term disability contributions,
    d. The ASRS employer's name and telephone number;
    e. The employer number;
    f. The name and title of the authorized employer representative;
    g. Certification by the authorized employer representative that:
        i. The member terminated employment and is neither under contract nor bound by any verbal or written agreement for employment with the employer;
        ii. There is no agreement to re-employ the member; and
        iii. The authorized employer representative has the legal power to bind the employer in transactions with the ASRS; and
    h. The signature of the authorized employer representative and date of signature.

F. If the member requests a return of contributions and a warrant is distributed during the fiscal year that the member began membership in the ASRS, no interest is paid to the account of the member.

G. If the member requests a return of contributions after the first fiscal year of membership, ASRS shall credit interest at the rate specified in Column 3 of the table in R2-8-118(B) to the account of the member as of June 30 of each year, on the basis of the balance in the account of the member as of the previous June 30. The ASRS shall credit interest for a partial fiscal year of membership in the ASRS on the previous June 30 balance based on the number of days of membership up to and including the day the ASRS issues the warrant divided by the total number days in the fiscal year. Contributions made after the previous June 30 are returned without interest.

H. Upon submitting to the ASRS the completed and accurate Application for Withdrawal of Contributions and Termination of Membership form and, if applicable, any Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership forms, a member is entitled to payment of the amount due to the member as specified in subsection (F) or (G)

unless a present or former spouse submits to the ASRS a domestic relations order that specifies entitlement to all or part of the return of contributions under A.R.S. § 38-773 before the ASRS returns the contributions as specified by the member.

I. Upon death of a member, the ASRS shall provide survivor benefits based on the deceased member's last dated, written designation of beneficiary that is on file with the ASRS before the date of the member's death.

J. If there is no designation of beneficiary or if the designated beneficiary predeceases the member, the survivor benefit is paid as specified in A.R.S. § 38-762(F). The designated beneficiary or other person specified in A.R.S. § 38-762(F) shall:

1. Provide a certified copy of a death certificate or a certified copy of a court order that establishes the member's death;
2. Provide a certified copy of the court order of appointment as administrator, if applicable; and
3. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an application for survivor benefits, provided by the ASRS, that includes:
   a. The deceased member's full name,
   b. The deceased member's Social Security number,
   c. The following, as it pertains to the designated beneficiary or other person specified in A.R.S. § 38-762(F):
      i. Full name;
      ii. Mailing address;
      iii. Contact telephone number;
      iv. Date of birth, if applicable; and
      v. Social Security number or Tax ID number, if applicable.

Historical Note

Former Rule, Social Security Regulation 1; Amended effective Dec. 20, 1979 (Supp. 79-6). Former Section R2-8-15 renumbered as Section R2-8-115 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 644, effective February 7, 2006 (Supp. 06-1).

R2-8-116. Expired

Historical Note

Former Rule, Retirement System Regulation 2; Former Section R2-8-16 renumbered as Section R2-8-116 without change effective May 21, 1982 (Supp. 82-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

R2-8-117. Repealed

Historical Note

Former Rule, Retirement System Regulation 3; Former Section R2-8-17 renumbered as Section R2-8-117 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

R2-8-118. Application of Interest Rates

A. The following definitions apply to this Section unless otherwise specified:

1. "ASRS" means the same as in A.R.S. § 38-711.
2. "Member" has the same meaning as in A.R.S. § 38-711.
3. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-769, and administered by the ASRS.
4. "System" means the same as "defined contribution plan" as defined in A.R.S. § 38-769, and that is administered by the ASRS.

B. Application of interest from inception of the ASRS through the present is as follows:

Effective Date of Interest Rate Change	Assumed Actuarial Interest and Investment Yield Rate	Interest Rate Used to Determine Return of Contributions Upon Termination of Membership by Separation from Service by Other Than Retirement or Death	Interest Rate Used to Determine Survivor Benefits
7-1-1953	2.50%	2.50%	2.50%
7-1-1959	3.00%	3.00%	3.00%
7-1-1966	3.75%	3.75%	3.75%
7-1-1969	4.25%	4.25%	4.25%
7-1-1971	4.75%	4.75%	4.75%
7-1-1975	5.50%	5.50%	5.50%
7-1-1976	6.00%	5.50%	6.00%
7-1-1981	7.00%	5.50%	7.00%
7-1-1982	7.00%	7.00%	7.00%

7-1-1984	8.00%	8.00%		8.00%
7-1-2005	8.00%	4.00% for Plan Members	8.00% for System Members	8.00%
7-1-2013	8.00%	2.00% for Plan Members	8.00% for System Members	8.00%

C. At the beginning of each fiscal year interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the member's account as of the previous June 30. The balance on which interest is credited includes:
1. Employer and employee contributions;
2. Voluntary additional contributions made by System members, if applicable;
3. Amounts credited by transfer under A.R.S. § 38-922;
4. Amounts credited to a non-retired system member's employer account or to a retired System member's non-guaranteed benefit as determined by Article 2 of this Chapter; and
5. Interest credited in previous years.

Historical Note

Former Rule, Retirement System Regulation 4; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-18 renumbered and amended as Section R2-8-118 effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2).

R2-8-119. Expired

Historical Note

Former Rule, Retirement System Regulation 5; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-19 renumbered and amended as Section R2-8-119 effective May 21, 1982 (Supp. 82-3). Section R2-8-119 and Appendix A and B expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

R2-8-120. Designating a Beneficiary; Spousal Consent to Designation

A. In addition to the definitions at A.R.S. § 38-711, the following apply to this Section unless otherwise specified:
1. "Beneficiary" means a person designated to receive money or other benefits when someone dies.
2. "Contingent annuitant" means the person that a member designates to receive continued annuity payments after the member dies.
3. "Joint and survivor annuity" means an optional form of retirement benefits described at A.R.S. § 38-760(B).
4. "Period certain and life annuity" means an optional form of retirement benefits described at A.R.S. § 38-760(B).
5. "QDRO" means qualified domestic relations order, which is a judgment, decree, or order directing a retirement plan to make payments to an alternative payee.
6. "Spouse" means the individual to whom a member is married under Arizona law.

B. Effective July 1, 2013, a married member:
1. Who is not retired shall name and maintain the member's current spouse as primary beneficiary of at least 50 percent of the member's retirement account unless:
   a. Naming or maintaining the current spouse as beneficiary violates another law, existing contract, or court order; or
   b. The spouse consents to an alternate beneficiary; and
2. Who retires shall choose a joint and survivor annuity and name the member's current spouse as contingent annuitant of at least 50 percent of the member's retirement benefit unless the spouse consents to an alternative.

C. Application of subsection (B).
1. The ASRS shall honor a beneficiary designation last made or a retirement election submitted before July 1, 2013, even if the beneficiary designation or retirement election fails to comply with subsection (B).
2. The ASRS shall not apply subsection (B) to a lump-sum retirement authorized under A.R.S. § 38-764.
3. The ASRS shall not apply subsection (B) if a member submits a letter to the ASRS in which the member affirms under penalty of perjury that spousal consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).

D. Changing a beneficiary designation:
1. If a married member changes a beneficiary designation on or after July 1, 2013, the member shall ensure that the new beneficiary designation is consistent with the requirements specified in subsection (B);
2. If a married member who retired before July 1, 2013, and:
   a. Chose a straight-life annuity wishes to change the member's beneficiary, the member shall ensure that the new beneficiary designation is consistent with subsection (B); or
   b. Chose a period certain or joint and survivor annuity wishes to change either the annuity option or the contingent annuitant, the member shall ensure that the new beneficiary designation is consistent with subsection (B).

E. Re-retirement. A married member who re-retires, as described in A.R.S. § 38-766:
1. Within 60 months of the member's previous retirement date, shall elect the same annuity option and beneficiary as the member made at the time of the previous retirement; or
2. More than 60 months after the member's previous retirement date, shall comply with subsection (B).

F. Involuntary cancellation of retirement. If a married member retires on or after July 1, 2013, and is issued one or more estimate checks but fails to comply with subsection (B) within 30 days after the member's effective retirement date, the member shall submit a signed letter to ASRS stating that the member's spouse refuses to consent to the chosen alternative and asking that the retirement be cancelled. The member may submit another retirement application that complies with subsection (B). The member's new effective retirement date is the date ASRS receives the new application. ASRS shall not issue additional estimate checks to a member whose retirement was involuntarily cancelled.

G. Survivor benefits:
   1. If a married member last made a beneficiary designation before July 1, 2013, the ASRS shall, at the time of the member's death, honor the beneficiary designation even if the beneficiary designation is not consistent with the requirements specified in subsection (B); and
   2. If a married member made a beneficiary designation on or after July 1, 2013, that is not consistent with the requirements specified in subsection (B), the ASRS shall, at the time of the member's death:
      a. Notify both the spouse and designated beneficiary and:
         i. Provide the spouse with an opportunity to waive the right under subsection (B); and
         ii. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse's right under subsection (B); and
      b. Designate 50 percent of the member's retirement benefit to the spouse if neither the spouse nor designated beneficiary respond under subsection (G)(2)(a) within 30 days after notification.

H. Effect of legal documents. In general, a legal document such as a QDRO or prenuptial agreement will supersede the requirements in subsection (B). The ASRS shall ask the Office of the Attorney General to review the legal document before the ASRS decides how to disburse the retirement benefit.

I. Spousal waiver and consent; consent revocation
   1. The current spouse of a member has a right to:
      a. Be designated as primary beneficiary of at least 50 percent of the member's retirement account, and
      b. Have the member choose a joint and survivor annuity with the spouse as contingent annuitant of at least 50 percent of the retirement benefit.
   2. To waive the right described in subsection (I)(1) and consent to an alternative, the current spouse shall complete and have notarized a spousal consent form, which is available from the ASRS. If the current spouse is not capable of completing the spousal consent form because of a documented incapacitating mental or physical condition, a person with power of attorney or a conservator may complete the spousal consent form on behalf of the current spouse.
   3. A spouse may revoke a waiver and consent by sending written notice to ASRS and ensuring the written notice is received no later than the earlier of one day before the member dies or ASRS disburses a retirement benefit to the member.

Historical Note

Former Rule, Social Security Regulation 6; Amended effective June 19, 1975 (Supp. 75-1). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-20 renumbered and amended as Section R2-8-120 effective May 21, 1982 (Supp. 82-3). Repealed effective July 24, 1985 (Supp. 85-4). New section…

R2-8-121. Repealed

Historical Note

Former Rule, Retirement System Regulation 7; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-21 renumbered as Section R2-8-121 without change effective May 21, 1982 (Supp. 82-3). Amended subsection (A) effective May 30, 1985 (Supp. 85-3). Section repealed by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (05-1).

R2-8-122. Remittance of contributions

A. Remittance of employee member contributions: Each state department and employer member of the Arizona State Retirement System, including, without limitation, any county, municipality or political subdivision, shall certify on each payroll the amount to be contributed by each one of their employee members of the Arizona State Retirement System and shall remit the amount of employee member contributions to the Arizona State Retirement System, together with such detailed report as may be required by the System to identify the individual owner of each such member contribution, not later than 14 calendar days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the Arizona State Retirement System by the 14th calendar day after the last day of the applicable payroll period shall become delinquent after that date and shall be increased, by interest at the rate of eight percent per annum from and after the date of delinquency until payment is received by the Arizona State Retirement System.

B. Remittance of employer contributions: Each state department and employer member of the Arizona State Retirement System, including, without limitation, any county, municipality or political subdivision, shall remit the amount of employer contributions to the Arizona State Retirement System not later than 14 calendar days after the last day of each payroll period. Payments of employer contributions not received in the offices of the Arizona State Retirement System by the 14th calendar day after the last day of the applicable payroll period shall become delinquent after that date and shall be increased, by interest at the rate of eight percent per annum from and after the date of delinquency until payment is received by the Arizona State Retirement System.

Historical Note

Former Rule, Retirement System Regulation 8; Amended effective Dec. 8, 1978 (Supp. 78-6). Former Section R2-8-22 renumbered as Section R2-8-122 without change effective May 21, 1982 (Supp. 82-3).

R2-8-123. Actuarial Assumptions and Actuarial Value of Assets

A. The following definitions apply to this Section unless otherwise specified:
   1. "Actuarial assumption" means an estimate of an uncertain future event that affects pension liabilities.
   2. "Board" means the same as in A.R.S. § 38-711.
   3. "Investment return rate" means a percentage of total return on an asset.
   4. "Market value" means an estimated monetary worth of an asset based on the current demand for the asset and the amount of that type of asset available for sale.

B. The Board adopts the following actuarial assumptions and asset valuation method:
   1. The interest and investment return rate assumptions are determined by the Board.
   2. The actuarial value of assets equals the market value of assets:
      a. Minus a 10-year phase-in of the excess for years in which actual investment return exceeds expected investment return; and
      b. Plus a 10-year phase-in of the shortfall for years in which actual investment return falls short of expected investment return.

Historical Note

Adopted effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Amended effective December 20, 1977 (Supp. 77-6). Former Section R2-8-23 renumbered and amended as Section R2-8-123 effective May 21, 1982 (Supp. 82-3). Emergency amendments effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent amendments adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 1006, effective February 24, 2003 for a period of 180 days (Supp. 03-1). Emergency rulemaking renewed at 9 A.A.R. 3963, effective August 21, 2003 for a period of 180 days (Supp. 03-3). Amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3). New Section….

Table 1. Expired

Historical Note

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 1 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 2. Expired

Historical Note

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 2 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 3. Repealed

Historical Note

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 3 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Table 3 repealed; new Table 3

renumbered from Table 4 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Table 3A. Expired

Historical Note

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 3B. Expired

Historical Note

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 4. Expired

Historical Note

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 4 renumbered as Table 3 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 4A. Repealed

Historical Note

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Table 4B. Repealed

Historical Note

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Table 4C. Repealed

Historical Note

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Table 5. Expired

Historical Note

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 5 repealed, new Table 5 adopted by emergency action effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Table 5 repealed, new Table 5 adopted by regular rulemaking action effective September 12, 1997 (Supp. 97-3). Table 5 repealed; new Table 5 renumbered from Table 6 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 5 renumbered to Table 6; new Table 5 made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 6. Expired

Historical Note

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective

September 12, 1997 (Supp. 97-3). Former Table 6 renumbered to Table 5; new Table 6 renumbered from Table 7 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 6 renumbered to Table 7; new Table 6 renumbered from Table 5 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

Table 7. Expired

Historical Note

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3). Renumbered to Table 6 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table 7 renumbered from Table 6 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

R2-8-124. Repealed

Historical Note

Adopted as an emergency effective August 25, 1975 (Supp. 75-1). Former Section R2-8-24 renumbered as Section R2-8-124 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

R2-8-125. Repealed

Historical Note

Adopted as an emergency effective July 30, 1975 (Supp. 75-1). Former Section R2-8-25 renumbered as Section R2-8-125 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

R2-8-126. Calculating Benefits

A. The following definitions apply to this Section unless otherwise specified:
   1. “Contingent annuitant” has the same meaning as in A.R.S. § 38-711.
   2. “Life annuity” has the same meaning as in A.R.S. § 38-711.
   3. “Member” has the same meaning as in A.R.S. § 38-711.
   4. “Plan” means a “defined benefit plan” under A.R.S. § 38-769 that is administered by the ASRS.
   5. “Prior service” has the same meaning as in A.R.S. § 38-772.
   6. “System” means a “defined contribution plan” as defined under A.R.S. § 38-769 that is administered by the ASRS.

B. An individual who is 104 years of age or older at the time of retirement and who elects a life annuity is not eligible to select the option of income for five years certain and for life thereafter.

C. An individual who is 93 years of age or older at the time of retirement and who elects a life annuity is not eligible to select the option of income for ten years certain and for life thereafter.

D. An individual who is 85 years of age or older at the time of retirement and who elects a life annuity is not eligible to select the option of income for 15 years certain and for life thereafter.

E. As authorized under A.R.S. § 38-764(F), if the life annuity of any Plan member is less than a monthly amount determined by the Board, the ASRS shall not pay the annuity. Instead, the ASRS shall make a lump sum payment in the amount determined by using appropriate actuarial assumptions.

F. The ASRS shall calculate a member’s or beneficiary’s benefits, based on the attained age of the member or beneficiary, determined in years and full months, as of the effective date of the benefit payment.

G. The ASRS shall add any prior service benefit that is payable to a member to the life annuity of the member before the ASRS applies any optional payment plan calculation provided for in A.R.S. § 38-760.

H. A member who is ten or more years older than the member’s non-spousal contingent annuitant is not eligible to participate in a 100% joint-and-survivor option. A member who is 24 or more years older than the member’s non-spousal contingent annuitant is not eligible to participate in a 66 2/3% joint-and-survivor option.

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-26 renumbered and amended as Section R2-8-126 effective May 21, 1982 (Supp. 82-3). Amended subsections (A) through (D) effective October 18, 1984 (Supp. 84-5). Amended subsections (A) through (D) effective July 24, 1985 (Supp. 85-4). Amended by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Amended by emergency rulemaking

under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Amended by final rulemaking at 19 A.A.R. 332, effective April 6, 2013 (Supp. 13-1).

Table 1. Repealed

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Table 1 repealed, new Table 1 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 2. Repealed

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Table 2 repealed, new Table 2 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 3. Repealed

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Table 3 repealed, new Table 3 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 4. Repealed

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Table 4 repealed, new Table 4 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 5. Repealed

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Table 5 repealed, new Table 5 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 6. Repealed

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Table 6 repealed, new Table 6 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 7. Repealed

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Table 7 repealed, new Table 7 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 8. Repealed

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Table 8 repealed, new Table 8 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 9. Repealed

Historical Note

Adopted effective September 12, 1977 (Supp. 77-5). Table 9 repealed, new Table 9 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 10. Repealed

Historical Note

Adopted effective October 18, 1984 (Supp. 84-5). Table 10 repealed, new Table 10 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Table 11. Repealed

Historical Note

Adopted effective October 18, 1984 (Supp. 84-5). Table 11 repealed, new Table 11 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

Exhibit A. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit B, Table 1. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit B, Table 2. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit B, Table 3. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit C. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit D, Table 1. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit D, Table 2. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit D, Table 3. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit D, Table 4. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit D, Table 5. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit D, Table 6. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit E, Table 1. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit E, Table 2. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit E, Table 3. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit E, Table 4. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit E, Table 5. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit E, Table 6. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit F, Table 1. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit F, Table 2. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit F, Table 3. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit F, Table 4. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit F, Table 5. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit F, Table 6. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit G. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit H. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit I. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit J. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit K. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit L, Table 1. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026

at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit L, Table 2. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit L, Table 3. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit L, Table 4. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit L, Table 5. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit L, Table 6. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit L, Table 7. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit M, Table 1. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking

under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit M, Table 2. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit M, Table 3. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit M, Table 4. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit M, Table 5. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

Exhibit M, Table 6. Repealed

Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

ARTICLE 2. STATE RETIREMENT DEFINED CONTRIBUTION PROGRAM

Article 2, consisting of R2-8-201 through R2-8-207, made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2).

R2-8-201. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "13th check" means the aggregated amount of the annual annuities awarded to a retired System member as the member's pro rata share of the excess surplus allocated by the Board for an increase in retirement benefits and distributed once a year to a retired System member or, upon election by the retired System member, to the retired System member's surviving beneficiary.
2. "14th check" means the aggregated amount of the annual annuities awarded to a retired System member as the retired System member's pro rata share of the excess surplus due to changes in the interest rate assumption and life expectancy table assumption, allocated by the Board for an increase in retirement benefits distributed once a year to the retired System member or, upon election by the retired System member, to the retired System member's beneficiary.
3. "Actuary" means an individual who is a Fellow of the Society of Actuaries, and is hired and directed by the Board to make actuarial calculations, determinations, valuations, experience studies, recommendations, and other actions directed by the Board.
4. "ASRS" means the same as in A.R.S. § 38-711.

5. “Beneficiary longevity reserve account” means the account established under Laws of 1953 and continued in Section 24 (B) of the Implementing Statute that is used to maintain benefits payable to retired System members and System members’ beneficiaries.
6. “Board” means the same as in A.R.S. § 38-711.
7. “Employer” means the same as in A.R.S. § 38-711.
8. “Employer account” means that portion of a non-retired member’s System retirement account that contains employer contributions, supplemental credits, and accumulated interest on employer contributions and supplemental credits.
9. “Employer contributions” means the same as in A.R.S. § 38-711.
10. “Excess surplus” means the funds in the beneficiary longevity reserve account that exceed the funded status range and that are subject to allocation by the Board as provided in R2-8-203(A)(3).
11. “Fiscal year” means the same as in A.R.S. § 38-711.
12. “Funded status” means the ratio, expressed as a percentage, of the actuarial value of assets for System members to the total liabilities of the System for future benefits.
13. “Guaranteed account balance” means all System member and employer contributions in a System member’s retirement account, not including supplemental adjustments, plus the interest credited annually on those contributions.
14. “Guaranteed benefit” means the portion of a retired system member’s or the retired System member’s beneficiary’s monthly benefit derived from the guaranteed account balance and calculated at the time of retirement.
15. “Implementing Statute” means Arizona Session Laws 1995, Chapter 32, Section 24, as amended by Arizona Session Laws 1999, Chapter 66, Section 1.
16. “Interest” means the assumed actuarial investment earnings rate approved by the Board.
17. “Market value” means an estimated monetary worth of an asset, based on the current demand for the asset and the amount of that type of asset that is available for sale.
18. “Member” means the same as in A.R.S. § 38-711.
19. “Member contributions” means the same as in A.R.S. § 38-711.
20. “Monthly benefit” means the annuitized payment of a retired System member’s guaranteed and non-guaranteed account balances.
21. “Non-guaranteed account balance” means the sum of all supplemental adjustments and interest credited on those adjustments.
22. “Non-guaranteed benefit” means:
    a. The portion of the monthly benefit derived from all supplemental adjustments and interest credited on those adjustments,
    b. The 13th check, and
    c. The 14th check
23. “Plan” means the same as “defined benefit plan” in A.R.S. § 38-769, and administered by the ASRS.
24. “Retirement account” means the same as in A.R.S. § 38-771.
25. “Supplemental adjustment” means the amount credited or debited to a non-retired system member’s employer account or to a retired System member’s non-guaranteed benefit as determined by Section 24 (B) of the Implementing Statute.
26. “System” means the same as “defined contribution plan” as defined in A.R.S. § 38-769, and which is administered by the ASRS.
27. “Total liabilities” means the amount needed to pay all System benefits.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2).

R2-8-202. Expired

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Amended by emergency rulemaking at 10 A.A.R. 4259, effective September 30, 2004 (Supp. 04-3). Amended by final rulemaking at 10 A.A.R. 4346, effective October 5, 2004 (Supp. 04-3). Section amended and Table 1 repealed by final rulemaking at 13 A.A.R. 4581, effective February 2, 2008 (Supp. 07-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

R2-8-203. Expired

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

R2-8-204. Expired

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

R2-8-205. Expired

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

R2-8-206. Expired

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

R2-8-207. Return of Contributions

A. A System member who elects to receive a return of contributions under A.R.S. § 38-740 is paid as follows:
   1. The ASRS shall pay the guaranteed portion of the account balance no sooner than 30 days after the member separates from service, unless earlier payment is otherwise authorized by law;
   2. The ASRS shall pay the non-guaranteed portion of the account balance upon completion of the actuarial valuation for the fiscal year end immediately before the date the member separates from service; and
   3. The ASRS shall pay the entire account balance no later than 90 days after the member separates from service.

B. A non-retired member's beneficiary who qualifies for and elects a lump-sum payout under A.R.S. § 38-762, is paid as follows:
   1. The ASRS shall pay the guaranteed portion of the account balance upon verification of the member's death and determination of the deceased member's guaranteed portion of the account balance,
   2. The ASRS shall pay the non-guaranteed portion of the account balance upon completion of the actuarial valuation for the fiscal year end immediately before the date of the member's death, and
   3. The ASRS shall pay the entire account balance no later than 90 days after the beneficiary requests the lump-sum payout.

C. If the ASRS pays a partial lump sum to a System member at retirement, the proportion of the guaranteed to non-guaranteed funds the ASRS pays to the System member is equal to the proportion of guaranteed to non-guaranteed funds in the System member's entire account.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2).

ARTICLE 3. RESERVED

ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD

R2-8-401. Definitions

The following definitions apply to this Article unless otherwise specified:
   1. "Appealable agency action" has the same meaning as in A.R.S. § 41-1092.
   2. "Board" has the same meaning as in A.R.S. § 38-711.
   3. "Director" means the Director appointed by the Board as provided in A.R.S. § 38-715.
   4. "Party" has the same meaning as in A.R.S. § 41-1001.
   5. "Person" has the same meaning as in A.R.S. § 41-1001.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

R2-8-402. General Procedures

In computing any time period, parties shall exclude the day from which the designated time period begins to run. Parties shall include the last day of the period unless it falls on a Saturday, Sunday, or legal holiday. When the time period is 10 days or less, parties shall exclude Saturdays, Sundays, and legal holidays.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

R2-8-403. Request for a Hearing of an Appealable Agency Action

A. A person who is not satisfied with a decision by the Director that is an appealable agency action may file a Request for a Hearing, in writing, with the Director. The request shall include the following:
   1. The name and mailing address of the member, employer, or other person filing the request;
   2. The name and mailing address of the attorney for the person filing the request, if applicable;
   3. A concise statement of the reasons for the appeal.

B. The person requesting a hearing shall file the Request for a Hearing with the ASRS Office of the Director within 30 days after receiving a decision of the Director and a Notice of an Appealable Agency Action. The date the request is filed is established by the Director's date stamp on the face of the first page of the request.

C. Upon receipt of the Request for a Hearing, the ASRS shall notify the Office of Administrative Hearings as required in A.R.S. § 41-1092.03.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings

A recommended decision from the Office of Administrative Hearings that is sent to ASRS at least 30 days before the Board's next regular monthly meeting, shall be reviewed by the Board at that monthly meeting. At the monthly meeting, the Board shall render a decision to accept, reject, or modify the findings of fact, conclusions of law and recommendations in whole or in part. If the Board modifies or rejects a recommended decision, the Board shall state the reasons for the modification or rejection. The Board shall deliver the Board's final decision to the Office of Administrative Hearings within five days after the monthly meeting at which the Board made the final decision.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

R2-8-405. Rehearing; Review of a Final Decision

A. Except as provided in subsection (H), any party in an appealable agency action aggrieved by a final decision may file with the Board a written motion for rehearing or review of the final decision specifying the particular grounds not later than 30 days after service of the decision.

B. A party may amend a motion for rehearing or review at any time before the Board rules on the motion. A party may file a response within 15 days after the motion or amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

C. The Board may grant a rehearing or review of a decision for any of the following causes materially affecting the moving party's rights:

1. Irregularity in the administrative proceedings of the agency or the hearing officer, or any order or abuse of discretion that deprives the moving party of a fair hearing;
2. Misconduct of the Board, the hearing officer, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing; or
7. That the decision is not justified by the evidence or is contrary to law.

D. The Board may affirm or modify the decision or grant a rehearing or review to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.

E. Not later than 10 days after the decision, the Board may, after giving each party notice and an opportunity to be heard, order a rehearing or review of its decision for any reason for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds on which it is granted.

F. When a motion for rehearing or review is based upon an affidavit, the affidavit shall be filed with the motion. An opposing party may, within 15 days after filing, file an opposing affidavit. The Board may extend the period for filing an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.

G. The Board shall rule on the motion within 15 days after the response to the motion is filed or if a response is not filed, within five days of the expiration of the response period.

H. If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an application for judicial review of the decision may be made within the time limits permitted for applications for judicial review of the Board's final decisions.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

ARTICLE 5. PURCHASING SERVICE CREDIT

R2-8-501. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Active duty" has the same meaning as in 32 U.S.C. 101.
2. "Active duty termination date" means the day a member:
   a. Separates from active military duty;
   b. Is released from active duty-related hospitalization or one year after initiation of active duty-related hospitalization, whichever date is earlier; or
   c. Dies as a result of active military duty.
3. "Active member" means the same as in A.R.S. § 38-711.
4. "Active reserve duty" means participating in required meetings and annual training in a Reserve or National Guard branch of the United States uniformed service.
5. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:

a. Member's current years of credited service to the nearest month;
b. Member's age to the nearest day;
c. Amount of service credit the member wishes to purchase to the nearest month, except for the calculation in R2-8-506(A)(2); and
d. Member's current annual compensation.

6. "ASRS" means the same as in A.R.S. § 38-711.
7. "ASRS employer" means the same as "employer" in A.R.S. § 38-711.
8. "Authorized employer representative" means an individual who has been delegated the authority to act on behalf of an ASRS employer to provide the ASRS with information.
9. "Authorized representative" means an individual who has been delegated the authority to act on behalf of a custodian, trustee, plan administrator, or, if applicable, a member.
10. "Compensation" means the same as in A.R.S. § 38-769.
11. "Credited service" means the same as in A.R.S. § 38-711.
12. "Current annual compensation" means the greater of:
    a. Annualized compensation of the full pay period immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743 or 38-745.
    b. Annualized compensation of the partial year if the member has less than twelve months total credited service on the date of a request to purchase credited service pursuant to section 38-743 or 38-745.
    c. The sum of the twelve months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743 or 38-745.
    d. The sum of the thirty-six months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743 or 38-745 divided by three.
    e. If the member has retired one or more times from ASRS, the average monthly compensation that was used for calculating the member's last pension benefit times twelve. A.R.S. § 38-711(10).
13. "Current years of credited service" means the amount of credited service a member has earned or purchased, and the amount of service credit for which an Irrevocable Payroll Deduction Authorization is in effect for which the member has not yet completed payment, but does not include any current requests to purchase service credit for which the member has not yet paid.
14. "Custodian" means a financial institution that holds financial assets for guaranteed safekeeping.
15. "Day" means a calendar day, and excludes the:
    a. Day of the act or event from which a designated period of time begins to run; and
    b. Last day of the period if a Saturday, Sunday, or official state holiday.
16. "Direct rollover" means distribution of eligible funds made payable to the ASRS as a contribution for the benefit of an eligible member from a retirement plan listed in A.R.S. § 38-747(H)(2) or (H)(3).
17. "Eligible funds" means payments listed in A.R.S. § 38-747(H)(2) and (3).
18. "Eligible member" means an active member of the Plan or a Plan member who is receiving benefits under the Long Term Disability Program established by A.R.S. Title 38, Chapter 5, Article 2.1.
19. "Error" means a typographical mistake, incorrect information, or other inaccuracy, whether intentional or unintentional.
20. "Forms of payment" means check, cashier's check, money order, Irrevocable Payroll Deduction Authorization, direct rollover, trustee-to-trustee transfer, IRA rollover and termination pay distribution.
21. "Forfeited service" means credited service for which the ASRS has returned retirement contributions to the member under A.R.S. § 38-740.
22. "Immediate family member" means:
    a. A member's spouse or life partner;
    b. A member's natural, step, or adopted sibling;
    c. A member's natural, step, or adopted child;
    d. A member's natural, step, or adoptive parent; or
    e. An individual for whom the member has legal guardianship.
23. "Indirect IRA rollover" means funds already distributed to the eligible member from a retirement plan listed in A.R.S. § 38-747(H)(3) that are then paid by the eligible member to the ASRS as a contribution for the benefit of the eligible member.
24. "IRA" means an Individual Retirement Account or Annuity under IRC § 408.
25. "IRC" means the Internal Revenue Code.
26. "Irrevocable payroll deduction authorization" means an irrevocable contract between an eligible member, an ASRS employer, and the ASRS that requires the ASRS employer to withhold payments from a member's pay for a specified amount and for a specified number of payments, as provided in A.R.S. § 38-747.
27. "Leave of absence" means the same as in A.R.S. § 38-711.
28. "Life partner" means an individual who lives with a member as a spouse, but without being legally married.
29. "Member" means the same as in A.R.S. § 38-711.
30. "Military service" means active duty or active reserve duty with any branch of the United States uniformed services.
31. "Military service record" means a United States uniformed services document that provides proof of active duty or active reserve duty time, including a military form DD-214 or other military form that provides the following information:

a. The member's full name;
b. The member's Social Security number;
c. Type of discharge the member received;
d. Active duty dates, if applicable; and
e. Active reserve duty dates, if applicable.

32. "Other public service" means previous employment listed in A.R.S. § 38-743(A).
33. "PDA pay-off letter" means written correspondence from the ASRS to a member that specifies the amount necessary to be paid by the member to complete an Irrevocable Payroll Deduction Authorization and receive the credited service specified in the Irrevocable Payroll Deduction Authorization.
34. "Person" means the same as in A.R.S. § 1-215.
35. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-769, and administered by the ASRS.
36. "Plan Administrator" means the person authorized to represent a specific eligible plan as addressed in IRC § 414(g).
37. "Political subdivision" means the same as in A.R.S. § 38-711.
38. "Political subdivision entity" means the same as in A.R.S. § 38-711.
39. "Presidential Call-up" means a directive from the President of the United States, Cabinet Secretary, or Secretary of any United States uniformed service, initiating active duty for personnel of active military, or active or inactive National Guard and Reserve branches of the United States uniformed services.
40. "Public employer" means the United States government, a state of the United States, a political subdivision of a state of the United States, or a political subdivision entity.
41. "Rollover" means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747(H)(2) and (3).
42. "Service credit" means forfeited service under A.R.S. § 38-742, leave of absence under A.R.S. § 38-744, military service and Presidential Call-up service under A.R.S. § 38-745, and other public service under A.R.S. § 38-743 that an eligible member may purchase.
43. "SP invoice" means a written correspondence from the ASRS informing an eligible member of the amount of money required to purchase a specified amount of service credit.
44. "Terminate employment" means to end the employment relationship between a member and an ASRS employer with the intent that the member not return to employment with that ASRS employer.
45. "Termination pay distribution" means an ASRS employer's payment to the ASRS of an eligible member's termination pay to purchase service credit as specified in § 38-747(B)(2).
46. "Three full calendar months" means the first day of the first full month through the last day of the third full month.
47. "Transfer employment" means to terminate employment with one ASRS employer with which a member has an Irrevocable Payroll Deduction Authorization:
    a. After accepting an offer to work for a new ASRS employer, or
    b. While working as an active member for a different ASRS employer.
48. "Trustee-to-trustee transfer" means a transfer of assets to the ASRS as authorized in A.R.S. § 38-747(I), from a retirement program listed in R2-8-515(A) from which, at the time of the transfer, a member is not eligible to receive a distribution.
49. "Uniformed services" means the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Air Force, Air Force Reserve, Air Force National Guard, Marine Corps, Marine Corps Reserve, Coast Guard, Coast Guard Reserves, the National Oceanic and Atmospheric Administration, and the Public Health Service.
50. "United States" means the same as in A.R.S. § 1-215.
51. "Window credit" means overpayments made on previously purchased service credit by eligible members of the ASRS as provided by Laws 1997, Ch. 280, § 21, and Laws 2003, Ch. 164, § 3.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2).

R2-8-502. Request to Purchase Service Credit and Notification of Cost

A. An eligible member may request to purchase service credit verbally, in writing, or electronically. The eligible member shall provide the eligible member's mailing address and designate which category of service credit the eligible member is requesting to purchase.

B. The ASRS shall send a letter acknowledging the request to purchase service credit to the mailing address provided by the eligible member. The ASRS shall provide, with the acknowledgment letter, any form specified in this Article that corresponds to the category of service credit the eligible member requests to purchase and indicate in the acknowledgment letter the deadline for providing supporting documentation of service credit to the ASRS.

C. Except as provided in R2-8-519(A), the eligible member shall provide documentation of service credit as required by this Article within 90 days of the eligible member's request to purchase service credit. If the ASRS has not received complete and correct documents within 90 days of the request to purchase service credit, the ASRS shall cancel the eligible member's request to purchase service credit. The eligible member may make a new request to purchase service credit.

D. Upon receipt of the documentation required by this Article from the eligible member and if the eligible member's request to purchase service credit meets the requirements of this Article, the ASRS shall provide the following to the eligible member:
1. A SP invoice stating the cost to purchase the amount of service credit the member is eligible to purchase and the date payment is due;
2. A Service Purchase Payment Request form requesting the following information:
a. The member's name;
b. The member's Social Security number;
c. The member's mailing address;
d. The member's daytime telephone number;
e. ID number listed on the SP invoice;
f. Either the number of years or partial years of service credit the member wishes to purchase or the cost for the number of years or partial years of service the member wishes to purchase, not exceeding the years or partial years and cost specified on the SP Invoice;
g. If the member elects to pay for the service credit by trustee-to-trustee transfer, IRA rollover, distributed rollover contribution, or direct rollover, the anticipated number of rollovers or transfers;
h. If the member elects to pay by Irrevocable Payroll Deduction Authorization, the amount of money the member wishes to pay per pay period;
i. If the member elects to pay for the service credit by check, the check number and amount of the check;
j. If the member elects to pay any cost remaining at retirement or termination of employment with a termination pay distribution, the retirement date or last date of work;
k. The member's signature and date of the signature; and
3. Other forms the member may need to complete the request for service credit purchase.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

R2-8-503. Requirements Applicable to All Service Credit Purchases

A. To purchase service credit at the amount provided in an SP invoice, an eligible member shall purchase the service credit by check or money order, or request an Irrevocable Payroll Deduction Authorization, rollover, transfer or termination pay distribution as specified in this Article, by the due date specified on the SP invoice.
B. An eligible member may purchase all of the service credit or a portion of the service credit. If the eligible member wishes to purchase only a portion of the service credit, the eligible member shall specify, on the Service Purchase Payment Request form identified in R2-8-502(D)(2):
1. The dollar amount the eligible member wishes to purchase, up to the amount specified on the SP invoice, or
2. The number of years or partial years the eligible member wishes to purchase, not exceeding the years or partial years specified on the SP invoice.
C. If the eligible member elects to purchase only a portion of the service credit, the cost and amount of service credit the eligible member identifies on the Service Purchase Payment Request form is only an estimate and may be more or less than the actual cost or amount of service credit purchased by the eligible member.
D. The eligible member shall not request to purchase additional service credit based on the SP invoice until the member has completed the purchase of the previously requested portion of service credit or cancel the request as specified in subsection (F).
E. ASRS shall not consider more than one active request at a time from a member to purchase service credit in a single category. The categories are:
1. Leave of absence,
2. Military service,
3. Presidential Call-up service,
4. Forfeited service, and
5. Other public service.
F. An eligible member may cancel an active request to purchase a specific category of service credit verbally or in writing, and submit a new request in the same category of service credit for a different amount of service credit.
G. If an eligible member is entitled to a window credit, the eligible member may apply the window credit to purchase service credit. To apply a window credit to a purchase of service credit, the eligible member shall make a request to the ASRS in writing by the due date specified on the SP invoice and include the following information:
1. The amount the member wants to apply,
2. The member's signature, and
3. The date of the member's signature.
H. The amount of service credit an eligible member may purchase and the benefits an eligible member may receive are subject to the limitations prescribed in A.R.S. § 38-747(E).
I. On or before the due date specified on the SP Invoice, ASRS shall extend the time for an eligible member to respond to an SP invoice as follows:

1. If the member notifies the ASRS of an ASRS error, the time is extended 30 days after the date the ASRS sends notification to the eligible member that the ASRS has corrected the error;
2. If an ASRS internal review is made of the member's service credit purchase request, the time is extended 30 days after the date ASRS sends notification to the member that the review is completed;
3. If the member appeals an issue regarding the SP invoice under Article 4 of this Chapter, the time is extended 30 days after the date ASRS sends notification to the member that a decision on the appeal has been made; or
4. If an unforeseeable event occurs that is outside of the member's control, such as an incapacitating illness of the member or death of an immediate family member, and the member notifies the ASRS of the event, the ASRS shall extend the time by up to six months, after a review of the unforeseeable event to determine the length of the extension.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

R2-8-504. Service Credit Calculation for Purchasing Service Credit

An eligible member who purchases service credit shall receive one month of credited service for one or more days of service in a calendar month.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

R2-8-505. Restrictions on Purchasing Overlapping Service Credit; Transfers

A. The ASRS shall not permit an eligible member to purchase service credit that, when added to credited service earned in any plan year, results in more than:
   1. One year of credited service in any plan year, or
   2. One month of credited service in any one calendar month.

B. The restrictions in subsection (A) do not apply to service credit that an eligible member transfers from another retirement system to the ASRS as authorized in A.R.S. § 38-730 or A.R.S. Title 38, Chapter 5, Article 7, whether the eligible member requests the transfer before or after purchasing other service credit.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

R2-8-506. Cost Calculation for Purchasing Service Credit

A. For leave of absence service credit, military service credit, and other public service credit, the ASRS shall calculate, as of the date of the request to purchase service credit:
   1. The actuarial present value of the future retirement benefit for the member including the service credit that the eligible member requests to purchase, and
   2. The actuarial present value of the future retirement benefit for the member without the service credit that the eligible member requests to purchase.

B. The cost for purchasing the service credit that the member requests to purchase is the difference between the actuarial present value in subsection (A)(1) and the actuarial present value in subsection (A)(2).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

R2-8-507. Required Documentation and Calculations for Forfeited Service Credit

A. An eligible member who requests to purchase service credit for forfeited service under A.R.S. § 38-742 shall provide to the ASRS:
   1. The eligible member's:
      a. Full name and, if applicable, other names used while working for an ASRS employer for which the eligible member is requesting to purchase service credit;
      b. Mailing address;
      c. Telephone number, if applicable;
      d. Social Security number;
   2. The name of each ASRS employer, if known, for which the eligible member is requesting to purchase service credit for forfeited service;
   3. The year the eligible member began working for each ASRS employer and the year the eligible member left each employment, if known; and
   4. The year the eligible member believes the ASRS returned retirement contributions to the member.

B. The amount the eligible member shall pay to purchase service credit for previously forfeited service is the amount of retirement contributions that the ASRS returned to the eligible member, plus interest on that amount from the date on the return of retirement contributions check to the date of redeposit at the interest rate determined by the Board as specified in A.R.S. § 38-742.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit

A. An eligible member may request to purchase service credit for an approved leave of absence from an ASRS employer under A.R.S. § 38-744. To request to purchase service credit for an approved leave of absence the eligible member shall provide to the ASRS:

1. An Approved Leave of Absence form that includes:
   a. The following information completed by the eligible member:
      i. The eligible member's full name and, if applicable, other names used while working for the ASRS employer;
      ii. The eligible member's Social Security number;
      iii. The eligible member's mailing address;
      iv. The eligible member's daytime telephone number;
      v. A statement that the eligible member understands that up to one year of leave of absence service credit may be purchased for each approved leave of absence, if the eligible member returns to work for the employer that approved the leave of absence unless employment could not be resumed because of disability or nonavailability of a position;
      vi. A statement that the eligible member understands that the ASRS uses the actuarial present value calculation method to determine the cost of the service purchase request;
      vii. A statement that the eligible member authorizes the ASRS employer to provide any necessary personal information to ASRS in order to process this request; and
      viii. The member's dated signature; and
   b. The following information completed by the ASRS employer;
      i. The beginning date and ending date of the approved leave of absence;
      ii. The date the eligible member returned to work or a statement of why employment was not resumed;
      iii. Name of the employer;
      iv. The authorized employer representative's name;
      v. The authorized employer representative's telephone number and, if applicable, fax number; and
      vi. The authorized employer representative's dated signature verifying that the approved leave of absence benefited or was in the best interest of the employer; and
2. A copy of the guidelines referenced in A.R.S. § 38-744, if applicable.

B. The amount the member shall pay to purchase service credit for leave of absence is determined as provided in R2-8-506.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-509. Required Documentation and Calculations for Military Service Credit

A. An eligible member may request to purchase military service credit under A.R.S. § 38-745(A) and (B). To request to purchase military service credit, the eligible member shall provide to the ASRS:

1. The items listed in R2-8-507(A)(1);
2. A copy of the eligible member's military service record; and
3. A completed, signed, dated, and notarized Affidavit of Military Service form that contains:
   a. The member's full name;
   b. The member's Social Security number;
   c. The branch of the uniformed services the member was in;
   d. Whether the member was active duty or active reserve duty;
   e. The years and months by fiscal year that the member was in active duty or active reserve duty for which the member wishes to purchase service credit;
   f. Acknowledgement that the member has attached:
      i. Proof of honorable discharge for each type of military service listed on the form; and
      ii. The member's military service record that supports all of the service listed on the affidavit;
   g. The following statements of understanding initialed by the member:
      i. I understand that any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement plan with an intent to defraud the plan is guilty of a class 6 felony per Arizona Revised Statutes Section 38-793;
      ii. I understand this transaction is subject to audit and if any errors or misrepresentations are discovered as a result of this audit, my total credited service with the ASRS will be adjusted as necessary and if I am retired, my retirement benefit will also be adjusted;
      iii. I understand that the service listed on this affidavit does not include time that I either volunteered or was ordered into active duty military service as part of a Presidential Call-up. This service is purchased under Presidential Call-up and requires a Presidential Call-up form to be completed by your employer; and
      iv. I understand that any time I have listed on this affidavit for Reserve or National Guard time reflects the months that I attended at least one drill or assembly for each month listed.

B. The amount the eligible member pays to purchase military service credit is determined as provided in R2-8-506.

C. ASRS determines the amount of service credit an eligible member receives for active duty and active reserve duty time by the time listed on the Affidavit of Military Service form, if the service listed is supported by the information contained in the member's military service record.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-510. Required Documentation and Calculations for Presidential Call-up Service Credit

A. An eligible member or the eligible member's beneficiary who meets the requirements under A.R.S. § 38-745(C) shall receive up to 60 months of Presidential Call-up service under A.R.S. § 38-745(C) through (I). In order to determine the amount of contributions the ASRS employer owes to purchase service credit for Presidential Call-up service, the eligible member's ASRS employer shall provide to the ASRS a copy of the eligible member's military service record and a completed Military Call-up form that includes the following:

1. The member's full name;
2. The member's Social Security number;
3. The start date of Presidential Call-up Service;
4. The end date of Presidential Call-up Service;
5. Whether the member received paid leave while on Presidential Call-up;
6. The date the member returned to work for the ASRS employer;
7. The salary for each fiscal year while the member is on Presidential Call-up, including any salary increases the eligible member would have received had the member not left employment due to Presidential Call-up, if applicable;
8. The ASRS employer's name and address;
9. The name of a contact individual for the ASRS employer, and that individual's business and fax telephone numbers;
10. The contact individual's signature and date of signature;
11. If applicable, the earlier of:
    a. The date that the member was released from the hospital for injuries sustained as a result of participating in a Presidential Call-up; or
    b. The date that the member was hospitalized for one year for injuries sustained as a result of participating in a Presidential Call-up; and
12. A copy of the member's death certificate, if applicable.

B. An ASRS employer shall make the request to purchase service credit for Presidential Call-up service within 30 days after the member's active duty termination date.

C. The ASRS calculates the amount the ASRS employer pays to purchase Presidential Call-up service by multiplying the eligible member's salary at the time active duty commences, by the contribution rate in effect for the period of active duty, and by the years or partial years of service elapsing from the active duty commencement date through the active duty termination date. Included in the calculation are any salary increases the member would have received if the member had not left work to participate in a Presidential Call-up.

D. The ASRS shall send the ASRS employer a statement of cost for purchase of the Presidential Call-up service credit, based on the calculation in subsection (B). Within 90 days from the date on the ASRS statement of cost, the ASRS employer shall pay to the ASRS the amount on the statement. If the ASRS employer fails to make full payment within the 90 days, interest shall accrue on the unpaid balance at the assumed actuarial investment earnings rate approved by the Board in effect on the date of the statement of cost.

E. If an ASRS employer deducts retirement and long-term disability contributions from an eligible member's pay while the eligible member is on Presidential Call-up service, the ASRS shall return the contributions to the ASRS employer after the ASRS receives the information in subsection (A).

F. If an ASRS employer deducts retirement contributions from an eligible member's pay while the eligible member is on Presidential Call-up service, and the eligible member does not return to the ASRS employer after separation from active military service, the ASRS shall apply the retirement contributions to the member's credited service.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-511. Required Documentation and Calculations for Other Public Service Credit

A. An eligible member who requests to purchase other public service credit under A.R.S. § 38-743 shall provide to the ASRS a completed Affidavit of Other Public Service form, signed and dated by the member, and notarized, that includes the following:

1. The member's full name;
2. The member's Social Security number;
3. Other names used by the member during employment with the other public service employer, if applicable;
4. The name and mailing address of the other public service employer;
5. The position the member held while working for the other public service employer;

6. A contact name and telephone number of an individual in the other public service employer's human resources department who can verify employment, if known;
7. The years and months by fiscal year of other public service the member worked and wishes to purchase;
8. If the other public service employer was a non-ASRS employer, a statement of whether the member participated in the non-ASRS employer's retirement plan;
9. If the member participated in a non-ASRS public service employer's retirement plan, the name of the retirement plan, identifying whichever one of the following applies:
   a. The approximate date the member took a return of retirement contributions;
   b. The plan is non-contributory and the member is not eligible for benefits from the plan; or
   c. That, if not using all of the retirement contributions as a pre-tax rollover, the member will request a return of retirement contributions and forfeit all rights to any benefits from the plan and provide the ASRS with documentation that the member has forfeited all rights to benefits from the plan no later than the due date specified on the SP invoice; and
10. Acknowledgement that:
   a. Knowingly making a false statement or falsifying or permitting falsification of any record of the ASRS with an intent to defraud ASRS is a Class 6 felony, pursuant to A.R.S. § 38-793;
   b. The service purchase transaction is subject to audit and if any errors are discovered, the ASRS shall adjust a member's total credited service with the ASRS, or if the member is already retired, adjustments to the member's credited service will affect the member's retirement benefit; and
   c. If an audit determines that the member is eligible for a benefit from the other public service employer's retirement plan, the member is required to take necessary steps to forfeit the benefit, and if the forfeiture is not completed within 90 days of being notified of the audit results, the service credit purchase listed on this application will be revoked and any funds paid to purchase the service credit will be refunded to the member.

B. The amount the member shall pay to purchase other public service credit is determined as provided in R2-8-506.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-512. Purchasing Service Credit by Check, Cashier's Check, or Money Order

A. An eligible member may purchase service credit by check, cashier's check, or money order.

B. Within 30 days of the issue date on the SP invoice or PDA **pay-off** letter, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form with the information specified in R2-8-502(D)(2) and a check, cashier's check, or money order made to the order of the Arizona State Retirement System in the amount to purchase the requested service credit.

C. If an eligible member purchases service credit by check, cashier's check, or money order in conjunction with one or more rollovers, trustee-to-trustee transfers, or termination pay, the member shall make payment within 30 days after the date the ASRS sends written confirmation that the ASRS received the final rollover, trustee-to-trustee transfer, or termination pay payment.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-513. Purchasing Service Credit by Irrevocable Payroll Deduction Authorization

A. An eligible member may purchase service credit by Irrevocable Payroll Deduction Authorization.

B. By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form with the information specified in R2-8-502(D)(2).

C. If the eligible member elects to pay for service credit by Irrevocable Payroll Deduction Authorization, ASRS shall prepare an Irrevocable Payroll Deduction Authorization and send it to the eligible member for signature. The member shall ensure that the ASRS receives the signed Irrevocable Payroll Deduction Authorization within 30 days after the date on the Irrevocable Payroll Deduction Authorization. The signed Irrevocable Payroll Deduction Authorization becomes irrevocable upon receipt by the ASRS.

D. At the time the eligible member signs the Irrevocable Payroll Deduction Authorization the eligible member may elect to use termination pay towards the balance of the Irrevocable Payroll Deduction Authorization if the eligible member terminates employment. If the eligible member chooses this option, the eligible member shall complete the Termination Pay Addendum to the Irrevocable Payroll Deduction Authorization and return it to the ASRS along with the remainder of the Irrevocable Payroll Deduction Authorization that includes the following:
   1. A statement that the member:
      a. Understands and agrees that the member must continue working at least three full calendar months after the date of submission of the form before termination pay may be used on a pre-tax basis;
      b. Understands that if the termination payment exceeds the balance owed on the Irrevocable Payroll Deduction Authorization, the overage will be returned to the ASRS employer to be distributed to the member; and

c. Elects to irrevocably agree to have termination pay that may be payable to the member upon termination of employment sent to the ASRS on a pre-tax basis and used toward any remaining balance of the Irrevocable Payroll Deduction Authorization if all scheduled payroll deductions have not been completed upon termination of service; and

2. A statement that either all termination pay or a specified amount of termination pay is to be applied to the balance of the Irrevocable Payroll Deduction Authorization.

E. The ASRS shall:

1. Charge interest on the unpaid balance at the assumed actuarial investment earnings rate approved by the Board in effect at the time the authorization was entered into;
2. Limit the payroll deduction time period to a maximum of 20 years; and
3. Require a minimum payment of $10.00 per payroll period, or payment in an amount to purchase at least .001 year of service credit per payroll period, whichever is greater.

F. The ASRS shall transmit the Irrevocable Payroll Deduction Authorization to the active member's ASRS employer, and the ASRS employer shall implement the deduction on the first pay period after receiving the Irrevocable Payroll Deduction Authorization.

G. If a deduction is not made under an Irrevocable Payroll Deduction Authorization within six months after the member signs the authorization, the authorization lapses and the member may make another request, which is recalculated based on the new request date unless the failure to begin deductions is due to an ASRS error.

H. A period of leave of absence, long-term disability, or Presidential Call-up shall not cancel the Irrevocable Payroll Deduction Authorization. The ASRS employer shall resume deductions immediately upon the member's return to that employment. The period during which the member is on leave of absence, on long-term disability, or leaves work because of a Presidential Call-up is not included in the 20-year payment time limitation under subsection (E)(2). If the member does not return to active working status, whether due to termination of employment or retirement, the member may elect to purchase the balance of unpaid service under the Irrevocable Payroll Deduction Authorization at the time of termination or retirement as specified in this Section.

I. Deductions made pursuant to an Irrevocable Payroll Deduction Authorization continue until the:

1. Irrevocable Payroll Deduction Authorization is completed;
2. Member retires, whether or not the member continues employment as allowed in A.R.S. §§ 38-766.01 and 38-764(J); or
3. Member terminates all ASRS employment without transferring employment.

J. If a member retires or terminates employment from all ASRS employers without transferring employment as stated in R2-8-513.01 before all deductions are made as authorized by the Irrevocable Payroll Deduction Authorization, the member's purchase of service credit is canceled unless the member notifies the ASRS in writing during the period 14 days before to 14 days after retirement or termination from all ASRS employment of the intent to purchase the remaining amount due in a lump sum.

K. When the member notifies ASRS of retirement or termination from all ASRS employment and requests to pay off the Irrevocable Payroll Deduction Authorization, the ASRS shall send the member a PDA pay-off letter to the mailing address given by the member. The ASRS shall calculate the amount owed by the member and reduce the amount owed by any excess interest that the member has paid.

L. Within 30 days of the date of the PDA pay-off letter, the member shall ensure that the ASRS receives the completed SP Payment Request form with the information specified in R2-8-502(D)(2). The member may purchase the remaining service credit by one or more of the following methods:

1. By check, cashier's check, or money order made out to the ASRS under R2-8-512;
2. By making a request to the ASRS for a rollover or transfer under R2-8-514 and completing the rollover or transfer within 90 days of the date of the PDA pay-off letter; or
3. By termination pay distribution under R2-8-519, if the member authorized this option at the time the member signed the Irrevocable Payroll Deduction Authorization.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

R2-8-513.01. Irrevocable Payroll Deduction Authorization and Transfer of Employment to a Different ASRS Employer

A. An Irrevocable Payroll Deduction Authorization continues if a member transfers employment.

B. An Irrevocable Payroll Deduction Authorization ends if a member terminates employment without having accepted an offer to work for a new ASRS employer, and the member is not already an active member working for a different ASRS employer. The member shall then pay off the Irrevocable Payroll Deduction Authorization as specified in R2-8-513(J).

C. If a retirement contribution is due from the new ASRS employer within 120 days from the member's termination date with the previous employer, there is a rebuttable presumption that there is a transfer of employment. If a retirement contribution is not received within 120 days, the Irrevocable Payroll Deduction Authorization terminates.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-513.02 Termination Date

For the purpose of an Irrevocable Payroll Deduction Authorization, the date a member is considered terminated from an ASRS employer is:

1. For a member terminating employment, the member's last pay period end date with that ASRS employer;
2. For a member on Presidential Call-up who does not return to the same ASRS employer:
    a. Ninety days from the date of separation from Presidential Call-up service;
    b. Ninety days from the date released from the hospital, if injured while on Presidential Call-up service;
    c. The date the member has been hospitalized for one year for injuries sustained as a result of participating in a Presidential Call-up; or
    d. The date of the member's death as a result of participating in a Presidential Call-up;
3. For a member on leave of absence without pay who does not return to the same ASRS employer, the date the ASRS employer required the member to return to work;
4. For a member who is unable to work because of a disability, the later of:
    a. The date the member's request for long-term disability benefits are denied;
    b. The date the member no longer has sick leave and annual leave; or
    c. For a member on long-term disability who does not return to the same ASRS employer or transfer employment, the date long-term disability benefits are terminated.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-514. Purchasing Service Credit by Direct Rollover

A. An eligible member may purchase service credit or pay off an Irrevocable Payroll Deduction Authorization by direct rollover at retirement or termination of employment without transferring employment.

B. By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form with the information specified in R2-8-502(D)(2).

C. Upon receipt of the completed Service Purchase Payment Request form, the ASRS shall provide a Direct Rollover/Transfer Certification to Purchase Service Credit form, if the ASRS has not already provided the member with the form.

D. The member shall ensure that the ASRS receives the Direct Rollover/Transfer Certification to Purchase Service Credit form completed by the member and the plan making the distribution within 90 days after the issue date of the SP Invoice.

E. The information requested on the Direct Rollover/Transfer Certification to Purchase Service Credit form includes:

1. Member's full name;
2. Member's Social Security number;
3. Member's mailing address;
4. Member's daytime telephone number;
5. The amount of each rollover or transfer, if applicable;
6. The account number of each plan, if applicable;
7. The member's signature certifying that the member understands the requirements, limitations, and entitlements for the rollover/transfer that is being used to purchase service credit, and has read and understands the Direct Rollover/Transfer Certification to Purchase Service Credit form and any accompanying instructions and information sheets;
8. The date the member signs the form;
9. The authorized representative's name and title;
10. The authorized representative's address;
11. The authorized representative's telephone number;
12. Certification by the authorized representative that:
    a. The plan is either:
        i. A qualified pension, profit sharing, or 401(k) plan described in IRC § 401(a), or a qualified annuity plan described in IRC § 403(a);
        ii. A deferred compensation plan described in IRC § 457(b) maintained by a state of the United States, a political subdivision of a state of the United States, or an agency or instrumentality of a state of the United States;
        iii. An annuity contract described in IRC § 403(b); or
        iv. An IRA described in A.R.S. § 38-747(H)(3);
    b. The rollover/transfer specified on the form from which the pre-tax funds are being rolled over or transferred is intended to satisfy the requirements of the applicable section of the Internal Revenue Code;
    c. The authorized representative is not aware of any plan provision or any other reason that would cause the plan/IRA not to satisfy the applicable section of the Code; and
    d. The funds will be sent to the ASRS as a direct plan rollover, IRA rollover, or a trustee-to-trustee transfer; and
13. The date and signature of the authorized representative.

F. The ASRS shall provide the member with written notification regarding the eligibility of the rollover.

G. The member shall contact the plan administrator to have the funds distributed and transferred to the ASRS. Except as provided in subsection (H), unless the ASRS receives a check for the correct amount from the plan within 90 days of the issue date on the SP invoice, the ASRS shall cancel the request to purchase service credit as specified in R2-8-502(C).

H. At the written request of the member, the ASRS shall provide an extension of 60 days in which the check may be received by the ASRS from the plan at the written request of the member, if:

1. The member has followed the procedure in this Article for requesting to purchase service credit,
2. The member has responded to the ASRS correspondence within the time-frame set forth in this Article,
3. The eligible plan has not provided to the ASRS the check to pay for the requested service credit purchase within 90 days of the date of the SP invoice, and
4. The member makes the written request for extension before expiration of the 90 days.

I. The member shall ensure that the ASRS receives a check from the plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.

J. If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the member.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-515. Purchasing Service Credit by Trustee-to-Trustee Transfer

A. An eligible member may purchase service credit or pay off an Irrevocable Payroll Deduction Authorization at retirement or termination of employment without transferring employment by a trustee-to-trustee transfer if the member participates in:
1. A deferred compensation plan described in IRC § 457 that is maintained by:
a. The state of Arizona;
b. A political subdivision, agency, or instrumentality of the state of Arizona; or
c. A political subdivision entity of the state of Arizona;
2. An annuity contract described in IRC § 403(b); or
3. A retirement program qualified under IRC § 401(a) or 403(a).

B. By the due date specified on the SP invoice, the ASRS shall receive from the member the completed Service Purchase Payment Request form described in R2-8-502(D)(2).

C. Upon receipt of the completed Service Purchase Payment Request form, the ASRS shall provide a Direct Rollover/Transfer Certification to Purchase Service Credit form, if the ASRS has not already provided the member with the form.

D. The member shall ensure that the member and the plan administrator complete the Direct Rollover/Transfer Certification to Purchase Service Credit form, containing all of the applicable information identified in R2-8-514(E), and ensure that the ASRS receives the form within 90 days after the issue date on the SP Invoice.

E. The ASRS shall provide the member with written notification regarding the eligibility of the transfer.

F. The member shall contact the plan administrator to have the funds transferred to the ASRS. Except as provided in subsection (G), unless the ASRS receives the check for the correct amount from the plan within 90 days of the issue date on the SP invoice, the ASRS shall cancel the request to purchase service credit as specified in R2-8-502(C).

G. The ASRS shall provide an extension of 60 days in which the check may be received by the ASRS from the plan at the written request of the member, if:
1. The member has followed the procedure under this Article for requesting to purchase service credit,
2. The member has responded to the ASRS correspondence within the time-frame set forth in this Article,
3. The eligible plan has not provided to the ASRS the check to pay for the requested service credit purchase within 90 days of the date of the SP invoice, and
4. The member makes the written request for extension before expiration of the 90 days.

H. The member shall ensure that the ASRS receives a check from the plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.

I. If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the member and notify the member of the correct amount due.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-516. Purchasing Service Credit by Indirect IRA Rollover

A. An eligible member may purchase service credit, or pay off an Irrevocable Payroll Deduction Authorization at retirement or termination of employment without transferring employment, by an indirect IRA rollover if the rollover purchase is completed within 60 days of the date of distribution of funds from the IRA account, as required by IRC § 408(d)(3)(A). The 60-day time limitation is exclusive of any other time limitations prescribed in this Article and the ASRS shall not extend the 60-day period.

B. By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form described in R2-8-502(D)(2).

C. Upon the receipt of the completed Service Purchase Payment Request form and upon the member's request, the ASRS shall provide to the member an Indirect IRA Rollover Contribution form. The member shall complete the Indirect IRA Rollover Contribution form and ensure that the ASRS receives the form within 90 days after the issue date on the SP Invoice, along with:
1. A copy of the distribution statement or check stub identifying it as an IRA distribution, showing the date of distribution and amount distributed; or
2. The distribution check endorsed by the member made payable to the ASRS with documentation that it is an IRA distribution.

D. The information requested on the Indirect IRA Rollover Contribution form includes:
1. The member's full name,
2. The member's Social Security number,
3. The member's mailing address,
4. The member's daytime telephone number,
5. The member's signature certifying that the member understands the statements on the form regarding the distribution the member has received from the IRA and the requirements for an IRA rollover to the ASRS and agrees to the statements, and
6. The date the member signs the form.

E. The ASRS shall provide the member with written notification regarding the eligibility of the rollover contribution.

F. After receiving notice from the ASRS that the rollover is an eligible rollover contribution, if the member has not sent payment for the purchase of service credit, the member shall submit payment for the service credit purchase. The member shall make payment by:
1. The distribution check from the IRA made payable to the member and endorsed by the member to make it payable to the ASRS; or
2. Direct payment by the member by check or money order to the ASRS, after the IRA distribution is deposited to the member's account.

G. Except as provided in subsection (H), unless the ASRS receives payment from the member within 90 days of the issue date on the SP invoice, the ASRS shall cancel the request to purchase service credit as specified in R2-8-502(C).

H. The ASRS shall provide an extension of 60 days in which the check may be received by the ASRS under subsection (G) at the written request of the member, if:
1. The member has followed the procedure under this Article for requesting to purchase service credit,
2. The member has responded to the ASRS correspondence within the time-frame set forth in this Article,
3. The eligible plan has not provided the member with the check to pay for the requested service credit purchase within 90 days of the date of the SP invoice, and
4. The member makes the written request for extension before expiration of the 90 days.

I. The member shall ensure that the ASRS receives a check made payable to the ASRS for an amount that does not exceed the amount specified on the SP Invoice.

J. If the payment exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the member.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-517. Purchasing Service Credit by Distributed Rollover Contribution

A. An eligible member may purchase service credit with a distribution from a prior employer's eligible plan that has already been distributed to the member if the rollover purchase is completed within 60 days of the date of distribution to the member, as required by IRC §§ 402(c)(3)(A), 403(b)(8)(B), and 457(e)(16)(B). The 60-day time limitation is exclusive of any other time limitations prescribed in this Article, and the ASRS shall not extend the 60-day period. Eligible plans are:
1. A pension, profit sharing, or other qualified plan described in IRC § 401(a) and (k);
2. A qualified annuity plan described in IRC § 403(a);
3. A deferred compensation plan described in IRC § 457 and maintained by a state of the United States, or a political subdivision, agency, or instrumentality of a state of the United States; and
4. A tax deferred annuity described in IRC § 403(b).

B. By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form described in R2-8-502(D)(2).

C. When the ASRS receives the completed Service Purchase Payment Request form and upon the member's request, the ASRS shall provide a Certification by Eligible Plan Rollover Contribution form and Rollover Contribution form.

D. The information requested on the Certification by Eligible Plan Rollover Contribution form includes:
1. The member's dated signature;
2. Member's full name;
3. Member's Social Security number;
4. Member's mailing address;
5. Certification by the plan administrator that the plan is one of the plans described in subsection (A);
6. Certification by the plan administrator that:
   a. If the plan is described in either IRC § 401(a) or 403(a), the plan has received a determination letter from the Internal Revenue Service indicating that the plan is qualified under either IRC § 401(a) or 403(a);
   b. If the plan is described in either IRC § 401(a) or 403(a), but has not received a determination letter from the Internal Revenue Service, the plan satisfies the requirements of IRC § 401(a) or 403(a) or is intended to satisfy the requirements of IRC § 401(a) or 403(a) and the plan administrator is not aware of any plan provision or any other reason that would disqualify the plan; or
   c. If the plan is a deferred compensation plan described in IRC § 457 or an annuity contract described in IRC § 403(b), the plan or annuity satisfies the applicable requirements of IRC § 457 or 403(b) and the plan administrator

is not aware of any plan provision or any other reason that would cause the plan or annuity to not satisfy the applicable provisions of IRC § 457 or 403(b);

7. Certification by the plan administrator that the plan permits a direct rollover of an eligible rollover distribution to a defined benefit plan;
8. The full name, title, and signature of the plan administrator;
9. The plan administrator's business address and telephone number; and
10. Date of the signature of the plan administrator.

E. The information requested on the Rollover Contribution form includes:

1. The member's Social Security number;
2. The member's full name;
3. The member's mailing address;
4. The member's daytime telephone number;
5. The member's signature certifying that:
   a. The member has read the statements on the Rollover Contribution form regarding requirements for a rollover contribution, understands all the statements, and believes the statements, certifications, and any documents attached to the form to be true and correct to the best of the member's knowledge and belief; and
   b. The member understands that:
      i. The ASRS assumes no responsibility for ensuring that the member makes a timely rollover contribution to the ASRS or that the amount rolled over constitutes a valid rollover contribution;
      ii. The member accepts full responsibility for ensuring that the rollover contribution is an eligible rollover contribution before making the contribution to the ASRS;
      iii. If the ASRS accepts the rollover contribution and it is later determined that the contribution was an invalid rollover contribution, the ASRS will distribute the invalid contribution directly to the member; and
      iv. Any invalid rollover contributions returned to the member may decrease the member's benefits and the Internal Revenue Service and state taxing authorities may require the member to pay taxes, penalties, and interest on the returned contributions; and
6. The date the member signed the form.

F. The member shall ensure that the ASRS receives the Certification by Eligible Plan Rollover Contribution form signed and dated by the plan administrator, the Rollover Contribution form signed and dated by the member, and a copy of the distribution statement showing the:

1. Date of the distribution;
2. Amount of the distribution; and
3. Amount of taxes withheld, if any.

G. The ASRS shall provide the member with written notification regarding the eligibility of the rollover.

H. The member shall make payment by:

1. The distribution check from the eligible plan made payable to the member and endorsed by the member to make it payable to the ASRS; or
2. Direct payment by the member by check or money order to the ASRS, after the eligible plan distribution is deposited to the member's personal financial account.

I. Except as provided in subsection (J), unless the ASRS receives the check from the plan within 90 days of the issue date on the SP invoice, the ASRS shall cancel the request to purchase service credit as specified in R2-8-502(C).

J. At the written request of the member, the ASRS shall provide an extension of 60 days in which the check may be received by the ASRS from the plan under subsection (I), if:

1. The member has followed the procedure under this Article for requesting to purchase service credit,
2. The member has responded to the ASRS correspondence within the time-frame set forth in this Article,
3. The eligible plan has not provided to the member with the check to pay for the requested service credit purchase within 90 days of the date of the SP invoice, and
4. The member makes the written request for extension before expiration of the 90 days.

K. The member shall ensure that the ASRS receives a check, made payable to the ASRS, for an amount that does not exceed the amount specified in the written notification identified in subsection (G).

L. If the payment from the eligible plan exceeds the amount specified in the written notification identified in subsection (G) the ASRS shall return the entire payment to the member.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-518. Repealed

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

R2-8-519. Purchasing Service Credit by Termination Pay Distribution

A. To purchase service credit using termination pay distribution, an eligible member shall, no more than six months before the date the eligible member plans to retire or terminate employment, request to purchase service credit as specified in R2-8-502 and specify that the member wants to use termination pay distribution to pay for the service credit. Upon receipt of the acknowledgement letter identified in R2-8-502, the eligible member shall provide documentation for service credit as required by this Article, within 30 days of the eligible member's request to purchase service credit.

B. Upon receipt of the documentation required by this Article from the eligible member and if the eligible member's request to purchase service credit meets the requirements of this Article, the ASRS shall provide a:
   1. SP invoice stating the cost to purchase the requested amount of service credit and the date the payment is due, and
   2. Service Purchase Payment Request form as described in R2-8-502(D)(2).

C. By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form.

D. Upon receipt of the Service Purchase Request form, if the member indicates the member wishes to purchase service credit by termination pay distribution, the ASRS shall send the member a Termination Pay Authorization for the Purchase of Service Credit form to complete and return within the time limitation specified in subsection (E) that includes:
   1. Member's full name,
   2. Member's Social Security number,
   3. Member's daytime telephone number,
   4. The Request ID number listed on the SP invoice,
   5. Name of ASRS employer,
   6. Whether the member elects to use all termination pay or a specific amount of termination pay to purchase service credit,
   7. Signature of the member, certifying that the member understands that:
      a. The member is required to continue working at least three full calendar months after the date the member submits the Termination Pay Authorization for the Purchase of Service Credit form before termination pay may be used on a pre-tax basis;
      b. If the member terminates employment more than six months after the date on the SP invoice, the member may purchase the service credit at a newly calculated rate and possibly at a higher cost;
      c. The Termination Pay Authorization for the Purchase of Service Credit form is binding and irrevocable;
      d. The member's employer is required to make payment directly to the ASRS after mandatory deductions are made, and the member does not have the option of receiving the funds directly from the employer;
      e. The ASRS shall apply service credit to the member's account upon the receipt of payments authorized by the member by the Termination Pay Authorization for the Purchase of Service Credit form;
      f. If the member elects to purchase with termination pay only a portion of the service credit that the member is entitled to purchase, the member may be eligible to use other forms of payment to purchase additional service credit. However, using other forms of payment to purchase additional service credit does not alter, amend, or revoke the terms of the Termination Pay Authorization for the Purchase of Service Credit form;
      g. It is the member's responsibility to ensure that the member's employer properly deducts termination pay, as provided the Termination Pay Authorization for the Purchase of Service Credit form; and
      h. The amount of termination pay the member is allowed to apply to purchase service credit is subject to federal laws.

E. In addition to the other time limitations in this Section, to apply termination pay to a service purchase the eligible member shall complete and sign the Termination Pay Authorization for the Purchase of Service Credit form, and the member shall ensure that the ASRS receives the Termination Pay Authorization for the Purchase of Service Credit form at least three full calendar months before the member retires or terminates employment.

F. The ASRS shall not apply a termination pay distribution to a service credit purchase covered by an Irrevocable Payroll Deduction Authorization in effect at the time of termination unless the eligible member signed a Termination Pay Addendum to the Irrevocable Payroll Deduction Authorization specified in R2-8-513(D) at the time the member signed the Irrevocable Payroll Deduction Authorization.

G. If a member elects to use all of the member's available termination pay to purchase service credit, ASRS shall not apply any other form of payment to the service credit purchase until the ASRS receives the termination pay.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-520. Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable Payroll Deduction Authorization

A. If a member terminates employment without transferring employment as specified in R2-8-513.01 while purchasing service credit by an Irrevocable Payroll Deduction Authorization and requests return of retirement contributions, the ASRS shall return any payments made for the purchase of service credit including interest earned on those payments as determined by the Board.

B. If a member dies while purchasing service credit, the ASRS shall credit the member's account with:
   1. The service credit for which the ASRS received payment before the member's death,
   2. Interest earned on payment through the date of distribution at the valuation rate established by the Board, and

3. All service purchase payments.

C. If a member dies while purchasing service credit, the ASRS shall not permit the survivor to purchase the remaining balance.

D. The ASRS shall not refund interest charged as part of an Irrevocable Payroll Deduction Authorization as specified in R2-8-513(E)(1).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

R2-8-521. Adjustment of Errors

A. If the ASRS determines an error has been made in the information provided by the member or in the calculations made by the ASRS, the ASRS shall make an adjustment, including, but limited to, increasing or decreasing a member's total credited service with the ASRS and increasing or decreasing the payment amount.

B. If the ASRS determines that a member is receiving or is eligible to receive retirement benefits from another public employee retirement system that makes the member ineligible to purchase service credit for the same period, the ASRS shall revoke that purchase of service credit, and return any payments made, less any interest payments made, if applicable.

C. The ASRS shall notify the member in writing of any adjustments.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING

R2-8-601. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "ASRS" has the same meaning as in A.R.S. § 38-711.
2. "Day" means a calendar day, and excludes the:
   a. Day of the act or event from which a designated period of time begins to run; and
   b. Last day of the period if a Saturday, Sunday, or official state holiday.
3. "Rulemaking record" means a file the ASRS maintains as specified in A.R.S. § 41-1029.
4. "Oral proceeding" means a public gathering the ASRS holds for the purpose of receiving comment and answering questions about a proposed rule as specified in A.R.S. § 41-1023.
5. "Presiding officer" means an individual selected by the ASRS Director to oversee oral proceedings.
6. "Substantive policy statement" has the same meaning as in A.R.S. § 41-1001.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

R2-8-602. Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements

Except on a state holiday, an individual may review a rulemaking record or the directory of substantive policy statements at the Phoenix office of the ASRS, Monday through Friday, from 8:00 a.m. until 5:00 p.m.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

R2-8-603. Petition for Rulemaking

A. An individual submitting a petition to the ASRS to make or amend a rule under A.R.S. § 41-1033 shall include the following in the petition:
   1. The name and current address of the individual submitting the petition;
   2. An identification of the rule to be made or amended;
   3. The suggested language of the rule;
   4. The reason why a new rule should be made or a current rule should be amended with supporting information, including:
      a. An identification of the persons who would be affected by the rule and how the persons would be affected; and
      b. If applicable, statistical data with references to attached exhibits;
   5. The signature of the individual submitting the petition; and
   6. The date the individual signs the petition.

B. The ASRS shall send a written notice of the ASRS's decision regarding the Petition for Rulemaking to the individual within 30 days of receipt of the petition.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

R2-8-604. Review of a Rule, Agency Practice, or Substantive Policy Statement

A. An individual submitting a petition to the ASRS under A.R.S. § 41-1033 requesting that the ASRS review an agency practice or substantive policy statement that the individual alleges constitutes a rule shall include the following in the petition:
   1. The name and current address of the individual submitting the petition,
   2. The reason the individual alleges that the agency practice or substantive policy statement constitutes a rule,
   3. The signature of the individual submitting the petition, and

4. The date the individual signs the petition.

B. The individual who submits a petition under subsection (A) shall attach a copy of the substantive policy statement or a description of the agency practice to the petition.

C. The ASRS shall send a written notice of the ASRS's decision regarding the petition to the individual within 30 days of receipt of the petition.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

R2-8-605. Objection to Rule Based Upon Economic, Small Business and Consumer Impact

A. An individual submitting an objection to a rule based upon the economic, small business and consumer impact under A.R.S. § 41-1056.01 shall include the following in the objection:

1. The name and current address of the individual submitting the objection;
2. Identification of the rule;
3. Either evidence that the actual economic, small business and consumer impact:
   a. Significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule with supporting information attached as exhibits; or
   b. Was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule with supporting information attached as exhibits;
4. The signature of the individual submitting the objection; and
5. The date the individual signs the objection.

B. The ASRS shall respond to the objection as specified in A.R.S. § 41-1056.01(C).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

R2-8-606. Oral Proceedings

A. An individual requesting an oral proceeding under A.R.S. § 41-1023(C) shall submit a written request to the ASRS that includes:

1. The name and current address of the individual making the request;
2. If applicable, the name of the public or private organization, partnership, corporation or association, or the name of the governmental entity the individual represents; and
3. Reference to the proposed rule including, if known, the date and issue of the Arizona Administrative Register in which the Notice of Proposed Rulemaking was published.

B. The ASRS shall record an oral proceeding by either electronic or stenographic means and any CDs, cassette tapes, transcripts, lists, speaker slips, and written comments received shall become part of the official record.

C. A presiding officer shall perform the following acts on behalf of the ASRS when conducting an oral proceeding as prescribed under A.R.S. § 41-1023:

1. Provide a method for individuals who attend the oral proceeding to voluntarily note their attendance;
2. Provide a speaker slip that includes space for:
   a. An individual's name,
   b. The person the individual represents, if applicable,
   c. The rule the individual wishes to comment on or has a question about, and
   d. The approximate length of time the individual wishes to speak;
3. Open the proceeding by identifying the rules to be considered, the location, date, time, purpose of the proceeding, and the agenda;
4. Explain the background and general content of the proposed rulemaking;
5. Provide for public comment as specified in A.R.S. § 41-1023(D); and
6. Close the oral proceeding by announcing the location where written public comments are to be sent and specifying the close of record date and time.

D. A presiding officer may limit comments to a reasonable time period, as determined by the presiding officer. Oral comments may be limited to prevent undue repetition.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

R2-8-607. Petition for Delayed Effective Date

A. An individual who wishes to delay the effective date of a rule under A.R.S. § 41-1032 shall file a petition with the ASRS prior to the proposed rule's close of record date identified in the Notice of Proposed Rulemaking. The petition shall contain the:

1. Name and current address of the individual submitting the petition;
2. Identification of the proposed rule;
3. Need for the delay, specifying the undue hardship or other adverse impact that may result if the request for a delayed effective date is not granted;
4. Reason why the public interest will not be harmed by the delayed effective date;
5. Signature of the individual submitting the petition; and

6. Date the individual signs the petition.

B. The ASRS shall send a written notice of the ASRS's decision to the individual within 30 days of receipt of the Petition for Delayed Effective Date.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

ARTICLE 7. CONTRIBUTIONS NOT WITHHELD

R2-8-701. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "218 agreement" means a written agreement between the state, political subdivision, or political subdivision entity and the Social Security Administration, under the provisions of § 218 of the Social Security Act, to provide Social Security and Medicare or Medicare-only coverage to employees of the state, political subdivision, or political subdivision entity.
2. "Active member" has the same meaning as in A.R.S. § 38-711.
3. "ASRS" has the same meaning as in A.R.S. § 38-711.
4. "ASRS employer" means this state, a political subdivision, or a political subdivision entity that has:
   a. Signed a 218 agreement,
   b. Applied to become a member of ASRS, and
   c. Been approved for membership by the Board.
5. "Authorized employer representative" means an individual who has legal power to bind the ASRS employer in its transactions with the ASRS.
6. "Board" has the same meaning as in A.R.S. § 38-711.
7. "Director" means the Director appointed by the Board as provided in A.R.S. § 38-715.
8. "Documentation" means a pay stub, completed W-2 form, completed Verification of Contributions Not Withheld form, employer letter or spreadsheet, completed State Personnel Action Form, Social Security Earnings Report, employment contract, payroll record, timesheet, or other ASRS employer-provided form that includes:
   a. Whether the employee was covered under the ASRS employer's 218 agreement,
   b. The number of hours worked or length of time the member was employed by the ASRS employer, or
   c. The compensation paid to the member by the ASRS employer.
9. "Eligible service" means employment with an ASRS employer:
   a. That is no more than 15 years before the date the ASRS receives written credible evidence that less than the correct amount of contributions were paid into the ASRS or the ASRS otherwise determines that less than the correct amount of contributions were made as specified in A.R.S. § 38-738(C); and
   b. In which the member:
      i. Until 6/30/92, worked a minimum of 20 hours per week for at least five months in a fiscal year for any one or more ASRS employers;
      ii. From 7/1/92 to 7/1/99, worked a minimum of 20 hours per week for at least 20 weeks in a fiscal year for any one or more ASRS employers; or
      iii. From 7/1/99 to the present, worked a minimum of 20 hours per week for at least 20 weeks in a service year for at least one ASRS employer.
10. "Fiscal year" means from July 1 of one year through June 30 of the next year.
11 "Member" has the same meaning as in A.R.S. § 38-711.
12. "Person" has the same meaning as in A.R.S. § 1-215.
13. "Political subdivision" has the same meaning as in A.R.S. § 38-711.
14. "Political subdivision entity" has the same meaning as in A.R.S. § 38-711.
15. "Service year" has the same meaning as in A.R.S. § 38-711.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

R2-8-702. General Information

A. Verified eligible service that occurred more than 15 years before the date ASRS receives the information identified in R2-8-704(A)(1) is considered public service credit as provided in A.R.S. § 38-738(D), and is not applied under this Article.

B. The ASRS employer shall pay the ASRS employer's portion of the contributions the ASRS determines is owed under R2-8-706 whether or not:
   1. The member has withdrawn contributions as specified in R2-8-115; or
   2. The member pays the member's portion of the contributions.

C. The person who initiates the claim that contributions were not withheld for eligible service has the burden to prove a contribution error was made.

D. ASRS shall not waive payment of contributions or interest owed under this Article.

E. If a member is not able to establish eligibility for service credit for which contributions were not withheld, but is able to establish a period of employment by an ASRS employer the member may request to purchase service credit for that period under A.R.S. § 38-743 and Article 5 of this Chapter.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

R2-8-703. ASRS Employer's Discovery of Error

If an ASRS employer determines that contributions have not been withheld for a member for a period of eligible service, the ASRS employer shall notify ASRS in writing, and shall provide ASRS with the member's full name, Social Security number, months, years, and hours per week worked, the compensation each fiscal year for the time periods worked, and the member's position title and status at the time contributions should have been withheld.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

R2-8-704. Member's Discovery of Error

A. If a member believes that an ASRS employer has not withheld contributions for the member for a period of eligible service, the member shall:

1. Provide the ASRS employer with documentation of the member's claim and request that the ASRS employer provide a letter that includes the information in the Verification of Contributions Not Withheld form or complete a Verification of Contributions Not Withheld form that includes:
   a. The member's full name;
   b. Other names used by the member;
   c. The member's Social Security number;
   d. Whether the position was covered under the ASRS employer's 218 agreement;
   e. The position title the member held at the time the contributions should have been withheld;
   f. The eligibility of the member at the time the contributions should have been withheld;
   g. The following statements of understanding and agreements to be initialed by the authorized employer representative filling out the form:
      i. I understand it is my responsibility to verify the accuracy of the information I am providing on this form. I understand any individual who knowingly makes a false statement, or who falsifies or permits to be falsified any record of the ASRS with an intent to defraud the ASRS, is guilty of a Class 6 felony pursuant to A.R.S. § 38-793; and
      ii. I understand that, based on the information provided on this form, the ASRS may determine that contributions are owed on behalf of the member listed on this form, and the ASRS employer may incur a substantial financial obligation;
   h. The months worked, the hours per week worked, and the compensation earned by the member, by fiscal year;
   i. The name of the ASRS employer;
   j. The printed name and signature of the authorized employer representative;
   k. The daytime telephone number of the authorized employer representative;
   l. The title of the authorized employer representative; and
   m. The date the authorized employer representative signed the form;
2. Provide the ASRS with the completed Verification of Contributions Not Withheld form; and
3. If the ASRS employer refuses to fill out the Verification of Contributions Not Withheld form, or if the member disputes the information the ASRS employer completes on the form, provide the ASRS with the documentation the member believes supports the allegation that contributions should have been withheld, that includes proof:
   a. That the employee was covered under the ASRS employer's 218 agreement,
   b. Of the number of hours worked,
   c. Of the length of time the member was employed by the ASRS employer, and
   d. Of the compensation paid to the member by the ASRS employer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

R2-8-705. ASRS' Discovery of Error

If the ASRS determines, as specified in A.R.S. § 38-738(B)(7), that contributions have not been withheld for a member for a period of eligible service, the ASRS shall notify the member and the ASRS employer in writing and shall request the following information:

1. The months, years and hours per week worked;
2. The compensation earned by the member each fiscal year for the time periods worked; and
3. The member's position title at the time contributions should have been withheld.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

R2-8-706. Determination of Contributions Not Withheld

A. Upon receipt of the information listed in R2-8-703, R2-8-704, or R2-8-705, the ASRS shall review the information to determine whether or not member contributions should have been withheld by the ASRS employer, the length of time those contributions should have been withheld, and the amount of contributions that should have been withheld.

B. Except for returning to work under A.R.S. § 38-766.01, the presence of a contract between a member and the ASRS employer does not alter the contribution requirements of A.R.S. §§ 38-736 and 38-737.

C. If there is any discrepancy between the documentation provided by the ASRS employer and the documentation provided by the member, a document used in the usual course of business prepared at the time in question is controlling.

D. The ASRS shall provide to the ASRS employer and the member a written statement that includes:

1. The dates of eligible service for which contributions were not withheld,
2. The dollar amount of contributions that should have been made,
3. The dollar amount of the contributions to be paid by the ASRS employer,
4. The interest on the ASRS employer contributions and member contributions to be paid by the ASRS employer,
5. The dollar amount of contributions to be paid by the member, and
6. To the member, the various payment options that may apply, as specified in R2-8-512 through R2-8-519.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

R2-8-707. Submission of Payment

A. Within 90 calendar days after the ASRS notifies the ASRS employer in writing of the amount due, the ASRS employer shall pay all ASRS employer contributions, including accrued interest on both the ASRS employer and member contributions, from the date the contributions were due to the date the ASRS notifies the ASRS employer of the amount due. An ASRS employer who makes payment under A.R.S. § 38-738(B)(3) is not liable for additional interest that may accrue as a result of a member's failure to remit payment required by A.R.S. § 38-738(B)(1). If the ASRS does not receive full payment of the ASRS employer's amount due within 90 calendar days after the ASRS notifies the ASRS employer of the amount due, interest on the amount not paid, as provided in A.R.S. § 38-738(B)(3), will accrue from the 91st day until the ASRS employer pays the full amount.

B. An ASRS employer may pay the amount the ASRS employer believes may be due at any time before ASRS's notification of the amount due in order to prevent the accrual of interest after the date of the payment. Any amount the ASRS employer pays that the ASRS determines is not owed shall be refunded to the ASRS employer.

C. A member may purchase eligible service for which contributions were not withheld in accordance with the requirements of Article 5 of this Chapter for purchase of service credit. If the ASRS does not receive full payment of the ASRS employee's amount due within 90 calendar days after the ASRS notifies the member that the ASRS received the ASRS employer's full payment, interest on the amount not paid, as provided in A.R.S. § 38-738(B)(1), will accrue from the 91st day until the member pays the full amount.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

R2-8-708. Dispute of an ASRS Determination Regarding Contributions Not Withheld

A. If a member or the ASRS employer disputes an ASRS determination regarding contributions not withheld, that party may request in writing that the Director review the ASRS determination. Within 30 calendar days of receiving the request for the review of the ASRS determination, the Director shall review and either approve or amend the ASRS determination, and send to the member and the ASRS employer written notice of the Director's decision.

B. If the member or the ASRS employer disputes the Director's decision, that party may obtain a hearing by filing a Request for a Hearing with the Board, in accordance with Article 4 of this Chapter, within 30 calendar days after receiving notice of the Director's determination. The party filing the request shall provide the name of the other party.

C. The burden of producing evidence is on the party challenging the determination.

D. If the ASRS Board determines that the service is eligible, the ASRS shall send both the ASRS employer and the member a written statement, as specified in R2-8-706(D), and the:

1. Decision of the Board;
2. Correct amount due as determined by the Board, if applicable;
3. Additional amount of interest due from the losing party, from the 91st day after the initial notification of the amount due to the date of the decision; and
4. Notification that interest shall continue to accrue on the total amount due at the rate specified in A.R.S. § 38-738(B) until the date payment is received by the ASRS.

E. If the ASRS Board determines that the service is not eligible, ASRS shall send both the ASRS employer and the member the decision of the Board.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

R2-8-709. Nonpayment of Contributions

A. A member receives service credit only for the portion of service the ASRS has determined is eligible and that the member has paid for.

B. A member does not receive service credit until both the ASRS employer and member portions of the contributions have been paid.

C. If the ASRS employer does not pay, the ASRS shall take any steps legally authorized to collect payment. Any steps the ASRS may take to collect payment are separate from any action a member may elect to take against the ASRS employer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

41-1001. Definitions

In this chapter, unless the context otherwise requires:

1. "Agency" means any board, commission, department, officer or other administrative unit of this state, including the agency head and one or more members of the agency head or agency employees or other persons directly or indirectly purporting to act on behalf or under the authority of the agency head, whether created under the Constitution of Arizona or by enactment of the legislature. Agency does not include the legislature, the courts or the governor. Agency does not include a political subdivision of this state or any of the administrative units of a political subdivision, but does include any board, commission, department, officer or other administrative unit created or appointed by joint or concerted action of an agency and one or more political subdivisions of this state or any of their units. To the extent an administrative unit purports to exercise authority subject to this chapter, an administrative unit otherwise qualifying as an agency must be treated as a separate agency even if the administrative unit is located within or subordinate to another agency.
2. "Audit" means an audit, investigation or inspection pursuant to title 23, chapter 2 or 4.
3. "Code" means the Arizona administrative code.
4. "Committee" means the administrative rules oversight committee.
5. "Contested case" means any proceeding, including rate making, except rate making pursuant to article XV, Constitution of Arizona, price fixing and licensing, in which the legal rights, duties or privileges of a party are required or permitted by law, other than this chapter, to be determined by an agency after an opportunity for an administrative hearing.
6. "Council" means the governor's regulatory review council.
7. "Delegation agreement" means an agreement between an agency and a political subdivision that authorizes the political subdivision to exercise functions, powers or duties conferred on the delegating agency by a provision of law. Delegation agreement does not include intergovernmental agreements entered into pursuant to title 11, chapter 7, article 3.
8. "Emergency rule" means a rule that is made pursuant to section 41-1026.
9. "Fee" means a charge prescribed by an agency for an inspection or for obtaining a license.
10. "Final rule" means any rule filed with the secretary of state and made pursuant to an exemption from this chapter in section 41-1005, made pursuant to section 41-1026, approved by the council pursuant to section 41-1052 or 41-1053 or approved by the attorney general pursuant to section 41-1044. For purposes of judicial review, final rule includes expedited rules pursuant to section 41-1027.
11. "General permit" means a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing.

12. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes.
13. "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.
14. "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.
15. "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.
16. "Preamble" means:
(a) For any rulemaking subject to this chapter, a statement accompanying the rule that includes:
(i) Reference to the specific statutory authority for the rule.
(ii) The name and address of agency personnel with whom persons may communicate regarding the rule.
(iii) An explanation of the rule, including the agency's reasons for initiating the rulemaking.
(iv) A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study and any analysis of each study and other supporting material.
(v) The economic, small business and consumer impact summary, or in the case of a proposed rule, a preliminary summary and a solicitation of input on the accuracy of the summary.
(vi) A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state.
(vii) Such other matters as are prescribed by statute and that are applicable to the specific agency or to any specific rule or class of rules.
(b) In addition to the information set forth in subdivision (a) of this paragraph, for a proposed rule, the preamble also shall include a list of all previous notices appearing in the register addressing the proposed rule, a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and where, when and how persons may request an oral proceeding on the proposed rule if the notice does not provide for one.
(c) In addition to the information set forth in subdivision (a) of this paragraph, for an expedited rule, the preamble also shall include a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and an explanation of why expedited proceedings are justified.
(d) For a final rule, except an emergency rule, the preamble also shall include, in addition to the information set forth in subdivision (a), the following information:
(i) A list of all previous notices appearing in the register addressing the final rule.
(ii) A description of the changes between the proposed rules, including supplemental notices and final rules.
(iii) A summary of the comments made regarding the rule and the agency response to them.

(iv) A summary of the council's action on the rule.
(v) A statement of the rule's effective date.
(e) In addition to the information set forth in subdivision (a) of this paragraph, for an emergency rule, the preamble also shall include an explanation of the situation justifying the rule being made as an emergency rule, the date of the attorney general's approval of the rule and a statement of the emergency rule's effective date.
17. "Provision of law" means the whole or a part of the federal or state constitution, or of any federal or state statute, rule of court, executive order or rule of an administrative agency.
18. "Register" means the Arizona administrative register.
19. "Rule" means an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency. Rule includes prescribing fees or the amendment or repeal of a prior rule but does not include intraagency memoranda that are not delegation agreements.
20. "Rulemaking" means the process for formulation and finalization of a rule.
21. "Small business" means a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations.
22. "Substantive policy statement" means a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a court of competent jurisdiction, including, where appropriate, the agency's current practice, procedure or method of action based upon that approach or opinion. A substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents which only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties, confidential information or rules made in accordance with this chapter.

41-1023. Public participation; written statements; oral proceedings
A. After providing notice of docket openings, an agency may meet informally with any interested party for the purpose of discussing the proposed rule making action. The agency may solicit comments, suggested language or other input on the proposed rule. The agency may publish notice of these meetings in the register.
B. For at least thirty days after publication of the notice of the proposed rule making, an agency shall afford persons the opportunity to submit in writing statements, arguments, data and views on the proposed rule, with or without the opportunity to present them orally.
C. An agency shall schedule an oral proceeding on a proposed rule if, within thirty days after the published notice of proposed rule making, a written request for an

oral proceeding is submitted to the agency personnel listed pursuant to section 41-1021, subsection B.
D. An oral proceeding on a proposed rule may not be held earlier than thirty days after notice of its location and time is published in the register. The agency shall determine a location and time for the oral proceeding which affords a reasonable opportunity to persons to participate. The oral proceeding shall be conducted in a manner that allows for adequate discussion of the substance and the form of the proposed rule, and persons may ask questions regarding the proposed rule and present oral argument, data and views on the proposed rule.
E. The agency, a member of the agency or another presiding officer designated by the agency shall preside at an oral proceeding on a proposed rule. If the agency does not preside, the presiding official shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding. Oral proceedings must be open to the public and recorded by stenographic or other means.
F. Each agency may make rules for the conduct of oral rule making proceedings. Those rules may include provisions calculated to prevent undue repetition in the oral proceedings.

41-1029. Agency rule making record
A. An agency shall maintain an official rule making record for each rule it proposes by publication in the register of a notice of proposed rule making and each final rule filed in the office of the secretary of state. The record and matter incorporated by reference must be available for public inspection.
B. The agency rule making record shall contain all of the following:
1. A copy of the notice initially filed in the office of the secretary of state.
2. Copies of all publications in the register with respect to the rule or the proceeding on which the rule is based.
3. Copies of any portions of the agency's rule making docket containing entries relating to the rule or the proceeding on which the rule is based.
4. All written petitions, requests, submissions and comments received by the agency and all other written materials considered or prepared by the agency in connection with the rule or the proceeding on which the rule is based.
5. Any official transcript of oral presentations made in the proceeding on which the rule is based, or if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum prepared by a presiding official summarizing the contents of those presentations.
6. A copy of all materials submitted to the council, including the economic, small business and consumer impact statement and the minutes of the council meeting at which the rule was reviewed.
7. A copy of the final rule and preamble.
8. Information requested regarding the experience, technical competence, specialized knowledge and judgment of an agency if the agency relies on section 41-1024, subsection D in the making of a rule and a request is made.
C. On judicial review, the record required by this section constitutes the official agency rule making record with respect to a rule. Except as provided in section 41-1036 or otherwise required by a provision of law, the agency rule making record

need not constitute the exclusive basis for agency action on that rule or for judicial review of that rule.

41-1032. Effective date of rules

A. A rule filed pursuant to section 41-1031 becomes effective sixty days after a certified original and two copies of the rule and preamble are filed in the office of the secretary of state and the time and date are affixed as provided in section 41-1031, unless the rule making agency includes in the preamble information that demonstrates that the rule needs to be effective immediately on filing in the office of the secretary of state and the time and date are affixed as provided in section 41-1031. A rule may only be effective immediately for any of the following reasons:

1. To preserve the public peace, health or safety.
2. To avoid a violation of federal law or regulation or state law, if the need for an immediate effective date is not created due to the agency's delay or inaction.
3. To comply with deadlines in amendments to an agency's governing statute or federal programs, if the need for an immediate effective date is not created due to the agency's delay or inaction.
4. To provide a benefit to the public and a penalty is not associated with a violation of the rule.
5. To adopt a rule that is less stringent than the rule that is currently in effect and that does not have an impact on the public health, safety, welfare or environment, or that does not affect the public involvement and public participation process.

B. Notwithstanding subsection A of this section, a rule making agency may specify an effective date more than sixty days after the filing of the rule in the office of the secretary of state if the agency determines that good cause exists for and the public interest will not be harmed by the later date.

C. This section does not affect the validity of an existing rule until the new or amended rule that is filed with the secretary of state is effective pursuant to this section.

41-1033. Petition for a rule or review of a practice or policy

A. Any person, in a manner and form prescribed by the agency, may petition an agency requesting the making of a final rule or a review of an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule. The petition shall clearly state the rule, agency practice or substantive policy statement which the person wishes the agency to make or review. Within sixty days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for denial, initiate rule making proceedings in accordance with this chapter or, if otherwise lawful, make a rule.

B. A person may appeal to the council the agency's final decision within thirty days after the agency gives written notice pursuant to subsection A of this section. The appeal shall be limited to whether an existing agency practice or substantive policy statement constitutes a rule. The council chairperson shall place this appeal on the agenda of the council's next meeting if at least three council members make such a request of the council chairperson within two weeks after the filing of the appeal.

C. If the council receives information indicating that an existing agency practice or substantive policy statement may constitute a rule and at least four council members request the chairperson that the matter be heard in a public meeting:
1. Within ninety days of receipt of the fourth council member request, the council shall determine if the agency practice or substantive policy statement constitutes a rule.
2. Within ten days of receipt of the fourth council member request, the council shall notify the agency that the matter has been or will be placed on an agenda.
3. Within thirty days of receiving notice from the council, the agency shall submit a statement that addresses whether the existing agency practice or substantive policy statement constitutes a rule.
D. For the purposes of subsection C of this section, the council meeting shall not be held until the expiration of the agency response period prescribed in subsection C, paragraph 3 of this subsection.
E. An agency practice or substantive policy statement considered by the council pursuant to this section shall remain in effect while under consideration of the council. If the council ultimately decides the agency practice or statement constitutes a rule, the practice or statement shall be considered void.
F. A decision by the agency pursuant to this section is not subject to judicial review, except that, in addition to the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to section 41-1034.

41-1056.01. Impact statements; appeals
A. Within two years after a rule is finalized, a person who is or may be affected by the rule may file a written petition with an agency objecting to all or part of a rule on any of the following grounds:
1. The actual economic, small business or consumer impact significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule.
2. The actual economic, small business or consumer impact was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule.
3. The agency did not select the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
B. The burden of proof is on the petitioner to show that any of the provisions set forth in subsection A of this section are met.
C. Within thirty days after receiving the copy of the petition, the agency shall reevaluate the rule and its economic impacts and publish notice of the petition in the register. For at least thirty days after publication of the notice the agency shall afford persons the opportunity to submit in writing statements, arguments, data and views on the rule and its impacts. Within thirty days after the close of comment, the agency shall publish a written summary of comments received, the agency's response to those comments, and the final decision of the agency on whether to initiate a rule making or to amend or repeal the rule. The agency shall

initiate any such rule making within forty-five days after publication of its final decision.
D. Any person who is or may be affected by the agency's final decision on whether to initiate a rule making pursuant to subsection C of this section may appeal that decision to the council within thirty days after publication of the agency's final decision.
E. The council shall place on its agenda the appeal if at least three council members make such a request of the council chairman within two weeks after the filing of the appeal with the council.
F. If the appeal is placed on the council's agenda, the council chairman shall provide a copy of the appeal and written notice to the agency that the council will consider the appeal. The agency shall provide the council with a copy of the written summary described in subsection C of this section.
G. The council shall require an agency to promptly initiate a rule making or to amend or repeal the rule or the rule package, as prescribed by section 41-1024, subsection E, objected to in the petition if the council finds that any of the provisions set forth in subsection A of this section are met.
H. This section shall not apply to a rule for which there is a final judgment of a court of competent jurisdiction based on the grounds of whether the contents of the economic, small business and consumer impact statement were insufficient or inaccurate.

41-1091. Substantive policy statements; directory
A. An agency shall file substantive policy statements pursuant to section 41-1013, subsection B.
B. An agency shall ensure that the first page of each substantive policy statement includes the following notice:
This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under section 41-1033, Arizona Revised Statutes, for a review of the statement.
C. The agency shall publish at least annually a directory summarizing the subject matter of all currently applicable rules and substantive policy statements. The agency shall keep copies of this directory and all of its substantive policy statements at one location. The directory, rules and substantive policy statements and any materials incorporated by reference in the rules or substantive policy statements shall be open to public inspection at the office of the agency director.

STATE BOARD OF INVESTMENT (F-16-0405)
Title 2, Chapter 13, Article 1, General Provisions

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: May 5, 2016 **AGENDA ITEM: D-3**

TO: Members of the Governor's Regulatory Review Council

FROM: Shama Thathi, Staff Attorney

DATE : April 15, 2016

SUBJECT: **STATE BOARD OF INVESTMENT (F-16-0405)**
Title 2, Chapter 13, Article 1, General Provisions

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The Arizona State Board of Investment (Board) reviews investment of state monies, serves as trustee of the Permanent Land Trust Funds, and approves the State Treasurer's Investment Policy. The Board provides independent oversight for the assets held by the Office of the Treasurer and in conjunction with the Treasurer, selects the state's Servicing Bank provider.

This five-year review covers three rules establishing the Servicing Bank Charges Account, which consists of General Fund interest earnings and is used to pay for servicing charges.

Article Contents

Article 1 contains three rules that provide definitions, establish the Servicing Bank Charges Account, and require the Servicing Bank deliver to the Treasurer each month a statement for services rendered.

Year that Each Rule was Last Amended or Newly Made

R2-13-101 and R2-13-102 were last amended on June 7, 2011. R2-13-103 was adopted on July 12, 1996.

Proposed Action

The Board does not plan to take any action on the rules.

Summary of Reasons for the Proposed Action

The Board indicates that the rules are effective, consistent with state statutes and rules, enforced as written, clear, concise, and understandable, and have not received any written criticisms in the last five years.

Exemption or Request and Approval for Exception from the Moratorium

The Board has not requested an exemption from the moratorium.

Substantive or Procedural Concerns

None

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. Has the agency certified that it is in compliance with A.R.S. § 41-1091?

Yes. The Board has certified its compliance with A.R.S. § 41-1091.

2. Has the agency analyzed the rules' effectiveness in achieving their objectives?

Yes. The Board indicates that the rules are effective in achieving their objectives.

3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?

No. The Board indicates that it has not received written criticisms of the rules during the last five years.

4. Has the agency analyzed whether the rules are authorized by statute?

Yes. Under A.R.S. § 35-315(B), the Board has authority to prescribe rules for the payment of the Servicing Bank from general fund interest earnings.

5. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes. The Board indicates that the rules are consistent with state statutes and rules.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Board enforces the rules as written.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Board indicates that the rules are clear, concise, and understandable.

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

Not applicable. The Board indicates that the rules do not correspond to any federal laws. The rules are based on state law.

b. There is statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010, has the agency analyzed whether:

a. The rules require issuance of a regulatory permit, license or agency authorization?

Not applicable. The rules do not require issuance of a permit or license.

b. It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. As indicated by the previous five-year review report, the Board made technical changes through a letter to the Secretary of State to reflect statutory name change for the Department of Administration's Finance Division to General Accounting Office.

11. Has the agency included a proposed course of action?

Yes. The Board does not plan to take any action on these rules.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: May 5, 2016 **AGENDA ITEM: D-3**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : April 15, 2016

SUBJECT: **STATE BOARD OF INVESTMENT (F-16-0405)**
Title 2, Chapter 13, Article 1, General Provisions

I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

The economic, small business, and consumer impact statement (EIS) from the most recent rulemaking was not available for the rules contained in the five-year-review report.

The rules address the Board's procedures for "the receipt and deposit of general fund interest earnings as well as for the invoice from and payment to the state's servicing bank." With these rules, interest from the general fund are used to pay servicing charges to the State's servicing bank. This is done through an account called the "Servicing Bank Charges Account." Further, the rules state that the servicing bank must provide the Treasurer's office with monthly account analysis. This analysis includes, but is not limited to, "the number of transactions performed" and "amount and time duration of deposits."

The Board states that the economic impact to the state has been positive because the "earnings that the State Treasurer's Office can make on investments is higher than the credit the servicing bank provides for compensating balances."

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Board reports that the rules do not impose any burden or cost to the public. Because of this, and the fact that previous five-year reviews already corrected errors in statutory citations, the Board plans to leave the rules as written.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

OFFICE OF THE
ARIZONA STATE TREASURER

JEFF DEWIT
TREASURER

January 29, 2016

Ms. Nicole Ong, Chair
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 402
Phoenix, Arizona 85007

Dear Chairman Ong

Enclosed is the 5-Year Review Report of the rules of the State Board of Investment., Title 2, and Chapter 13 as required by A.R.S. §41-1056 for placement on the Council's agenda. The Treasurer's office is in compliance with A.R.S. §41-1091.

Thank you for your attention to this report. If you have any questions, or require more information, please contact me at, 602-542-7877. I will be present at the Council meetings to respond to any questions the members may have about the report.

Sincerely

Mark Swenson
Deputy Treasurer, Policy and Research
State of Arizona

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ARIZONA STATE BOARD OF INVESTMENT

2016 FIVE-YEAR REVIEW REPORT

TITLE 2. ADMINISTRATION

CHAPTER 13. STATE BOARD OF INVESTMENT

ARTICLE 1. GENERAL PROVISIONS

Arizona State Board of Investment
2016 Five-Year Review Report
I. Introduction

Under A.R.S. § 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. Each agency shall prepare a report summarizing its findings, its supporting reasons, and any proposed course of action; and obtain approval of the report from the Governor's Regulatory Review Council (GRRC). The schedule for reviews is determined by GRRC. The report for the Arizona Board of Investment rules listed under A.A.C. Title 2, Chapter 13, Article 1 is due January 29, 2016.

The Board of Investment is responsible for reviewing the investment of state monies, serving as trustees of the Permanent Land Trust Funds, and approval of the State Treasurer's Office Investment Policy. The Board of Investment provides independent oversight to the approximately $13.2 billion of assets under management held by the Office of the State Treasurer. The Board in conjunction with the State Treasurer's office also selects the State's Servicing Bank provider.

A.R.S. 35-311 established the Board of Investment membership as the State Treasurer (with the Treasurer as Chairman), the Director of the Department of Administration, the State Banking Superintendent, and two other individuals appointed by the Treasurer.

II. Five-Year Rules Review Report Applying to all Three Rules

1. **Statutory Authority.**

General: A.R.S. § 35-315 (B). In a public meeting held on May 16, 1996, the Board of Investment (then called the Board of Deposit) approved the rule.

2. **Objectives:**

The rules establishes a logistical framework/mechanism within which the provisions of A.R.S. 35-315(B) may be carried out allowing the State Treasurer's Office to adopt procedures for the receipt and deposit of general fund interest earnings as well as for the invoice from and payment to the state's servicing bank. The rules authorize deposit of general fund interest earnings into a general fund account known as the "Servicing Bank Charges Account" to pay servicing charges to the State's servicing bank. After the claims have been paid from the Servicing Bank Charges Account, any remaining interest earnings are transferred back into the general fund.

The servicing bank provides the State Treasurer's office with a monthly account analysis statement for services rendered in the preceding month. The statement includes the number of transactions performed, amount and time duration of deposits and all other information required under the servicing bank contract.

3. **Effectiveness.**

The rules are effective in meeting their respective objectives.

4. **Consistency.**

The rules are consistent with the Board of Investment statutes: A.R.S. Title 35, Chapter 2, and Article 2. There are no other inconsistencies with statutes, or other rules. These are the only rules governing the Board.

5. **Enforcement.**

The rules are enforced as written.

6. **Relation to Federal Law**

Federal law is not applicable to this rule. The rule is based on state law.

7. **Clarity, Conciseness and Understandability.**

The rules are clear, concise, and understandable.

8. **Written Criticisms.**

The Board has not received any written criticisms of the rules in the past five years.

9. **Economic, Small Business, and Consumer Impact Comparison.**

The economic impact to the state has been positive since the earnings that the State Treasurer's office can make on investments is higher than the credit the servicing bank provides for compensating balances. Currently, operating balances are earning between 55 to 77 basis points compared to the 45 basis points earned through compensating balances. Under the previous 5-year review, compensating balances were receiving 50 basis points versus the 75-100 basis points earned by the Treasurer's investments. The increased earnings made by the Treasurer's office investments to pay for the servicing bank contract as opposed to leaving compensating balances at the bank has been the case throughout the 20 years this rule has been in place. The Arizona economy also benefits from this arrangement as it frees up capital of the servicing bank to be used in the private sector. State law requires banks to pledge collateral of 102% for all public entity deposits that are not covered by federal insurance. The Treasurer's office would have to deposit substantial amounts of operating funds in the

servicing bank account in order to achieve sufficient credit for off-setting the costs of the bank contract. This would require the bank to deploy more of its capital to the public sector as opposed to the private sector and also charge the state more for the contract due to the increased cost of setting aside this collateral. Any risk of the Treasurer's office of investing operating balances in obligations of the United States Government or U.S. agencies as well as highly rated debt issued by U.S. firms is mitigated by the increased returns the office generates for taxpayers and the expansion of the private sector in the state.

10. Analysis Submitted Comparing Rule's Impact.

No analysis was submitted.

11. Completion of Previous Five-Year Review.

This is the fourth five-year review of these rules. The previous review was conducted by GRRC in 2011. Previous 5-year review changes were made through a letter to the Secretary of State.

12. Least Burden and Costs to Persons Regulated Necessary to Achieve the Underlying Regulatory Objective.

The definitions do not impose a burden or cost on the public.

13. Issuance of a regulatory permit, license, or agency authorization.

No permit, license or authorization is required under the rule.

14. Proposed Action.

The Board plans to leave the rule as written. Prior 5-year review action updated rules to reflect statutory name change for the Board as well as correcting errors in statutory citations in the rules.

TITLE 2. ADMINISTRATION

CHAPTER 13. STATE BOARD OF INVESTMENT

(Authority: A.R.S. § 35-325)

Editor's Note: The name of the State Board of Deposit was changed to the State Board of Investment by Laws 1998, Ch. 69, § 6, effective May 7, 1998 (Supp. 06-1).

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R2-13-101 through R2-13- 103, adopted effective July 12, 1996 (Supp. 96-3).

Former Article 1, consisting of Sections R2-13-01 and R2-13- 02, adopted as an emergency action effective April 25, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-2). Emergency expired.

Section

R2-13-101. Definitions
R2-13-102. Servicing Bank Charges Account
R2-13-103. Information required to be submitted with Servicing Bank's Monthly Statement

ARTICLE 1. GENERAL PROVISIONS

R2-13-101. Definitions

In this Article, unless otherwise specified, the following terms mean:

1. "General Accounting Office" means the General Accounting Office of the Department of Administration.
2. "General Fund" means the General Fund of the State as defined in A.R.S. § 35-141.
3. "Servicing Bank" means the bank awarded the servicing bank contract pursuant to A.R.S. § 35-315(C).
4. "Servicing Bank Contract" means the contract awarded pursuant to A.R.S. § 35-315.

Historical Note

Adopted effective July 12, 1996 (Supp. 96-3). R2-13- 101(3) reflects corrected A.R.S. citation (Supp. 06-1). R2-13-101(1) revised at request of the Board, Office File No. M11-215, filed June 7, 2011 (Supp. 11-2).

R2-13-102. Servicing Bank Charges Account

A. As authorized by A.R.S. § 35-315(B), General Fund interest earnings shall be deposited monthly into a General Fund account known as the "Servicing Bank Charges Account" to the extent necessary to pay for current servicing charges.

B. Claims for servicing bank charges shall be paid from the Servicing Bank Charges Account. After each payment the General Accounting Office shall transfer any remaining interest earnings in the Servicing Bank Charges Account into the General Fund.

Historical Note

Adopted effective July 12, 1996 (Supp. 96-3). R2-13- 102(A) reflects corrected A.R.S. citation (Supp. 06-1). R2-13-102(B) revised at request of the Board, Office File No. M11-215, filed June 7, 2011 (Supp. 11-2).

R2-13-103. Information Required To Be Submitted with Servicing Bank's Monthly Statement

This Servicing Bank shall deliver to the state treasurer its monthly account analysis statement for services rendered in the preceding month which shall include the number and type of transactions per- formed, amount and time duration of deposits, and any other information required under the servicing bank contract.

Historical Note

Adopted effective July 12, 1996 (Supp. 96-3).

35-315. Servicing banks; qualifications; proposals

A. Any bank eligible to become an eligible depository having a total capital structure of ten million dollars or more and assets of one hundred million dollars or more and being otherwise in a sound condition is eligible to be the servicing bank for the state.

B. The state board of investment shall provide for public notice to the banks qualified to be a servicing bank of the time and place at which servicing proposals will be received. Requests for proposals shall clearly specify all services required to be performed by the servicing bank. The servicing proposal submitted shall be the compensation for which the qualified bank will agree to perform the required services as a servicing bank for the ensuing period of designation as established by the board of investment. The award shall be made for a period not to exceed five years and may be paid from general fund interest earnings according to rules adopted by the board of investment.

C. The state treasurer shall receive the servicing proposals in writing. Only those proposals that conform to the specifications set forth in the request for proposals shall be considered. The qualified bank submitting the proposal with the highest value to this state, as determined by the state treasurer and the board of investment, shall be designated as the servicing bank. Designations shall be evidenced by the signing of the final proposal by the state treasurer, the board of investment and the designee bank. The state treasurer may maintain a bank account in conjunction with the servicing bank account, which must have on deposit at all times a sum of money approximating the average dollar value of daily warrants paid by the bank the previous month.

D. The state treasurer may request and qualified banks may submit proposals for any or all of the services required. The state treasurer may specify differing contract periods for any or all of the services required.

E. The state treasurer or servicing bank may terminate a servicing bank contract at any time after sixty days' prior written notice is given.

F. In addition to the services required of the servicing bank, the state treasurer shall contract for all other banking services required by any state agency. No state agency shall contract for banking services except with the written permission of the state treasurer.

G. This section does not require the state treasurer to utilize a servicing bank.

H. This section or the specifications set forth in the request for proposals shall not be construed to require the servicing bank to purchase warrants.

I. Deposits and withdrawals of monies shall be made by the state treasurer on the servicing bank.

ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-0408)
Title 9, Chapter 8, Article 1, Food and Drink

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: May 5, 2016 **AGENDA ITEM: D-4**

TO: Members of the Governor's Regulatory Review Council

FROM: Shama Thathi, Staff Attorney

DATE : April 15, 2016

SUBJECT: **ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-0408)**
Title 9, Chapter 8, Article 1, Food and Drink

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Department of Health Services (Department) is "to protect the physical and mental health of the people of this state and promote the highest standards for licensed health care institutions, emergency services, and care facilities for adults and children." Laws 2010, Ch. 8, § 3.

This five-year review covers nine rules, including a table, which relate to food and drink in Title 9, Chapter 8, Article 1 (Chapter 8). The sanitarians in the Department and the health departments or environmental health departments of Arizona's counties use these rules in conjunction with county codes while conducting inspections of licensed food establishments. A "sanitarian" is a professional who is trained and qualified to carry out investigations in the field of environmental health. See A.R.S. § 36-136.01(J). The rules were initially adopted in 2001 and incorporate by reference the United States Food and Drug Administration (FDA) publication, Food Code: 1999 Recommendations of the United States Public Health Services, Food and Drug Administration (Food Code) as modified in R9-8-107.

Article Contents

Article 1 contains nine rules and one table, which provide standards to assure that all food and drink sold at the retail level in Arizona are fit for human consumption.

Year that Each Rule was Last Amended or Newly Made

R9-8-103, R9-8-104, R9-8-105, R9-8-106, R9-8-108, R9-8-109, and Table 1 were made by final rulemaking on October 3, 2001. R9-8-101 and R9-8-102 were last amended by final rulemaking on February 4, 2012. Lastly, R9-8-107 was last amended by final rulemaking on September 9, 2006.

Proposed Action

The Department plans to amend the rules in Chapter 8 and submit a Notice of Final Rulemaking to the Council by April 2019. Specific actions are outlined throughout this memorandum.

Summary of Reasons for the Proposed Action

The rules need to be amended to incorporate a more recent version of the Food Code and improve the effectiveness of the rules.

Exemption or Request and Approval for Exception from the Moratorium

The Department has not requested an exception from the moratorium.

Substantive or Procedural Concerns

Council's staff empathizes with the pending workload faced by the Department's rulewriting staff, and understands that the Department is engaging in higher priority rulemakings. However, it is never staff's preference for an agency to identify issues in a five-year-review report without proposing action on those issues within a reasonable period of time, particularly when there are public comments on the rules.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. <u>Has the agency certified that it is in compliance with A.R.S. § 41-1091?</u>

Yes. The Department has certified its compliance with A.R.S. § 41-1091.

2. <u>Has the agency analyzed the rules' effectiveness in achieving their objectives?</u>

Yes. The Department indicates that the rules are effective, with the following exceptions:

- R9-8-104 should remove administrative procedures associated with requests for approval from a "requestor" because the administrative procedures associated with a "requestor" may only be performed by the Department since the "requestor" of approval of an inspection form or qualify assurance program is another regulatory authority.
- The time frames for approval of an inspection form or quality assurance program should be removed from Table 1.
- R9-8-105 should require that the name, address, and telephone number of the regulatory authority be included on the food establishment license.

- Subsection (B)(3) in R9-8-106 should be removed because the current text in the referenced statute, A.R.S. § 36-183.04, is not relevant.
- R9-8-107 should incorporate the most recent version of the Food Code.
- Subsection (B) of R9-8-108 should require the name, address, and telephone number of the regulatory authority be included in the inspection report. Further, subsections (D) and (E) should be removed from the rules or placed in a separate section.

3. <u>Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?</u>

Yes. Attached to the report are several written comments that the Department received during the last five years. In October 2014, a representative of a restaurant chain expressed concern that the rules did not incorporate the most recent version of the Food Code. Further, a county representative questioned whether interstate food processing facilities should be regulated under the Article and asked for specific authority allowing for regulation of food processing facilities. The Department has also received several comments about whether breweries, honey production, amaranth processing, dove or crayfish preparation, or nut, seed, trail mix, and candy re-packaging are regulated under the Article.

The Department intends to address these concerns by amending the rules in 9 A.A.C. 8, Article 1 to incorporate a more recent version of the Food Code and make changes addressed in this memo to improve the effectiveness of the rules.

4. <u>Has the agency analyzed whether the rules are authorized by statute?</u>

Yes. The Department cites applicable statutory authority for the rules reviewed. Pursuant to A.R.S. § 36-136(A)(7), the Department is required to "[p]repare sanitary and public health rules." With regard to general rulemaking authority, the director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health. A.R.S. § 36-136(F).

The Department also cites to the following statutes that provide statutory authority for the rules:

- Under A.R.S. § 36-104(1)(b)(ii), the Department's director must administer "[c]onsumer health protection programs that include at least the functions of community water supplies, general sanitation, vector control and food and drugs."
- Under A.R.S § 36-132(A)(13), the Department shall "[t]ake all actions necessary to appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth…poisonous, deleterious or other foreign substance."
- A.R.S. § 36-136(H)(4) requires the Department's director to "prescribe reasonably necessary measures to assure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free

from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms."

- A.R.S. § 36-136(H)(5) requires the Department's director to "prescribe reasonably necessary measures to assure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources resources approved by the Arizona department of agriculture…."
- Under A.R.S. § 36-136(H)(7), the Department's director shall "[d]efine and prescribe reasonably necessary measures governing ice production, handling, storing and distribution…."

5. <u>Has the agency analyzed the rules' consistency with other rules and statutes?</u>

The Department indicates that the rules are consistent with other rules and statutes, with the following exceptions:

- Subsection (B) in R9-8-102 contains vague or incorrect cross references. For example, "assisted living home" is defined in A.R.S. § 36-401(A)(9) and the cross references for "behavioral health services agencies" and "hospice inpatient facilities" are incorrect, due to the recent rulemakings for 9 A.A.C. 10 and 9 A.A.C. 20.
- R9-8-103(A)(7)(g) is inconsistent with A.R.S. § 36-136(H)(4)(f), which states that Chapter 8 does not apply to prepackaged food or drink that is not potentially hazardous.
- R9-8-106(B)(3) contains an incorrect citation to A.R.S. § 36-183.04(E).
- R9-8-109(B)(4)(b) contains an incorrect citation to A.R.S. § 36-183.04(E).

6. <u>Has the agency analyzed the current enforcement status of the rules?</u>

Yes. R9-8-108 is not enforced as written because some counties have adopted a newer version of the Food Code and are using different terminology to categorize a violation.

7. <u>Has the agency analyzed whether the rules are clear, concise, and understandable?</u>

Yes. The Department identifies the following changes that would make the rules more clear, concise and understandable:

- R9-8-101 should be amended to add definitions of undefined terms used in R9-8-103. Also, the rule could be improved by replacing the period after subsection (2)(g) with a semicolon.
- R9-8-102 needs to be restructured for clarity. The rule should separate out the types of facilities to which the Article does not apply from the types of foods to which the Article does not apply. In addition, the Department needs to clarify the term "partial care services" in subsection (B)(7).
- R9-8-103 contains terms that are ambiguous and should be defined, such as "mobile," "stationary," "temporary," and "permanent." Further, subsection (A)(5)(a) states that a food establishment may be under construction when an application is submitted. Subsection (A)(2), however, requires a telephone number of the food establishment, which may not be available for a food establishment under construction.

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

Yes. The Department indicates that there is no corresponding federal law.

b. There is statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010, has the agency analyzed whether:

a. The rules require issuance of a regulatory permit, license or agency authorization?

Yes. The only rules adopted after July 29, 2010 are R9-8-101 and R9-8-102. Neither of these rules require issuance of permit, license or agency authorization.

b. It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. The Department indicates that it completed the action proposed in the previous five-year review report through the rulemaking effective February 4, 2012.

11. Has the agency included a proposed course of action?

Yes. As stated above, the Department plans to amend all of the rules in 9 A.A.C. 8, Article 1, to incorporate the recent version of the Food Code and to improve the effectiveness of the rules. The Department intends to submit a Notice of Final Rulemaking to the Council by April 2019, to allow time for adequate stakeholder input and review the next version of the Food Code.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends approval of the report.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: May 5, 2016 **AGENDA ITEM: D-4**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : April 15, 2016

SUBJECT: **ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-408)**
Title 9, Chapter 8, Article 1, Food and Drink

I have reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

The economic, small business, and consumer impact statement (EIS) from the most recent Commission rulemaking completed in 2012 was available.

The rules address procedures prescribed by the Department in order to regulate the food safety of commercial food service establishments. The Department is charged with ensuring that all food and drink products sold at the retail level are fit for human consumption, as required by A.R.S. § 36-136(H)(4).

Key stakeholders that are impacted are the Department, county health departments, retail food and drink vendors, and consumers of food and drink. The Department notes that the rules as a whole incur minimal short-term training costs to food and drink vendors as well as county health inspectors; however, these minimal costs are more than offset by the long-term benefits of reducing foodborne illnesses.

Current rules regarding the regulation of food and drink were effective starting in 2001 with subsequent amendments and revisions in 2003, 2006, and 2012. The 2001 rules incorporate the 1999 Food Code (1999 FC) published by the Food and Drug Administration (FDA). The FDA has subsequently published three updates to this code; the 2013 FC is the most recent.

These rules are used by sanitarians at the state and county levels to conduct inspections of licensed food and drink establishments. In FY 2015, there were 33,217 food establishments regulated by 168 FTEs. These employees completed:

- 80,484 food safety-related inspections (routine or re-inspection)
- 7,237 pre-operational inspections of new facilities
- 8,971 complaint investigations
- 8,499 inspections of temporary food operations
- 1,001 compliance proceedings

The Department concludes that the economic impact has generally been as predicted in the prior EIS for the rules in the Article cited above.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

After analyzing these rules, the Department determines that these rules have inconsistencies, and they generate confusion. In their current state, the rules do not impose the least burden and costs to persons regulated by the rules.

The Department intends to submit a final rulemaking package that will update statute references; clarify rules that cause confusion among stakeholders; and adopt the 2013 Food Code. Regardless of these issues, the overall benefits to public health and safety outweighs the minimal costs of compliance.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the Commission by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Arizona Department of Health Services

Division for Policy & Intergovernmental Affairs
Administrative Counsel and Rules

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DOUGLALS A. DUCEY, GOVERNOR
CARA M. CHRIST, MD, DIRECTOR

February 12, 2016

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GRRC

Nicole A. Ong, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 8, Article 1

Dear Ms. Nicole Ong:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 8, Article 1, is due to the Council no later than April 29, 2016. The Arizona Department of Health Services (Department) has reviewed A.A.C. Title 9, Chapter 8, Article 1, Food and Drink, and is enclosing a report to the Council for the reviewed rules.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. A five-year-review summary, information that is identical for all the rules, information for individual rules, copies of authorizing statutes, copies of each rule reviewed, copies of economic impact statements, and written criticisms are included in this package. As stated in the report, the Department intends to amend these rules by April 2019.

The Department certifies that the Department is in compliance with A.R.S. § 41-1091.

If you need any further information, please contact me at (602) 542-1020.

Sincerely,

Robert Lane
Director's Designee

RL:rms

Enclosures

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES

FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

ARTICLE 1. FOOD AND DRINK

April 2016

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES

FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

ARTICLE 1. FOOD AND DRINK

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TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES

FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

ARTICLE 1. FOOD AND DRINK

FIVE-YEAR-REVIEW SUMMARY

Arizona Revised Statutes (A.R.S.) § 36-136(H)(4) requires the Department to "prescribe reasonably necessary measures to assure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms." It further requires the rules adopted by the Department to "prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation" of food and drink and include minimum standards for the sanitary facilities and conditions that are to be "maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant." The rules are to "prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported." The Department is responsible "for the inspection and licensing of premises and vehicles so used and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards."

Additional statutes that address specific areas of food and drink include A.R.S. § 36-132(A)(13), A.R.S. § 36-136(H)(5), and A.R.S. § 36-136(H)(7). A.R.S. § 36-132(A)(13) requires the Department to take "all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances." A.R.S. § 36-136(H)(5) requires the Director to prescribe "reasonably necessary measures to assure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources" approved by the Arizona Department of Agriculture and "are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms." The rules are to "prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level." A.R.S. § 36-136(H)(7) requires the Department to "define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to assure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms." The rules are to contain "minimum standards for the sanitary facilities and conditions and the quality of ice" that is to be "maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored,

handled or transported" and "provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards."

The Department has adopted in Arizona Administrative Code (A.A.C.) Title 9, Chapter 8, Article 1, rules to implement A.R.S. § 36-136(H)(4) by providing standards that ensure that food and drink in Arizona are fit for human consumption. The rules were initially adopted in October 2001 and incorporated the United States Food and Drug Administration (FDA) publication, *Food Code: 1999 Recommendations of the United States Public Health Service, Food and Drug Administration* (FC) as modified. Only three of the rules have been amended since they were adopted. R9-8-102 was amended in 2003 to exempt hospice inpatient facilities from the requirements of the Article. R9-8-102 was again amended, along with R9-8-107, in 2006 to include milk and milk products sold at the retail level under this Article, to implement Laws 2004, Ch. 51. R9-8-101 was amended and R9-8-102 was further amended in 2012 to clarify requirements and exempt certain categories of foods, in compliance with Laws 2006, Ch. 272, § 1; Laws 2008, Ch. 149 § 1; and Laws 2011, Ch. 84, § 1.

The sanitarians in the Department and in the health departments or environmental health departments of Arizona's counties use these rules in conjunction with county codes while conducting inspections of licensed food establishments. In FY2015, there were 33,217 regulated food establishments in Arizona, at which state and county sanitarians conducted 80,484 food safety-related inspections (routine or re-inspection). The frequency of inspections depends on the complexity of the food service operations, with those facilities conducting more complex operations being inspected more frequently. In addition, the individuals in 168 sanitarian FTEs and 15.5 sanitarian aide FTEs conducted 7,237 pre-operational inspections of new facilities, 8,971 complaint investigations, and 8,499 inspections of temporary food operations. These inspections resulted in 1,001 compliance proceedings.

The Department had begun a rulemaking to amend the rules in 9 A.A.C. 8, Article 1, in January 2007 and was in the process of revising the rules to incorporate the 2005 FC when the rulemaking moratorium was established in January 2009 and rulemaking was halted. In the 2011 five-year-review report, the Department stated that the Department would amend R9-8-102 to be consistent with statutory changes, but would wait until the 2013 version of the FC was released before deciding what further rulemaking should be done. The Department did not anticipate completing other rulemaking until after the 2016 five-year-review report was due. Since then, two counties have adopted the 2009 FC, and four have adopted the 2013 FC, with two more working towards the adoption of the 2013 FC. Because of the issues identified in this five-year-review report, the Department plans to amend the rules in 9 A.A.C. 8, Article 1, by April 2019 to improve the effectiveness of the rule.

INFORMATION THAT IS IDENTICAL FOR ALL OF THE RULES

1. Authorization of the rule by existing statute

The rules in 9 A.A.C. 8, Article 1, have A.R.S. §§ 36-136(A)(7) and 36-136(F) as general statutory authority.

The rules in 9 A.A.C. 8, Article 1, have specific statutory authority in A.R.S. §§ 36-104(1)(b)(i), 36-132(A)(13), 36-136(H)(4), 36-136(H)(5), and 36-136(H)(7).

2. The purpose of the rule

The purpose of the rules in 9 A.A.C. 8, Article 1, is to prescribe reasonably necessary measures to assure that all food or drink sold at the retail level are fit for human consumption.

7. Summary of the written criticisms of the rule received within the last five years

Except for criticisms of R9-8-102 and R9-8-107 provided as Attachment D, the Department has not received written criticisms of the rules in 9 A.A.C. 8, Article 1, during the past five years.

8. Economic, small business, and consumer impact comparison

The food and drink rules were adopted by final rulemakings published in the *Arizona Administrative Register* (A.A.R.) at 7 A.A.R. 1719, effective October 3, 2001. The rules were amended by rulemaking at 9.A.A.R. 317, effective March 14, 2003; 12.A.A.R. 2768, effective September 9, 2006; and 17 A.A.R. 2608, effective February 4, 2012. The 2001 rulemaking incorporated by reference the 1999 FC publication by the FDA, as modified. The 1999 FC uses a "science-based food evaluation system known as Hazard Analysis and Critical Control Point" (HACCP) to ensure food safety. An economic, small business, and consumer impact statement (EIS) was submitted to the Governor's Regulatory Review Council (GRRC) as part of the Notice of Final Rulemaking package for the rulemaking effective October 3, 2001. The EIS stated the anticipation of a substantial economic benefit to employers and the general public from the reduced risk of foodborne illnesses resulting from food establishments implementing the practices required in the 1999 FC. Each food establishment was expected to incur minimal costs for training employees, especially the person in charge, on the new requirements; counties might also incur short-term substantial costs to train inspectors on the new standards, which could be offset by "a more efficient regulatory process" once inspectors and the regulated community became familiar with the rules. Food establishments in general could incur substantial costs from the time to "modify and monitor food processes" and employee personal hygiene practices to meet the 1999 FC requirements. Both food establishments and regulatory authorities could receive a benefit from the added flexibility and allowances for variances if an approved HACCP plan were used to prepare food. Allowing a 10-year period, rather than the five-year period projected in the

1999 FC, for a food establishment to come into compliance with a reduction in cold storage temperatures from 45° to 41° F and allowing the hot holding temperature to be 130°, rather than 140° F in the 1999 FC, were thought to help mitigate the potentially substantial costs for implementing time and temperature controls associated with adopting the 1999 FC. The 2003 rulemaking added an exemption for hospice inpatient facilities with 20 or fewer patients to the list of exemptions from the food and drink rules in R9-8-102, and provided a significant benefit to these health care institutions and their patients. An EIS was not submitted because the rulemaking was exempt from the requirement under A.R.S. § 41-1055(D)(3), as stated in the Notice of Final Rulemaking. The 2006 rulemaking amended R9-8-102 and R9-8-107 to make these rules consistent with A.R.S. § 36-136(H)(4), as amended by Laws 2004, Ch. 51, effective August 25, 2004. The 2006 rulemaking removed milk and milk products from the list of exemptions from the food and drink rules in R9-8-102 and incorporated portions of the FC that apply to milk and milk products into R9-8-107. An EIS was submitted to GRRC with the 2006 rulemaking, stating that a person selling milk or milk products at the retail level might incur minimal-to substantial costs to become licensed as a food establishment, if not already licensed, and to comply with the 1999 FC requirements for milk or milk products. The Department was unaware of any persons selling milk or milk products at the retail level that were not already licensed as food establishments. County health departments, which perform the bulk of food establishment license inspections, were expected to incur minimal additional costs to inspect currently licensed food establishments and moderate additional costs to inspect a new food establishment requesting licensing for adherence to requirements for milk and milk products. The 2012 rulemaking amended R9-8-101 and R9-8-102 to make these rules consistent with A.R.S. § 36-136(H)(4), as amended by Laws 2006, Ch. 272; Laws 2008, Ch. 149; and Laws 2011, Ch. 84 by exempting certain categories of food and drink from requirements of the Article. An EIS was submitted to GRRC with the 2006 rulemaking and specified that only the economic impacts directly attributable to the rulemaking would be considered in the EIS. The EIS stated that regulated food establishments were expected to receive a significant benefit from the rule's clarification of the applicability of the rules in 9 A.A.C. 8, Article 1; persons providing food or drink that is statutorily exempt were expected to receive a significant benefit from being better able to determine whether they are required to apply for a license as a food establishment and, for those exempt, a minimal-to-substantial benefit from saving the costs of becoming a licensed food establishment and complying with requirements in 9 A.A.C. 8, Article 1. The Department believes the costs and benefits identified in the 2001, 2006, and 2012 EISs are generally consistent with the actual costs and benefits of the rules.

9. Summary of business competitiveness analyses of the rules

The Department did not receive a business competitiveness analysis of the rules in the last five years.

10. Status of the completion of action indicated in the previous five-year-review report

As stated in the 2011 five-year-review report, the Department planned to amend R9-8-102 to be consistent with statutory changes but did not plan to amend the rest of the rules in 9 A.A.C. 8, Article 1, until after the 2016 five-year-review report was due. The Department completed the rulemaking action proposed in the previous five-year-review report through the rulemaking effective February 4, 2012.

12. Analysis of stringency compared to federal laws

The rules are not more stringent than federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

Since neither R9-8-101 nor R9-8-102 establish licensing, certification, or permit requirements, the rules establishing licensing, certification, or permit requirements were adopted before July 29, 2010.

14. Proposed course of action

The Department intends to amend the rules in 9 A.A.C. 8, Article 1, to incorporate a more recent version of the FC and make other changes to address issues described in this report and improve the effectiveness of the rules. To allow time for adequate stakeholder input into revised rules and the review of the next version of the FC, the Department anticipates submitting a Notice of Final Rulemaking to the Governor's Regulatory Review Council (GRRC) by April 2019. This timetable is subject to change based on the Department's priorities and staffing.

INFORMATION FOR INDIVIDUAL RULES

R9-8-101. Definitions

2. Objective of the rule

The objective of the rule is to define terms and phrases used in the Article to enable the reader to clearly understand the requirements of the Article and allow for consistent interpretation.

3. Analysis of effectiveness in achieving the objective

The rule is effective but could be improved if the issues described in paragraph 6 were addressed.

4. Analysis of consistency with state and federal statutes and rules

The rule is consistent with cited state and federal statutes and rules.

5. Status of enforcement of the rule

The Department is enforcing the rule to the extent that definitions can be enforced.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable but could be improved by adding definitions of undefined terms used in R9-8-103, as specified in paragraph 6 for the Section. The rule could also be improved by replacing the period after subsection (2)(g) with a semicolon.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

Because of the issues described in paragraph 6 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

R9-8-102. Applicability

2. Objective of the rule

The objective of the rule is to specify the categories of facilities and foods to which the rules apply and those that are exempt from the Article.

3. Analysis of effectiveness in achieving the objective

The rule is mostly effective in achieving its objective. The effectiveness of the rule is decreased by the issues described in paragraphs 4 and 6.

4. Analysis of consistency with state and federal statutes and rules

Subsection (B)(9)(f) of the rule is inconsistent with A.R.S. § 36-136(H)(4)(f), as amended by Laws 2013, Ch.6, which removed the limitation on the display area for food that is not potentially hazardous. In addition, many of the cross references in subsection (B) are not specific or are incorrect. "Group home" is defined in A.R.S. § 36-551, within A.R.S. Title 36, Chapter 5.1,

Article 1; "child care group home" is defined in A.R.S. § 36-897, within A.R.S. Title 36, Chapter 7.1, Article 4; and "residential group care facility" is defined in A.A.C. R6-5-7401, within 6 A.A.C. 5, Article 74. The definition of "assisted living home" is in A.R.S. § 36-401. The term "adult day health care services" is not defined, but "adult day health care facility" and "adult day health services" are both defined in A.R.S. § 36-401. Due to the recent rulemakings for 9 A.A.C. 10 and 9 A.A.C. 20, the cross references for "behavioral health service agencies" and "hospice inpatient facilities" are also incorrect.

5. Status of enforcement of the rule

The rule is enforced as written, except that the correct definitions of the terms in subsection (B) are used when determining if the Article applies to a facility.

6. Analysis of clarity, conciseness, and understandability

The rule is mostly clear, concise, and understandable. The clarity of the rule could be improved by separating out the types of facilities to which the Article does not apply from the types of foods to which the Article does not apply. It is also unclear what the term "partial care services" in subsection (B)(7) means.

7. Summary of the written criticisms of the rule received within the last five years

Criticism: The Department has received a written criticism of the rule from a county representative, questioning whether interstate food processing facilities should be regulated under the Article and asking for "appropriate code or statute references relevant to" such regulation. The Department has received other comments about whether breweries are regulated under the Article. The Department has received several comments expressing confusion about whether activities, such as honey production, amaranth processing, dove or crayfish preparation, or nut, seed, trail mix, and candy re-packaging, are regulated under the Article.

Response: As stated in paragraph 14 under *Information That Is Identical for All of the Rules*, the Department plans to amend the rules in 9 A.A.C. 8, Article 1, by April 2019. As part of the rulemaking, the applicability of the Article will be clarified to improve the effectiveness of the rule.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

Because of the issues described in paragraphs 4 and 6 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

R9-8-103. Food Establishment License Application

2. <u>Objective of the rule</u>

The objective of the rule is to explain the process an applicant must follow to apply for a food establishment license.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is effective but could be improved if the issues described in paragraph 6 were addressed.

4. <u>Analysis of consistency with state and federal statutes and rules</u>

The rule is consistent with cited state and federal statutes and rules, but the inclusion of subsection (A)(7)(g) may be confusing as described in paragraph 6.

5. <u>Status of enforcement of the rule</u>

The rule is enforced as written.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is mostly clear, concise, and understandable but could be improved. The terms "mobile," "stationary," "temporary," and "permanent" are open to interpretation and should be defined or described. The rule states in subsection (A)(5)(a) that a food establishment may be under construction when an application is submitted. However, subsection (A)(2) requires the telephone number of the food establishment, which may not be available for a food establishment under construction. In addition, the inclusion of subsection (A)(7)(g) in an application for a food establishment license is confusing because, under A.R.S. § 36-136(H)(4)(f), as amended by Laws 2013, Ch.6, the rules in 9 A.A.C. 8, Article 1 do not apply to prepackaged food that is not potentially hazardous.

11. <u>A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective</u>

Because of the issues described in paragraph 6 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

R9-8-104. Time-frames

1. <u>Authorization of the rule by existing statute</u>

The rule has A.R.S. §§ 41-1073 through 41-1076 as additional specific statutory authority.

2. <u>Objective of the rule</u>

The objective of the rule is to specify the administrative procedures the regulatory authority will perform during the time-frames in Table 1.

3. Analysis of effectiveness in achieving the objective

The rule is mostly effective in achieving its objective but could be improved. The rule contains administrative procedures related to the licensing process, including the issuance of a license itself, approval of a variance, approval of plans and specifications, and approval of a "HACCP PLAN." These administrative procedures may be performed by any regulatory authority. However, the administrative procedures associated with a "requestor" may only be performed by the Department since the "requestor" of approval of an inspection form or quality assurance program is another regulatory authority. In addition, these latter approvals are not subject to the provisions of A.R.S. Title 41Chapter 6, Article 7.1, since they are only tangentially related to licensing and more associated with the delegation of authority. Therefore, the effectiveness of the rule would be improved by removing administrative procedures associated with requests for approval by a "requestor" from this rule or moving them into a separate Section.

4. Analysis of consistency with state and federal statutes and rules

The rule is consistent with cited state and federal statutes and rules.

5. Status of enforcement of the rule

The rule is enforced as written.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

Because of the issues described in paragraph 3 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

Table 1. Time-frames (in days)

1. Authorization of the rule by existing statute

The table has A.R.S. §§ 41-1073 through 41-1076 as additional specific statutory authority.

2. Objective of the rule

The objective of the table is to establish the time-frames for the regulatory authority's administrative processes for the approvals issued under this Article.

3. Analysis of effectiveness in achieving the objective

The table is effective in achieving its objective but could be improved if the time-frames for approval of an inspection form or quality assurance program were removed from the table.

4. Analysis of consistency with state and federal statutes and rules

The rule is consistent with cited state and federal statutes and rules.

5. Status of enforcement of the rule

The rule is enforced as written.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

Despite the minor issue described in paragraph 3, the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

R9-8-105. Issuance of License

2. Objective of the rule

The objective of the rule is to specify the information that a regulatory authority is required to put on a food establishment license to identify a licensed food establishment.

3. Analysis of effectiveness in achieving the objective

The rule is effective, but it could be improved by requiring the name, address, and telephone number of the regulatory authority issuing the license to be on the license.

4. Analysis of consistency with state and federal statutes and rules

The rule is consistent with cited state and federal statutes and rules.

5. Status of enforcement of the rule

The rule is enforced as written.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

Despite the minor issue described in paragraph 3, the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

R9-8-106. License Suspension or Revocation

2. <u>Objective of the rule</u>

The objectives of the rule are to:

a. Explain the regulatory authority's power to suspend or revoke a food establishment license if the food establishment is in violation of the rules in this Article, and

b. Provide information about revocation or suspension hearings.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is effective, but it could be improved by removing subsection (B)(3). The citation in subsection (B)(3) to A.R.S. § 36-183.04(E) in the rule adopted in 2001 is incorrect because it refers to text in A.R.S. § 36-183.04 that was repealed by Laws 2002, Ch. 313, § 3. The current text in A.R.S. § 36-183.04 was added by Laws 2002, Ch. 313, § 4, and is not relevant.

4. <u>Analysis of consistency with state and federal statutes and rules</u>

The rule is consistent with A.R.S. § 36-136(H)(4) and the other cited statutory authorities, but the citation in subsection (B)(3) to A.R.S. § 36-183.04 is incorrect, as described in paragraph 3.

5. <u>Status of enforcement of the rule</u>

The rule is enforced as written.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable.

11. <u>A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective</u>

Because of the issues described in paragraphs 3 and 4 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

R9-8-107. Food Safety Requirements

2. <u>Objective of the rule</u>

The objective of the rule is to explain the food safety requirements a licensed food establishment must follow in order to maintain food safety and be licensed to operate in Arizona.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is partly effective in achieving its objectives. The rule incorporates the 1999 FC as modified. Since this rule was made, three revisions of the FC have been released by the FDA. The rule would be more effective in protecting health and safety if the rule were amended to

incorporate a newer version of the FC. As part of the rulemaking planned for 9 A.A.C. 8, Article 1, the Department plans to compare the requirements in the FCs and obtain input from licensed food establishments and sanitarians who use the rules before deciding what requirements will be incorporated into revised rules.

4. Analysis of consistency with state and federal statutes and rules

The rule is consistent with cited state and federal statutes and rules.

5. Status of enforcement of the rule

The rule is enforced as written.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable but could be improved by revising subsection (A) to meet current style and format standards.

7. Summary of the written criticisms of the rule received within the last five years

Criticism: The Department has received a written criticism of the rule from a representative of a restaurant chain, expressing concern that the rule still incorporates by reference the 1999 FC, rather than the most recent version of the FC.

Response: As stated in paragraph 14 under *Information That Is Identical for All of the Rules*, the Department plans to amend the rules in 9 A.A.C. 8, Article 1, by April 2019 to incorporate a more recent version of the FC and to improve the effectiveness of the rule.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

Because of the issues described in paragraph 3 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

R9-8-108. Inspections Standardization and Documentation

2. Objective of the rule

The objective of the rule is to specify the process a regulatory authority must follow when inspecting a food establishment.

3. Analysis of effectiveness in achieving the objective

The rule is somewhat effective in achieving its objective but could be improved in several ways. The inspection report specified in subsection (B) would be improved if the name, address, and telephone number of the regulatory authority conducting the inspection were included on the report. The rule would also me more effective if the issue described in paragraph 5 were

addressed. The rule would also be improved if information about creating separate inspection forms and requesting approval of a quality assurance program, as specified in subsections (D) and (E), were removed from the rules or placed in a separate Section.

4. Analysis of consistency with state and federal statutes and rules

The rule is consistent with cited state and federal statutes and rules.

5. Status of enforcement of the rule

The rule is not enforced as written. Some counties, which have adopted more recent versions of the FC, are not using the term "critical items" in inspection reports. Instead they categorize a violation as "priority" (is likely to cause a food-borne illness), "priority foundation" (may lead to a food-borne illness if other conditions are present), and "core" (is not according to basic to good food-handling practices). In addition, in counties that have adopted a newer version of the FC, violations may not be cited with the FC sections listed in the rule.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable but could be improved as described in paragraphs 3 and 5.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

Because of the issues described in paragraphs 3 and 5 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

R9-8-109. Cease and Desist and Abatement

2. Objective of the rule

The objectives of the rule are to:

a. Notify the reader that a violation of this Article constitutes a public nuisance, and

b. Explain the process a regulatory authority initiates if the regulatory authority has reasonable cause to believe that a food establishment is creating or maintaining a public nuisance.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective but could be improved by addressing the issues identified in paragraphs 4 and 6.

4. Analysis of consistency with state and federal statutes and rules

The rule is consistent with A.R.S. § 36-136(H)(4) and the other cited statutory authorities, but the citation in subsection (B)(4)(b) to A.R.S. § 36-183.04(E) is incorrect, because the text in A.R.S. § 36-183.04 to which the rule refers was repealed by Laws 2002, Ch. 313, § 3.

5. Status of enforcement of the rule

The rule is enforced as written.

6. Analysis of clarity, conciseness, and understandability

The rule is mostly clear, concise, and understandable but could be improved by clarifying that information about the alleged nuisance should be included in the order.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

Because of the issues described in paragraphs 4 and 6 of the analysis of this rule, the rule does not impose the least burden and costs on persons regulated by the rule.

ATTACHMENT D

Yum! Brands, Inc.
3590 Buckingham Way
St. Cloud, FL 34772
Tel 407-593-6181
Cell 720-253-5538

October 6, 2014

Arizona Department of Health Services
Bureau of Epidemiology and Disease Control
Office of Environmental Health
Attn. Blanca Caballero
150 North 18th Ave.
Phoenix, AZ 85007

Subject: Letter Requesting Arizona Adoption of 2013 FDA Food Code

Dear Ms. Caballero,

With nearly 20,000 restaurants peppered across the 3,000 plus Environmental Health jurisdictions in the United States, ensuring food code compliance is a challenge for YUM! Brands. To better ensure consistency in execution, we strive to operate with a single set of standards, and we set those standards on the most recent version of the FDA Food Code.

Each year, we survey all 50 states to determine which version of the FDA Food Code a state is following, whether a state is planning to update their Food Code that year and where state regulations differ from the FDA. We don't relax our standards if a state's code is different, but we do tighten them if the state's requirements are more stringent. But this complexity means many of our restaurants must learn to manage the differences between our national standards and their local code. It makes brand level communication and training more difficult and increases the risk of non-compliance. And when the local jurisdiction has less stringent regulations, it weakens our position with franchisees that are required to meet the stricter FDA guidance.

It should be no surprise that YUM! is a strong supporter of uniform food code adoption. The stakeholder endorsed guidance that comes from the Conference for Food Protection (CFP) assists the FDA in maintaining science-based and up-to-date retail food regulations. Uniform food code adoption better ensures compliance and increases everyone's focus on risk-reduction tasks instead of administrative activities.

The FDA issues Food Code updates every two years with a new edition issued every fourth year. Currently, Arizona is utilizing a Food Code based on the 1999 FDA Food Code. There are only nine other states in the nation who have a Food Code based on that or an earlier version and 8 of those are in the process of updating their Food Code to the current version of the FDA Food Code.

Since Arizona last updated their Food Code there have been many science driven changes to the FDA Food Code which are beneficial to industry providing sound and definitive guidance on additional ways to produce and ensure food safety. The FDA Food Code updates are beneficial to both industry and the regulatory community.

Some of the changes FDA has made that are beneficial to industry include:

- A definition of what characterizes a food as a Time/Temperature Controlled for Safety Food (formerly Potentially Hazardous Food) that is more definitive and which more accurately defines foods which require refrigeration for safety.
- Added greater clarity and procedures explaining how to handle employees who are symptomatic or diagnosed with a foodborne illness.
- Providing guidance on procedures required to clean up a diarrheal or vomiting event in a food establishment.
- Addition of procedures for facilities using non-continuous cooking methods (often done by hotels and others catering large events).
- Additional exemptions for foods which are exempt from the date marking requirements of the Food Code due to their ability to prevent growth of pathogenic organisms for more than seven days.
- Changed numerous minimum temperatures for cooking raw animal and some other foods.
- Expanded methods for storing in-use dispensing utensils.
- Clarified and simplified the procedures for preparing and handling foods packaged in a reduced oxygen environment.
- Many national and regional firms use the FDA Food Code as the basis for their food safety programs and having a Code based upon a current FDA version keeps industry standards consistent with regulatory standards and expectations.
- The FDA issues numerous Food Code interpretations which help industry and regulatory agencies to have consistent expectations and understanding of Food safety requirements.

These are just a few of the many changes that FDA has made to their Food Code over the past 14 years. I am requesting that The Arizona Department of Health Services update their Food Code to the current version of the FDA Food Code as soon as possible. This process should seek to adopt the FDA Food Code with as few changes as possible.

Sincerely,

Dale Yamnik, REHS, RS, CP-FS

Yum! Brands, Inc.
Food Safety and Regulatory Affairs Manager

Cc:

Becky Stevens-Grobbelaar, Yum! Brands, Inc., FSRA Director

Maricopa County
Environmental Services Department

John Kolman RS, MBA
Director
1001 N. Central Avenue #400
Phoenix, Arizona 85004
Phone: (602) 506-6623
Fax: (602) 506-5141
TDD 602 372-0622

June 8, 2011

RECEIVED
JUN 13 2011
By

Don Harrington
Arizona Department of Health Services
Office of Environmental Health
150 N. 18th Avenue, Suite 130
Phoenix, AZ 85007

Mr. Harrington

During our phone conversation of June 1, 2011, you requested that the Department submit to you a guidance request for food processors. As you recall we spoke on May 12, 2011, after you had received information that Maricopa County was no longer regulating food processors. I corrected your information by informing you that the Department was no longer regulating interstate food processors, but continuing to focus on intrastate food processors stationed in Maricopa County.

The Department makes every effort possible to avoid duplicative permitting and inspection duties. It has come to our attention that we have tried to permit interstate food processors. It is our belief that interstate food processors fall within FDA's jurisdiction and within appropriate CFRs which are not part of our Environmental Health Code. At this time we feel that we do not have the appropriate jurisdictional authority over these entities.

We believe that the issue of interstate food processing affects not only Maricopa County but the entire state. At this time we would request that ADHS provide definitive guidance to Maricopa County on when and where interstate food processing facilities shall be permitted and regulated by the local authority either independently or acting as ADHS's agent through the delegated authority. If ADHS's decision is for local authority to permit and regulate interstate food processing, we would request definitive guidance on coordination with federal officials and agencies as well as the appropriate code or statue references relevant to regulating interstate food processing. We value our Department's close working relationship with your agency. As always we will continue to strive to meet or exceed your expectations when it comes to our delegation agreement. Please let me know should you require any additional information about this issue.

Sincerely

John Kolman, RS, MBA
Director
Maricopa County Environmental Services

ADHS - Breweries 9-29-14

Division of Public Health Services
Office of the Assistant Director
Public Health Preparedness Services

150 N. 18th Avenue, Suite 520
Phoenix, Arizona 85007
(602) 364-3855
(602) 364-3445 FAX
Internet: www.azdhs.gov

JANICE K. BREWER, GOVERNOR
WILL HUMBLE, DIRECTOR

September 29, 2014

Mr. Andrew Linton, CPM, R.S.
1001 North Central Avenue, Suite 300
Phoenix, Arizona 85004

Dear Mr. Linton:

Per John Kolman's request at the most recent Arizona County Directors of Environmental Health Services Association (ACDEHSA) meeting, I am writing to confirm that breweries not otherwise inspected under the U.S. Food and Drug Administration (FDA) authority are considered food establishments in Arizona and subject to county permitting and inspection under the current delegation agreements. This holds true irrespective of whether food items are served to the public. Mr. Linton, since you are the President of ACDEHSA, can I ask you to please pass this information along to the ACDEHSA membership? This would ensure a most efficient means of distributing the information.

For reference, the code sections that apply are contained within Title 9, Article 8, of the Arizona Administrative Code. The Arizona Food Code (Code) was adopted from the 1999 FDA Food Code, with some exceptions, in 2000. When the Code was formulated, food processors were included within the definition of food establishments, differing from the 1999 FDA Food Code (see #32 of the definitions section (1-201.10(B)(1)(32)) of the Code at http://www.azdhs.gov/phs/oeh/rs/pdf/fc2000.pdf.

Please let me know if you need additional information or have any questions.

Sincerely,

Don Herrington, Assistant Director
Public Health Preparedness Services

DH:DH:wms

Honey4.pdf

Blanca Caballero

Subject: FW: Honey

Good afternoon,
The Arizona Department of Health Services ("ADHS") and the Arizona Department of Agriculture ("ADA") met recently to discuss some questions raised by various counties around the issue of honey and whether or not it is an agriculturally exempt product. Before providing a summary of the meeting, it is important to point out that neither the ADA nor ADHS have specific statutory authority to regulate honey.
The ADA does, however, have a Substantive Policy Statement (SPS) on A.R.S. § 3-561 to 3-563 (sale of food products by producers), which may apply to some honey products. A copy of this SPS has been attached to this email for reference and it may assist in determining the most appropriate approach to honey product regulation and permitting.
As the SPS notes, A.R.S. § 3-561 to 3-563, apply only to "producers" of food products. Therefore, the exemption might not apply for other scenarios, such as a when a food product, such as honey, is comingled or otherwise processed and/or if one adds anything to a food product.
Additional information on this topic can be obtained from the Food and Drug Administration ("FDA"). The FDA has created draft guidance for industry regarding the proper labeling of honey and honey products. A link to this draft guidance document can be found here.
Please contact ADHS or ADA if you have any additional questions or concerns.
Thank you,
Blanca

Blanca Caballero, CPM, RS/REHS
Food Safety & Environmental Services Program Manager
Office of Environmental Health
Arizona Department of Health Services
Office (602) 364-3851 Fax (602) 364-3146
Visit us at: www.azdhs.gov

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<sp13-01.pdf>

Amaranth

Blanca Caballero

From: Cecil Newell <Cecil.Newell@yavapai.us>
Sent: Friday, June 26, 2015 12:08 PM
To: Blanca Caballero
Subject: FW: Amaranth Processor

Cottage law versus FDA jurisdiction on selling this product across state lines.

Once he goes across state lines, I would consider him underneath FDA's jurisdiction. It would be up to that individual to determine what he would need from FDA to go across state lines.

Blanca what are your thoughts on Roberts request?

From: Robert Mumper
Sent: Thursday, June 25, 2015 5:17 PM
To: Cecil Newell
Cc: William Blankemeier
Subject: Amaranth Processor

Hi Cecil,

I have an individual who is currently a cottage law registrant that make "popped amaranth". (It's a grain product like quinoa that is heated like popcorn). The product is not potentially hazardous. If I get him under license for wider distribution, will the FDA require any licensure for out of state distribution or will they only be concerned with the labeling? Inquiring minds need to know.....

Robert Mumper, RS
Environmental Health Specialist III
Yavapai County Community Health Services
(928) 634-6891

Dove.pdf

Blanca Caballero

From: Monty Stansbury <Monty.Stansbury@yumacountyaz.gov>
Sent: Tuesday, August 25, 2015 1:47 PM
To: Blanca Caballero
Cc: Brigitte Dufour
Subject: RE: Crayfish

I believe you are very correct. But will await your added commentary. Thank you very much!

Monty M. Stansbury, AICP
Environmental Program Manager
Yuma County Health District
(928) 317-4636 [office]
(928) 580-2950 [c-phone]
monty.stansbury@yumacountyaz.gov

From: Blanca Caballero [mailto:Blanca.Caballero@azdhs.gov]
Sent: Tuesday, August 25, 2015 1:46 PM
To: Monty Stansbury
Cc: Brigitte Dufour
Subject: RE: Crayfish

Hi Monty,
No, they could not use the dove inside the establishment. I would think that the same reasoning used for the crayfish would apply here plus, because I think dove is poultry, the dove would need to be inspected by the Arizona Department of Agriculture. I'll reach out to the ADA to double check.

Blanca Caballero
Food Safety & Environmental Services Program Manager
Office: 602-364-3851

From: Monty Stansbury [mailto:Monty.Stansbury@yumacountyaz.gov]
Sent: Tuesday, August 25, 2015 1:31 PM
To: Blanca Caballero
Subject: RE: Crayfish
Importance: High

Good afternoon Blanca...
Just received a call from a food service employee asking if dove (since it is getting toward that part of the season) can be prepared outside of an establishment and served to only the hunters that provided the game. Any reference to that issue?

Monty M. Stansbury, AICP
Environmental Program Manager
Yuma County Health District
(928) 317-4636 [office]
(928) 580-2950 [c-phone]
monty.stansbury@yumacountyaz.gov

crayfish 2.pdf

Blanca Caballero

From: Blanca Caballero
Sent: Tuesday, August 11, 2015 10:48 AM
To: Cecil Newell (Cecil.Newell@yavapai.us)
Cc: Brigitte Dufour
Subject: Crayfish
Attachments: Cecil Newell.vcf; Marc Dahlbert.vcf

Hi Cecil,
I spoke to Marc Dahlberg from the Arizona Game and Fish Department and he explained that individuals couldn't sell crayfish because the commercialization of wildlife is prohibited; wildlife is held in trust for the citizens of Arizona and can be fished/hunted by individuals with a license but not for commercial purposes. I've attached Marc's contact information to this email in case you need it.
Take care,
Blanca

Marc Dahlbert
Arizona Game and Fish Department
WAter Quality Program Manager

(623) 236-7260 Work
mdahlberg@azgfd.gov

Blanca Caballero, CPM, RS/REHS
Food Safety & Environmental Services Program Manager
Office of Environmental Health
Arizona Department of Health Services
Office (602) 364-3851 Fax (602) 364-3146
Visit us at: www.azdhs.gov

From: Blanca Caballero [mailto:Blanca.Caballero@azdhs.gov]
Sent: Tuesday, August 25, 2015 11:07 AM
To: Andy Linton (alinton@mail.maricopa.gov); Bree Daugherty; Cecil Newell; Chris Sexton; christopher.reimus@pinalcountyaz.gov; David Ludwig (David.Ludwig@pima.gov); Diana Gomez; Don Thomas; Gary Frucci (Gary.Frucci@pima.gov); Gavin Lawson (Glawson@graham.az.gov); Jeff Nafziger (Jeff.Nafziger@navajocountyaz.gov); jkline@co.greenlee.az.us; Jose Arriola; Joyce McCluskey; Lemon, Mike; Luis Guerrero (lguerrero@santacruzcountyaz.gov); Maria Nunez; Marlene Gaither; mbolinger@co.greenlee.az.us; Michael Lemon (mlemon@gilacountyaz.gov); Michael McGee (MMcGee@cochise.az.gov); Michael O'Driscoll; Monty Stansbury; Randy Phillips (rphillips@coconino.az.gov)
Cc: Roland S. Mader (rmader@azda.gov); David Morales (DMorales@mail.maricopa.gov); Vas Hofer (vhofer@mail.maricopa.gov); Michael Dunn (michael.dunn@fsis.usda.gov); John Marcello (John.Marcello@fda.hhs.gov); Herminio Francisco (Herminio.Francisco@fda.hhs.gov); Jeff Black (jblack@azda.gov); mdahlberg@azgfd.gov; Heather Miller; Gork Yee; Kathryn Mathewson; Brigitte Dufour; Foodborne and Waterborne Diseases; Harmony Duport; Gavin Lawson (Glawson@graham.az.gov); Staci Herbert; jkline@co.greenlee.az.us; Becky Bramlett (Becky.Bramlett@mohavecounty.us); Elizabeth A. Richardson; Marlene Gaither (mgaither@coconino.az.gov); David Pineda
Subject: Crayfish

Good morning,
I've received two inquiries over the last month regarding the catching of crayfish from Arizona lakes and then selling them at retail (to restaurants). I spoke to representatives at Game and Fish and was informed that the commercialization of wildlife is prohibited, as wildlife is held in trust for the benefit of the public. This means that individuals are not allowed to catch and sell wildlife to retail food establishments. Just wanted to pass on the information to all the counties in case you had similar inquiries.
Have a great week!
Blanca

Blanca Caballero, CPM, RS/REHS
Food Safety & Environmental Services Program Manager
Office of Environmental Health
Arizona Department of Health Services
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Crayfish

Blanca Caballero

From: Cecil Newell <Cecil.Newell@yavapai.us>
Sent: Tuesday, August 04, 2015 8:50 AM
To: Blanca Caballero
Subject: FW: Crawfish/Crayfish/Crawdads

From: Samantha [mailto:sleepymeadow02@gmail.com]
Sent: Monday, July 27, 2015 4:41 PM
To: Cecil Newell
Subject: RE: Crawfish/Crayfish/Crawdads

I would like to start by saying thank you very much for your reply and help. Currently I catch crawfish for my family and my personal consumption from Lynx lake in Yavapai county. I do occasionally fish other small public lakes in Yavapai county as well like Goldwater and Watson lake. I'm just catching so many. As far as processing them for sell my plan was to just clean them with a tap water rinse, then a salt water bath to purge them and then another tap water rinse. I already contacted the Department of Fish and Game and was informed that in order to legally transport the crawfish they must be dead and they suggested immediately burying the crawfish in ice after catching them so they die. They also informed me that I have to have a valid fishing license, which I do have already.
I have an almost unlimited supply of ice so my plan to store them would be after the rinse, purge, rinse I would then package them into 1lb and 5lbs mesh bags put them back on ice and immediately sell that days catch. Any left over at the end of the day I may possibly bring home and freeze. Another option would be to boil them and then freeze or boil them and remove the tail meat and freeze. The boiling process is an outdoor propane cooker, a 30qt pot with basket insert. I add a Cajun spice powder I buy from Frys to the water. Then I bring the water to a boil. I add the crawfish bring the water back to a boil then put the lid on and let the crawfish cook for 5 to 10min. Then I remove the crawfish from the water and immediately put them on fresh ice. I may also just throw away the leftover catch I'm not really sure yet because I would prefer to sell only fresh caught that day crawfish.
I would also like to add that I am interested in selling the crawfish in as many venues as possible. Roadside stand, farmers market, swap meet maybe, to a local restaurant possibly, and also to a seafood market in Phoenix that I have considered as well.
I would also like to add that I currently work at a fast food restaurant and have for 14 years. I am Serve Safe certified and I have a copy of my Serve Safe certification.
I just want to cover all my bases and operate completely within the law.
Thank you so much for you time and help.

Thank you,
Samantha Hamilton

On Jul 27, 2015 1:38 PM, "Cecil Newell" <Cecil.Newell@yavapai.us> wrote:
Samantha, in order for me to give you an informative answer to this question I will need further information such as; where are you getting the crawfish, are you processing them, catching them from local lakes, how and where are you going store the crawfish, etc..
Please contact me with additional information on how, what, where, and when on your proposed business of selling crawfish locally.

Cecil F. Newell, R.S.
Public Health Protection Section Manager
(928) 442-5492
cecil.newell@yavapai.us

-----Original Message-----
From: David McAtee
Sent: Monday, July 27, 2015 6:29 AM
To: Cecil Newell; Sandra Gray
Subject: FW: Crawfish/Crayfish/Crawdads

Thank you,
David McAtee

Community Relations and PIO
Yavapai County Community Health Services
928-442-5509 or 928-420-2017
www.YavapaiHealth.com

From: Samantha [sleepymeadow02@gmail.com]
Sent: Sunday, July 26, 2015 11:16 AM
To: web.health
Subject: Crawfish/Crayfish/Crawdads

I would like to know if there are any license or permits I need to purchase and/or earn in order to legally sell crawfish to the public, restaurants or markets.

Thank you,
Samantha Hamilton

Home Baked Goods Email 1.pdf

Blanca Caballero

Subject: FW: Home Baked Goods

Blanca Caballero
Food Safety & Environmental Services Program Manager
Office: 602-364-3851

From: Bree Daugherty [mailto:Bree.Daugherty@mohavecounty.us]
Sent: Wednesday, September 16, 2015 9:57 AM
To: Blanca Caballero
Subject: Home Baked Goods

Hi Blanca,
I have a question relating to the Home Baked Goods law, we have a vendor who would like to sell pre-packaged nuts, seeds, trail mix, and candies. They do not make these products themselves, but buy from a supplier. However, they would like to open and repackage for sampling in their home and then take to events to sell. Would this fall under the Home Baked Goods since the products are not potentially hazardous and they are essentially doing what a person who does prepare home baked goods would be doing (which does not require our permit)?

One other question I have received recently, are caramel apples allowed?

Bree R. Daugherty, REHS, RS
Environmental Health Manager
Mohave County Department of Public Health
Environmental Health Division
PO Box 7000
Kingman, AZ 86402
(928) 757-0901
bree.daugherty@mohavecounty.us

ATTACHMENT A

TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

ARTICLE 1. FOOD AND DRINK

R9-8-101. Definitions

In addition to the terms defmed in the material incorporated by reference in R9-8-107, which are designated by all capital letters, the following definitions apply in this Article, unless otherwise specified:

1. "Agency" means any board, commission, department, office, or other administrative unit of the federal government, the state, or a political subdivision of the state.
2. "Applicant" means the following PERSON requesting a LICENSE:
   a. If an individual, the individual who owns the FOOD ESTABLISHMENT;
   b. If a corporation, any officer of the corporation;
   c. If a limited liability company, the designated manager or, if no manager is designated, any member of the limited liability company;
   d. If a partnership, any two of the partners;
   e. If a joint venture, any two individuals who signed the joint venture agreement;
   f. If a trust, the trustee of the trust;
   g. If a religious or nonprofit organization, the individual in the senior leadership position within the organization.
   h. If a school district, the superintendent of the district;
   i. If an agency, the individual in the senior leadership position within the agency; or
   j. If a county, municipality, or other political subdivision of the state, the individual in the senior leadership position within the county, municipality, or political subdivision.
3. "Department" means the Arizona Department of Health Services.
4. "Developmental disability" means the same as in A.R.S. § 36-551.
5. "FC" means the United States Food and Drug Administration publication, Food Code: 1999 Recommendations of the United States Public Health Service, Food and Drug Administration (1999), as modified and incorporated by reference in R9-8-107.
6. "Incongruous" means inconsistent with the inspection reports of other inspectors or the REGULATORY AUTHORITY as a whole because significantly more or fewer violations of individual CRITICAL ITEMS are documented.
7. "Prepare" means to process commercially for human consumption by manufacturing, packaging, labeling, cooking, or assembling.
8. "Public health control" means a method to prevent transmission of foodborne illness to the CONSUMER.
9. "Remodel" means to change the PHYSICAL FACILITIES or PLUMBING FIXTURES in a FOOD ESTABLISHMENT'S FOOD preparation, storage, or cleaning areas through construction, replacement, or relocation, but does not include the replacement of old EQUIPMENT with new EQUIPMENT of the same type.
10. "Requester" means a PERSON who requests an approval from the REGULATORY AUTHORITY, but who is not an applicant or a LICENSE HOLDER.

R9-8-102. Applicability

A. Except as provided in subsection (B), this Article applies to any FOOD ESTABLISHMENT.

B. This Article does not apply to the following, which are not subject to routine inspection or other regulatory activities by a REGULATORY AUTHORITY:

1. The beneficial use of wildlife meat authorized in A.R.S. § 17-240 and 12 A.A.C. 4, Article 1;
2. Group homes, as defined in A.R.S. Title 36, Chapter 5.1, Article 1;
3. Child care group homes, as defined in A.R.S. Title 36, Chapter 7.1, Article 4;

4. Residential group care facilities, as defined in 6 A.A.C. 5, Article 74, that have 20 or fewer clients;
5. Assisted living homes, as defined in 9 A.A.C. 10, Article 7;
6. Adult day health care services, as defined in 9 A.A.C. 10, Article 7, that have 15 or fewer clients;
7. Behavioral health service agencies, licensed under 9 A.A.C. 20, that provide residential or partial care services for 10 or fewer clients;
8. Hospice inpatient facilities, licensed under 9 A.A.C. 10, Article 8, that have 20 or fewer patients.
9. Food or drink that is:
   a. Served at a noncommercial social event that takes place at a workplace, such as a potluck;
   b. Prepared at a cooking school if:
      i. The cooking school is conducted in the kitchen of an owner-occupied home,
      ii. Only one meal per day is prepared and served by students of the cooking school,
      iii. The meal prepared at the cooking school is served to not more than 15 students of the cooking school, and
      iv. The students of the cooking school are provided with written notice that the food is prepared in a kitchen that is not regulated or inspected by a REGULATORY AUTHORITY;
   c. Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes;
   d. Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising, or an employee social event;
   e. Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut onsite for immediate consumption; or
   f. Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous and that is displayed in an area of less than 10 linear feet; and
10. Baked or confectionary goods that are:
   a. Not potentially hazardous;
   b. Prepared in the kitchen of a private home for commercial purposes by or under the supervision of an individual who has obtained a food handler's card, if issued by the county in which the individual resides, and is registered with the Department, as required in A.R.S. § 36-136(H)(4)(g); and
   c. Labeled with:
      i. The name, address, and telephone number of the individual registered with the Department;
      ii. A list of the ingredients in the baked or confectionary goods;
      iii. A statement that the baked or confectionary goods are prepared in a private home; and
      iv. If applicable, a statement that the baked or confectionary goods are prepared in a facility for individuals with developmental disabilities.

C. A kitchen in a private home in which baked or confectionary goods are prepared that meets the requirements in A.R.S. § 36-136(H)(4)(g) and (H)(13) and subsection (B)(10) is an approved source of baked or confectionary goods for retail sale.

R9-8-103. Food Establishment License Application

A. To obtain a FOOD ESTABLISHMENT LICENSE, an applicant shall complete and submit to the REGULATORY AUTHORITY a FOOD ESTABLISHMENT LICENSE application form supplied by the REGULATORY AUTHORITY that indicates all of the following:
1. The full name, telephone number, and mailing address of the applicant;
2. The name, telephone number, and street address of the FOOD ESTABLISHMENT;

3. Whether the FOOD ESTABLISHMENT is mobile or stationary;
4. Whether the FOOD ESTABLISHMENT is temporary or permanent;
5. Whether the FOOD ESTABLISHMENT facility is one of the following:
   a. A new construction that is not yet completed,
   b. An existing structure that is being converted for use as a FOOD ESTABLISHMENT, or
   c. An existing FOOD ESTABLISHMENT facility that is being remodeled;
6. Whether the FOOD ESTABLISHMENT prepares, offers for sale, or serves POTENTIALLY HAZARDOUS FOOD;
7. Whether the FOOD ESTABLISHMENT does any of the following:
   a. Prepares, offers for sale, or serves POTENTIALLY HAZARDOUS FOOD only to order upon CONSUMER request;
   b. Prepares, offers for sale, or serves POTENTIALLY HAZARDOUS FOOD in advance, in quantities based on projected CONSUMER demand;
   c. Prepares, offers for sale, or serves POTENTIALLY HAZARDOUS FOOD using time alone, rather than time and temperature, as the public health control as described in FC § 3-501.19;
   d. Prepares POTENTIALLY HAZARDOUS FOOD in advance using a multiple stage FOOD preparation method that may include the following:
      i. Combining POTENTIALLY HAZARDOUS FOOD ingredients,
      ii. Cooking,
      iii. Cooling,
      iv. Reheating,
      v. Hot or cold holding,
      vi. Freezing, or
      vii. Thawing;
   e. Prepares FOOD as specified under subsection (A)(7)(d) for delivery to and consumption at a location off of the PREMISES where prepared;
   f. Prepares FOOD as specified under subsection (A)(7)(d) for service to a HIGHLY SUSCEPTIBLE POPULATION; or
   g. Does not prepare FOOD, but offers for sale only pre-PACKAGED FOOD that is not POTENTIALLY HAZARDOUS FOOD; and
8. The applicant's signature and the date signed.

B. An applicant who operates FOOD ESTABLISHMENTS at multiple locations shall submit a completed LICENSE application for each location.

R9-8-104. Time-frames

A. This Section applies to the Department and to a local health department or public health services district to which the duty to comply with A.R.S. Title 41, Chapter 6, Article 7.1 has been delegated by the Department.

B. The overall time-frame described in A.R.S. § 41-1072 for each type of approval granted by the REGULATORY AUTHORITY is provided in Table 1. The applicant, LICENSE HOLDER, or requester and the REGULATORY AUTHORITY may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.

C. The administrative completeness review time-frame described in A.R.S. § 41-1072 for each type of approval granted by the REGULATORY AUTHORITY is provided in Table 1 and begins on the date that the REGULATORY AUTHORITY receives an application or request for approval.

1. The REGULATORY AUTHORITY shall mail a notice of administrative completeness or deficiencies to the applicant, LICENSE HOLDER, or requester within the administrative completeness review time-frame.

a. A notice of deficiencies shall list each deficiency and the information and documentation needed to complete the application or request for approval.
b. If the REGULATORY AUTHORITY issues a notice of deficiencies within the administrative completeness review time-frame, the administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice is issued until the date that the REGULATORY AUTHORITY receives the missing information from the applicant, LICENSE HOLDER, or requester.
c. If the applicant, LICENSE HOLDER, or requester fails to submit to the REGULATORY AUTHORITY all of the information and documents listed in the notice of deficiencies within 180 days from the date that the REGULATORY AUTHORITY mailed the notice of deficiencies, the REGULATORY AUTHORITY shall consider the application or request for approval withdrawn.

2. If the REGULATORY AUTHORITY issues a LICENSE or other approval to the applicant, LICENSE HOLDER, or requester during the administrative completeness review time-frame, the REGULATORY AUTHORITY shall not issue a separate written notice of administrative completeness.

D. The substantive review time-frame described in A.R.S. § 41-1072 is provided in Table 1 and begins as of the date on the notice of administrative completeness.

1. The REGULATORY AUTHORITY shall mail written notification of approval or denial of the application or other request for approval to the applicant, LICENSE HOLDER, or requester within the substantive review time-frame.
2. As part of the substantive review for a FOOD ESTABLISHMENT LICENSE, the REGULATORY AUTHORITY may complete an inspection that may require more than one visit to the FOOD ESTABLISHMENT.
3. During the substantive review time-frame, the REGULATORY AUTHORITY may make one comprehensive written request for additional information, unless the REGULATORY AUTHORITY and the applicant, LICENSE HOLDER, or requester have agreed in writing to allow the REGULATORY AUTHORITY to submit supplemental requests for information.
   a. The comprehensive written request regarding a FOOD ESTABLISHMENT LICENSE application may include a request for submission of plans and specifications, as described in FC § 8-201.11.
   b. The comprehensive written request regarding a request for a VARIANCE under FC § 8-103.10 may include a request for a HACCP PLAN, as described in FC § 8-201.13(A), if the REGULATORY AUTHORITY determines that a HACCP PLAN is required.
   c. If the REGULATORY AUTHORITY issues a comprehensive written request or a supplemental request for information, the substantive review time-frame and the overall time-frame are suspended from the date that the REGULATORY AUTHORITY issues the request until the date that the REGULATORY AUTHORITY receives all of the information requested.
4. The REGULATORY AUTHORITY shall issue a license or an approval unless:
   a. For a FOOD ESTABLISHMENT LICENSE application, the REGULATORY AUTHORITY determines that the application for a FOOD ESTABLISHMENT LICENSE or the FOOD ESTABLISHMENT does not satisfy all of the requirements of this Article;
   b. For a VARIANCE, the REGULATORY AUTHORITY determines that the request for a VARIANCE fails to demonstrate that the VARIANCE will not result in a health HAZARD or nuisance;
   c. For approval of plans and specifications, the REGULATORY AUTHORITY determines that the plans and specifications do not satisfy all of the requirements of this Article;
   d. For approval of a HACCP PLAN, the REGULATORY AUTHORITY determines that the HACCP PLAN does not satisfy all of the requirements of this Article;

e. For approval of an inspection form, the Department determines that the inspection form does not satisfy all of the requirements of R9-8-108(B)-(C); or
f. For approval of a quality assurance program, the Department determines that the quality assurance program does not satisfy all of the requirements of R9-8-108(E)(1).

5. If the REGULATORY AUTHORITY denies an application or request for approval, the REGULATORY AUTHORITY shall send to the applicant, LICENSE HOLDER, or requester a written notice of denial setting forth the reasons for the denial and all other information required by A.R.S. § 41-1076.

E. For the purpose of computing time-frames in this Section, the day of the act, event, or default from which the designated period of time begins to run is not included. Intermediate Saturdays, Sundays, and legal holidays are included in the computation. The last day of the period so computed is included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday.

Table 1. Time-frames (in days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-frame	Substantive Review Time-frame
FOOD ESTABLISHMENT LICENSE	A.R.S. § 36-136(H)(4)	60	30	30
Approval of VARIANCE under FC § 8-103.10	A.R.S. § 36-136(H)(4)	90	30	60
Approval of Plans and Specifications under FC § 8-201.11	A.R.S. § 36-136(H)(4)	90	30	60
Approval of HACCP PLAN under FC § 8-201.13	A.R.S. § 36-136(H)(4)	90	30	60
Approval of Inspection Form	A.R.S. § 36-136(H)(4)	90	30	60
Approval of Quality Assurance Program	A.R.S. § 36-136(H)(4)	90	30	60

R9-8-105. Issuance of License

A FOOD ESTABLISHMENT LICENSE issued by the REGULATORY AUTHORITY shall bear the following information:

1. The name of the FOOD ESTABLISHMENT,
2. The street address of the FOOD ESTABLISHMENT,
3. The full name of the LICENSE HOLDER,
4. The mailing address of the LICENSE HOLDER, and
5. A unique identification number assigned by the REGULATORY AUTHORITY.

R9-8-106. License Suspension or Revocation

A. The REGULATORY AUTHORITY may suspend or revoke a FOOD ESTABLISHMENT LICENSE if the LICENSE HOLDER:

1. Violates this Article or A.R.S. § 36-601, or

2. Provides false information on a LICENSE application.

B. A LICENSE revocation or suspension hearing shall be conducted as follows:

1. If the REGULATORY AUTHORITY is the Department, the hearing shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and any rules promulgated by the Office of Administrative Hearings;
2. If the REGULATORY AUTHORITY is a local health department or public health services district to which the duty to comply with A.R.S. Title 41, Chapter 6, Article 10 has been delegated, the hearing shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and any rules promulgated by the Office of Administrative Hearings; and
3. For all other REGULATORY AUTHORITIES, a LICENSE revocation or suspension hearing shall be conducted in accordance with the procedures adopted by a county board of supervisors as required by A.R.S. § 36-183.04(E).

R9-8-107. Food Safety Requirements

A. A LICENSE HOLDER shall comply with the United States Food and Drug Administration publication, Food Code: 1999 Recommendations of the United States Public Health Service, Food and Drug Administration (1999), as modified, which is incorporated by reference. This incorporation by reference contains no future editions or amendments. The incorporated material is on file with the Department and is available for purchase from the United States Department of Commerce, Technology Administration, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, as report number PB99-115925, or from the United States Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, as ISBN 0-16-050028-1; and is available on the Internet at http://www.fda.gov.

B. The material incorporated by reference in subsection (A) is modified as follows:

1. Where the term "permit" appears, it is replaced with "license";
2. Subparagraph 1-201.10(B)(2)(a) is modified to read: "'Food additive' has the meaning stated in A.R.S. § 36-901(7).";
3. Subparagraph 1-201.10(B)(2)(b) is modified to read: "'Color additive' has the meaning stated in A.R.S. § 36-901(2).";
4. Subparagraph 1-201.10(B)(3) is modified to read: "'Adulterated' means possessing one or more of the conditions enumerated in A.R.S. § 36-904(A).";
5. Subparagraph 1-201.10(B)(4) is modified to read: "'Approved' means acceptable to the REGULATORY AUTHORITY or to the FOOD regulatory agency that has jurisdiction based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.";
6. Subparagraph 1-201.10(B)(14) is modified by deleting "or FOOD PROCESSING PLANT";
7. Subparagraph 1-201.10(B)(31)(c)(iii) is deleted;
8. Subparagraph 1-201.10(B)(32) is modified to read: "'Food processing plant' means a FOOD ESTABLISHMENT that manufactures, packages, labels, or stores FOOD for human consumption and does not provide FOOD directly to a CONSUMER.";
9. Subparagraph 1-201.10(B)(50)(a) is modified to read: "'Packaged' means bottled, canned, cartoned, securely bagged, or securely wrapped.";
10. Subparagraph 1-201.10(B)(54) is modified to read: "'Person in charge' means the individual present at a FOOD ESTABLISHMENT who is responsible for the management of the operation at the time of inspection.";
11. Subparagraph 1-201.10(B)(69) is modified to read: "'Regulatory authority' means the Department or a local health department or public health services district operating under a delegation of authority from the Department.";

12. Paragraph 3-202.11(C) is modified to read: "POTENTIALLY HAZARDOUS FOOD that is cooked to a temperature and for a time specified under §§ 3401.11 - 3401.13 and received hot shall be at a temperature of 54° C (130° F) or above.";
13. Paragraph 3-202.14(B) is modified to read: "All milk and milk products sold at the retail level in Arizona shall comply with the requirements in A.A.C. Title 3, Chapter 2, Article 8.";
14. Paragraph 3-202.17(B) is deleted;
15. Paragraph 3-202.18(B) is deleted;
16. Paragraph 3-203.11(A) is modified to read: "Except as specified in ¶¶ (B) and (C) of this Section, MOLLUSCAN SHELLFISH may not be removed from the container in which they are received other than immediately before sale, preparation for service, or preparation in a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY.";
17. Paragraph 3-203.12(B) is modified to read:
    "(B) The identity of the source of SHELLSTOCK that are prepared by a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY, sold, or served shall be maintained by retaining SHELLSTOCK tags or labels for 90 calendar days from the date the container is emptied by:
    (1) Using an APPROVED record keeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the SHELLSTOCK are prepared by a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY, sold, or served; and
    (2) If SHELLSTOCK are removed from their tagged or labeled container:
    (a) Using only one tagged or labeled container at a time, or
    (b) Using more than one tagged or labeled container at a time and obtaining a VARIANCE from the REGULATORY AUTHORITY as specified in § 8-103.10 based on a HACCP PLAN that:
    (i) Is submitted by the LICENSE HOLDER and APPROVED as specified under § 8-103.11,
    (ii) Preserves source identification by using a record keeping system as specified under Subparagraph (B)(1) of this Section, and
    (iii) Ensures that SHELLSTOCK from one tagged or labeled container are not commingled with SHELLSTOCK from another container before being ordered by the CONSUMER or prepared by a FOOD PROCESSING PLANT licensed by the REGULATORY AUTHORITY.";
18. Paragraph 3-301.11(B) is modified by replacing "SINGLE-USE gloves" with "non-latex SINGLE-USE gloves";
19. Paragraph 3-304.12(F) is modified to read: "In a container of water if the water is maintained at a temperature of at least 54° C (130° F) and the container is cleaned at a frequency specified under Subparagraph 4-602.11(D)(7).";
20. Section 3-304.15 is modified by adding a new Paragraph (E):
    "(E) Latex gloves may not be used in direct contact with FOOD.";
21. Section 3-401.13 is modified to read: "Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of 54° C (130° F).";
22. Paragraph 3-403.11(C) is modified to read: "READY-TO-EAT FOOD taken from a commercially processed, HERMETICALLY SEALED CONTAINER, or from an intact package from a FOOD PROCESSING PLANT that is inspected by the FOOD regulatory agency that has jurisdiction over the plant, shall be heated to a temperature of at least 54° C (130° F) for hot holding.";
23. Subparagraph 3-501.14(A)(1) is modified to read: "Within 2 hours, from 54° C (130° F) to 21° C (70° F); and";
24. Paragraph 3-501.16(A) is modified to read: "At 54° C (130° F) or above; or";

25. Subparagraph 3-501.16(C)(2) is modified to read: "Within 10 years of the adoption of this Code, the EQUIPMENT is upgraded or replaced to maintain FOOD at a temperature of 5° C (41° F) or less.";
26. Section 3-502.11 is modified by deleting "custom processing animals that are for personal use as FOOD and not for sale or service in a FOOD ESTABLISHMENT;";
27. Paragraph 3-701.11(C) is modified by replacing "who has been restricted or excluded as specified under § 2-201.12" with "who has any of the conditions that require reporting to the PERSON IN CHARGE under § 2-201.11 or who has been excluded by the REGULATORY AUTHORITY under the communicable disease rules at 9 A.A.C. 6";
28. Subparagraph 4-602.11(D)(7) is modified by replacing "60° C (140° F)" with "54° C (130° F)";
29. Section 5-101.13 is modified to read: "BOTTLED DRINKING WATER used or sold in a FOOD ESTABLISHMENT shall be obtained from APPROVED sources, in accordance with LAW.";
30. Paragraph 5-501.116(A) is modified by replacing "§ 5-402.14" with "§§ 5-402.13 and 5-403.11";
31. Section 6-501.116 is added to read:
    "6-501.116 Vending Machine Signs.
    The LICENSE HOLDER for a VENDING MACHINE shall affix to the VENDING MACHINE a permanent sign that includes:
    1. A unique identifier for the VENDING MACHINE, and
    2. A telephone number for CONSUMERS to contact the LICENSE HOLDER.";
32. Paragraph 8-101.10(A) is modified by deleting ", as specified in § 1-102.10,";
33. Paragraph 8-201.11(C) is modified by replacing "as specified under ¶ 8-302.14(C)" with "as described in R9-8-103(A)(6)-(7)";
34. Paragraph 8-304.11(D) is modified to read: "Require FOOD EMPLOYEE applicants to whom a conditional offer of employment is made and FOOD EMPLOYEES to report to the PERSON IN CHARGE the information required under § 2-201.11";
35. Paragraph 8-304.11(H) is modified by replacing "5 years" with "10 years";
36. Section 8-304.20 is modified by replacing "as specified under ¶ 8-302.14(C)" with "as described in R9-8-103(A)(6)-(7)";
37. Section 8-402.11 is modified by adding the following at the end of the Section: "The Department or a local health department or public health services district to which the dnty to comply with A.R.S. § 41-1009 has been delegated by the Department shall comply with A.R.S. § 41-1009 when performing inspections.";
38. Section 8-403.50 is modified by deleting "Except as specified in § 8-202.10," and capitalizing "the";
39. Section 8-404.12 is modified by adding the following at the end of the Section: "The REGULATORY AUTHORITY shall approve or deny resnmption of operations within five days after receipt of the LICENSE HOLDER'S request to resume operations.";
40. Section 8-405.11 is modified by adding the following at the end of the Section:
    "(C) The Department or a local health department or public health services district to which the duty to comply with A.R.S. § 41-1009 has been delegated by the Department shall not provide the LICENSE HOLDER an opportunity to correct critical Code violations or HACCP PLAN deviations after the date of inspection if the Department or the local health department or public health services district determines that the deficiencies are:
    (1) Committed intentionally;
    (2) Not correctable within a reasonable period of time;
    (3) Evidence of a pattern of noncompliance; or
    (4) A risk to any PERSON; the public health, safety, or welfare; or the environment.
    (D) If the Department or a local health department or public health services district to which the duty to comply with A.R.S. § 41-1009 has been delegated by the Department allows the LICENSE HOLDER an opportunity to correct violations or deviations after the date of inspection, the Department, local health department, or public health services district shall inspect

the FOOD ESTABLISHMENT within 24 hours after the deadline for correction has expired. If the Department, local health department, or public health services district determines that the violations or deviations have not been corrected, the Department, local health department, or public health services district may take any enforcement action authorized by LAW, based upon those violations or deviations.

(E) A decision made under subparagraph 8-405.11(C) or subparagraph 8-405.11(D) by the Department or a local health department or public health services district to which the duty to comply with A.R.S. § 41-1009 has been delegated by the Department is not an appealable agency action, as defined by A.R.S. § 41-1092.";

41. The following FC Sections are deleted:
    a. Section 1-102.10,
    b. Section 1-103.10,
    c. Section 2-201.12,
    d. Section 2-201.13,
    e. Section 2-201.14,
    f. Section 2-201.15,
    g. Section 8-102.10,
    h. Section 8-202.10,
    i. Section 8-302.11,
    j. Section 8-302.12,
    k. Section 8-302.13,
    l. Section 8-302.14,
    m. Section 8-303.10,
    n. Section 8-303.20,
    o. Section 8-303.30,
    p. Section 8-402.20,
    q. Section 8-402.30,
    r. Section 8-402.40,
    s. Section 8-403.10,
    t. Section 8-501.10,
    u. Section 8-501.20,
    v. Section 8-501.30, and
    w. Section 8-501.40; and
42. The annexes are excluded.

R9-8-108. Inspection Standardization and Documentation

A. At each inspection, the REGULATORY AUTHORITY shall, at a minimum, inspect for compliance with each of the applicable CRITICAL ITEMS in the following categories:

1. Temperature control of POTENTIALLY HAZARDOUS FOODS, as required by FC §§ 3-401.11, 3-401.12, 3-403.11, 3-501.14, and 3-501.16;
2. EMPLOYEE health and hygienic practices, as required by FC §§ 2-201.11, 2-301.11, 2-301.12, 2-301.14, 2-401.11, 2-401.12, 2-403.11, 3-301.11, 3-301.12, and 5-203.11;
3. Time as a public health control, as required by FC § 3-501.19;
4. FOOD condition and source, as required by FC §§ 3-101.11, 3-201.11, 3-201.12, 3-201.14, 3-201.15, 3-201.16, 3-201.17, 3-202.11, 3-202.13, 3-202.14, 3-202.15, 3-202.16, 3-202.18, 3-203.12, 5-101.11, and 5-101.13;
5. CONSUMER advisories, as required by FC § 3-603.11;
6. Contamination prevention, as required by FC §§ 3-302.11, 3-302.13, 3-302.14, 3-304.11, 3-306.13, 3-306.14, 4-601.11, 4-602.11, 4-702.11, 4-703.11, 5-101.12, 5-201.11, and 5-202.11;

7. Date marking and disposal of READY-TO-EAT FOODS, as required by FC §§ 3-501.17 and 3-501.18;
8. Responsibility and knowledge of the PERSON IN CHARGE, as required by FC §§ 2-101.11 and 2-102.11; and
9. Compliance with a HACCP PLAN or VARIANCE, as required by FC § 8-103.12;

B. The REGULATORY AUTHORITY shall document its inspection results on an inspection report form provided or approved by the Department. The inspection report form shall include the following:

1. The name and address of the FOOD ESTABLISHMENT inspected;
2. The LICENSE number of the FOOD ESTABLISHMENT inspected;
3. The date of inspection;
4. The type of inspection;
5. A rating for each of the observed CRITICAL ITEMS listed in subsection (A), using a rating scheme that indicates whether the CRITICAL ITEM is met;
6. Space for comments, including observed violations of non-CRITICAL ITEMS;
7. Signature and date lines for the PERSON IN CHARGE of the FOOD ESTABLISHMENT; and
8. Signature and date lines for the inspector conducting the inspection.

C. The REGULATORY AUTHORITY shall also document on the inspection form the applicable CRITICAL ITEMS listed in subsection (A) that were not observed during the inspection, unless the REGULATORY AUTHORITY has a quality assurance program that has been approved by the Department under subsection (E).

D. If a REGULATORY AUTHORITY desires to create its own inspection form, the REGULATORY AUTHORITY may request approval of its inspection form by submitting a written request to the Department along with a copy of the inspection form for which approval is sought. The Department shall approve an inspection form if it determines that the inspection form satisfies all of the requirements of subsections (B) and (C).

E. A REGULATORY AUTHORITY may request approval of a quality assurance program by submitting a written request to the Department along with a description of the quality assurance program for which approval is sought.

1. The quality assurance program shall include the following:
   a. A system for monitoring the inspection reports completed by each inspector every six months and comparing them to the reports of other inspectors and the REGULATORY AUTHORITY as a whole with respect to the number and types of violations documented during the same period;
   b. Identification of each inspector whose inspection reports are incongruous;
   c. Reinspection of a representative sample of an inspector's FOOD ESTABLISHMENTS for which inspection reports are incongruous by a quality assurance inspector within 30 days of identification of an inspector under subsection (E)(1)(b) to determine whether the incongruous reports indicate a misapplication of the rules by the inspector;
   d. Follow-up with each inspector determined by a quality assurance inspector to have misapplied the rules:
      i. If the inspector has not previously required follow-up, additional training by a quality assurance inspector regarding any misapplication of the rules by the inspector;
      ii. If the inspector has previously received additional training under subsection (E)(1)(d)(i), formal counseling by the inspector's direct supervisor and a quality assurance inspector; or
      iii. If the inspector has previously been formally counseled under subsection (E)(1)(d)(ii), disciplinary action; and
   e. Consideration by the REGULATORY AUTHORITY of any misapplication of the rules by the inspector when completing the inspector's performance evaluations.

2. The Department shall approve a quality assurance program if it determines that the quality assurance program satisfies all of the requirements of subsection (E)(1).

R9-8-109. Cease and Desist and Abatement

A. Engaging in any practice in violation of this Article is a public nuisance.

B. If the REGULATORY AUTHORITY has reasonable cause to believe that any FOOD ESTABLISHMENT is creating or maintaining a nuisance, the REGULATORY AUTHORITY shall order the LICENSE HOLDER for the FOOD ESTABLISHMENT to cease and desist the activity and to abate the nuisance as follows:

1. The REGULATORY AUTHORITY shall serve upon the LICENSE HOLDER for the FOOD ESTABLISHMENT a written cease and desist and abatement order requiring the LICENSE HOLDER to cease and desist the activity and to remove the nuisance at the LICENSE HOLDER's expense within 24 hours after service of the order. The order shall contain the following:
   a. A reference to the statute or rule that is alleged to have been violated or on which the order is based,
   b. A description of the LICENSE HOLDER's right to request a hearing, and
   c. A description of the LICENSE HOLDER's right to request an informal settlement conference.
2. The REGULATORY AUTHORITY shall serve the order and any subsequent notices by personal delivery or certified mail, return receipt requested, to the LICENSE HOLDER's or other party's last address of record with the REGULATORY AUTHORITY or by any other method reasonably calculated to effect actual notice on the LICENSE HOLDER or other party.
3. The LICENSE HOLDER or another party whose rights are determined by the order may obtain a hearing to appeal the order by filing a written notice of appeal with the REGULATORY AUTHORITY within 30 days after service of the order. The LICENSE HOLDER or other party appealing the order shall serve the notice of appeal upon the REGULATORY AUTHORITY by personal delivery or certified mail, return receipt requested, to the office of the REGULATORY AUTHORITY or by any other method reasonably calculated to effect actual notice on the REGULATORY AUTHORITY.
4. If a notice of appeal is timely filed, the REGULATORY AUTHORITY shall do one of the following:
   a. If the REGULATORY AUTHORITY is the Department or a local health department or public health services district to which the duty to comply with A.R.S. Title 41, Chapter 6, Article 10 has been delegated, the notification and hearing shall comply with A.R.S. Title 41, Chapter 6, Article 10 and any rules promulgated by the Office of Administrative Hearings.
   b. For all other regulatory authorities, the notification and hearing shall comply with the procedures adopted by a county board of supervisors as required by A.R.S. § 36-183.04(E).
5. If no written notice of appeal is timely filed, the order shall become final without further proceedings.

C. The REGULATORY AUTHORITY shall inspect the FOOD ESTABLISHMENT 24 hours after service of the order to determine whether the LICENSE HOLDER has complied with the order. If the REGULATORY AUTHORITY determines upon inspection that the LICENSE HOLDER has not ceased the activity and abated the nuisance, the REGULATORY AUTHORITY shall cause the nuisance to be removed, regardless of whether the LICENSE HOLDER is appealing the order.

D. If the LICENSE HOLDER fails or refuses to comply with the order after a hearing has upheld the order or after the time to appeal the order has expired, the REGULATORY AUTHORITY may file an action against the LICENSE HOLDER in the superior court of the county in which the violation occurred, requesting that a permanent injunction be issued to restrain the LICENSE HOLDER from engaging in further violations as described in the order.

ATTACHMENT B

36-104. Powers and duties

This section is not to be construed as a statement of the department's organization. This section is intended to be a statement of powers and duties in addition to the powers and duties granted by section 36-103. The director shall:

1. Administer the following services:

(a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds utilized by the department.

(b) Public health support services, which shall include at a minimum:

(i) Consumer health protection programs that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.

(ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.

(iii) Laboratory services programs.

(iv) Health education and training programs.

(v) Disposition of human bodies programs.

(c) Community health services, which shall include at a minimum:

(i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.

(ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.

(iii) Children with physical disabilities services programs.

(iv) Programs for the prevention and early detection of an intellectual disability.

(d) Program planning, which shall include at least the following:

(i) An organizational unit for comprehensive health planning programs.

(ii) Program coordination, evaluation and development.

(iii) Need determination programs.

(iv) Health information programs.

2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal government liaison, grant development and management and departmental and interagency coordination.

3. Make rules and regulations for the organization and proper and efficient operation of the department.

4. Determine when a health care emergency or medical emergency situation exists or occurs within the state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.

5. Provide a system of unified and coordinated health services and programs between the state and county governmental health units at all levels of government.

6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of the department's duties subject to the departmental rules and regulations on the confidentiality of information.

10. Establish and maintain separate financial accounts as required by federal law or regulations.

11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.
12. Take appropriate steps to reduce or contain costs in the field of health services.
13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.
14. Encourage an effective use of available federal resources in this state.
15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.
16. Promote the effective utilization of health manpower and health facilities that provide health care for the citizens of this state.
17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.
18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.
19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.
20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
21. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.
22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are no lapsing and do not revert to the state general fund at the close of the fiscal year.
23. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.
24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for the event is received from the incident commander, the emergency response commission or the department of public safety and if funding is available. Coordination of public health issues shall include general environmental health consultation and risk assessment services consistent with chapter 13, article 8 of this title and, in consultation with the Arizona poison control system, informing the public as to potential public health risks from the environmental exposure. Pursuant to chapter 13, article 8 of this title, the department of health services shall also prepare a report, in consultation with appropriate state, federal and local governmental agencies, that evaluates the public health risks from the environmental exposure. The department of health services' report shall include any department of environmental quality report and map of smoke dispersion from the fire, the results of any environmental samples taken by the department of environmental quality and the toxicological implications and public health risks of the environmental exposure. The department of health services shall consult with the Arizona poison control system regarding toxicology issues and shall prepare and produce its report for the public as soon as practicable after the event. The department of health services shall not use any monies pursuant to section 49-282, subsection E to implement this paragraph.

36-132. Department of health services; functions; contracts

A. The department shall, in addition to other powers and duties vested in it by law:

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of the state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with the provisions of chapter 3 of this title, and sections 36-693, 36-694 and 39-122.

4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.

5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.

7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.

8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of school children, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of the state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection H, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the

enforcement of the federal food, drug and cosmetic act of 1938 (52 Stat. 1040; 21 United States Code sections 1 through 905).
15. Recruit and train personnel for state, local and district health departments.
16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.
17. License and regulate health care institutions according to chapter 4 of this title.
18. Issue or direct the issuance of licenses and permits required by law.
19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:
(a) Screening in early pregnancy for detecting high risk conditions.
(b) Comprehensive prenatal health care.
(c) Maternity, delivery and postpartum care.
(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.
21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.
B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.
C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.
D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. <u>Powers and duties of director; compensation of personnel</u>
A. The director shall:
1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of the state.
6. Exercise general supervision over all matters relating to sanitation and health throughout the state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of the state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of the state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.
B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of the state, the director may inspect any person or property in transportation through the state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.
C. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.
D. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:
1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director.
2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to assure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.
E. The compensation of all personnel shall be as determined pursuant to section 38-611.
F. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.
G. Notwithstanding subsection H, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.
H. The director, by rule, shall:
1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.
2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead

human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.
3. Define and prescribe reasonably necessary procedures not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.
4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to assure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:
(a) Served at a noncommercial social event that takes place at a workplace, such as a potluck.
(b) Prepared at a cooking school that is conducted in an owner-occupied home.
(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on site for immediate consumption.
(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
(g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
5. Prescribe reasonably necessary measures to assure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.
6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to assure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and

certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to assure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

I. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

J. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat

products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.
K. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.
L. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.
M. Until the department adopts exemptions by rule as required by subsection H, paragraph 4, subdivision (f) of this section, food and drink is exempt from the rules prescribed in subsection H of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

41-1073. Time frames; exception
A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.
B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.
C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.
D. In establishing time frames, agencies shall consider all of the following:
1. The complexity of the licensing subject matter.
2. The resources of the agency granting or denying the license.
3. The economic impact of delay on the regulated community.
4. The impact of the licensing decision on public health and safety.
5. The possible use of volunteers with expertise in the subject matter area.
6. The possible increased use of general licenses for similar types of licensed businesses or facilities.
7. The possible increased cooperation between the agency and the regulated community.
8. Increased agency flexibility in structuring the licensing process and personnel.
E. This article does not apply to licenses issued either:
1. Pursuant to tribal state gaming compacts.
2. Within seven days after receipt of initial application.
3. By a lottery method.

41-1074. Compliance with administrative completeness review time frame

A. An agency shall issue a written notice of administrative completeness or deficiencies to an applicant for a license within the administrative completeness review time frame.
B. If an agency determines that an application for a license is not administratively complete, the agency shall include a comprehensive list of the specific deficiencies in the written notice provided pursuant to subsection A. If the agency issues a written notice of deficiencies within the administrative completeness time frame, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date that the agency receives the missing information from the applicant.
C. If an agency does not issue a written notice of administrative completeness or deficiencies within the administrative completeness review time frame, the application is deemed administratively complete. If an agency issues a timely written notice of deficiencies, an application shall not be complete until all requested information has been received by the agency.

41-1075. Compliance with substantive review time frame
A. During the substantive review time frame, an agency may make one comprehensive written request for additional information. The agency and applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information. If an agency issues a comprehensive written request or a supplemental request by mutual written agreement for additional information, the substantive review time frame and the overall time frame are suspended from the date the request is issued until the date that the agency receives the additional information from the applicant.
B. By mutual written agreement, an agency and an applicant for a license may extend the substantive review time frame and the overall time frame. An extension of the substantive review time frame and the overall time frame may not exceed twenty-five per cent of the overall time frame.

41-1076. Compliance with overall time frame
Unless an agency and an applicant for a license mutually agree to extend the substantive review time frame and the overall time frame pursuant to section 41-1075, an agency shall issue a written notice granting or denying a license within the overall time frame to an applicant. If an agency denies an application for a license, the agency shall include in the written notice at least the following information:
1. Justification for the denial with references to the statutes or rules on which the denial is based.
2. An explanation of the applicant's right to appeal the denial. The explanation shall include the number of days in which the applicant must file a protest challenging the denial and the name and telephone number of an agency contact person who can answer questions regarding the appeals process.

D-5

ARIZONA COMMISSION FOR POSTSECONDARY EDUCATION (F-16-0503)

Title 7, Chapter 3, Article 5, Arizona College Savings Program

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: May 5, 2016 **AGENDA ITEM: D-5**

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: Chris Kleminich, Staff Attorney

DATE: April 15, 2016

SUBJECT: **ARIZONA COMMISSION FOR POSTSECONDARY EDUCATION (F-16-0503)**
Title 7, Chapter 3, Article 5, Arizona Family College Savings Program

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Commission for Postsecondary Education (Commission) is to:

1. Conduct, supervise and coordinate the review of public and private postsecondary education institutions in this state to determine their eligibility for student financial aid monies,
2. Administer specifically identified federal and state financial aid programs,
3. Provide a forum to public and private postsecondary education institutions for discussion of issues of mutual interest,
4. Coordinate and promote studies of interest to postsecondary institutions, and
5. Provide information to the public on postsecondary education opportunities in this state.

Laws 2009, Ch. 95, § 61.

This five-year-review report covers eight rules in A.A.C. Title 7, Chapter 3, Article 5. This is the first five-year-review report submitted by the Commission to the Council on these rules. A.R.S. § 15-1852 exempts the Commission from Title 41, Chapter 6, but the Commission has chosen to submit five-year-review reports to the Council after changes in 2012 to A.R.S. § 41-1056(A). Under that statute, "[a]t least once every five years, each agency shall review all of its rules, including rules made pursuant to an exemption from this chapter or any part of this chapter, to determine whether any rule should be amended or repealed."

Article Contents, Including the Subject Matter of Each Rule in the Report

Article 5 contains eight rules, related to the Arizona Family College Savings Program (Program), which address definitions; fees; the RFP Process; changing designated beneficiaries;

account balance limitations; withdrawals, reporting of non-qualified withdrawals, and penalties; oversight of financial institutions; and IRS regulations, rulings, notices, and other guidance.

Year that Each Rule was Last Amended or Newly Made

- Sections 501, 502, 505, 506, 507: August 14, 2003
- Section 508: August 8, 2002
- Section 504: December 21, 1998
- Section 503: October 31, 1997

Proposed Action

The Commission does not propose any amendments at this time.

Summary of Reasons for the Proposed Action

The Commission does not plan to amend the rules to address citation clarity issues in R7-3-504 through R7-3-507 until the rulemaking moratorium is lifted for a sufficient length of time to allow for revisions to be reviewed and approved for submission by both the Oversight Committee and Trustees. Staff encourages the Commission to request an exception from the moratorium in order to update the rules in a timely fashion.

Exemption or Request and Approval for Exception from the Moratorium

The Commission does not indicate that it plans to request an exception from the moratorium.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

No, as the Commission indicates that A.R.S. § 15-1852 exempts the Commission from Title 41, Chapter 6, which includes A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. The Commission indicates that the rules are generally effective in achieving their objectives.

3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?

No. The Commission has not received any written criticisms of the rules covered by this report during the last five years.

4. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Commission has general rulemaking authority under A.R.S. §§ 15-1851 and 15-1852. Specifically, under A.R.S. § 15-1852(A)(2), the Commission shall "[a]dopt rules to carry out the purposes of this article [Commission for Postsecondary Education]." A.R.S. § 15-1852(C) provides that the Commission is exempt from A.R.S. Title 41, Chapter 6 [Administrative Procedure] but "shall adopt rules in a manner substantially similar to [T]itle 41, [C]hapter 6." The Commission cites to A.R.S. §§ 15-1871 through 15-1879 as specific authority for governing the Program.

5. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes. The Commission indicates that the rules are consistent with state and federal rules and statutes.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Commission indicates that the rules are enforced as written.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Commission indicates that the rules are mostly clear, concise, and understandable, with the exception of outdated and incorrect statutory citations in Sections 504, 505, 506, and 507.

8. Stringency of the Rules:

a. Are the rules more stringent than corresponding federal law?

No. The Commission indicates that the rules stem from, and are not more stringent than corresponding federal law, specifically U.S.C. Title 26 [Internal Revenue Code], Subtitle A, Chapter 1, Subchapter F, Part VIII, Section 529.

b. If so, is there statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010:

a. Do the rules require issuance of a regulatory permit, license or agency authorization?

Not applicable. None of the rules were made after July 29, 2010.

b. If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. The Commission notes that this is the first five-year-review report on the rules.

11. Has the agency included a proposed course of action?

Yes. No action is planned on the rules.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: May 5, 2016 **AGENDA ITEM: D-5**

TO: Members of the Governor's Regulatory Review Council ("Council")

FROM: GRRC Economic Team

DATE: April 15, 2016

SUBJECT: **ARIZONA COMMISSION FOR POSTSECONDARY EDUCATION (F-16-0503)**
Title 7, Chapter 3, Article 5, Arizona Family College Savings Program

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I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the rules contained in the five-year-review report.

The Arizona Family College Savings Program (AFCSP) is a Section 529 College Savings Plan administered through the Commission. The AFCSP is designed to help families meet the rising costs of a higher education by offering an easy, flexible, and tax-advantaged way to save for college. The Commission believes that the economic impact has been as predicted for the rules. During the last rulemaking in 2003, the formula for contribution or account balance limitations was amended to increase the cap, and technical changes were made to align with IRS Code.

From FY 2011 through FY 2015, a total of 38,041 new accounts have been opened, of which, 8,243 accounts were opened in FY 2015. Since the last rulemaking, when the formula for contribution or account balance limitations was amended, no account owners have exceeded the account contribution limit.

<u>2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?</u>

The Commission has determined that the rules impose the least burden and costs to persons regulated by the rules.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Arizona Commission for Postsecondary Education

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Phoenix, Arizona 85004-4503
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Email: acpe@azhighered.gov | Website: https://highered.az.gov

February 29, 2016

Bret Parke, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007

Re: Five-Year-Review Report on Title 7, Chapter 3, Article 5

Dear Mr. Parke:

The Arizona Commission for Postsecondary Education ("Commission") submits for approval by the Governor's Regulatory Review Council the attached Five-Year-Review Report on Title 7, Chapter 3, Article 5. This Report is timely filed pursuant to the Council's email, dated July 11, 2013.

This document complies with the reporting requirement in A.R.S. § 41-1056. A.R.S § 15-1852 exempts the Commission from Title 41, Chapter 6 which encompasses A.R.S. § 41-1091.

An electronic copy of this cover letter, report, the rules being reviewed, statutes authorizing the rules, and economic impact statement are being submitted by email to Dolores Habre. Additionally, a hard copy will be delivered to the Governor's Regulatory Review Council office at 100 North 15th Avenue, Suite 402.

If you need any further information, please contact me at (602) 258-2435.

Respectfully Submitted,

April L. Osborn

Dr. April L. Osborn, Executive Director

Enclosures

FIVE-YEAR-REVIEW REPORT
TITLE 7. EDUCATION
CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION
ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM
February 2016

ARIZONA COMMISSION FOR POSTSECONDARY EDUCATION

…expanding access and increasing success in postsecondary education for Arizonans

FIVE-YEAR-REVIEW REPORT
TITLE 7. EDUCATION
CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION
ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM

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FIVE-YEAR-REVIEW SUMMARY
Article 5. Arizona Family College Savings Program

Arizona Revised Statutes (A.R.S.) §§ 15-1871 through 15-1879 establish the Arizona Family College Savings Program (AFCSP) criteria. The Commission has adopted rules to implement these statutes in Arizona Administrative Code (A.A.C.) Title 7, Chapter 3. The rules specifying the criteria for the AFCSP for the Commission are in A.A.C. Title 7, Chapter 3, Article 5.

The rules in A.A.C. Title 7, Chapter 3, Article 5 cover the definitions; fees; RFP process; changing a designated beneficiary; account balance limitations; withdrawals; reporting of non-qualified withdrawals; penalties; oversight of financial institutions; and IRS regulations, rulings, notices and other guidance. Rules R7-3-501 through R7-3-505 were adopted October 1997, under an exemption from the provisions of the Arizona Administrative Procedure Act. Rules R7-3-506 and R7-3-507 were adopted December 1998, under an exemption from the Administrative Procedure Act. Rule R7-3-508 was a new section made by exempt rulemaking at 8 A.A.R. 3743, effective August 2002. Rules R7-3-501, R7-3-502, and R7-3-505 through R7-3-507 were amended by exempt rulemaking at 9 A.A.R. 3886, effective August 2003.

Through an analysis of the rules in Article 5, the Commission has determined the rules are effective, enforced as written, consistent with state and federal statutes and rules, and are concise, understandable, an mostly clear,. The Commission does not anticipate revising this Article anytime in the near future unless the rulemaking moratorium is lifted for a sufficient length of time to allow for citation revisions for improved clarity to be reviewed and approved for submission by both the Oversight Committee and Trustees.

INFORMATION THAT IS IDENTICAL FOR ALL RULES UNDER ARTICLE 5

1. **Authorization of the rule by existing statutes**
   A.R.S. § 15-1871 through § 15-1879

3. **Effectiveness in achieving the objective**
   The rule is effective in achieving its objective.

4. **Consistency with state and federal statutes and rules**
   The rule is consistent with state and federal statutes and rules.

5. **Enforcement policy**
   The rule describes processes and definitions regarding the Arizona Family College Savings Program and is enforced as written.

6. **Clarity, conciseness, and understandability**
   Despite minor citation issues identified in R7-3-504, R7-3-505, R7-3-506, and R7-3-507 the rule is clear, concise, and understandable.

7. **Written criticisms of the rules received within the last five years**
   The Commission staff has not received one written criticism of this rule in the last five years.

8. **Estimated economic, small business, and consumer impact**
   The economic, small business, and consumer impact of the rule is moderate. Similar to the 529 plans implemented and maintained in 49 other states, the principle impact of these rules is on the financial institutions participating in the program and account owners. For financial institutions participating in the program and account owners these rules provide the guidelines for compliance with federal and state requirements.

   These rules have an impact on financial institutions participating in the program as the rules define guidelines such as fees; the RFP process; account balance limitations; reporting of non-qualified withdrawals; penalties; oversight of financial institutions; and IRS regulations, rulings, notices, and other guidance.

   Participating account owners receive the financial benefit of utilizing a federal and state tax-deferred savings vehicle in which to accumulate funds to be spent at a future date on qualified higher education expenses. The rules have an impact on participating account owners as the rules define guidelines such as changing designated beneficiary; account balance limitations; withdrawals; and IRS regulations, rulings, notices, and other guidance. The rules facilitate consumer saving for higher education, thereby reducing future dependence on consumer debt.

Small business should not be impacted by these rules. Additionally, due to the nature of the various statutory requirements, less intrusive or less costly alternatives are not available.

9. **Business competitiveness analysis**
   The Commission did not receive a business competitiveness analysis of the rules in the last five years.

10. **Completion of previous five-year-review report process**
    Due to the exemption from the Governor's Regulatory Review Council (GRRC) rulemaking process there has been no previous five-year-review report submitted.

11. **Costs vs. benefits/least burden**
    The rules impose the least burden and costs to persons regulated.

12. **Stringency compared to federal law**
    Federal law applies to these rules since the program was established by the federal government; United States Code, Title 26 – Internal Revenue Code, Subtitle A, Chapter 1, Subchapter F, Part VIII, Section 529. The rules stem from federal regulations so are not more stringent than corresponding federal law.

13. **General permit compliance, A.R.S. § 41-1037**
    Of the rules reviewed, none were adopted or amended after July 29, 2010.

14. **Proposed course of action**
    No revisions to these rules are being made at this time. The Commission does not plan to amend the rules to address citation clarity issues in R7-3-504 through R7-3-507 until the rulemaking moratorium is lifted for a sufficient length of time to allow for revisions to be reviewed and approved for submission by both the Oversight Committee and Trustees.

INFORMATION FOR INDIVIDUAL RULES UNDER ARTICLE 5

R7-3-501. Definitions

2. **Objective of the rule**
   The objective of this rule is to define terms used in the AFCSP program to enable the reader to understand clearly the requirements of Article 5 and allow for consistent interpretation.

R7-3-502. Fees

2. **Objective of the rule**
   The objective of this rule is to identify fee types, fee amounts, when fees are to be paid by the financial institution, and how often the AFCSP Oversight Committee may review and recommend adjustments to the fees.

R7-3-503. RFP Process

2. **Objective of the rule**
   The objective of this rule is to identify a process allowing for the selection of participating financial institutions in the program.

R7-3-504. Changing Designated Beneficiary

2. **Objective of the rule**
   The objective of the rule is to identify a process allowing account owners to change the designated beneficiary to a member of the family of the original designated beneficiary as defined within A.R.S. § 15-1871.
6. **Clarity, conciseness, and understandability**
   The rule is concise, understandable, and mostly clear, however it could be more clear if amended to read “as defined in A.R.S. § 15-1871(9)” instead of “A.R.S. § 15-1871(8)”.

R7-3-505. Account Balance Limitations

2. **Objective of the rule**
   The objective of this rule is to identify procedures for setting annual account balance limits equivalent to estimates of future qualified higher education costs and procedures to assist participating financial institutions with managing account contributions. These procedures will allow participating financial institutions guidance in the management of funds presented for deposit.
6. **Clarity, conciseness, and understandability**
   The rule is concise, understandable, and mostly clear, however item B could be more clear if amended to read “in accordance with A.R.S. § 15-1875(L)” instead of “A.R.S. § 15-1875(F)”.

R7-3-506. Withdrawals: Reporting of Non-qualified Withdrawals; Penalties

2. **Objective of the rule**
   The objective of the rule is to identify who may make a withdrawal from an account, how often withdrawals can be made, and define what constitutes a qualified or non-qualified withdrawal. Additionally, the rule identifies reporting requirements for withdrawals, and a process for account owners to dispute any withholding by a financial institution.

6. **Clarity, conciseness, and understandability**
   The rule is concise, understandable, and mostly clear however item B.1. could be more clear if could be amended to read "set forth in A.R.S. § 15-1871(14)" instead of "A.R.S. § 15-1871(11)" and item B.5. could be more clear if amended to read "the extent that A.R.S. § 15-1875(M) requires" instead of "A.R.S. § 15-1875 requires"

R7-3-507. Oversight of Financial Institutions

2. **Objective of the rule**
   The objective of the rule is to identify the oversight requirements participating financial institutions must adhere to while marketing, managing funds, and reporting on accounts within the AFCSP. The ability of participating financial institutions to meet or exceed these oversight requirements allow the AFCSP Oversight Committee and Commission evaluation points for contract renewal or non-renewal discussions.

6. **Clarity, conciseness, and understandability**
   The rule is concise, understandable, and mostly clear however item E could be more clear if amended to read "as referred to in A.R.S. § 15-1874(H)" instead of "A.R.S. § 15-1874(I)".

R7-3-508. IRS Regulations, Rulings, Notices, and Other Guidance

2. **Objective of the rule**
   The objective of the rule is to propose a process in which the rules contained in Title 7, Chapter 3, Article 5 and the statutes contained in A.R.S. §§ 15-1871 to 15-1877 are to be reviewed and evaluated in consideration of IRS regulations, rulings, notices, and other guidance issued after February 27, 2002, adopting amendments as necessary to ensure compliance and maintain exemption under § 529 of the Code.

TITLE 7. EDUCATION

CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION

(Authority A.R.S. § 15-1852 et seq.)

Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (01-4).

Editor's Note: This Chapter contains rules which were adopted, amended, repealed, or renumbered under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6), pursuant to A.R.S. § 15-1852(C). Exemption from A.R.S. Title 41, Chapter 6 means the Commission was not required to hold public hearings; and the Governor's Regulatory Review Council did not review or approve the rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, it is printed on blue paper.

ARTICLE 1. RULEMAKING

Article 1, consisting of Sections R7-3-101 through R7-3-108, adopted effective August 22, 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 96-3).

Section
R7-3-101. General Provisions
R7-3-102. Incorporation by Reference
R7-3-103. Commission Rulemaking Reference
R7-3-104. Notice of Oral Proceedings
R7-3-105. Economic, Small Business, and Consumer Impact Summary
R7-3-106. Effective Date of Rules
R7-3-107. Variance Between Adopted Rule and Published Notice of Proposed Rule Adoption
R7-3-108. Oral Proceedings

ARTICLE 2. ADJUDICATIONS

Article 2, consisting of Sections R7-3-201 through R7-3-205, adopted effective August 22, 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 96-3).

Section
R7-3-201. Definitions
R7-3-202. Contested Cases, Notice, Hearing, Records
R7-3-203. Decisions and Orders
R7-3-204. Hearings and Evidence
R7-3-205. Rehearing and Decisions

ARTICLE 3. ARIZONA LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

Article 3, consisting of Sections R7-3-301 through R7-3-309, adopted effective September 19, 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 96-3).

Section
R7-3-301. Federal LEAP Requirements
R7-3-302. Institutional Eligibility Requirements
R7-3-303. Receipt and Allocation of Arizona LEAP Program Funds
R7-3-304. Arizona LEAP Student Eligibility Requirements
R7-3-305. Arizona LEAP Award Procedures
R7-3-306. Award Alteration
R7-3-307. Administrative Costs
R7-3-308. Institutional Program Review
R7-3-309. Definitions

ARTICLE 4. ARIZONA PRIVATE POSTSECONDARY EDUCATION STUDENT FINANCIAL ASSISTANCE PROGRAM

Article 4, consisting of Sections R7-3-401 through R7-3-404, adopted effective September 19, 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 96-3).

Section
R7-3-401. Purpose
R7-3-402. Definitions
R7-3-403. Administration and Allocation of Funds
R7-3-404. Student Eligibility
R7-3-405. Termination of Award

ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM

Article 1, consisting of Sections R7-3-501 through R7-3-505, adopted effective October 31, 1997, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 97-4).

Section
R7-3-501. Definitions
R7-3-502. Fees
R7-3-503. RFP Process
R7-3-504. Changing Designated Beneficiary
R7-3-505. Account Balance Limitations
R7-3-506. Withdrawals; Reporting of Non-qualified Withdrawals; Penalties
R7-3-507. Oversight of Financial Institutions
R7-3-508. IRS Regulations, Rulings, Notices, and Other Guidance

ARTICLE 1. RULEMAKING

R7-3-101. General Provisions

A. Definitions. In this Article, unless the context otherwise requires:
1. "Agenda item" means a specified matter listed on an agenda included as part of the public notice of a Commission meeting pursuant to A.R.S. § 38-431.02.
2. "Commission" means the Commission for Postsecondary Education.
3. "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.
4. "Public meeting" means a meeting held under and subject to the Open Meeting Act, A.R.S. §§ 38-431 through 38-431.09.
5. "Rule" means a statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the Commission. Rule includes the amendment or repeal of a prior rule, but does not include intra-agency memoranda.
6. "Rulemaking" means the process for formulation and adoption of a rule.

B. The Commission shall follow the uniform system for numbering, form and style as prescribed by the Secretary of State in the *Arizona Administrative Code*.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-102. Incorporation by Reference
The Commission may incorporate by reference in its rules and without publishing the incorporated matter in full all or any part of a code, standard, rule, or regulation that is adopted by an agency of the United States or this state, or a nationally recognized organization or association, if incorporation of its text in Commission rules would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the Commission rules shall fully identify the incorporated matter by location, date, and shall state that the rule does not include any later amendments or editions of the incorporated matter. The Commission shall file three copies of the incorporated matter with the Secretary of State at the time the adopted rule is filed.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-103. Commission Rulemaking Record
The Commission shall maintain an official rulemaking record for each rule proposed. The record and matter incorporated by reference shall be available for public inspection. The Commission rulemaking record shall contain all of the following:

1. Reference to the specific authority under which the rule is proposed to be adopted, amended, or repealed;
2. The name and address of Commission personnel with whom persons may communicate regarding the rule;
3. An informative summary of the proposed rule;
4. The time during which written submissions may be made and the time and place where oral comments may be made;
5. The current status of the proposed rule;
6. Any known timetable for Commission decisions or other action for the rulemaking;
7. A copy of all publications in the *Arizona Administrative Register* or a newspaper of general circulation with respect to the proposed action;
8. All written petitions, requests, submissions, and comments received by the Commission and all other written materials considered or prepared by the Commission in connection with the proposed action;
9. The official minutes of all oral proceedings regarding the rule;
10. A copy of the economic, small business, and consumer impact summary and the minutes of any public meeting at which the rule was considered by the Commission;
11. A statement of the time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule;
12. A copy of the final rule, including the date of its adoption and the date of its filing and publication.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-104. Notice of Oral Proceedings
The Commission or its staff shall request that the Secretary of State publish in the *Arizona Administrative Register* notice of an oral proceeding concerning proposed action by the Commission regarding a rule. The notice shall include a statement of the date, time, place, and nature of the proceedings, and the name and address of Commission personnel with whom persons may communicate regarding the rule. If the Secretary of State declines to publish such information, the Commission or its staff shall cause the information to be published in a newspaper of general circulation. If an oral proceeding regarding a rule is scheduled, the Commission shall allow at least 30 days to elapse after the publication date of the notice before adopting, amending, or repealing the rule.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-105. Economic, Small Business, and Consumer Impact Summary
The Commission shall cause to be prepared an economic, small business, and consumer impact summary. The economic, small business, and consumer impact summary shall be a brief summary of the following information:

1. An identification of the proposed rulemaking;
2. An identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking;
3. An analysis of the probable costs and benefits from the implementation and enforcement of the proposed rulemaking on the Commission, and on any political subdivision or business directly affected by the proposed rulemaking;
4. The probable impact of the proposed rulemaking on employment in business, agencies, and political subdivisions of this state affected by the proposed rulemaking;
5. A statement of the probable impact of the proposed rulemaking on small business;
6. A statement of the probable effect on state revenues;
7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-106. Effective Date of Rules
A rule adopted by the Commission becomes effective when a certified original and two copies of the rule are delivered to the Office of the Secretary of State unless a later date is required by the constitution of Arizona, statute, or court order, or as specified in the rule.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-107. Variance Between Adopted Rule and Published Notice of Proposed Rule Adoption

A. If, as a result of public comment or internal review, the Commission determines that a proposed rule requires substantial change pursuant to subsection (B), the Commission shall issue a supplemental notice containing the changes in the proposed rule, in accordance with R7-3-104. The Commission shall provide for additional public comment pursuant to R7-3-108.

B. In determining whether a rule which the Commission intends to adopt is substantially different from the rule as originally proposed by the Commission, the following shall be considered:

1. The extent to which the subject matter of the proposed rule or the issues determined by that rule are different from the subject matter or issues involved in the rule which the Commission intends to adopt,
2. The extent to which the effects of the proposed rule differ from the effects of the rule which the Commission intends to adopt,

3. The extent to which all persons affected by the rule which the Commission intends to adopt should have understood that the proposed rule would affect their interests.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-108. Oral Proceedings

A. When the Commission proposes a rule, such proposed action shall be presented as a specifically identified agenda item for review at a public meeting of the Commission, and such public meeting shall take place no less than 30 days prior to the public meeting at which the Commission intends to adopt, amend, or repeal the rule. At the time it proposes a rule, the Commission may schedule an oral proceeding on the proposed action. Any person may submit written statements, arguments, and supporting data on the Commission's proposed action to the Executive Director of the Commission within 30 days following the date the Commission proposes the rule.

B. The Commission shall schedule an oral proceeding on a proposed rule if, within 30 days after proposing the rule, a written request for an oral proceeding is submitted to the Commission by no fewer than five persons. An oral proceeding may not be held earlier than 30 days after notice of its date, location, and time is published. If an oral proceeding is scheduled, the Commission shall post, in a location as required for notice of a public meeting, a written notice of the place and date of the proceeding no less than 20 days in advance thereof. The Commission, a member of the Commission, or an official of the Commission's staff designated by the Commission, shall preside at the oral proceeding. At the oral proceeding, minutes of the meeting shall be taken and persons may present oral argument, views, and supporting data on the proposed rule. The person presiding at the hearing shall exclude unduly repetitious argument.

C. Prior to its meeting at which it intends to adopt, amend, or repeal a rule, the Commission shall be provided with a copy of the proposed action; an informative summary of such action; a memorandum summarizing the written public comment received; the economic, small business, and consumer impact summary; and the minutes of any oral proceeding regarding the proposed action. The Commission shall consider all such information prior to adopting, amending, or repealing the rule.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

ARTICLE 2. ADJUDICATIONS

R7-3-201. Definitions

In this Article, unless the context otherwise requires:

1. "Commission" means the Commission for Postsecondary Education, including the state postsecondary review entity, acting in accordance with responsibilities as prescribed by A.R.S. § 15-1851(A).
2. "Contested case" means any proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by the Commission after an opportunity for hearing.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-202. Contested Cases, Notice, Hearing, Records

A. In a contested case, the parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall be given at least 20 days prior to the date set for the hearing.

B. The notice shall include:

1. A statement of the time, place, and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
3. A reference to the particular Sections of the statutes and rules involved.
4. A short and plain statement of the matters asserted. If a party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

C. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. Informal disposition may be made of any contested case by stipulation, agreed settlement, consent agreement, or default.

D. The record in a contested case shall include:

1. All pleadings, motions, and interlocutory rulings;
2. Evidence received or considered;
3. A statement of matters officially noticed;
4. Objections and offers of proof and rulings thereon;
5. Proposed findings and exceptions;
6. Any decision, opinion, or report by the officer presiding at the hearing;
7. All staff memoranda, other than privileged communications, or data submitted to the hearing officer or members of the Commission in connection with their consideration of the case.

E. A hearing before a hearing officer or the Commission in a contested case or any part thereof shall be recorded manually or by a recording device and shall be transcribed on request of any party, unless otherwise provided by law. The cost of such transcript shall be paid by the party making the request, unless otherwise provided by law or unless assessment of the cost is waived by the Commission.

F. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-203. Decisions and Orders

Any final decision or order adverse to a party in a contested case shall be in writing or stated in the record. Any final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by mail to their last known address of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to the party's attorney of record.

Historical Note
Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-204. Hearings and Evidence

A. A hearing in a contested case shall be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. A party to such

proceedings shall have the right to be represented by counsel, to submit evidence in open hearing, and shall have the right of cross examination. Hearings may be held in any place determined by the Commission or its hearing officer.

B. Copies of documentary evidence may be received in the discretion of the presiding officer. Upon request, the parties shall be given an opportunity to compare the copy with the original.

C. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the Commission. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The Commission's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

Historical Note

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

R7-3-205. Rehearing of Decisions

A. A party in a contested case before the Commission who is aggrieved by a decision rendered in such case may file with the Commission not later than 20 days after receipt of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor. A motion for rehearing of review under this Section may be amended at any time before it is ruled upon by the Commission. A response may be filed within 10 days after service of such motion by any other party. The Commission may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

B. A rehearing or review of a decision may be granted for any of the following causes materially affecting the moving party's rights:

1. Irregularity in the administrative proceedings of the Commission or its hearing officer, or abuse of discretion, whereby the moving party was deprived of a fair hearing;
2. Misconduct of the Commission or its hearing officer or the prevailing party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
5. Excessive or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;
7. That the decision is not justified by the evidence or is contrary to the law.

C. The Commission may affirm or modify the decision or grant a rehearing or review to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (B). An order granting a rehearing or review shall specify with particularity the ground or grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters so specified.

D. Not later than 20 days after a decision is rendered, the Commission may on its own initiative order a rehearing or review of its decision for any reasons for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Commission may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting such a rehearing or review shall specify the grounds therefor.

E. When a motion for rehearing or review is based upon affidavits they shall be served with the motion. An opposing party may within 10 days after service of such motion serve opposing affidavits and this period may be extended for an additional period not exceeding 20 days by the Commission for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.

Historical Note

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

ARTICLE 3. ARIZONA LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

R7-3-301. Federal LEAP Requirements

The federal government requires that a state LEAP Program must:

1. Be administered by a single state agency in accordance with the Federal-State Agreement under Section 1203 of the Higher Education Act, as amended. The Governor of Arizona has designated as the responsible single state agency the Arizona Commission for Postsecondary Education, which hereafter shall be referred to as the Commission;
2. Award grants only to students who meet the eligibility and financial need requirements as outlined in R7-3-304(A) and (B);
3. Provide grants which do not exceed $5,000 per program year for a full-time student enrolled in an eligible program at a participating postsecondary institution;
4. Use as state matching funds an amount which is over and above the amount the state expended for grants in the initial program year of FY 1974;
5. Provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of the accounting for federal funds paid to the state;
6. Provide for making such reports, in such form and containing such information, as may be reasonably necessary to enable the U.S. Secretary of Education to perform program analysis;
7. Provide for the payment of the state matching fund share of grants awarded from direct state appropriated funds;
8. Provide that no payment may be made to a student under this program unless the student meets the requirements specified in R7-3-304;
9. Obey all other United States laws and regulations applying to the Federal-State Student Grant Program;
10. Provide that all institutions of higher education in Arizona which meet the eligibility requirements of R7-3-302 shall be eligible to participate in the program;
11. Provide that state expenditures shall not be less than:
    a. The average annual aggregate expenditures for the preceding three years; or
    b. The average annual expenditure per full-time equivalent student for those years.
12. Provides assurances that all LEAP grants will be awarded without regard to sex, race, debilitating condition, creed, or economic background.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-302. Institutional Eligibility Requirements

To participate in the Arizona LEAP Program, an Arizona postsecondary educational institution must either:

1. Be a public or other nonprofit institution of higher education which:
   a. Admits as regular students only persons who have a high school diploma, have the recognized equivalent of a high school diploma, or are beyond the age of compulsory school attendance in the state in which the institution is located, and who have the ability to benefit from the training offered;
   b. Is legally authorized by the state of Arizona to provide an educational program beyond secondary education;
   c. Provides an educational program for which it awards an associate, baccalaureate, graduate, or professional degree, or at least a two-year program which is acceptable for full credit toward a baccalaureate degree; or at least a one-year training program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation; or at least a six-month training program at a postsecondary vocational institution (such as a public community college) which leads to a certificate or degree and prepares students for gainful employment;
   d. Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution which has satisfactorily assured the Secretary that it will meet the accreditation standards of an approved agency or association within a reasonable time, considering the resources available to the institution, the period of time it has operated and its efforts to meet accreditation standards, or is an institution whose credits are determined by the Secretary to be accepted on transfer by at least three accredited institutions on the same basis as transfer credits from fully accredited institutions.
   e. Has a certified Eligibility Letter and a valid written Program Participation Agreement from the Department of Education cited in 34 CFR 668.
2. Be a proprietary institution of postsecondary education which:
   a. Is not a public or other nonprofit institution;
   b. Admits as regular students only persons who have a high school diploma, have the recognized equivalent of a high school diploma, or are beyond the age of compulsory school attendance in the state in which the institution is located, and who have the ability to benefit from the training offered;
   c. Is legally authorized to provide postsecondary education in the state of Arizona;
   d. Provides at least a six-month or 600 clock hour program of training to prepare students for gainful employment in a recognized occupation;
   e. Is accredited by a nationally recognized accrediting agency or association; and
   f. Has been in existence for at least two years. The Secretary considers a school to have been in existence for two years if it has been legally authorized to provide, and has provided, a continuous training program to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.
   g. Refer to this subsection (1)(e).

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-303. Receipt and Allocation of Arizona LEAP Program Funds

A. Receipt of funds.
1. The Commission may receive funds for the Arizona LEAP Program from the following sources:
   a. The federal government;
   b. The Arizona Legislature;
   c. Institutions which are eligible to participate in the program; and,
   d. Other nonfederal institutions, organizations, or individuals.
2. All funds received will be deposited by the Commission in a properly secured account and appropriate controls will be instituted to assure that accountability will be maintained for all funds received.
3. Available federal program funds will be matched, on a dollar-for-dollar basis, by state appropriated funds.
4. Funds provided by the eligible participating institutions and nonfederal funds from other institutions, organizations, or individuals shall be used by the Commission to supplement the federal and state program funds for grants and for necessary administrative costs.

B. Allocation of funds.
1. Arizona LEAP Program Funds will be allocated to eligible Arizona postsecondary educational institutions according to their proportionate share of the State's total headcount of Arizona resident students enrolled in eligible programs. The Commission will survey each eligible institution in Arizona no later than May of each year to determine the number of eligible Arizona resident students who are enrolled. Headcount will be determined in the following manner:
   a. Semester or quarter hour schedule institutions will provide data for the preceding fall semester. (For example, allocations for the LEAP program for any given academic year will be based on enrollment data from the previous academic year.)
   b. Institutions which operate on clock hour or other nontraditional schedules will provide unduplicated student enrollment data for the period from August through April of the previous year. (For example, allocations for the LEAP program for any given year will be based on data for the period August through April.) Enrollment data must be verified by two Administrative Officials of the school.
2. The staff will promptly notify each eligible institution of its preliminary allocation as soon as necessary Commission approvals can be obtained. The total will show the amount of federal and state dollars and also the amount the institution must provide to receive the full allocation. The institution will be asked to select one of the following choices:
   a. It will provide the full amount of institutional funds in order to receive the full allocation.
   b. It will provide the full amount of institutional funds and also is prepared to provide additional institutional funds if additional federal and state funds should become available. The institution will be asked to specify the amount of additional institutional funds it will be able to provide.

c. It prefers to provide a lesser amount which will be noted in the space provided. In this case the federal and state amounts will be adjusted to meet the reduced institutional amount.
d. It chooses not to participate in the LEAP program for this period. In this case it is important that the institution return the form to the Commission to inform them of this choice.

3. A response due date will be included in this notification. Only institutions whose response is received by the Commission by that due date will be eligible to participate in the LEAP Program for that academic year.
4. All institution responses which are received by the Commission on or before the response due date will determine the final list of institutions eligible to participate in the LEAP program. If all institutions elect to participate, the preliminary allocation will become the final allocation list. However, if some institutions choose not to participate, or if some prefer to participate at a reduced level, the staff will calculate a new final allocation list considering only the institutions on the final institutional eligibility list. The staff will then notify each participant institution of its revised allocation, the amount of institutional funds to provide, and instructions for transmitting its funds to the Commission.
5. The Commission will maintain the necessary accounts for each eligible institution which participates in the Arizona LEAP Program. Each account will, as a minimum, show the current status of that account for its source of program funds, and such other information that the Commission deems necessary.

C. Transfer of institutional funds. When the institution receives its final allocation notice from the Commission, it shall send its institutional funds to the Commission. This transfer shall take place beginning July 1 of each year. Checks conveying institutional funds shall be made out to the Arizona Commission for Postsecondary Education -- LEAP Program.

D. Disbursement of Arizona LEAP Program Funds to Participating Institutions. The Commission will disburse funds from the Arizona LEAP Program Fund to participating institutions for further disbursement to approved student applicants in accordance with the program calendar.

E. Reallocation of Unused LEAP Program Funds

1. Schools will be contacted in February, and asked if they will be able to use all their funds or if they wish additional funding and the amount thereof.
2. Schools not awarding 100% of their funds by the middle of February may have the remaining LEAP funds recovered by the Commission for reallocation. Remaining institutional funds, less administrative funds, will then be returned to each of those schools when the final program financial report has been received by the Commission.
3. In March, a reallocation of funds will take place and funds will be available for those schools that asked for additional funds in February.
   a. If the amount of available funds exceeds the total amount of requests, all requests will be honored. Any remaining available funds will be retained by the Commission for later reallocation.
   b. If the amount of the requests exceeds the amount of available funds, the Commission will allocate those funds among the requesting institutions based on each institution's proportionate share of Arizona resident students eligible headcount for that institution. The enrollment at non-requesting institutions will not be included in these calculations.
4. The staff will notify each participant institution of its share of the reallocation, the amount of institutional funds to provide, and instructions for transmitting its funds to the Commission.
5. Any LEAP funds retained by the institutions, minus the institutional proportionate share originally paid, must be returned to the Commission in the form of a check by the end of July, along with the signed Financial Report. Any unused program funds remaining in the state treasury will be returned to the institutions in the same proportionate share as was paid in at the beginning of the program year. The Commission may impose a deduction in the amount of those unutilized program funds from a school's following years allocation.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-304. Arizona LEAP Student Eligibility Requirements

A. Student eligibility requirements. To be eligible for a grant from the Arizona LEAP Program, a student must:

1. Be a resident of the State of Arizona as defined by the A.R.S. §§ 15-1802, 15-1803, 15-1804, and 15-1805;
2. Be enrolled or accepted for enrollment on at least a half-time basis as defined in R7-3-309(A)(20) in an eligible course or program at an Arizona postsecondary educational institution which has met the institutional eligibility requirements in R7-3-302, and which has been approved by the Commission.
3. At the discretion of the institution financial aid officer, this may include a person who has attained a baccalaureate or first professional degree and has re-entered an eligible Arizona postsecondary institution for retraining in a program below the baccalaureate level. Such a person will be considered an undergraduate student for LEAP purposes.
4. Have a substantial demonstrated financial need determined in accordance with the provision given in R7-3-304(B);
5. Maintain satisfactory progress in a course of study as defined by the institution and not be in default or owe a repayment on a federal grant or loan. Refer to 34 CFR 692.

B. Financial Need Determination Procedures. The financial need of eligible students will be determined annually, or more often if need be, by the financial aid officer of the institution the student is attending, or will attend, using the Federal Methodology (FM) system of need analysis approved by the Commission and the U.S. Department of Education. A student must be considered to have substantial need.

C. A student is considered to have substantial financial need when:

1. The student has an expected family contribution of $2,140 or less as a result of the student's FM need analysis for the program year; or,
2. The difference between the student's cost of education and the student's expected family contribution is at least $100.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt

rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-305. Arizona LEAP Award Procedures

A. Eligible students who wish to apply for a LEAP award will provide to the financial aid office the information needed for the financial need analysis as specified in R7-3-304(B).

B. The financial aid office will:
1. Determine whether or not the student meets the eligibility requirements for an Arizona LEAP award as outlined in R7-3-304(A);
2. Determine the financial need of the student using the need analysis specified in R7-3-309(B);
3. Exercise due diligence in determining that the student:
   a. Satisfies verification procedures which may be required for federal Title IV financial aid programs;
   b. Satisfies requirements listed under 34 CFR 692.4.
4. Recommending the amount of the LEAP award in accordance with the following guidelines:
   a. Awards may be made only to students who meet the criteria of R7-3-304(A);
   b. The total of all LEAP awards to a student may not exceed $2,500 for the program year;
   c. The financial aid officer will determine, based on student need, an award of no more than $2,500 nor less than $100 (round all awards to the nearest $1.00).
   d. The financial aid officer must ensure that all applications are received in a timely fashion so disbursement of funds to students will be made before a semester or training period ends.
   e. Sign the application form.
5. Send the application form to:
   Arizona Commission For Postsecondary Education
   2020 North Central Avenue, Suite 275
   Phoenix, Arizona 85004-4503
   (Attention: Financial Aid Director)
6. Receive approved applications, assure that LEAP award funds are disbursed to the student, and retain on file disbursement records (signed receipts, canceled checks, etc.) which verify that the student received the funds. No disbursement may be made to a student who, as a result of a change in status, no longer meets the eligibility requirements outlined in R7-3-304.
7. Maintain adequate fiscal control, accounting, and financial aid records at the institution in accordance with approved state and federal procedures.
8. Provide to the Commission such financial and other information as may be required to meet federal reporting and auditing requirements.

C. The Arizona Commission for Postsecondary Education will:
1. Receive the application for the Arizona LEAP award;
2. Verify that the student is eligible and that there are sufficient funds in the LEAP program account to fund the award;
3. Approve applications which meet these criteria;
4. Return applications that do not meet the criteria or are in any way incomplete to the financial aid office;
5. Disburse funds to the institution's financial aid officer for the approved applications.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-306. Award Alterations

A. The Commission will attempt to accommodate any changes which institutional financial aid officers wish to make in individual student awards. These changes might include, for example, cancellation of award, reduction in award level, or increase in award level.
1. Increased LEAP Awards: A student's LEAP award may be increased if the earlier award for that program year is less than the maximum amount specified, and if the student is eligible for such an increase. To increase a LEAP award, the institutional financial aid officer will simply submit to the Commission another LEAP application form, and provide updated financial aid information on the form. In no case may a student receive more than a total of $2,500 in LEAP awards for a program year.
2. Reversions: A student's LEAP award may be reduced or canceled. If a student officially or unofficially withdraws or is expelled from the institution, or if the student drops below the minimum number of hours, the institution financial aid officer must attempt to recover all of LEAP award funds possible in accordance with the repayment policies of that institution.
3. The reversion procedure includes the following steps:
   a. Funds are recovered from the student;
   b. The financial aid officer completes the LEAP Reversion Form;
   c. The financial aid officer forwards the completed LEAP Reversion Form(s) and the Transmittal Form to the Commission.
4. Reverted LEAP funds recovered by the Commission are redeposited in the secured LEAP program account and credited to the institution's LEAP Program Fund account. Such funds are then available to the institution to be used to make new LEAP awards.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-307. Administrative Costs

No federal LEAP funds may be used to administer the Arizona LEAP Program. Therefore, administrative expenses will be paid from nonfederal state appropriated or institutional program funds provided such payment does not reduce state appropriated matching funds necessary to receive the maximum federal LEAP funds.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-308. Arizona LEAP Institutional Review

Commission staff members will review Institutional LEAP Program records for each program year, and each institution participating in the LEAP program will be visited at least once every two years. The purpose of the visit is to review, with institution financial aid and fiscal officers, the LEAP student records which state and federal regulations require be kept. Those records include documentation which verifies that:
1. The student is a resident of the state of Arizona as prescribed by Arizona Revised Statutes.
2. The student is currently enrolled at least half-time in an eligible course or program.

3. The student has a demonstrated need for financial assistance as determined by a Federal Methodology needs analysis system approved by the Commission and the U.S. Department of Education.
4. The student has received the LEAP funds approved for the award (for example, a canceled check, a written receipt, a signed roster, etc.).
5. The institutional financial aid officer must assure that the total amount of financial aid awarded to a student, from all sources, added to the amount of the family contribution, is limited by and does not exceed the student's total cost of education. The LEAP award limits and the treatment of any additional funds which were received after the institutional aid awards were made shall be consistent with the federal regulations which govern the Federal Title IV, Campus-based programs.
6. Repayments and refunds of LEAP disbursements which have been made to students shall be made in accordance with the written policies of the institution. These written policies must be consistent with applicable federal regulations and a copy must be filed at the Commission office at the beginning of each LEAP program year.
7. Verify that the institution has a Certified Letter of Eligibility and a valid Program Participation Agreement from the Department of Education cited in 34 CFR 668.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

R7-3-309. Definitions

The following definitions are taken from the Federal Regulations which govern the LEAP program and apply to this Plan as well.

1. "Academic year" means a period of time, usually eight to nine months, during which a full-time student would normally be expected to complete the equivalent of two semesters (24 semester hours), two trimesters (24 trimester hours), three quarters (36 quarter hours), or 900 clock hours of instruction.
2. "Act" means the Higher Education Act of 1998, as amended, of Title IV.
3. "Board" means the Arizona Board of Regents.
4. "CFR" means the Code of Federal Regulations.
5. "Clock hour" means a period of time which is the equivalent of a 50 to 60 minute class, lecture, or recitation, or a 50 to 60 minute period of faculty-supervised laboratory, shop training, or internship.
6. "Commission" means the Commission for Postsecondary Education.
7. "Cost of education" means the cost of attending an institution as defined by the institution.
8. "Dependent student" is a student who does not qualify as an Independent Student.
9. "Eligible course or program" is one which is properly approved by an accrediting agency recognized by the U.S. Department of Education as being an integral part of the curriculum of the institution, is of postsecondary level, and is at least one semester in length at a college or university, or six months in length, or a minimum of 600 clock hours at a proprietary institution.
10. "Expected family contribution of a dependent student" means the sum of amounts which reasonably may be expected from the student to meet the student's costs of education and the amount which reasonably may be expected to be made available to the student by the student's parents for such purpose. Amount is calculated based upon the Federal methodology need analysis for current program year.
11. "Expected Family Contribution of an Independent Student" means the amount which reasonably may be expected from the student or their spouse, or both, to meet the student's cost of education. Amount is calculated based upon the Federal methodology need analysis for current program year.
12. "Federal methodology" means the methodology now mandated by federal regulation for determining financial need for federally funded programs.
13. "Full-time undergraduate student" means a student who has not attained the baccalaureate or first professional degree and who is carrying a full-time academic work load, other than by correspondence, measured in terms of:
    a. Course work or other required activities as determined by the institution in which the student is enrolled, or by the state whose agency is administering the program authorized by the Act, which amounts to the equivalent for institutions utilizing trimester, semester, or quarter hour systems, or which consists of a program requiring a minimum of 24 clock hours per week in a program of at least six months or 600 clock hours for those institutions that do not utilize such systems.
    b. The tuition and fees customarily charged for full-time study by the institution.
14. "Full-time graduate student" is a student who has attained a baccalaureate or first professional degree, has been accepted by the graduate college, and is enrolled in an approved graduate level program at an accredited university or college for a minimum of nine semester, trimester, or quarter hours during a normal length term or five hours during a summer session.
15. "Independent" means an independent student as defined by federal regulations.
16. "Program funds" means the awards; reversions (reverted/retained); and un-utilized Funds:
    a. Awards: Awarded LEAP Funds are dollars given in the form of grants to eligible students attending eligible postsecondary institutions.
    b. Reversions:
        i. Reverted LEAP funds are funds that have been awarded and because student is no longer eligible are returned to the Commission for re-use at a later date.
        ii. Reverted Retained LEAP funds are those funds that institutions have kept and not transferred back to the Commission after the student who has been awarded is considered ineligible for LEAP award.
    c. Un-utilized: Un-utilized LEAP Program Funds are those Funds that have never been awarded to a student by an eligible institution.
17. "Public or private nonprofit institution of higher education" means an educational institution which:
    a. Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate.
    b. Is legally authorized to provide a program of education beyond secondary education.
    c. Provides an educational program for which it awards an associate, baccalaureate, or professional degree

or at least a two-year program which is acceptable for full credit towards a baccalaureate degree, or at least a six-month vocational program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation.

d. Is accredited by a nationally recognized accrediting agency or association or, if not so accredited,

i. Is an institution with respect to which the Commission has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or

ii. Is an institution whose credits are accepted on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited. This term also includes a public or nonprofit private educational institution which, in lieu of the requirement in this subsection 309(A)(16)(d)(i) admits as regular students persons who are beyond the age of compulsory school attendance in the state in which the institution is located and who have the ability to benefit from the training offered by the institution.

18. "Nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which may lawfully inure to the benefit of any private shareholder or individual.
19. "Parent" means the student's mother or father, or both, legal guardians or legally adoptive parents. This does not include foster parents.
20. "Part-time undergraduate student" is a student who is enrolled at least half-time, but less than full-time, in an eligible program at an eligible and participating Arizona institution. In no case will this be less than six semester, trimester or quarter hours per academic term (including one summer session), or less than 12 clock hours per week for institutions which utilize a clock hour system.
21. "Part-time graduate student" is a student who has attained a baccalaureate or first professional degree, has been accepted by the graduate college, and is enrolled in an approved graduate level program at an accredited university or college for a minimum of six semester, trimester, or quarter hours during any term, including summer sessions.
22. "Postsecondary education institution" means an educational institution which offers courses or training programs which are beyond the high school level in scope and complexity and which are open to the general public. Major categories are public universities, private colleges and universities, community colleges and proprietary institutions.
23. "Program Year" means the consecutive period which begins on July 1 and runs through June 30 of any given year.
24. "Proprietary institution of higher education" means an educational institution:

a. Which provides not less than a six-month or 600 clock hour program of training to prepare students for gainful employment in a recognized occupation;

b. Which admits as regular students only persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, or persons who are beyond the age of compulsory school attendance and who have the ability to benefit from the training offered;

c. Which is legally authorized by the state in which it is located to provide a program of education beyond secondary education;

d. Which is accredited by a nationally recognized accrediting agency or association approved by the U.S. Commissioner of Education for this purpose;

e. Which is not a public or other nonprofit institution; and

f. Which has been in existence for at least two years. The term also includes any proprietary institution which offers degrees at the associate, baccalaureate or graduate level, and which has an agreement with the U.S. Secretary of Education containing the terms and conditions which the Secretary determines to be necessary to ensure that the availability of assistance to students at the school under this program has not resulted, and will not result, in an increase in the tuition, fees, or other changes to students.

25. "State" means, in addition to the several states of the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and Trust Territory of the Pacific Islands, and the Virgin Islands.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

ARTICLE 4. ARIZONA PRIVATE POSTSECONDARY EDUCATION STUDENT FINANCIAL ASSISTANCE PROGRAM

R7-3-401. Purpose

The purpose of the Arizona Private Postsecondary Education Student Financial Assistance Program is to enhance the educational opportunities of citizens wishing to attend Arizona private postsecondary colleges or universities by providing financial assistance to eligible students attending eligible postsecondary institutions.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

R7-3-402. Definitions

A. "Award year" means the period from July 1 through June 30 of the succeeding year.

B. "Commission" means the Commission for Postsecondary Education.

C. "Eligible postsecondary institution" means any private postsecondary institution:

1. Licensed to provide baccalaureate degrees in Arizona by the Arizona State Board for Private Postsecondary Education; and

2. Accredited by an accrediting body recognized by the United States Department of Education.

D. "Eligible student" means an individual who:
1. Has obtained an associate degree from a community college under the jurisdiction of the Arizona State Board of Directors for Community Colleges; and
2. Enrolls as a full-time undergraduate student at an eligible postsecondary institution.

E. "Enrollment" means the establishment and maintenance of an individual's status as a student in an eligible postsecondary institution, regardless of the definition used at that institution.

F. "FAFSA" means Free Application for Federal Student Aid.

G. "Financial need" means the cost of attendance less expected family contribution, determined from the student's FAFSA form, minus any grant or scholarship aid.

H. "Full-time student" means an individual who is enrolled in at least 12 credit hours per semester or an equivalent calculation.

I. "Undergraduate student" means an individual who has not earned a baccalaureate or professional degree and who is enrolled in a postsecondary educational program which leads to, or is creditable toward, a baccalaureate degree.

J. "Student financial assistance" means awarding a grant of money to an eligible, undergraduate student for payment of tuition and fees, as defined and allowed under United States Department of Education Title IV student assistance analysis, at an eligible postsecondary institution.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

R7-3-403. Administration and Allocation of Funds

A. The Commission shall administer the Arizona Private Postsecondary Education Student Financial Assistance Program in accordance with A.R.S. § 15-1854 and the rules promulgated thereunder. Administration shall include but not be limited to the award of vouchers to eligible students approved by the Commission.

B. The Commission shall maintain financial records of all disbursements made under the Program. These records shall include the amount of each student grant and the award year for which it was disbursed.

C. The Commission shall allocate private postsecondary education student financial assistance grant funds to eligible students based on methodology approved by the Commission under these rules.

D. Any funds which have been allocated to a student, but are not used by that student, shall be reallocated by the Commission in a subsequent award year.

E. Student financial assistance will be awarded to renewal students as first priority and then to new students in the order of receipt of completed applications. In the event that there are more new eligible students in an award year than available vouchers for new students, awards shall be made in the following priority:
1. Date of receipt of a completed application,
2. Highest grade point averages for the associate degree.

F. Student financial assistance in the amount up to $1,500 may be disbursed to an eligible student for an award year. An amount representing the student financial assistance award shall be paid to the eligible institution towards tuition and fee charges following:
1. Receipt by the Commission of an institutional certification of full-time attendance by the eligible student; and
2. The initial expiration of the institution's refund time period for United States Department of Education Title IV student assistance during the award year. The institution shall then repay the Commission the applicable proportion of the annual award if the eligible student is not enrolled full-time on the date of the expiration of the institution's refund policy during any subsequent portion of the award year.

G. Student financial assistance in the amount up to $750 may be awarded to an eligible student for half of an award year. An amount representing the student financial assistance award shall be paid to the eligible institution towards tuition and fee charges following:
1. Receipt by the Commission of an institutional certification of full-time attendance by the eligible student; and
2. The expiration of the institution's refund time period for United States Department of Education Title IV student financial assistance.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

R7-3-404. Student Eligibility

A. To be considered for an initial private postsecondary education student financial assistance, an eligible student, as defined in R7-3-402(D) and R7-3-402(G), shall submit a complete private postsecondary education student financial assistance program application to the Commission. The application shall contain:
1. Assurance of acceptance at an eligible institution;
2. Assurance of attendance as a full-time student;
3. Written authorization to inspect any of the academic or financial records of the student which are in the possession or under the control of the institution, which records are necessary to the proper administration of the provision of the Program and the regulations promulgated thereunder;
4. A signed statement certifying the student's understanding that the award will be used for tuition and fee expenses only; and
5. Agreement to reimburse the Commission the total amount of Program awards in the event the student fails to receive a baccalaureate degree within a three-year period of the receipt of the initial student financial assistance award.

B. To be eligible for a renewal of a private postsecondary education student financial assistance, a student shall:
1. Meet the conditions of R7-3-402(D);
2. Provide verification of full-time enrollment and satisfactory academic progress as determined by the institution for the previous award year; and
3. Not have exceeded a cumulative total of $3,000 in awards.

Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

R7-3-405. Termination of Award

A. Student financial assistance shall be terminated if:
1. A student has withdrawn from the PFAP program; or

2. A student has been dismissed from the institution for academic or other reasons; or
3. A student is not in attendance for more than 12 consecutive months.

B. The remaining student financial assistance award money designated for that student shall no longer be available to that student. This money shall be available for awards to other eligible students.

Historical Note
Adopted by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM

R7-3-501. Definitions

A. "Account year" means the period beginning on October 1 and ending on September 30 of each year.
B. "A.R.S." means Arizona Revised Statutes.
C. "Cash" means currency, bills and coin in circulation, or converting a negotiable instrument to cash by endorsing and presenting to a financial institution for deposit. An automatic transfer, cashier's check, certified check, money order, payroll deposit, traveler's check, personal check, and wire transfer will be treated as cash. Deposits will also be accepted by credit card.
D. "Code" means the Internal Revenue Service Code of 1986, as amended, or the corresponding provision of any future United States Internal Revenue law.
E. "Commission" means the Commission for Postsecondary Education as defined in A.R.S. § 15-1871.
F. "Committee" means the Family College Savings Program Oversight Committee as defined in A.R.S. § 15-1871.
G. "Distributee" means the designated beneficiary or the account owner who receives or is treated as receiving a distribution from an account. If a distribution is made directly to the designated beneficiary or to an eligible educational institution for the benefit of the designated beneficiary, the designated beneficiary is the distributee. In all other circumstances, the account owner is the distributee.
H. "Eligible educational institution" means an institution of higher education that qualifies under § 529 of the Code as an eligible educational institution.
I. "Negotiable instrument" means negotiable instrument as defined in A.R.S. § 47-3104.
J. "Qualified Tuition Program" means a qualified tuition program as defined in § 529 of the Code.

Historical Note
Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4). Amended effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 917, effective February 10, 2000 (Supp. 00-1). Amended by exempt rulemaking at 8 A.A.R. 486, effective January 9, 2002 (Supp. 02-1). Amended by exempt rulemaking at 8 A.A.R. 3743, effective August 8, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

R7-3-502. Fees

A. Application fee. The application fee is $10. Application fees shall be forwarded to the Commission at the end of the month in which the account is opened. A financial institution may waive the application fee but will nevertheless be responsible for tendering to the Commission $10 for each new account opened; said tender to be made at the end of the month in which the account is opened. The Committee shall review the application fee every 24 months and recommend to the Commission whether the application fee should be adjusted.
B. Administrative fee. For each account opened, the financial institution shall pay to the Commission a one-time fee of $3 at the end of the month in which the account was opened. The Committee shall review the administrative fee every 24 months and recommend to the Commission whether the administrative fee should be adjusted. The financial institution shall not charge the account owner the administrative fee.
C. Marketing fee. The financial institution shall pay to the Commission an annual marketing fee. The marketing fee shall be paid at the beginning of each calendar year as a $200 flat fee. If a financial institution begins participating in the Arizona Family College Savings Program after the beginning of a calendar year, the financial institution shall pay a pro-rated marketing fee based upon the month in which it begins participation in the Program regardless of the day in the month. The Committee shall review the marketing fee every 12 months and recommend to the Commission whether the marketing fee should be adjusted. The Commission may review the marketing fee prior to the committee's required 12-month review. The financial institution shall not charge the account owner the marketing fee.

Historical Note
Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

R7-3-503. RFP Process

The Commission may require any and all information for participation, including the ability of the investment instruments to track estimated costs of higher education as calculated by the Commission.

Historical Note
Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4).

R7-3-504. Changing Designated Beneficiary

An account owner may change the designated beneficiary so long as the new designated beneficiary is a member of the family, as defined in A.R.S. § 15-1871(8), of the previously named designated beneficiary. The account owner must certify and provide to the financial institution the name, address, social security number, and relationship of the new designated beneficiary to the previously named designated beneficiary. The change shall be effective upon the financial institution's receipt of such certification.

Historical Note
Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4). Section repealed; new Section adopted effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4).

R7-3-505. Account Balance Limitations

A. For each designated beneficiary, the balance in all qualified tuition programs, as defined in § 529 of the Code, shall not exceed the lesser of:
1. The product (rounded down to the nearest multiple of $1000) of 7 and the average one year's undergraduate tuition, fees, room and board at the ten independent four

year eligible educational institutions as measured and last published by the College Board's Independent College 500 Index that have the largest total direct charges. For purposes of this subsection, "total direct charges" means the charges determined for each eligible educational institution by multiplying the eligible educational institution's undergraduate enrollment by the reported tuition, fees, room and board for an on-campus student at the eligible educational institution; or

2. The cost in current dollars of qualified higher education expenses the account owner reasonably anticipates the designated beneficiary will incur.

B. No person shall make any contribution to a qualified tuition program during an account year that would cause the sum of the account balances in all qualified tuition programs of the designated beneficiary as of the first day of the account year plus contributions made during the account year less withdrawals during the account year to or from any such account to exceed the maximum allowable balance set forth in subsection (A). Any excess contributions with respect to a designated beneficiary shall be promptly withdrawn as a non-qualified withdrawal or transferred to another account in accordance with A.R.S. § 15-1875(F).

C. No financial institution shall accept for deposit in any account a contribution if the contribution would cause the sum of the values (as of the beginning of an account year) of all qualified tuition programs of the designated beneficiary that are managed by the financial institution and contributions to such accounts less withdrawals from such accounts during the account year to exceed the maximum allowable balance set forth in subsection (A).

D. Each year, the Commission shall review the amounts set forth in subsection (A).

E. Persons making a contribution to an account shall certify that as to the account's designated beneficiary, and to the best of the contributor's knowledge, the contribution shall not cause the balances in all qualified tuition programs to exceed the account balance limitations described in subsection (A).

F. If the Commission determines that contributions have been made to program accounts in violation of subsection (B) or (C), it shall notify the designated beneficiary and the account owners of all accounts of such designated beneficiary. The account owners shall have 60 days after receipt of such notice to reduce the balances of the qualified tuition programs through distributions and/or changes in beneficiaries to a level less than or equal to the maximum account balance described in subsection (A). If the balances are not appropriately reduced, the Commission will disqualify such accounts in reverse order of their date of opening until the sum of the balances in the accounts does not exceed the maximum allowable balance set forth in subsection (A). This subsection shall not apply to any contribution made at a time when such contributions did not cause the account balance limits to be exceeded.

Historical Note

Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4). Section repealed; new Section adopted effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 917, effective February 10, 2000 (Supp. 00-1). Amended by exempt rulemaking at 7 A.A.R. 5699, effective November 26, 2001 (Supp. 01-4). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

R7-3-506. Withdrawals; Reporting of Non-qualified Withdrawals; Penalties

A. An account owner may withdraw funds from an account at any time. The designated beneficiary of an account shall not have any authority to withdraw funds from an account unless the account is structured to give the designated beneficiary such right of withdrawal upon matriculation or upon incurring qualified higher education expenses.

B. Withdrawals.

1. Qualified Withdrawals.
   In order to make a qualified withdrawal, the account owner or the account owner's designee must complete a certification, on a form approved by the Commission, declaring that the funds will be used for the purposes set forth in A.R.S. § 15-1871(11). The form shall include a statement advising the designated beneficiary and account owner of their obligations to report, in accordance with R7-3-506(B)(3)(c), refunds received from an eligible educational institution. In addition to the certification, a withdrawal shall be deemed qualified only if:
   a. The financial institution is provided with a copy of an invoice from the eligible educational institution, and the distribution is made directly to the eligible educational institution; or
   b. The financial institution is provided with a copy of an invoice from the eligible educational institution, and the distribution is made in the form of a check payable to both the designated beneficiary and the eligible educational institution; or
   c. Within 30 days following the withdrawal, substantiation that the withdrawal was actually expended for qualified higher education expenses is submitted to the financial institution.
2. Withdrawal Based on Death, Disability, or Scholarship.
   A penalty-free withdrawal may be made as a result of the designated beneficiary's death, disability, or scholarship, if written substantiation thereof is provided. Such written substantiation must come from a party other than the designated beneficiary or the account owner. In the case of a scholarship, the withdrawal may not exceed the amount of the scholarship.
3. Non-Qualified or Unsubstantiated Withdrawals.
   Pursuant to A.R.S. § 15-1875(H), the Commission has authority to assess penalties for non-qualified withdrawals. If an account owner fails to certify that a withdrawal is qualified or penalty-free, as defined in R7-3-506(B)(1) and (2), above, or if a financial institution has reason to believe that a withdrawal is non-qualified, the financial institution shall withhold from such withdrawal an amount equal to 10% of that portion of that withdrawal which constitutes income under § 72 of the Code. If an account owner seeks to make a withdrawal in accordance with R7-3-506(B)(1)(c) and does not provide the required substantiation at the time of the withdrawal, the withdrawal shall be limited so that the balance remaining in the account is sufficient to pay the 10% of earnings penalty. If the financial institution is not provided with the required substantiation within 30 days, the withdrawal shall be treated as a non-qualified withdrawal, the penalty shall be assessed at that time, and the financial institution shall withdraw the penalty from the account.
   a. If the withdrawal has not been declared, by the party making the withdrawal, to be non-qualified, the amount of any penalty shall be remitted to the Commission with the financial institution's first monthly report following the date that the withdrawal is

determined to be non-qualified. If the withdrawal has been declared to be non-qualified, the amount of said withholding may be remitted to the Commission with the financial institution's required monthly report.

b. If the withdrawal has not been declared, by the party making the withdrawal, to be non-qualified, the financial institution shall report any such withholding, in writing, to the Commission with the financial institutions's first monthly report following the date that the withdrawal is determined to be non-qualified. The report shall include identification of the account owner, beneficiary, date of withdrawal, amount of withdrawal, and a brief description as to why the financial institution believes the withdrawal to be non-qualified. If the withdrawal has been declared to be non-qualified, the report may be submitted to the Commission with the financial institution's required monthly report. The financial institution shall notify the account owner and beneficiary, in writing, of any withholding.

c. If a qualified withdrawal is made from an account in any calendar year, within 60 days after the end of such year and within 60 days after the end of the following year, any designated beneficiary or account owner who received a partial or total refund from the eligible educational institution attended by the designated beneficiary or the eligible educational institution that the designated beneficiary had expected to attend shall provide to the financial institution a signed statement identifying the amount of any refunds received. In addition, the designated beneficiary or account owner shall provide an explanation as to what portion, if any, of the refund is allocable to a qualified withdrawal. If all or a portion of a refund is allocable to a qualified withdrawal, the designated beneficiary (or the account owner) may provide the financial institution with substantiation of qualified higher education expenses for which the refund was used or substantiation that the refund was made by reason of scholarship, or the death, or disability of the designated beneficiary. To the extent that a refund allocable to a qualified withdrawal was not used to pay qualified higher education expenses or made on account of death, disability, or scholarship of the designated beneficiary, it shall be considered a non-qualified withdrawal subject to the penalty described in R7-3-506(B)(3). The financial institution shall withdraw the penalty from the account from which the original qualified withdrawal was made, if sufficient funds are available in the account, or attempt to collect the penalty by billing the designated beneficiary or account owner for the penalty, if sufficient funds are not available in the account.

4. Substantiation Procedures.
Before treating any withdrawal as qualified or penalty-free based on substantiation provided, the financial institution shall review the substantiation to confirm that substantiation is provided for the amount of a withdrawal that the account owner or designated beneficiary asserts is qualified or penalty-free, that the substantiation complies with the program rules, and, in the case of a withdrawal to pay qualified higher education expenses, that the substantiated expenditures are of a nature and in amounts that can be treated as qualified higher education expenses. The financial institution may seek additional information from the account owner, the designated beneficiary, or the eligible educational institution before approving or rejecting substantiation, and the financial institution may seek guidance from staff of the Commission. If the financial institution determines that substantiation is inadequate, it shall promptly notify the account owner and defer making any distribution with respect to any inadequately substantiated request until proper substantiation is provided or the account owner instructs the financial institution to make the requested distribution and either withhold the penalty from the distribution or from other funds in the account.

5. Distributions Made after December 31, 2001.
R7-3-506(B)(1) through (4) shall not apply to any withdrawals made after December 31, 2001, except to the extent that any provision contained therein is required for the Family College Savings Program to qualify as a qualified tuition program under § 529 of the Code. A financial institution shall not be required to collect a penalty on any withdrawal made after December 31, 2001. Withdrawals may be made pursuant to forms prepared or used by the financial institution and meeting the requirements of R7-3-501 through R7-3-507, if any, and any requirements for the Family College Savings Program to qualify as a qualified tuition program under § 529 of the Code. To the extent that A.R.S. § 15-1875 requires provisions that will generally enable the Commission to determine whether withdrawals are qualified or nonqualified withdrawals, a financial institution shall require an account owner to state whether the account owner expects that the withdrawal will be a qualified or nonqualified withdrawal.

C. The account owner may dispute any withholding made by a financial institution under subsection (B) by submitting written notice, to the Commission, within 30 days from the date of such withholding. The Commission shall make a written determination regarding the dispute within 30 days of the receipt of its notice from the account owner. If the account owner disagrees with the Commission's determination, the matter shall be adjudicated in accordance with A.R.S. § 41-1092 et seq.

Historical Note

Adopted effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 917, effective February 10, 2000 (Supp. 00-1). Amended by exempt rulemaking at 6 A.A.R. 2486, effective June 7, 2000 (Supp. 00-2). Amended by exempt rulemaking at 8 A.A.R. 3743, effective August 8, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

R7-3-507. Oversight of Financial Institutions

A. Disclaimer of state liability. Every document pertaining to the Family College Savings Program shall clearly indicate that "The account is not insured by the state of Arizona and neither the principal deposited nor the investment return is guaranteed by the state of Arizona." A rubber stamp may be used to imprint this language on deposit slips, account statements, payroll stubs, or other documents pertaining to the Family College Savings Program. This language may also be handwritten or typed or provided by any other method to facilitate compliance.

B. No Investment Direction. A financial institution shall not permit an account owner to move funds, once deposited, that in

any way would result in investment direction under § 529 of the Code.

C. Reporting Requirements.

1. At least quarterly, every financial institution shall provide each account owner with a statement. The statement shall list a beginning balance, all activity during the quarter, including any interest paid or dividends earned and any penalties charged, and an ending balance. Additionally, the statement for the fourth quarter shall include the following information: an annual beginning balance, an annual total of the interest earned or dividends paid, an annual total of any penalties charged, and a year-end balance.
2. Within the time-frames established by the Code, financial institutions, at the request of the Commission, shall provide Form 1099Q to all distributees.
3. A copy of the statement described in (C)(1) and (2) shall be sent to the Commission. Additionally, each financial institution shall provide the Commission with the information required by A.R.S. § 15-1874(F).

D. Access to books and records. No contractor shall have access to the books and records of a financial institution or Program Manager unless the Commission or its designee first approves, with or without modification, such request for access.

E. Non-renewal. The Commission's failure to renew a contract with a financial institution shall not be construed as "good cause" as referred to in A.R.S. § 15-1874(I).

F. Marketing programs.

1. Any financial institution or group of financial institutions that wishes to engage in its own marketing program may do so provided that any proposed marketing program is first submitted to the Commission for review. If, within 30 days, the Commission does not notify the financial institution or group of financial institutions, in writing, that the proposed marketing program is rejected or requires modifications, the proposed marketing program shall be deemed approved.
2. Any financial institution or group of financial institutions that chooses to engage in its own marketing program may petition the Commission for a credit against future marketing fees.

Historical Note

Adopted effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4). Amended by exempt rulemaking at 8 A.A.R. 3743, effective August 8, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

R7-3-508. IRS Regulations, Rulings, Notices, and Other Guidance

A. If (i) the Internal Revenue Service issues on or after February 27, 2002, any regulation, ruling, notice or other precedential guidance on procedures or activities that a qualified tuition program may adopt or undertake without jeopardizing its exemption under § 529 of the Code, (ii) such guidance is less restrictive than any rule contained in Title 7, Chapter 3, Article 5, and (iii) the more restrictive rule was not mandated by A.R.S. §§ 15-1871 to 15-1877, then the more restrictive rule shall be deemed liberalized to the maximum extent possible without violating A.R.S. §§ 15-1871 through 15-1877 or any requirements for a program to qualify as a qualified tuition program under § 529 of the Code.

B. If (i) the Internal Revenue Service issues on or after February 27, 2002, any regulation, ruling, notice or other precedential guidance on procedures or activities that a qualified tuition program shall or shall not adopt or undertake to avoid jeopardizing its exemption under § 529 of the Code and (ii) the rules contained in Title 7, Chapter 3, Article 5 or the statutes contained in A.R.S. §§ 15-1871 to 15-1877 do not include such requirement or prohibition, then these rules shall be deemed amended to the maximum extent possible without violating A.R.S. §§ 15-1871 through 15-1877 to adopt such requirement or prohibition.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 3743, effective August 8, 2002 (Supp. 02-3).

15-1871. Definitions

In this article, unless the context otherwise requires:

1. "Account" means an individual trust account in the fund established as prescribed in this article.

2. "Account owner" means the person who enters into a tuition savings agreement pursuant to this article, who is an account owner within the meaning of section 529 of the internal revenue code and who is designated at the time an account is opened as having the right to withdraw monies from the account before the account is disbursed to or for the benefit of the designated beneficiary.

3. "Commission" means the commission for postsecondary education established by section 15-1851.

4. "Committee" means the family college savings program oversight committee.

5. "Designated beneficiary" means a person who qualifies as a designated beneficiary under section 529 of the internal revenue code and, except as provided in section 15-1875, subsections P and Q, with respect to an account, who is designated at the time the account is opened as the person whose higher education expenses are expected to be paid from the account or, if this designated beneficiary is replaced in accordance with section 15-1875, subsections D, E and F, the replacement beneficiary.

6. "Eligible educational institution" means an institution of higher education that qualifies under section 529 of the internal revenue code as an eligible educational institution.

7. "Financial institution" means any bank, commercial bank, national bank, savings bank, savings and loan association, credit union, insurance company, brokerage firm or other similar entity that is authorized to do business in this state.

8. "Fund" means the family college savings program trust fund that constitutes a public instrumentality of this state and that is established by section 15-1873.

9. "Member of the family" means any of the following:

(a) A son or daughter of a person or a descendant of the son or daughter of the person.

(b) A stepson or stepdaughter of a person.

(c) A brother, sister, stepbrother or stepsister of a person. For the purposes of this subdivision, "brother" and "sister" includes a brother or sister by the half-blood.

(d) The father or mother of a person or the ancestor of the father or mother of a person.

(e) A stepfather or stepmother of a person.

(f) A son or daughter of a person's brother or sister. For the purposes of this subdivision, "brother" and "sister" includes a brother or sister by the half-blood.

(g) A brother or sister of the person's father or mother. For the purposes of this subdivision, "brother" and "sister" includes a brother or sister by the half-blood.

(h) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law or sister-in-law of a person.

(i) The spouse of a person or the spouse of any individual described in this paragraph.
(j) A first cousin of a person.
(k) Any individual who meets the criteria for family membership described in this paragraph as a result of legal adoption.
10. "Nonqualified withdrawal" means a withdrawal from an account other than one of the following:
(a) A qualified withdrawal.
(b) A withdrawal made as the result of the death or disability of the designated beneficiary of an account.
(c) A withdrawal that is made on the account of a scholarship, or the allowance or payment described in section 135(d)(1)(B) or (C) of the internal revenue code, and that is received by the designated beneficiary, but only to the extent of the amount of this scholarship, allowance or payment.
(d) A rollover or change of designated beneficiary.
11. "Person" means an individual, an individual's legal representative or any other legal entity authorized to establish a savings account under section 529 of the internal revenue code and the corresponding regulations.
12. "Program" means the family college savings program that is established under this article and that constitutes a qualified tuition program as defined in section 529 of the internal revenue code.
13. "Qualified higher education expenses" means tuition, fees, books, supplies, room and board and equipment required for enrollment or attendance of a designated beneficiary at an eligible educational institution and expenses for special needs services in the case of a special needs beneficiary that are incurred in connection with enrollment or attendance, if these expenses meet the definition of qualified higher education expenses in section 529 of the internal revenue code.
14. "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education expenses of the designated beneficiary of the account, but only if the withdrawal is made in accordance with this article.
15. "Section 529 of the internal revenue code" means section 529 of the internal revenue code of 1986, as amended, and the final regulations issued pursuant to that section.
16. "Trust interest" means an account owner's interest in the fund created by a tuition savings agreement for the benefit of a designated beneficiary.
17. "Tuition savings agreement" means an agreement between the commission, as trustee of the fund, and an account owner that creates an interest in the fund and that provides for participation in the program.

15-1872. Family college savings program oversight committee; membership; powers and duties

A. The family college savings program oversight committee is established in the commission for postsecondary education. The committee consists of the following members:

1. The state treasurer or the state treasurer's designee.
2. The chairperson of the state board for private postsecondary education or the chairperson's designee.
3. Three members of the general public, each of whom possesses knowledge, skill and experience in accounting, risk management or investment management or as an actuary. The governor shall appoint these members to serve staggered four year terms pursuant to section 38-211. The initial members appointed pursuant to this paragraph shall assign themselves by lot to serve two, three and four year terms. The chairperson shall notify the governor's office on appointments of these terms. All subsequent members appointed pursuant to this paragraph serve four year terms.
4. A certified financial planner who is appointed by the governor.
5. A certified public accountant who is appointed by the governor.
6. An attorney with a state bar of Arizona certification in estates and trusts who is appointed by the governor.
7. An individual with investment, asset management and financial related expertise who is appointed by the governor.
8. An individual employed by a community college or university with investment, asset management and financial related expertise who is appointed by the governor.

B. The commission shall select a chairperson and a vice-chairperson from among the committee's membership. A majority of the membership constitutes a quorum for the transaction of business. The committee shall meet at least once each calendar quarter. The chairperson may call additional meetings.

C. The member of the family college savings program oversight committee appointed pursuant to subsection A, paragraph 6 of this section is eligible to receive compensation as determined pursuant to section 38-611 for each day of attendance at committee meetings, except that the compensation of the member shall not exceed five hundred dollars in any year. The commission shall pay compensation pursuant to this subsection from monies of the commission.

D. The committee shall recommend financial institutions for approval by the commission to act as the depositories and managers of family college savings accounts pursuant to section 15-1874.

E. The committee may submit proposed rules to the commission to assist in the implementation and administration of this article.

F. Members of the committee are immune from personal liability with respect to all actions that are taken in good faith and within the scope of the committee's authority.

15-1873. Commission for postsecondary education; powers and duties; family college savings program trust fund

A. The commission shall:

1. Develop and implement the program in a manner consistent with this article through the adoption of rules, guidelines and procedures.

2. Retain professional services, if necessary, including accountants, auditors, consultants and other experts.

3. Seek rulings and other guidance from the United States department of the treasury and the internal revenue service relating to the program.

4. Make changes to the program required for the participants in the program to obtain the federal income tax benefits or treatment provided by section 529 of the internal revenue code.

5. Interpret, in rules, policies, guidelines and procedures, the provisions of this article broadly in light of its purpose and objectives.

6. Charge, impose and collect administrative fees and service charges in connection with any agreement, contract or transaction relating to the program.

7. Negotiate and select the financial institution or institutions to act as the depository and manager of the program in accordance with this article.

8. As an agency of this state, act as trustee of the fund.

9. Maintain the program on behalf of this state as required by section 529 of the internal revenue code.

10. Enter into tuition savings agreements with account owners pursuant to this article.

B. The family college savings program trust fund is established consisting of the assets of the family college savings program. The commission shall administer the fund and shall act as the sole trustee of the fund. Monies in the fund are continuously appropriated. The fund is designated a public instrumentality of this state that is created for an essential public purpose. Trust interests in the fund shall be designated by the commission for each account owner. The fund shall be separated into a trust account and an operating account. The trust account shall include amounts received by the family college savings program from account owners pursuant to tuition savings agreements and interest and investment income earned by the fund. The commission shall make transfers from the trust account to the operating account as necessary for the immediate payment of obligations under tuition savings agreements, operating expenses and administrative costs of the family college savings program. The commission shall deposit and invest monies or other amounts in the fund with financial institutions in accordance with section 15-1874.

15-1874. Use of contractor as account depository and manager

A. The commission shall implement the operation of the program through the use of one or more financial institutions to act as the depositories of the fund and managers of the program. Under the program, persons may submit applications for enrollment in the program and establish accounts in the fund at the financial institution. Monies paid by account owners to the fund for deposit in accounts maintained by the fund at a financial institution shall be paid to the financial institution as an agent of the fund and the tuition savings agreements shall provide that all monies paid by account owners to fund accounts held at financial institutions are being paid to the fund.

B. The committee shall solicit proposals from financial institutions to act as the depositories of fund monies and managers of the program. Financial institutions that submit proposals must describe the financial instruments that will be held in accounts. The commission shall select proposals from financial institutions to act as depositories and managers, and the solicitation and selection process is exempt from the procurement code requirements of title 41, chapter 23.

C. On the recommendation of the committee, the commission shall select the financial institution or institutions to implement the program from among bidding financial institutions that demonstrate the most advantageous combination, both to potential program participants and this state, of the following factors:

1. Financial stability and integrity.
2. The safety of the investment instruments being offered, taking into account any insurance provided with respect to these instruments.
3. The ability of the investment instruments to track estimated costs of higher education as calculated by the commission and provided by the financial institution to the account holder.
4. The ability of the financial institutions, directly or through a subcontract, to satisfy record keeping and reporting requirements.
5. The financial institution's plan for promoting the program and the investment it is willing to make to promote the program.
6. The fees, if any, proposed to be charged to persons for maintaining accounts.
7. The minimum initial deposit and minimum contributions that the financial institution will require for the investment of fund monies and the willingness of the financial institution to accept contributions through payroll deduction plans and other deposit plans.
8. Any other benefits to this state or its residents included in the proposal, including an account opening fee payable to the commission by the account owner and an additional fee from the financial institution for statewide program marketing by the commission.

D. The commission shall enter into a contract with a financial institution, or except as provided in subsection E of this section, contracts with financial institutions, to serve as program managers and depositories. Program management contracts shall provide the terms and conditions by which financial institutions shall sell interests in the fund to account owners, invest monies in the fund and manage the program.

E. The commission may select more than one financial institution and investment for the program if both of the following conditions exist:
1. The United States internal revenue service has provided guidance that giving a contributor a choice of two investment instruments under a state plan will not cause the plan to fail to qualify for favorable tax treatment under section 529 of the internal revenue code.
2. The commission concludes that the choice of instrument vehicles is in the best interest of college savers and will not interfere with the promotion of the program.
F. A program manager shall:
1. Take all action required to keep the program in compliance with the requirements of this article and all action not contrary to this article or its contract to manage the program so that it is treated as a qualified tuition plan under section 529 of the internal revenue code.
2. Keep adequate records of each of the fund's accounts, keep each account segregated from each other account and provide the commission with the information necessary to prepare statements required by section 15-1875, subsections M, N and O or file these statements on behalf of the commission.
3. Compile and total information contained in statements required to be prepared under section 15-1875, subsections M, N and O and provide these compilations to the commission.
4. If there is more than one program manager, provide the commission with this information to assist the commission to determine compliance with section 15-1875, subsection L.
5. Provide representatives of the commission, including other contractors or other state agencies, access to the books and records of the program manager to the extent needed to determine compliance with the contract.
6. Hold all accounts in the name of and for the benefit of the fund and this state.
G. Any contract executed between the commission and a financial institution pursuant to this section shall be for a term of at least three years and not more than seven years.
H. The commission may terminate a contract with a financial institution at any time for good cause on the recommendation of the committee. If a contract is terminated pursuant to this subsection, the commission shall take custody of accounts held at that financial institution and shall seek to promptly transfer the accounts to another financial institution that is selected as a program manager and into investment instruments as similar to the original investments as possible.
I. If the commission determines not to renew the appointment of a financial institution as a program manager, the commission may take action consistent with the interests of the program and the accounts and in accordance with its duties as the trustee of the fund, including termination of all services or continuation of certain management and administrative services of that financial institution for accounts of the program managed by that financial institution

during its term as a program manager, if any continuation of services is only permitted under the following conditions:
1. The commission and the financial institution enter into a written agreement specifying the rights of the program and the commission and the responsibilities of the financial institution, including the standards that continue to be applicable to the accounts as accounts of the program.
2. Any services provided by the financial institution to accounts continue to be subject to the control of the commission as the trustee of the fund with responsibility of all accounts of the program.

15-1875. Program requirements
A. The program shall be operated through the use of accounts in the fund established by account owners. Payments to the fund for participation in the program shall be made by account owners pursuant to tuition savings agreements. An account may be opened by any person who desires to invest in the fund and to save to pay qualified higher education expenses by satisfying each of the following requirements:
1. Completing an application in the form prescribed by the commission. The application shall include the following information:
(a) The name, address and social security number or employer identification number of the contributor.
(b) The name, address and social security number of the account owner if the account owner is not the contributor.
(c) The name, address and social security number of the designated beneficiary.
(d) The certification relating to no excess contributions required by subsection L.
(e) Any other information that the commission may require.
2. Paying the one-time application fee established by the commission.
3. Making the minimum contribution required by the commission or by opening an account.
4. Designating the type of account to be opened if more than one type of account is offered.
B. Any person may make contributions to an account after the account is opened.
C. Contributions to accounts may be made only in cash.
D. An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the former designated beneficiary in accordance with procedures established by the commission.
E. On the direction of an account owner, all or a portion of an account may be transferred to another account of which the designated beneficiary is a member of the family of the designated beneficiary of the transferee account.
F. Changes in designated beneficiaries and rollovers under this section are not permitted if the changes or rollovers would violate either of the following:
1. Subsection L, relating to excess contributions.

2. Subsection I, relating to investment choice.
G. Each account shall be maintained separately from each other account under the program.
H. Separate records and accounting shall be maintained for each account for each designated beneficiary.
I. No contributor to, account owner of or designated beneficiary of any account may direct the investment, within the meaning of section 529 of the internal revenue code, of any contributions to an account or the earnings from the account.
J. If the commission terminates the authority of a financial institution to hold accounts and accounts must be moved from that financial institution to another financial institution, the commission shall select the financial institution and type of investment to which the balance of the account is moved unless the internal revenue service provides guidance stating that allowing the account owner to select among several financial institutions that are then contractors would not cause a plan to cease to be a qualified tuition plan.
K. Neither an account owner nor a designated beneficiary may use an interest in an account as security for a loan. Any pledge of an interest in an account is of no force and effect.
L. On the recommendation of the committee, the commission shall adopt rules to prevent contributions on behalf of a designated beneficiary in excess of those necessary to pay the qualified higher education expenses of the designated beneficiaries. The rules shall address the following:
1. Procedures for aggregating the total balances of multiple accounts established for a designated beneficiary.
2. The establishment of a maximum total balance for the purpose of prohibiting contributions to accounts established for a designated beneficiary if the contributions would cause the maximum total balance to be exceeded.
3. The commission shall review the quarterly reports received from participating financial institutions and certify that the balance in all qualified tuition programs, as defined in section 529 of the internal revenue code, of which that person is the designated beneficiary does not exceed the lesser of:
(a) A maximum college savings amount established by the commission from time to time.
(b) The cost in current dollars of qualified higher education expenses that the contributor reasonably anticipates the designated beneficiary will incur.
4. Requirements that any excess contributions with respect to a designated beneficiary be promptly withdrawn in a nonqualified withdrawal or rolled over to another account in accordance with this section.
M. If there is any distribution from an account to any person or for the benefit of any person during a calendar year, the distribution shall be reported to the internal revenue service and the account owner or the designated beneficiary to the extent required by federal law.
N. The financial institution shall provide statements to each account owner at least once each year within thirty-one days after the twelve month period to which they relate. The statement shall identify the contributions made during a

preceding twelve month period, the total contributions made through the end of the period, the value of the account as of the end of this period, distributions made during this period and any other matters that the commission requires be reported to the account owner.
O. Statements and information returns relating to accounts shall be prepared and filed to the extent required by federal or state tax law.
P. A state or local government or organizations described in section 501(c)(3) of the internal revenue code may open and become the account owner of an account to fund scholarships for persons whose identity will be determined after an account is opened.
Q. In the case of any account described in subsection P, the requirement that a designated beneficiary be designated when an account is opened does not apply and each person who receives an interest in the account as a scholarship shall be treated as a designated beneficiary with respect to the interest.
R. Any social security numbers, addresses or telephone numbers of individual account holders and designated beneficiaries that come into the possession of the commission are confidential, are not public records and shall not be released by the commission.
S. An account owner may transfer ownership rights to another eligible account owner.
T. An account owner may designate successor account owners.

15-1876. Higher education expenses; exemption from taxation
Notwithstanding any other law, the amount of any distribution to a designated beneficiary, as defined in section 529(e)(1) of the internal revenue code, from an individual trust account or savings account established under this article is exempt from taxation under title 43 but only to the extent that this income is used to pay qualified higher education expenses of the designated beneficiary.

15-1877. Scholarships and financial aid provisions
A. Any student loan program, student grant program or other financial assistance program established or administered by this state shall treat the balance in an account of which the student is a designated beneficiary as neither an asset of the parent of the designated beneficiary nor as a scholarship, a grant or an asset of the student for determining a student's or parent's income, assets or financial need.
B. Subsection A applies to any state appropriated financial assistance program administered by a college or university in this state including the financial aid trust fund, established by section 15-1642, the leveraging educational assistance program established by section 1203 of the higher education act amendments of 1998 (P.L. 105-244; 112 Stat. 1581; 20 United States Code

section 1001) and the private postsecondary education student financial assistance program established by section 15-1854.
C. Subsections A and B do not apply if any of the following conditions exist:
1. Federal law requires all or a portion of the amount in an account to be taken into consideration in a different manner.
2. Federal benefits could be lost if all or a portion of the amount in an account is not taken into consideration in a different manner.
3. A specific grant establishing a financial assistance program requires that all or a portion of the amount in an account be taken into consideration.

15-1878. Limitations of article
A. Nothing in this article shall be construed to:
1. Give any designated beneficiary any rights or legal interest with respect to an account unless the designated beneficiary is the account owner.
2. Guarantee that a designated beneficiary will be admitted to an eligible educational institution or be allowed to continue enrollment at or graduate from an eligible educational institution located in this state after admission.
3. Establish state residency for a person merely because the person is a designated beneficiary.
4. Guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified higher education expenses of a designated beneficiary.
B. Nothing in this article establishes any obligation of this state or any agency or instrumentality of this state to guarantee for the benefit of any account owner, contributor to an account or designated beneficiary any of the following:
1. The return of any amounts contributed to an account.
2. The rate of interest or other return on any account.
3. The payment of interest or other return on any account.
4. Tuition rates or the cost of related higher education expenditures.
C. Under rules adopted by the commission, every contract, application, deposit slip or other similar document that may be used in connection with a contribution to an account shall clearly indicate that the account is not insured by this state and neither the principal deposited nor the investment return is guaranteed by this state.

15-1879. Annual report
The commission shall submit an annual report to the speaker of the house of representatives, the president of the senate and the governor by March 1 that summarizes the commission's findings and recommendations concerning the program established by this article.