

# ARIZONA STATE PARKS BOARD

Title 12, Chapter 8, Articles 1, 2, and 3

May 2014

## INTRODUCTION

The Arizona State Parks Board (Board) has, since its inception in 1957, promulgated rules pursuant to A.R.S. § 41-511. Agency staff in the operation and maintenance of the Arizona State Parks System, including the State Historic Preservation Office, utilize these rules. The current rules are simple, direct and provide clear guidelines for the public, park users, and park employees. The current rules are adequate for Board to accomplish its legislative charge in A.R.S. §41-511.04. The agency has had very few written or verbal complaints on the current rules.

It has been Arizona State Parks policy and philosophy to constantly monitor the effectiveness and appropriateness of its rules. Agency staff has actively enforced these rules. In the past five years there have been no significant issues based upon the interpretation and use of these rules in their current format. In completing the five-year rule review in accordance with A.R.S. §41-1056 and A.A.C. R1-6-301, the agency has determined that there are no rules that need to be amended in the next five years.

### Article 1

Statute that generally authorizes the agency to make all rules: A.R.S. § 41-511.05(9)

1. Specific statute authorizing the rules:

R12- 8–108 was adopted and authorized by § 41-511.05(7), (8).

"Designation of roads, spurs or other traffic related appurtenances as public highways shall not prohibit the Board from closing such public highways when the park is closed, charging for admission to the park to persons using the public highway within the park or otherwise managing such public highways in the same manner as other lands within the park." A.R.S. § 41-511.05(7).

"Levy and collect reasonable fees or other charges for the use of such privileges and conveniences as may be provided under the jurisdiction of the Board" A.R.S. § 41-511.05(8).

R12-8-109, R12-8-110 and Exhibit-A were adopted and authorized by §41-511.05(8) and (11).

"Levy and collect reasonable fees or other charges for the use of such privileges and conveniences as may be provided under the jurisdiction of the Board." A.R.S. § 41-511.05(8).

R12-8-111 was adopted and authorized by A.R.S. § 41-511.05(5)

"Construct at state parks and monuments necessary sanitary and other facilities including picnic tables, fire places, campsites... ."

R12-8-122 was adopted and authorized by §41-511.05(5).

"Contract with private persons for the construction and operations of cabins, hotels and restaurants, and like establishments." A.R.S. §41 - 511.05(5)".

R12-8-125 was adopted and authorized by §41-511.05(8).

"Levy and collect reasonable fees and other charges for the use of such privileges and conveniences as may be provided under the jurisdiction of the Board." A.R.S. § 41-511.05(8)".

2. Objective of the rule including the purpose for the existence of the rule:

The general purpose of all the rules in this article are established in A.R.S. § 41-511.03, Purposes and Objectives of the Arizona State Parks Board, which states:

"The purposes and objectives of the board shall be to select, acquire, preserve, establish and maintain areas of natural features, scenic beauty, historical and scientific interest, and zoos and botanical gardens, for the education, pleasure, recreation, and health of the people, and for such other purposes as may be prescribed by law."

Specifically:

R12-8-101 was adopted to provide definitions for terms, words, and phrases used in the rules promulgated by the Board.

R12-8-102 was adopted to set conditions upon which a park user or potential park user could enter, use or remain in an area under the management control of Arizona State Parks. This rule states that all persons using or wishing to use an Arizona State Park must comply with Arizona State Law and the regulations established by the Board. The rule was established to allow the managing staff to ask a user who is not meeting the stated conditions to leave the park for the purpose of maintaining the peace, safety, and security of the other park visitors, park resources and park staff.

R12-8-103 was adopted for the protection of all natural and cultural resources, and the public property found within areas under the administrative control of the Board. This rule allows park staff to take enforcement action to deter, control and stop any park visitor from degrading the resources and facilities located within a State Park. These resources and developments must be preserved as they are the foundation for setting aside the areas as State Parks.

R12-8-104 was adopted to establish general guidelines on park operating hours, specific reasons and authority levels for closing a park or portions of a park, when a park may temporarily extend its hours of operation to accommodate unusual circumstances, and define by whom and how a violation of the rule would be determined.

R12-8-106 was adopted to give staff the opportunity to use approved leave time in order to spend time with family. It gives notice to the public that Christmas day is a day in which park facilities will be operated on a very limited basis with only needed emergency services being provided at the individual park areas.

R12-8-107 was adopted to set conditions upon which park natural resources and developed facilities are kept free of any human or animal waste or refuse which may result in unsafe or unsanitary conditions to the visiting public and park employees.

R12-8-108 was adopted to give the parks' employees authority to collect revenues due the State from visitors in the designated fee areas under administrative control of the Arizona State Parks Board.

R12-8-109 was adopted to create, implement, review and revise and administer a fee structure for the use of the Agency's resources, lands and facilities. It provides a transparent mechanism to create, revise and implement fees in a fair manner.

R12-8-110 was adopted to provide the agency flexibility, via the agency director, to waive or modify a fee for the purposes of marketing the agency and its resources, assisting with improving the quality of life for disabled individuals, and educational purposes.

R12-8-111 was adopted for the purpose of controlling camping in State Parks for the protection of the resources in the park that would be deteriorated from overuse by uncontrolled camping, and to assure that camping is done in a manner that is safe, meets State health codes and allows for the collection of camping fees.

R12-8-112 was adopted for the protection of natural, human, and property resources found within areas under the administrative control of the Board. It allows park staff to control or limit the location, type and circumstances of recreational campfires, especially during high fire danger seasons.

R12-8-113 was adopted for three basic purposes: to protect the park resources against off-road traffic, to protect the safety of park visitors, and to prevent the obstruction of smooth traffic flow by improperly parked vehicles

R12-8-114 was adopted for the protection of the park shorelines in recreation parks with water frontage. Without this rule, beaches and other portions of shoreline could be clogged with moored watercraft, obstructing boating traffic and preventing use of the shoreline by fishermen, swimmers and other recreationists.

R12-8-115 was adopted to protect the health and safety of the park visitor, as well as protect the ability of the park visitor to enjoy the use of park resources. The leash law is needed to prevent dogs and other pets from running loose, chasing and disturbing natural wildlife, from biting park visitors, and from attacking other pets. The leash law also ensures that the pet is under the constant control of its owners.

R12-8-116 was adopted for the protection of the visiting public and staff. By promulgating a rule that prohibits glass containers to be taken into designated public swimming areas, Arizona State Parks is in effect reducing the possibility for injuries to the public and staff.

R12-8-119 is clearly written to maintain and keep the peace in state parks and monuments. There is no peace if visitor groups feel intimidated and threatened by armed persons in state parks.

R12-8-120 was adopted to prohibit the possession and discharge of fireworks, and explosive devices within a state park. This rule enables the park staff to provide a safe recreation environment for the visiting public.

R12-8-122 was adopted to control and prohibit soliciting, panhandling and other commercial activities on Arizona State Park's lands. Since a state park is often the location of large crowds of people, these crowds attract persons who would exploit the visitors for commercial gain. The intent of the rule is to limit commercial activities to park concessionaires and those who have been granted a commercial vending permit by the Director.

R12-8-124 was established to allow managing staff to ask a user who is not meeting the stated conditions, to leave the park for the purpose of maintaining the peace, and for the security of other park visitors and resources.

R12-8-125 was adopted to set conditions upon which a park user or potential park user could use an area under the management control of Arizona State Parks for special events and public attractions, such as organized sporting events, pageants and assemblies.

R12-8-126 was adopted to reference conditions upon which a person incurs a Class 2 Misdemeanor penalty, by violating any Arizona State Parks rule or regulation as stated in A.R.S. § 41-511.13.

Exhibit-A was adopted as a mechanism to provide staff and the public a specific listing of the fees charged at each park location and by type of use.

3. Effectiveness of the rules in achieving the objective including a summary of any available data supporting the conclusion:

R12-8-101 is effective in providing staff, as well as the general public, a working set of defined terms for understanding the content, intent, and uses of the rules in this article.

R12-8-102 is a building block for all of the regulation enforcement in the park areas. Because it sets conditions for park use, it enables both visitors and employees to evaluate the appropriateness of the user's treatment of the park resources, visitors, and employees. Not only does it define the conditions, but it also allows resolution of regulation non-compliance without the necessity of judicial process. The rule is effective in achieving its objective by giving staff a tool to reduce or eliminate the potential of inappropriate behavior, damage to the resource, or non-compliance with agency rules.

R12-8-103 is effective because it specifically defines the protected objects within the Park system to both the visitor and employees. It is the basis for general protection of all natural and man-made resources under the management control of the Board. Without this rule it would be difficult for the managing staff to accomplish a major portion of its enabling legislative charge: §41-511.03 "preserve, establish and maintain areas". Without this regulation, the agency's general enforcement procedures would necessarily have to be elevated to legal action, bypassing the educational component of the agency's philosophy.

R12-8-104 is effective because it essentially is the rule that establishes the authority for agency staff to manage public parks for public use. Without this rule the agency could not keep the public away from an identified safety hazard, control the number of persons that are using an area, establish use capacities, or extend use hours to meet a temporary public use demand. Because it specifically defines to the public when they can expect a park to be open, why a park or area of a park is closed to their use, and requires adherence to the hours of use or closures, R12-8-104 forms the basis for management of public use of all the areas under the management and control of the Board. Without this rule it would be difficult for the managing staff to accomplish a major portion of its enabling legislative charge: "preserve, establish and maintain areas. " The rule contains an errant citation to R12-8-105, which was repealed in 2007. The reference to R12-8-105 was removed in the 2007 rulemaking at 13 A.A.R. 1115; however, the citation was erroneously retained as part of the NFR when published in the Arizona Administrative Code. GRRC Staff has advised the Board that this correction can be fixed by having the Board send a letter to the Office of the Secretary of State.

R12-8-106 gives park users information they need to know for all the areas under the management control of the Arizona State Parks Board. Without this rule, Christmas Day would be just another day for park field staff. R12-8-106 gives most of the park employees a chance to be with their families during this extremely important family time. This rule effectively provides the public with notice that park facilities will be operated on a very limited basis with only needed emergency services being provided at the individual park areas

R12-8-107 is effective because it allows staff to designate safe and efficient methods and locations for the management, control, and disposal for litter and waste in a state park. Without this regulation, it would be difficult for the managing staff to accomplish a major portion of its legislative charge to "preserve, establish and maintain areas" and provide for the health and safety of park patrons and employees

R12-8-108 allows the park staff to take enforcement action as prescribed in §41-511.09 against any park visitor refusing to pay fees due the State for entry onto a Board designated fee area. The rule also specifies that general fees paid at one park do not entitle a park visitor free entry into a different park on the same day. The rule is effective in that it ensures that fees approved and implemented by the Board are collected in a fair and acceptable manner.

R12-8-109 is effective in providing staff, as well as the general public a definitive set of defined fees for the use of the Agency's resources, lands and facilities. The rule is effective because it gives staff and the Board a prescribed method to adjust fees based upon changing operational costs, developmental needs and general economic climates. The rule also allows for public transparency when developing fee changes and strategy.

R12-8-110 is effective in that it allows the ability to modify fees for a promotional campaign to increase visitation, implement or open new programs or resources, recognize volunteers and professional organizations or address special circumstances that forwards the Purposes and Objectives of the Board.

R12-8-111 is an effective in controlling camping use to prevent overuse or damage to the park. It specifically defines where visitors may camp, for how long visitors may camp in a park, how they may occupy the campsite, and at what time their camping permit expires the following day.

R12-8-112 is effective in that it allows park staff to take enforcement action as prescribed in §41-511.09 to deter and stop any park visitor from leaving any fire unattended within a state park. The rule provides park staff the authorization to determine when, where, and during what times fires may be inappropriate. Because the rule specifically defines where and when fires can be utilized, R12-8-112 forms the basis for general protection of all natural and man-made resources under the management control of the Board. Without this rule it would be difficult for the managing staff to accomplish a major portion of its enabling legislative charge to " preserve, establish and maintain areas ", and provide for visitor safety.

R12-8-113 is effective in that it allows park staff to take enforcement action as prescribed in §41-511.09 to deter, control and stop any unsafe or damaging use of motor vehicles within the parks. The rule has been used for its intended purpose of maintaining a safe traffic environment within parks.

R12-8-114 is effective in providing staff, as well as the general public notice as to where appropriate watercraft usage is allowed. Without R12-8-114 the continued launching of watercraft in areas other than designated ramps could result in severe damage to shoreline vegetation and soil erosion. On heavily used bodies of recreational water, such as Lake Havasu, regulation of these boating uses is essential for the protection of the resources, and the equal enjoyment of the resource by all recreationists.

R12-8-115 is effective in that it allows staff to maintain a safe environment for the resource and its visitors. The prohibition of pets from park buildings and beaches prevents the potential for unsanitary conditions to arise from pet waste. It also is effective in preventing potential injury to visitors from pets that could be startled or uncontrolled.

R12-8-116 was adopted by the Board because the agency actively manages several developed and/or designated public swimming areas. This rule is effective in helping to maintain a safe environment for visitors and staff. Frequently, food and drink items are stored in glass containers that are breakable into sharp, potentially dangerous pieces. Areas that encourage swimming are usually areas in which the user goes barefoot to swim in the water or recreate on the beach. Broken glass is not only hazardous on the dry beach, but when immersed in water becomes almost invisible to the naked eye.

R12-8-119 was adopted as a result of a number of situations where unarmed park visitors felt intimidated by armed visitors in developed, improved recreation areas. Intimidation can be accomplished by statements, or attitudes of the armed visitors. The objective of the rule was to allow all visitors to enjoy the recreational opportunities afforded by the State parks without feeling threatened by the open display of firearms in areas where there was no obvious need to carry them. The rule has been effective in achieving its objective. When considering nation-wide levels it can be seen that Arizona still has comparatively liberal firearms statutes and, therefore, the wearing of firearms in situations where other park visitors feel threatened or intimidated can be a relatively frequent occurrence. Without this rule, it would be extremely difficult for park staff to maintain the peace of mind of other park visitors while in the park.

R12-8-120 authorizes park staff to prohibit the discharge of fireworks and explosive devices, thus enabling the visitor to safely utilize a state park free of obtrusive noise and potential hazards. The rule is effective, and allows staff to maintain, preserve and protect the quality recreational experience expected to be found within state parks.

R12-8-122 is effective and allows the Board to properly manage and maintain the peace on Arizona state parks lands. It is imperative that controls be applied to commercial activities on those lands. Without those controls, commercial activities of an unsafe, unhealthy or illegal nature would occur, placing the State in a position of liability for lawsuits related to those activities, as well as creating conditions on the parks that would detract from the recreational experiences of park visitors. Also, without the rule, the value of concession contracts and vending permits, from which a percentage of sales go to the State, would be seriously lessened. Private parties could directly compete against concessionaires and vending permittees for the same goods and services, without the State receiving its share of revenues.

Rule R12-8-124 was adopted to establish when conduct of a person deters other park visitors from the enjoyment of a recreational experience, and potentially affects the welfare and safety of those visitors within a state park. The rule is effective in that it allows park staff to take enforcement action as prescribed in §41-511.09 to deter and stop activities, conduct or other situations that could become a detriment to a visitor's park experience or safety.

R12-8-125 forms the basis for the regulation and management of all the special events in individual park areas. It also sets conditions for special event park use, and enables the park areas to define the conditions, set standards for denial of permit application, and the permit appeal structure. This rule states that all persons using or wishing to use a state park for uses specified in the rule must obtain a special event permit. The rule is effective in that it establishes conditions that may be imposed on the special event permit, including conditions to address public safety concerns, liability, sanitation, resource protection, and profit sharing with the Board.

R12-8-126 is effective in providing staff and the general public a definition of the specific penalty incurred by non-compliance with any of the rules in this article.

Exhibit-A is effective in providing staff, as well as the general public a definitive set of defined fees for the use of the Agency's resources, lands and facilities. Its tabular format is easy to use and is accepted and published by the Secretary of State.

4. Consistency of the rules with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency:  
The rules in this Article are essentially separate in that they accomplish the specific objectives of each individual rule and there are no Board rules that can be considered redundant or in conflict with one another. These rules are consistent with the authorizing statute A.R.S. § 41-511.05(9). There are no federal laws upon which the rules are dependent or mandated by.
5. Agency enforcement policy including whether the rules are currently being enforced and, if so, whether there are any problems with enforcement:

R12-8-101, 106, 126 are being followed, interpreted, and used as written and intended. They do not require any enforcement.

All other rules in this article are enforced as written. All agency staff are required, when appropriate, to follow an established law enforcement policy which sets the tone of rule enforcement throughout the agency. This tone is best described as education and explanation first. The rules allow for elevation of enforcement within established norms under A.R.S. Title 13.

In general, the Board and administrative staff have adopted a general policy of low-key regulation enforcement. The rules have been used and enforced according to the above objectives many times since their adoption.

6. Clarity, conciseness, and understandability of the rules:  
All of the words utilized in the rules of this Article are commonly used words with clear, established definitions. These rules are comprised of simple sentences and it is the opinion of the Board that they do not need editing for brevity, clarity or organization.

7. Summary of written criticisms of the rules received by the agency with the past five years, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and, written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute or beyond the authority of the agency to enact, and the result of the litigation of administrative proceedings:  
Over the past five years there have been few written complaints or comments pertaining to the enforcement of the rules in this Article, although not necessarily the substance of the rule. These were from persons that had been evicted from park premises for failure to comply with this rule, or why a park was closed, or why “I can’t have my dog on the beach.” Each of the criticisms were addressed individually. There was no case of a continued correspondence from any individual.

No rule has been at issue in any litigation or an administrative proceeding.

8. A comparison of the estimated economic, small business, and consumer impact of the rules with the economic, small business, and consumer impact statement prepared on the last making of the rules or, if no economic, small business, and consumer impact statement was prepared on the last making of the rules, an assessment of the actual economic, small business, and consumer impact of the rules:

For rules R12-8-102, 103, 104, 107, 108, 111, 112,113, 114, 115, 116, 119, 120,122, 124,125 if action other than eviction is required, the active enforcement usually results in court citation and fine. Class 2 Misdemeanor penalties can be no more than \$750 (A.R.S. § 13-802). Actual monetary fines are set by individual Magistrate courts on a case-by-case basis. All funds are collected by the courts, and the final disposition and use of these fines are in the sole jurisdiction of the court system. There is no direct impact to small business.

For rule R12-8-106 and R12-8-126 there has been no determination of any significant adverse economic impact to either the user or the agency.

In general for all rules in this article, with the exception of Exhibit-A, there are no changes in the economic impact of these rules on small businesses since the last submitted EIS of 2007. There is no significant impact on consumers from the economic impact estimated since the last amendment of these rules in 2007.

In reference to Exhibit-A, fee changes are accomplished by exempt rule making authority ARS §41-1005 and therefore no EIS has been completed. Any fee changes reflect the agency’s policy of fair and competitive pricing while attempting to achieve park system sustainability as a result of loss of state funding sources (General Fund). The last changes completed were on January 1, 2014.

9. Any analysis submitted to the agency by another person regarding the rules’ impact on this state’s business competitiveness as compared to the competitiveness of businesses in other states:

There have been no such analyses received by the agency.

10. How the agency completed the course of action indicated in the agency’s previous 5YRR:

The agency did not propose any rule actions in its previous 5YRR.

11. A determination after analysis that the probable benefits of the rules outweigh within this state the probable costs of the rules and the rules imposes the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:  
The benefits of these rules greatly outweigh their minimal costs. These rules enable the Board to accomplish its primary mission as stated in §41-511.03 “the board shall be to select, acquire, preserve, establish and maintain areas of natural features, scenic beauty, historical and scientific interest, and zoos and botanical gardens, for the education, pleasure, recreation, and health of the people, and for such other purposes as may be prescribed by law.”
12. A determination after analysis that the rules are not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law:  
All of the rules in the Article were created under State authorization, A.R.S. § 41-511.05(9). None of the rules in this Article are dependent or mandated by federal law.
13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:  
None of the rules in this Article were made after July 29, 2010. The rules in this article were last amended in 2007. The exception being Exhibit-A. That has been amended several times, as allowed by ARS § 41-1005, in the last five years due to approved revisions to the individual user fee schedule, Exhibit-A was last amended in 2014. Exhibit-A, however, does not require the issuance of a regulatory license, permit, or agency authorization.
14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule or to make a new rule. If no issues are identified for a rule in the report, the agency may indicate that no action is necessary for the rule:  
The Board does not intend to take action regarding these rules.

## Article 2

Statute that generally authorizes the agency to make rules: A.R.S. § 41-511.05(9)

1. Specific statute authorizing the rules:

R12-8-201, 202, 203, and 204 were written and adopted in accordance with A.R.S. § 41-511.01(B): "The board shall adopt rules for the conduct of its meetings."

R12-8-207 was written in accordance with A.R.S. § 41-511.05(2): "Make such contracts, leases and agreements and incur such obligations as are reasonably necessary or desirable within the general scope of its activities and operations to enable it to perform adequately its duties."

2. Objective of the rule including the purpose for the existence of the rule:

The objectives of these rules are established in A.R.S. § 41-511.03, Purposes; objectives, which states: "The purposes and objectives of the board shall be to select, acquire, preserve, establish and maintain areas of natural features, scenic beauty, historical and scientific interest, and zoos and botanical gardens, for the education, pleasure, recreation, and health of the people, and for such other purposes as may be prescribed by law."

Specifically:

R12-8-201 was adopted to establish the frequency, time, place, and agenda requirements for Board meetings

R12-8-202 was adopted to establish the process of selecting officers and defining their duties in order for the Board to be efficiently organized in order to carry out its purpose and mission.

R12-8-203 and 204 were adopted to organize the internal structure(s) of the committee, voting and general meeting procedures.

R12-8-207 was adopted to set forth the conditions and procedures for the Board to follow when entering into concession agreements for the operation and development of concession activities within State Parks. These conditions and procedures ensure that the Board follows good business practices as set forth by the Arizona Department of Administration Procurement Office.

3. Effectiveness of the rules in achieving the objective including a summary of any available data supporting the conclusion:

R12-8-201 gives direction to the Chairman of the Board and Director on properly scheduling and planning Board meetings. The rule is effective in that without the rule, there would be no direction to the Board or the Director on properly noticing Board members or notifying the public of Board meetings.

R12-8-202 is effective in that it gives specific direction for selection of its officers or definition of officer duties. The rule is considered appropriate and necessary for proper functioning of the Board.

R12-8-203 is effective in that it gives direction to the Board and its Chairman concerning the establishment of Board committees. Without this rule, the Board would have no direction for establishing committees; therefore, the rule is considered appropriate and necessary for proper functioning of the Board.

R12-8-204 is effective in that it gives direction for procedures to be followed at its meetings; therefore, the rule is considered appropriate and necessary for proper functioning of the Board.

R12-8-207 is effective in that it provides guidelines for selecting concession operations and contractors in a fair and consistent manner. Evidence of its effectiveness is substantiated by the absence of any formal criticisms or protests regarding the policy and procedures authorized by the rule.

4. Consistency of the rules with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency:

R12-8-201 There are no other Arizona State Parks rules that have a similar purpose. This rule is consistent with the authorizing statute A.R.S. § 41-511.05(9).

R12-8-202 There are no other Arizona State Parks rules that have a similar purpose. There is neither an agency enforcement policy and procedure or fee structure associated with this rule. This rule is consistent with the authorizing statute A.R.S. § 41-511.05(9).

R12-8-203 is consistent with the authorizing statute A.R.S. § 41-511.05(9).

R12-8-204 There are no other Arizona State Park rules that have a similar purpose. This rule is consistent with the authorizing statute A.R.S. § 41-511.05(9).

R12-8-207 has no inconsistency with statute or other rules. The Arizona Procurement Code applies only to the expenditure of state funds. There are no other Arizona State Park rules that have a similar purpose. The procedure for soliciting potential concessionaire interests, dissemination of the rule to proposers, and conditions for exemptions are outlined. This rule is consistent with the authorizing statute A.R.S. § 41-511.05(9).

5. Agency enforcement policy including whether the rules are currently being enforced and, if so, whether there are any problems with enforcement:

R12-8-201, 202, 203 and 204 are enforced by conducting board meetings quarterly, at a minimum, holding yearly elections, special committees being appointed by the Chairman of the Board when necessary, conducting appropriate and legal votes at all board meeting.

R12-8-207 has no fees or enforcement policies associated with it. The rule is enforced fairly and consistently as written.

6. Clarity, conciseness, and understandability of the rules:

All the rules in this article consist of short sentences and it is the opinion of the Board that they do not need editing for brevity, clarity, or organization.

7. Summary of written criticisms of the rules received by the agency with the past five years, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and, written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute or beyond the authority of the agency to enact, and the result of the litigation of administrative proceedings:  
There have been no comments or complaints on the rules in this Article during the past five years. No rule in this Article has been at issue in any litigation or an administrative proceeding.
8. A comparison of the estimated economic, small business, and consumer impact of the rules with the economic, small business, and consumer impact statement prepared on the last making of the rules or, if no economic, small business, and consumer impact statement was prepared on the last making of the rules, an assessment of the actual economic, small business, and consumer impact of the rules:  
In general for all rules in this article there are no changes in the economic impact of these rules on small businesses since the last submitted EIS of 2001. There is no significant impact on consumers from the economic impact estimated since the last amendment of these rules in 2001.
9. Any analysis submitted to the agency by another person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states:  
There have been no such analyses received by the agency concerning the rules in this Article.
10. How the agency completed the course of action indicated in the agency's previous 5YRR:  
The agency did not propose any rule actions in its previous 5YRR.
11. A determination after analysis that the probable benefits of the rules outweigh within this state the probable costs of the rules and the rules imposes the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:  
The benefits of these rules greatly outweigh their minimal costs. These rules enable the Board to accomplish its primary mission, which is to: "select, acquire, preserve, establish and maintain areas of natural features, scenic beauty, historical and scientific interest, and zoos and botanical gardens, for the education, pleasure, recreation, and health of the people, and for such other purposes as may be prescribed by law."
12. A determination after analysis that the rules are not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law:  
All of the rules in the Article were created under State authorization A.R.S. § 41-511.05(9). None of the rules in this Article are dependent or mandated by federal law.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

None of the rules in this Article were made after July 29, 2010. The rules in this Article were last amended in 2001.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule or to make a new rule. If no issues are identified for a rule in the report, the agency may indicate that no action is necessary for the rule:

The Board does not intend to take action regarding these rules.

### Article 3

Statute that generally authorizes the agency to make rules: A.R.S. § 41-511.05(9)

1. Specific statute authorizing the rules:

R12-8-301, 302, 303, and 304 were written and adopted in accordance with A.R.S. § 41-511.04(D)(2): Identify and nominate eligible properties to the National Register of Historic Places and list properties on the Arizona State Register of Historic Places and otherwise administer applications for listing historic properties on the National and State Registers.

R12-8-305 was written and adopted in accordance with A.R.S. § 42-12102 and 42-12103.

R12-8-306 was written and adopted in accordance with A.R.S. § 42-12105(B)(4): The failure to maintain the property in a manner consistent with the minimum standards of maintenance established by rule by the Arizona State Parks Board.

R12-8-307 was written and adopted in accordance with A.R.S. § 42-12108(B): The State Historic Preservation Officer may demand reports from owners of historic property as to the continued qualification of the property at any other time considered to be necessary.

2. Objective of the rule including the purpose for the existence of the rule:

The objectives of R12-8-301 through R12-8-304 are established in A.R.S. §§ 41-511.04(D)-(E) and 41-511.02. These rules were created to establish a method of evaluating and registering historic properties. The objectives of rules R12-8-305 to 307 are established under A.R.S. §§ 42-12101 through 42-12108. The purpose of these rules is to create a process for adding properties to the State Historic Property Tax program, as well as, a criteria for removing them and defining the standards that properties must be maintained.

Specifically:

R12-8-301 was adopted to define terms used in the rules in a manner not explained adequately by dictionary definitions relating to A.R.S. § 41-511.04(D)-(E) and A.R.S. § 41-511.02.

R12-8-302 was adopted to create a method for evaluation per A.R.S. § 41-511.04(D)-(2): “Identify and nominate eligible properties to the national register of historic places and the

Arizona register of historic places and otherwise administer applications for listing historic properties on the national and state registers.”

R12-8-303 and R12-8-304 were adopted to create a process for registration of a historic property as described under A.R.S. § 41-511.04(D)(2).

R12-8-305 was adopted to establish criteria for reviewing applications by the state historic preservation officer per A.R.S. § 42-12103 and to inform potential participants of the application review process.

R12-8-306 was adopted to establish criteria for disqualification per A.R.S. § 42-12105 and to inform participants of minimum maintenance standards they are required to maintain in order to remain in the program.

R12-8-307 was adopted to establish a process for A.R.S. § 42-12108 and to inform participants of what reporting is required of them.

3. Effectiveness of the rules in achieving the objective including a summary of any available data supporting conclusions:

The State Historic Preservation Officer concluded that the current rules are effective in achieving their objectives. R12-8-302 through R12-8-304 explain a process by which the State Historic Preservation Office can list properties on the State Register of Historic Places and the criteria by which this can be done. R12-8-305 through R12-8-307 explain a process of application and rules governing the property tax program for historic properties. In addition to establishing eligibility, minimum maintenance standards, and reporting requirements, they also provide applicants with an appeal process.

4. Consistency of the rules with state and federal statutes and other rules made by the agency, and a listing of statutes or rules used in determining consistency:

The State Historic Preservation Officer determined the rules are consistent with state and federal statutes. The applicable state statutes are A.R.S. §§ 41-511.04(D)-(E), 41-511.02, 42-12101 to 41-12108. The applicable federal statute is 36 CFR Part 800.4.

5. Agency enforcement policy including whether the rules are currently being enforced and, if so, whether there are any problems with enforcement:

The State Historic Preservation Officer enforces the rules as written, without problem. All rules are being enforced.

6. Clarity, conciseness, and understandability of the rules:

The rules are generally clear, concise, and understandable and consistent with current rule writing standards.

7. Summary of written criticisms of the rules received by the agency within the past five years, including letters, memoranda, reports, written analysis submitted to the agency questioning whether the rules are based on valid scientific or reliable principles or methods, and, written allegations made in litigation or administrative proceedings in which the agency was a party that the rule was discriminatory, unfair, unclear, inconsistent, with statute or beyond the authority of the agency to enact, and the result of the litigation of administrative proceedings.

The State Historic Preservation Officer received no written criticisms of the rules during the last five years, including analyses regarding whether the rules are based on valid scientific or reliable principles or methods. No rule has been at issue in litigation or administrative proceedings.

8. A comparison of the estimated economic, small business, and consumer impact of the rules with the economic, small business, and consumer impact statement prepared on the last making of the rules or, if no economic, small business, and consumer impact statement was prepared on the last making of the rules, as assessment of the actual economic, small business, and consumer impact of the rules:

There are no changes in the economic impact of these rules on small business and/or consumers since the last amendments of each rule.

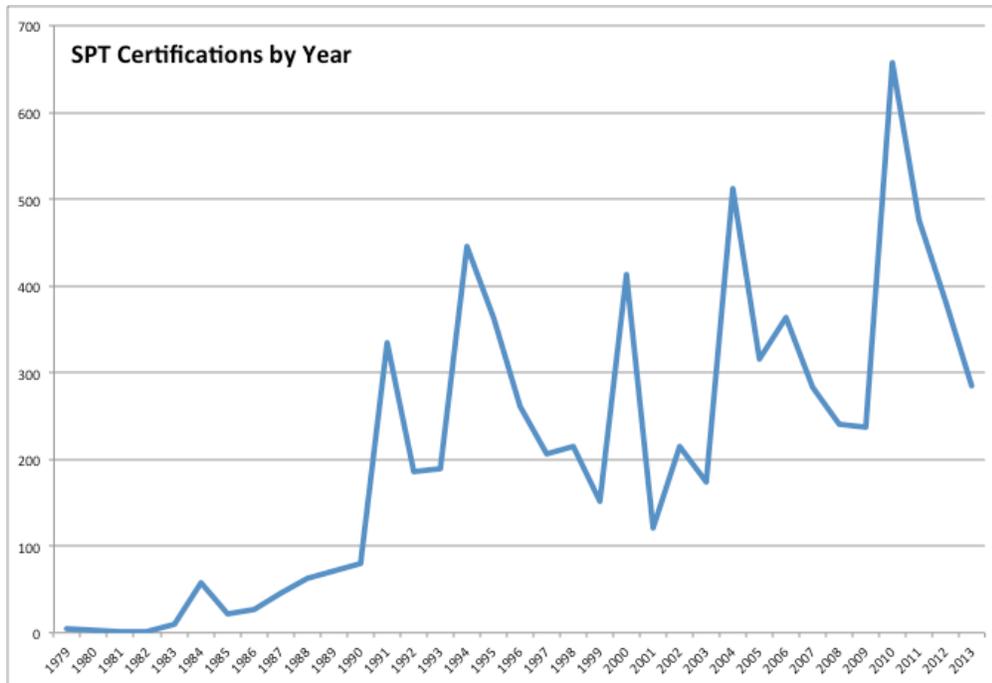
9. Any analysis submitted to the agency by another person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of business in other states:

In 2001, R12-8-205 and R12-8-206 were repealed and the 300 series of rules were created. This change did the following: placed the administration of the National and Arizona Register of Historic Places in the program of the State Historic Preservation Officer, placed responsibility for review of proposed mitigation through Memoranda of Agreement under the programs of the State Historic Preservation Officer, and defined the minimum maintenance standards for properties enrolled in the historic tax program. With the exception of defining the minimal maintenance standards, the changes were technical in nature and done to conform to Section 106 of the National Preservation Act and its implementing regulations, 36 CFR Part 800.

The minimum maintenance standards (R12-8-306) were enacted to prevent homeowners from receiving reduced property taxes for blighted properties, which could also cause the value of neighboring properties to fall. As this was a minor problem prior to 2001, it was expected to have a minimal economic impact on properties enrolled in the historic tax program. In 2001, it was thought that these standards would affect one or two properties a year. That has not been the case as only 1 property in the historic tax program has been removed for failing to uphold the minimum maintenance standards since then. Similarly, no properties have been denied entrance into either the commercial or residential tax programs due the minimum maintenance standards.

Though little used, R12-8-306 is important. A copy of the minimum maintenance standards is given to every owner who joins the program. While it is reasonable to expect that local zoning ordinances would negate the need for such a rule, this is not the case because some municipalities either do not enforce or do not have such rules in their ordinance.

Table 1 illustrates the number of properties certified for the state historic property tax program since 1984. The biggest year was 2010 when 658 properties entered the program because the City of Phoenix listed 10 historic districts on the National Register of Historic Places. Two large historic districts were listed in Tucson in 2004 when 512 properties joined the program, making it the second biggest year. There are no anticipated surges in growth to the program expected.



10. How the agency completed the course of action indicated in the agency’s previous 5YRR:

The Board did propose to amend R12-8-301, R12-8-303, R12-8-304 and R128-306 in its previous 5YRR. However, subsequent analysis of these rules indicated that the amendments were not critical and did not need to be amended. The Board did not take any action on any rules in this article.

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

The benefits of the rules outweigh their minimal costs. No person is regulated by these rules. R12-8-302 to 304 require an application so that the State Historic Preservation Officer can evaluate the eligibility of a proposed property for the State Register of Historic Places. R12-8-305 through R12-8-308 pertain to the State Property Tax program. Any property owner that applies for this program does so voluntarily.

12. A determination after analysis that the rules are not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law:

“R12-8-301 through R12-8-304 are based on the National Historic Preservation Act. (36 CFR Part 800.4). R12-8-306 incorporates three federal guidance documents related to rehabilitation projects to “ensure that the planned project for rehabilitation of the Historic Property is in accordance with the guidelines established by the U.S. Government.” There is no statutory authority to exceed federal requirements nor is there the need to do so.

R12-8-305 and R12-8-307 and R12-8-308 have no corresponding federal law.”

13. For a rule made after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rules complies with A.R.S. §41-1037:

None of the rules in this Article were made after July 29, 2010.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule or to make a new rule. If no issues are identified for a rule in the report, the agency may indicate that no action is necessary for the rule:

The Board does not intend to take action on these rules.