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WATER QUALITY APPEALS BOARD

Title 2, Chapter 17, Water Quality Appeals Board

Amend: R2-17-101, R2-17-102, R2-17-103, R2-17-104, R2-17-106, R2-17-107, R2-17-108, R2-17-109, R2-17-110, R2-17-112, R2-17-113, R2-17-115, R2-17-118, R2-17-120, R2-17-123, R2-17-125, R2-17-126, R2-17-127

Repeal: R2-17-106, Appendix A, Appendix B

Renumber: R2-17-106, R2-17-107, R2-17-108, R2-17-109, R2-17-110, R2-17-111, R2-17-112, R2-17-113, R2-17-114, R2-17-115, R2-17-116, R2-17-117, R2-17-118, R2-17-119, R2-17-120, R2-17-121, R2-17-122, R2-17-123, R2-17-124, R2-17-125, R2-17-126, R2-17-127



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: May 4, 2021

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

FROM: Council Staff

DATE: April 9, 2021

SUBJECT: WATER QUALITY APPEALS BOARD (R21-0501)
Title 2, Chapter 17, Water Quality Appeals Board

Amend: R2-17-101, R2-17-102, R2-17-103, R2-17-104, R2-17-106, R2-17-107, R2-17-108, R2-17-109, R2-17-110, R2-17-112, R2-17-113, R2-17-115, R2-17-118, R2-17-120, R2-17-123, R2-17-125, R2-17-126, R2-17-127

Repeal: R2-17-106, Appendix A, Appendix B

Renumber: R2-17-106, R2-17-107, R2-17-108, R2-17-109, R2-17-110, R2-17-111, R2-17-112, R2-17-113, R2-17-114, R2-17-115, R2-17-116, R2-17-117, R2-17-118, R2-17-119, R2-17-120, R2-17-121, R2-17-122, R2-17-123, R2-17-124, R2-17-125, R2-17-126, R2-17-127

_____This expedited rulemaking from the Water Quality Appeals Board (Board) seeks to amend and repeal several rules in Title 2, Chapter 17 relating to the Administration of the Water Quality Appeals Board. In this expedited rulemaking, the Board seeks to address issues identified in the recent Five-Year-Review Report for these rules, which the Council approved on November 5, 2019. This rulemaking will amend and repeal rules that are outdated, redundant or otherwise no longer necessary.

The Board received an exemption from the rulemaking moratorium to conduct this expedited rulemaking on May 19, 2020.

1. **Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?**

Yes, the Board states that it is conducting this expedited rulemaking pursuant to A.R.S. § 41-1027(A)(3) and (6). Upon review of this statute and the Department's 5YRR on these rules, Council staff agrees that this rulemaking meets the criteria for expedited rulemaking.

2. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

Yes. The Board cites both general and specific statutory authority for these rules.

3. **Do the rules establish a new fee or contain a fee increase?**

No. The rules do not establish a new fee or contain a fee increase.

4. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

No. The Board indicates they did not receive any comments.

5. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

No. No changes were made between the proposed expedited rulemaking and the final expedited rulemaking.

6. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. There is no corresponding federal law.

7. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require the issuance of a permit or license.

8. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Department did not review or rely on a study in conducting this expedited rulemaking.

9. Conclusion

The Board seeks to implement a proposed course of action from its recent 5YRR on these rules. Council staff finds that as amended, the rules would be more clear, concise, understandable, effective, and consistent with other rules and statutes. If approved, this rulemaking would be effective immediately upon the Department filing its Certificate of Approval and rulemaking with the Secretary of State. Council staff recommends approval of this expedited rulemaking.

Douglas A. Ducey
Governor



Andy Tobin
Director

ARIZONA DEPARTMENT OF ADMINISTRATION
WATER QUALITY APPEALS BOARD
1400 WEST WASHINGTON ST • SUITE B200
PHOENIX, ARIZONA 85007
(602) 542-1796

March 16, 2021

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Chair

Governor's Regulatory Review Council

100 North 15th Avenue, Suite 305

Phoenix, Arizona 85007

RE: Water Quality Appeals Board, Title 2, Chapter 17, Article 1, Expedited Rulemaking

Dear **Nicole Sornsin**:

- 1. The close of record date: March 16, 2021**
- 2. Does the rulemaking activity relate to a Five Year Review Report: Yes**
 - a. If yes, the date the Council approved the Five Year Review Report:**
November 5, 2019
- 3. Does the rule establish a new fee: No**
 - a. If yes, what statute authorizes the fee:**
- 4. Does the rule contain a fee increase: No**
- 5. Is an immediate effective date requested pursuant to A.R.S. 41-1032: Yes**

The **Water Quality Appeals Board** certifies that the preamble discloses a reference to any study relevant to the rule that the agency reviewed. The **Water Quality Appeals Board** certifies that the preamble states that it **did not** rely on it in the **Water Quality Appeals Board** evaluation of or justification for the rule.

The **Water Quality Appeals Board** certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.

The following documents are enclosed:

[Type text]

1. **Notice of Final Rulemaking, including the preamble, table of contents, and text of each rule;**
2. **If applicable: An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055.**
(The Board is exempt from the requirements to prepare and file an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2);
3. **If applicable: The written comments received by the agency concerning the proposed rule and a written record, transcript, or minutes of any testimony received if the agency maintains a written record, transcript or minutes;**
4. **If applicable: Any analysis submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of business in other states;**
5. **If applicable: Material incorporated by reference;**
6. **General and specific statutes authorizing the rules, including relevant statutory definitions; and**
7. **If applicable: If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition.**

Sincerely,


Michele Van Quathem (Mar 16, 2021 15:21 PDT)

Michelle Van Quathem
Chairman

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 17. WATER QUALITY APPEALS BOARD

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R2-17-101	Amend
R2-17-102	Amend
R2-17-103	Amend
R2-17-104	Amend
R2-17-106	Repeal
R2-17-106	Re-number
R2-17-106	Amend
R2-17-107	Re-number
R2-17-107	Amend
R2-17-108	Re-number
R2-17-108	Amend
R2-17-109	Re-number
R2-17-109	Amend
R2-17-110	Re-number
R2-17-110	Amend
R2-17-111	Re-number
R2-17-112	Re-number
R2-17-112	Amend
R2-17-113	Re-number
R2-17-113	Amend
R2-17-114	Re-number
R2-17-115	Re-number
R2-17-115	Amend
R2-17-116	Re-number
R2-17-117	Re-number
R2-17-118	Re-number
R2-17-118	Amend
R2-17-119	Re-number
R2-17-120	Re-number
R2-17-120	Amend
R2-17-121	Re-number

R2-17-122	Renumber
R2-17-123	Renumber
R2-17-123	Amend
R2-17-124	Renumber
R2-17-125	Renumber
R2-17-125	Amend
R2-17-126	Renumber
R2-17-126	Amend
R2-17-127	Renumber
R2-17-127	Amend
Appendix A	Repeal
Appendix B	Repeal

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

Authorizing statute: A.R.S. §§ 49-322(D)

Implementing statute: A.R.S. §§ 49-322(D)

3. The effective date of the rule:

Immediately upon the Board filing its Certificate of Approval and Notice of Final Expedited Rulemaking with the Secretary of State.

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

N/A

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

N/A

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

Notice of Rulemaking Docket Opening: volume #27, issue 6, A.A.R. (page 180)

Notice of Proposed Rulemaking: volume # 27, issue 6, A.A.R. (page169)

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

Name: Connie Castillo

Address: 100 N 15th Avenue

Telephone: 602-542-1796

Fax: Not Applicable

E-mail: connie.castillo@azdoa.gov
Web site: www.doa.az.gov/water-quality-appeals-board

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

The Water Quality Appeals Board ("Board") wishes to provide clarity and remove conflicting and outdated language as identified in a five-year-review report approved by the Council on November 5, 2019.

Under A.R.S. § 41-1027(A)(3) and (6), the Board is authorized to conduct an expedited rulemaking because the rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated by the rules. The rulemaking also amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government.

An exemption from Executive Order 2020-01 under criteria (1)(f) and (j) was provided for this rulemaking by Chuck Podolak, Natural Resources Policy Advisor, on May 19, 2020. Because no additional rules are being requested, criteria (2) in Executive Order 2020-01 do not apply.

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

The Board did not review or rely on any study for this rulemaking.

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

N/A

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

The Board is exempt from the requirements to prepare and file an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2).

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

N/A

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

No public comments received.

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

(Editor's Note: All agencies answer first part of question here.)

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

Not applicable

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

Not applicable

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

None submitted

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

None

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

N/A

15. The full text of the rules follows:

**TITLE 2. ADMINISTRATION
CHAPTER 17. WATER QUALITY APPEALS BOARD
ARTICLE 1. APPEALS**

Section

R2-17-101.	Scope of Article; General Considerations
R2-17-102.	Definitions
R2-17-103.	Commencement of an Appeal; Copies; Informal Settlement Conference
R2-17-104.	Docket; Case Number; Information on Documents
R2-17-106.	Computation of Time; Additional Time After Service by Mail
R2-17-107. R2-17-106	Contents of a Notice of Appeal
R2-17-108. R2-17-107	Time for Filing an Answer to a Notice of Appeal
R2-17-109. R2-17-108	Contents of an Answer to a Notice of Appeal
R2-17-110. R2-17-109	Prehearing Disclosure
R2-17-111. R2-17-110	Depositions
R2-17-112. R2-17-111	Motions
R2-17-113. R2-17-112	Duties of the Board During a Hearing
R2-17-114. R2-17-113	Location of Hearings
R2-17-115. R2-17-114	Notice of Hearing
R2-17-116. R2-17-115	Consolidation
R2-17-117. R2-17-116	Continuances
R2-17-118. R2-17-117	Subpoenas
R2-17-119. R2-17-118	Prehearing Conferences
R2-17-120. R2-17-119	Hearing
R2-17-121. R2-17-120	Evidence
R2-17-122. R2-17-121	Recording Hearings
R2-17-123. R2-17-122	Ex Parte Communications
R2-17-124. R2-17-123	Notification of Decisions and Orders
R2-17-125. R2-17-124	Decision of the Board
R2-17-126. R2-17-125	Rehearing or Review of Decision
R2-17-127. R2-17-126	Judicial Review
R2-17-128. R2-17-127	Record
Appendix A:	Notice of Appeal
Appendix B:	Notice of Hearing

R2-17-101. Scope of Article; General Considerations

- A. These rules of procedure and the statutes and administrative rules governing administrative hearing procedures under Title 41, Chapter 6, Article 10, A.R.S. §§ 41-1092.03 through 41-1092.12 and A.A.C. R2-19-101 through A.A.C. R2-19-122 govern all appeals to the Water Quality Appeals Board taken under A.R.S. § 49-323. In case of a conflict, this Article governs when the Board directly conducts an administrative hearing whereas the procedures under Title 41, Chapter 6, Article 10 govern when the Board uses the services of the Office of Administrative Hearings, except that in all appeal hearings A.R.S. § 49-324(C) prescribes the standard of review.
- B. Where a procedure is not established by law, this Article, or an order of the Board, the Board may refer to the Arizona Rules of Civil Procedure for guidance, but the Arizona Rules of Civil Procedure are not binding on the Board or the parties unless the Board issues an order to that effect.

R2-17-102. Definitions

The definitions in A.R.S. ~~§ 41-1001~~ and 41-1092 apply to this Article. In addition, the terms in this Article have the following meanings:

1. "Appellant" means the person who files a notice of appeal with the Department of Environmental Quality under A.R.S. § 49-323.
2. "Board" means the Water Quality Appeals Board appointed by the Governor according to A.R.S. § 49-322, but includes an individual Board member or administrative law judge acting on behalf of the Board according to a lawful delegation of authority.
3. "Clerk" means the person designated as Clerk of the Board.
4. ~~"Ex parte communication" means an oral or written communication, not on the public record, made without sufficient prior notice to permit all parties to participate in the communication.~~
5. "Party" means the appellant, the Department of Environmental Quality, all persons named by the appellant as interested persons as provided in R2-17-107 (B)(2), and any interested person the Board has permitted to intervene in the appeal as a matter of right.
6. "Record" has the meaning found in A.R.S. § 12-904(B) and includes records of proceedings before the Office of Administrative Hearings when the Board uses those services ~~A.R.S. § 41-1092.10 (C).~~

R2-17-103. Commencement of an Appeal; Copies; Informal Settlement Conference

- A. To commence an appeal, the appellant shall file a notice of appeal with the Department of Environmental Quality. The Department of Environmental Quality shall deliver or mail a copy of the notice of appeal to the Clerk of the Water Quality Appeals Board. The appellant shall file the notice of appeal within 30 days after receiving the notice of appealable agency action. The date of filing is the date the Department of Environmental Quality receives the notice of appeal.
- B. The Clerk shall make available to all persons ~~copies of the Notice of Appeal form in Appendix A~~ and copies of this Article. The Clerk shall charge a reasonable fee for the cost of copies.
- C. If an informal settlement conference is requested by the appellant under A.R.S. § 41-1092.06, the Department of Environmental Quality shall notify the Board in writing of the request and the outcome of the conference.

R2-17-104. Docket; Case Number; Information on Documents

- A. The Clerk shall maintain a docket of all appeals and assign each appeal a case number. For each appeal, the Clerk shall enter all of the following information on the docket:
 1. The case number;
 2. The case name;
 3. The filing date of the notice of appeal;
 4. The receipt date of any answer;
 5. The receipt date of any disclosures;
 6. The receipt date of prehearing motions, responses, and replies;
 7. The dates of the evidentiary hearing;
 8. The dates of orders by the Board and the Board's decision;
 9. The receipt date of any motion for rehearing or review;
 10. The Board's decision on any motion for rehearing or review and the date of the decision; and
 11. The Board's final decision and the date of the final decision.
- B. A party shall place the case number and the name, address, ~~and~~ telephone number and email address of the party or party's attorney on all pleadings, motions, or other documents filed with the Board.

~~R2-17-106. Computation of Time; Additional Time After Service by Mail~~

- ~~A. In computing any period of time prescribed or allowed by these rules or by order of the Board, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, not including the time for mailing permitted in subsection (B), intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation. When that period of time is 11 days or more, not including the time for mailing permitted in subsection (B), intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.~~
- ~~B. Whenever a party has a right or is required to do some act or proceed within a prescribed period after the service of a notice or other document upon the party and the notice or document is served by mail, 5 calendar days shall be added to the prescribed period. This subsection does not apply when time is counted from the date that a party receives the notice or other document.~~

~~R2-17-107~~ **R2-17-106. Contents of a Notice of Appeal**

- A. ~~The appellant may use the Notice of Appeal form in Appendix A and, where there is not enough space on the form, the appellant may attach additional sheets of paper. The notice of appeal shall contain the following statements:~~
- ~~1. "The appellant files this notice of appeal with the Department of Environmental Quality according to A.R.S. § 49-323."~~
 - ~~2. "Under ~~A.R.S. § 49-323~~ and A.A.C. R2-17-101 et seq. 107, if you, a Respondent in this case, have an interest in the final decision that may result from this Notice of Appeal, you are required to file an Answer to this Notice of Appeal within 20 days from the date of service of this Notice of Appeal on you."~~
- B. ~~The notice of appeal shall contain the following information:~~
- ~~1. The name, address, email and telephone number of the appellant and, if the appellant is represented by an attorney, the name, address, telephone number, email and Arizona Bar number of the appellant's attorney;~~
 - ~~2. The names, mailing addresses, email, and telephone numbers of all of the following interested parties:~~
 - ~~a. The permittee or registrant, if the permittee or registrant is not the appellant;~~
 - ~~b. All persons who filed a notice of appearance in the action before the Department of Environmental Quality that the appellant is appealing; and~~
 - ~~c. The Department of Environmental Quality.~~
 - ~~3. The specific action of the Department of Environmental Quality involving the grant, denial, modification, or revocation of an individual permit issued under A.R.S. Title 49, Chapter 2, the issuance, denial, or revocation of a determination pursuant to A.R.S. § 49-241(B) or (C), or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§ 49-303 and 49-304;~~
 - ~~4. The date of the action by the Department of Environmental Quality;~~
 - ~~5. The date the notice of action by the Department of Environmental Quality was received by the appellant;~~
 - ~~6. The relief requested by the appellant and a concise statement of the reasons for the appeal;~~
 - ~~7. The date of the notice of appeal;~~
 - ~~8. The signature of the appellant or the appellant's attorney;~~
 - ~~9. A verification that the appellant has served or caused to be served, a copy of the notice of appeal on the Department of Environmental Quality and all parties named by the appellant.~~

~~R2-17-108~~ **R2-17-107. Time for Filing an Answer to a Notice of Appeal**

The Department of Environmental Quality and all parties named by the appellant shall file an answer to appellant's notice of appeal within 20 days from service of the notice of appeal on that party.

~~R2-17-109~~ R2-17-108. Contents of an Answer to a Notice of Appeal

The answer of each respondent shall contain the following information:

1. The name, address, email and telephone number of the respondent preparing the answer and, if the respondent is represented by an attorney, the name, address, telephone number, email and Arizona Bar number of the respondent's attorney;
2. A response to the appellant's allegations relating to the action taken by the Department of Environmental Quality involving the grant, denial, modification, or revocation of an individual permit issued under A.R.S. Title 49, Chapter 2, the issuance, denial, or revocation of a determination pursuant to A.R.S. § 49-241(B) or (C), or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§ 49-303 and 49-304;
3. The relief requested by the respondent;
4. The date of the answer;
5. The signature of the respondent or the respondent's attorney;
6. A verification that the respondent has served or caused to be served a copy of the answer on all other parties.

~~R2-17-110~~ R2-17-109. Prehearing Disclosure

- A. Within the times set forth in subsection (B), each party shall disclose in writing to every other party:
 1. The factual basis of the appeal or response;
 2. The legal theory upon which the appeal or response is based, including citations of pertinent legal authorities;
 3. The names, addresses, email and telephone numbers of all witnesses the party expects to call at the hearing, with a description of the substance of each witness' expected testimony;
 4. If a party is a corporation, the name of the state of incorporation. If the party is not an Arizona corporation, the party shall state whether it is qualified to do business in the state by the Arizona Corporation Commission;
 5. If the party is a partnership, the name, address, email and telephone number of each partner;
 6. The names, mailing addresses, email and telephone numbers of all of the following interested persons:
 - a. The permittee or registrant, if the permittee or registrant is not the appellant;
 - b. All persons who filed a notice of appearance in the action before the Department of Environmental Quality that the appellant is appealing;
 - c. ~~The mayor of any city or town or the chair of the board of supervisors of any county that may be affected if the appellant is granted the relief requested;~~
 7. The name and address of each person whom the party expects to call as an expert witness at the hearing, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the qualifications of the witness and the name and address of the custodian of copies of any reports prepared by the expert;
 8. A list of documents which indicates the location, custodian, and a general description of any tangible evidence or relevant documents that the party plans to use during the hearing. Unless good cause is stated for not doing so, a copy of each document listed shall be served with the disclosure. If production is not made, the party shall indicate the name and address of the custodian of the document. A party who produces documents for inspection shall produce them as they are kept in the usual course of business.
- B. The parties shall make the initial disclosure required by sub- section (A) at least 15 days prior to the date set for hearing, unless the parties otherwise agree, or the Board shortens or extends the time for good cause. If feasible, counsel shall meet to exchange disclosures; otherwise, the parties shall serve the disclosures as prescribed in R2-17-105. At the same time the parties shall file with the Clerk the disclosures and 1 copy of each document listed.

- C. The duties described in subsections (A) and (B) are continuing duties, and each party shall make additional or amended disclosures whenever new or different information is discovered or revealed. A party shall serve additional or amended disclosures seasonably, but in no event later than 3 days before the hearing, except by leave of the Board.
- D. A party shall include in its disclosure, information and data in the possession, custody, and control of the parties as well as that which can be ascertained, learned, or acquired by reasonable inquiry and investigation.
- E. Each party shall make the disclosure in writing under oath and sign the disclosure.
- F. When information is withheld from disclosure or discovery on a claim that it is privileged or subject to protection as trial preparation materials, the party making the claim shall do so expressly and shall support the claim with a description of the nature of the documents, communications, or things not produced or disclosed that is sufficient to enable other parties to contest the claim.

~~R2-17-111~~ R2-17-110. Depositions

The Board may allow the deposition of a witness who cannot be subpoenaed or is unable to attend the hearing, in the manner and upon the terms designated by the Board. The party requesting a deposition shall bear the expense of the deposition.

~~R2-17-112~~ R2-17-111. Motions

- A. To obtain an order or other relief from the Board other than for rehearing or review as provided in A.A.C. R2-17-125, a party shall make a motion at least 15 days before the Board hearing. Unless the motion is made during a hearing, the party shall make the motion in writing. For all motions, the party shall state the grounds on which the motion is based and the relief or order sought. The Board shall decide prehearing motions based on the written materials submitted by the parties.
- B. Any party may file a response to a prehearing motion within 5 days after service of the motion and serve the response on all parties. The moving party has 2 days after service of a response to file a reply.
- C. For a written motion, a party shall state the grounds on which the motion is based and the relief or order sought in a supporting memorandum. A party's supporting memorandum shall not exceed 15 pages, exclusive of pages containing the table of contents, the table of cases, statutes or other authorities, and the appendix, if any. A reply memorandum shall not exceed 5 pages.
- D. A party shall support motion documents by affidavit or other satisfactory evidence if they contain facts not apparent in the record or facts that are not cognizable through judicial notice.
- E. When the Board directly conducts an administrative hearing, the Board shall rule on all motions. When the Board uses the services of the Office of Administrative Hearings, the administrative law judge shall rule on all motions.

~~R2-17-113~~ R2-17-112. Duties of the Board During a Hearing

- A. The Board shall:
 1. Conduct the hearing in an impartial, orderly, and informal manner;
 2. Regulate the course of the hearing;
 3. Rule upon procedural matters incidental to the hearing;
 4. Designate the order in which parties introduce their evidence; and
 5. Exercise the powers granted in A.R.S. §41-1092.07 ~~and 12-2212~~.
- B. The Board may:
 1. Exclude a witness from the hearing so the witness cannot hear the testimony of other witnesses;
 2. Set time limitations for arguments;
 3. Exclude a person from the hearing who is disruptive to the proceedings;
 4. Administer oaths and affirmations to witnesses; and
 5. Issue any orders necessary for the impartial, orderly, and informal conduct of the hearing.

~~R2-17-114~~ R2-17-113. Location of Hearings

All hearings shall be held in Arizona, in Maricopa County, unless the Board finds that it will be more cost effective for the Board and the parties to hold a hearing elsewhere, in which event the Board shall set the location of the hearing.

~~R2-17-115~~ R2-17-114. Notice of Hearing

- A.** If the Board conducts an administrative hearing, the Clerk shall set a date for the hearing no later than 60 days from the date the appellant filed the notice of appeal with the Department of Environmental Quality. The Clerk shall prepare and serve a notice of hearing as prescribed in A.R.S. § 41-1092.05. The Clerk may use the Notice of Hearing Form in Appendix B. If the Board uses the services of the Office of Administrative Hearings, the Clerk shall set the hearing date in consideration of and in conjunction with the Office of Administrative Hearings.
- B.** The notice of hearing shall contain the following information and statements:
1. The date, time, and place of the hearing;
 2. The hearing will be on the appellant's notice of appeal from an action of the Department of Environmental Quality;
 3. A.R.S. § 49-323 provides the authority and jurisdiction under which the hearing will be held;
 4. The particular sections of the statutes and rules involved in the substantive appeal are A.R.S. §§ 49-323 – ~~49-324~~ and A.A.C. R2-17-101 et seq. The parties should also refer to procedural statutes and rules which may be applicable to this appeal, to the extent they do not conflict with Board statutes and rules, including A.R.S. §§ 41-1092.03 through 41-1092.1+2 and A.A.C. R2-19-101 through A.A.C. R2-19-122;
 5. The hearing will be a full evidentiary hearing for the purpose of reviewing the grant, denial, modification, or revocation of any individual permit issued under A.R.S. Title 49, Chapter 2, the issuance, denial, or revocation of a determination pursuant to A.R.S. § 49-241(B) or (C), or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§ 49-303 and 49-304;
 6. The date the appellant filed the notice of appeal;
 7. The name of the administrative law judge, if any, when known at the time the notice of hearing is served;
 8. The Board may issue subpoenas on behalf of any party;
 9. All parties may be represented by counsel, may introduce evidence through witnesses and documents, and may cross-examine witnesses of other parties;
- C.** The Clerk shall provide written notification that reasonable accommodation will be made for ~~the disabled~~ a person with a disability, if the accommodation is requested. The notification shall be served with the notice of hearing.
- D.** At least 30 days prior to the date of the hearing the Clerk shall serve a copy of the notice of hearing on each Board member, the administrative law judge, if any, and each party.

~~R2-17-116~~ R2-17-115. Consolidation

Upon the motion of a party, the Board may consolidate 2 or more appeals involving a common question of law or fact when consolidation will avoid unnecessary cost or delay.

~~R2-17-117~~ R2-17-116. Continuances

- A.** A party applying for a continuance of a hearing shall file a motion with the Clerk and serve all parties no later than 10 days before the scheduled date of the hearing. The Board may accept a motion filed later than 10 days before the hearing for good cause. The motion shall state why the continuance is being requested, why a stipulation from adverse parties was not obtained, and the amount of time requested.
- B.** Any opposing party may, within 5 days after service of the motion, file and serve a response. The Board may permit a reply.
- C.** The parties may stipulate to a continuance. The Board is not required to accept the stipulation.

~~R2-17-118~~ R2-17-117. Subpoenas

- A. A party shall make a written request for a subpoena which clearly identifies the person, documents, or other evidence desired and the reason the evidence is relevant to the proceeding. The party requesting the subpoena shall file the request at least 15 days prior to the date set for hearing, provide the Board with a proposed subpoena for electronic signature, and ensure that any subpoena issued is served in the manner prescribed by the Arizona Rules of Civil Procedure.
- B. The person to whom a subpoena is directed shall comply with its provisions unless:
 - 1. The person serving the subpoena has failed to comply with subsection (A) of this rule; or
 - 2. The person to whom the subpoena is directed, at least 10 days prior to the date set for the hearing, files a motion to quash or modify the subpoena and the motion is granted in whole or in part, prior to the hearing.

~~R2-17-119~~ R2-17-118. Prehearing Conferences

- A. Upon a motion by a party or on the initiative of the Board, the Board may order a prehearing conference, if the Board finds that a prehearing conference will assist the Board to:
 - 1. Conduct the hearing within the 60-day period prescribed by A.R.S. § 41-1092.05(A); or
 - 2. Reach a just, speedy, and less expensive determination of the appeal.
- B. If the Board takes any action at or after the prehearing conference, the Board shall prepare a written order reciting the action taken. The order shall become a part of the record of the appeal.

~~R2-17-120~~ R2-17-119. Hearing

- A. The Board shall conduct a full evidentiary hearing. A party may introduce new evidence or evidence that was considered by the Department of Environmental Quality when it took the action being appealed.
- B. The Board and the administrative law judge if the matter is referred to the Office of the Administrative Hearings shall use the standard of review prescribed in A.R.S. § 49-324(C) to decide an appeal.
- C. Noncompliance with any order of the Board or disruption of any hearing is improper conduct and grounds for exclusion from the hearing.

~~R2-17-121~~ R2-17-120. Evidence

- A. All witnesses at a hearing shall testify under oath or affirmation. All parties shall have the right to present evidence and to conduct cross-examination as may be required for a full and true disclosure of the facts. The Board shall receive relevant, probative, and material evidence, rule upon offers of proof, and exclude all evidence determined to be irrelevant, immaterial, or unduly repetitious.
- B. Any party may call additional witnesses or introduce into evidence additional documents not disclosed by the party in its notice of appeal, answer, initial prehearing disclosure, or an additional or amended disclosure if that witness or document was not or could not reasonably have been known to that party at the time the party filed its notice of appeal, answer, initial prehearing disclosure, and additional or amended disclosure.
- C. The Board may conduct a hearing in an informal manner and without adherence to the rules of evidence required in judicial proceedings or follow that portion of the Arizona Rules of Evidence that the Board deems appropriate.
- D. The Board may question any witness.
- E. The Board may take judicial notice of judicially cognizable facts. In addition, the Board may take notice of generally recognized technical or scientific facts within the board members' specialized knowledge. The Board shall notify the parties either before or during the hearing, by reference in a preliminary report or otherwise, of the material noticed, including any staff memoranda or data. The parties shall be afforded an opportunity to contest the noticed material. The board members' experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

~~R2-17-122~~ R2-17-121. Recording Hearings

- A. The Board shall tape-record the hearing unless it determines there will be a court reporter and is able to obtain state funds for the cost of the court reporter.
- B. Any party may use a court reporter to produce a record of the hearing, but that party shall pay for all costs of the court reporter. Where a hearing is recorded by a party's court reporter, the Board shall determine whether the tape recording or the court reporter's recording will be used to prepare the hearing transcript. The Clerk shall ensure that the proceedings are transcribed and provide copies of the transcript to the Board at the time the Board meets to consider its decision on the appeal.
- C. Any party that requests a transcript of the proceeding from the Board shall pay the Clerk a fee for the cost of copying the transcript.

~~R2-17-123~~ R2-17-122. Ex Parte Communications

Ex parte communications with Board members and staff are prohibited as provided in A.A.C. R2-19-105. The prohibition applies to

- ~~A. In any appeal before the Board, except to the extent required for disposition of ex parte matters as authorized by law or these rules of procedure:

 - 1. An interested person shall not make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to any Board member, administrative law judge, or employee of the State of Arizona who is or may reasonably be expected to be involved in the decision making process.
 - 2. A Board member, administrative law judge, or employee of the State of Arizona who is or may reasonably be expected to be involved in the decision making process shall not make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to any interested person.~~
- ~~B. A Board member, administrative law judge, or employee of the State of Arizona who is or may reasonably be expected to be involved in the decision making process and receives, makes, or knowingly causes to be made a communication prohibited by this Section shall place all written communications and all written responses to the communications in the public record of the proceeding and by oral testimony on the record state the substance of all oral communications.~~
- ~~C. Any interested person who receives a communication prohibited by this Section shall file a notice of the communication with the Clerk and serve a copy on the Solicitor General and all parties to the appeal. The interested person shall attach to the notice a copy of the communication, if written, or a summary of the communication, if oral.~~
- ~~D. When the Board is made aware under subsections (B) or (C) of a communication prohibited by this Section, the Board shall give all parties a reasonable opportunity to respond to the communication. The Board, to the extent consistent with the interests of justice and the policy of the underlying statutes and rules, may require the person responsible for the communication to show cause why the person's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.~~
- ~~E. The provisions of this Section apply to an appeal from the date the notice of appeal is filed to the date on the Board's final administrative decision, unless the person responsible for the communication knew the appeal would be noticed, in which case the prohibition applies from the time that the person acquired the knowledge.~~

~~R2-17-124~~ R2-17-123. Notification of Decisions and Orders

The Clerk shall notify each party promptly by either delivering or mailing copies of all decisions and orders, including the findings of fact, conclusions of law, and the final administrative decision of the Board to each party's last known address.

~~R2-17-125~~ R2-17-124. Decision of the Board

- A. If the Board uses the services of the Office of Administrative Hearings, the Board will receive a copy of the administrative law judge's decision under A.R.S. § 41-1092.08.

Within 30 days after receipt, the Board may review the decision and accept, reject, or modify it.

1. If the Board does not make a decision within 30 days, the Board has accepted the administrative law judge's decision as the final administrative decision.
 2. If the Board reviews the administrative law judge's decision, it shall request the record of the hearing, described in A.R.S. § 41-1092.10(C)08(A), and may accept, reject, or modify the decision. If the Board rejects or modifies the decision, the Board shall file with the Office of Administrative Hearings a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification of each finding of fact or conclusion of law. If there is a rejection or modification of a conclusion of law, the written justification shall be sent to the president of the senate and the speaker of the house of representatives. Under the circumstances in this subsection, the decision of the Board is the final administrative decision.
- B. If the Board directly conducts an administrative hearing, the Board shall meet and render its final administrative decision on the appeal in writing within ~~15~~ 30 days after the hearing. The Board's decision shall contain its findings of fact and conclusions of law, separately stated, and its decision.
- ~~C.~~—The Board's final administrative decision shall contain the following statement: "This is a final administrative decision of the Water Quality Appeals Board, made according to A.R.S. § 49-323. You may file a motion for rehearing or review of this decision under R2-17-126. If you file a motion for rehearing or review, you shall file your motion within 30 days after service of this decision. You are not required to file a motion for rehearing or review before seeking judicial review. This decision may be reviewed by the Superior Court if you file a complaint in the manner prescribed in A.R.S. § 12-901, et seq." § ~~41-1092.10 and 41-1092.11.~~²²
- D. The Board may incorporate by reference findings, conclusions, or a decision previously made by an administrative law judge.
- E. When the Board has rendered a final administrative decision, it shall serve a copy of the decision on all parties and the Office of Administrative Hearings if an administrative law conducted the hearing.

~~R2-17-126~~ R2-17-125. Rehearing or Review of Decision

- A. Except as provided in subsection (H), any party to an appeal before the Board may file a motion for rehearing or review within 30 days after service of the final administrative decision. The party shall attach a supporting memorandum, specifying the grounds for the motion. The party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.
- B. Any other party may file a response within ~~5~~ 15 days after service of a motion for rehearing or review. The party shall support the response with a memorandum, discussing legal and factual issues.
- C. The moving party, the responding party, or the Board may request oral argument.
- D. The Board may grant a rehearing or review for any of the following causes materially affecting a party's rights:
 1. Irregularity in the proceedings of the Board, or any order or abuse of discretion, that deprived the moving party of a fair hearing;
 1. Misconduct of the Board, its staff, an administrative law judge, or the prevailing party;
 2. Accident or surprise that could not have been prevented by ordinary prudence;
 3. Newly discovered material evidence that could not, with reasonable diligence, have been

- discovered and produced at the hearing;
4. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding; or
 5. That the findings of fact or decision is not justified by the evidence or is contrary to law.
- E. The Board may affirm or modify the decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.
 - F. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits.
 - G. Not later than 15 days after the date of the decision, the Board may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.
 - H. If the Board makes specific findings that the immediate effectiveness of a decision is necessary for the preservation of the public health and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue a final administrative decision without an opportunity for rehearing or review. A party may seek judicial review of the decision under A.R.S. §§ ~~41-1092.10 and 41-1092.11~~ 49-323(B) and 12-901, et seq.
 - I. The Board shall rule on the motion for rehearing or review within 15 days after ~~it has been received~~ the response to the motion is filed or, if a response is not filed, within 5 days of the expiration of the response period. If a rehearing is granted, the Board shall hold the rehearing within 90 days after the issue date on the order granting the rehearing.
 - J. If a motion for rehearing or review is denied, the Clerk shall serve a notice of denial on all parties within 15 days after the denial.
 - K. If the motion for rehearing or review is granted, the Clerk shall serve the Board's final administrative decision on all parties within 15 days after the Board renders the decision.

~~R2-17-127~~ R2-17-126. **Judicial Review**

The final administrative decision of the Board may be reviewed as provided by A.R.S. §§ ~~41-1092.10, 41-1092.11,~~ 49-323(B) and A.R.S.

§ 12-901 et seq. (Title 12, Chapter 7, Article 6, Judicial Review of Administrative Decisions Act). The Clerk shall transmit the record to the superior court in all actions seeking judicial review under A.R.S. § 12-901 et seq., including when the Board uses the services of the Office of Administrative Hearings.

~~R2-17-128~~ R2-17-127. **Record**

The Clerk shall keep the record and ensure that it is preserved for a minimum of 5 years from the date of the final administrative decision.

~~Appendix A – Notice of Appeal~~ Repealed

~~Appendix B – Notice of Hearing~~ Repealed

TITLE 2. ADMINISTRATION

CHAPTER 17. WATER QUALITY APPEALS BOARD

(Authority: A.R.S. § 49-322 (D))

Editor's Note: The Water Quality Appeals Board rules were previously established under 2 A.A.C. 1, Article 7 (See Supp. 97-3 for former rules). They were repealed and this new Chapter was subsequently adopted in Supp. 98-1.

ARTICLE 1. APPEALS

Sections R2-17-101 through R2-17-128, and Appendices A & B, adopted effective January 8, 1998 (Supp. 98-1).

Section

- R2-17-101. Scope of Article; General Considerations
- R2-17-102. Definitions
- R2-17-103. Commencement of an Appeal; Copies; Informal Settlement Conference
- R2-17-104. Docket; Case Number; Information on Documents
- R2-17-105. Filing and Service of Pleadings, Motions, or Other Documents
- R2-17-106. Computation of Time; Additional Time After Service by Mail
- R2-17-107. Contents of a Notice of Appeal
- R2-17-108. Time for Filing an Answer to a Notice of Appeal
- R2-17-109. Contents of an Answer to a Notice of Appeal
- R2-17-110. Prehearing Disclosure
- R2-17-111. Depositions
- R2-17-112. Motions
- R2-17-113. Duties of the Board During a Hearing
- R2-17-114. Location of Hearings
- R2-17-115. Notice of Hearing
- R2-17-116. Consolidation
- R2-17-117. Continuances
- R2-17-118. Subpoenas
- R2-17-119. Prehearing Conferences
- R2-17-120. Hearing
- R2-17-121. Evidence
- R2-17-122. Recording Hearings
- R2-17-123. Ex Parte Communications
- R2-17-124. Notification of Decisions and Orders
- R2-17-125. Decision of the Board
- R2-17-126. Rehearing or Review of Decision
- R2-17-127. Judicial Review
- R2-17-128. Record
- Appendix A. Notice of Appeal
- Appendix B. Notice of Hearing

ARTICLE 1. APPEALS

R2-17-101. Scope of Article; General Considerations

- A. These rules of procedure govern all appeals to the Water Quality Appeals Board taken under A.R.S. § 49-323.
- B. Where a procedure is not established by law, this Article, or an order of the Board, the Board may refer to the Arizona Rules of Civil Procedure for guidance, but the Arizona Rules of Civil Procedure are not binding on the Board or the parties unless the Board issues an order to that effect.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-102. Definitions

The definitions in A.R.S. §§ 41-1001 and 41-1092 apply to this Article. In addition, the terms in this Article have the following meanings:

1. "Appellant" means the person who files a notice of appeal with the Department of Environmental Quality under A.R.S. § 49-323.
2. "Board" means the Water Quality Appeals Board appointed by the Governor according to A.R.S. § 49-322, but includes an individual Board member or administrative law judge acting on behalf of the Board according to a lawful delegation of authority.
3. "Clerk" means the person designated as Clerk of the Board.
4. "Ex parte communication" means an oral or written communication, not on the public record, made without sufficient prior notice to permit all parties to participate in the communication.
5. "Party" means the appellant, the Department of Environmental Quality, all persons named by the appellant as interested persons as provided in R2-17-107 (B)(2), and any interested person the Board has permitted to intervene in the appeal as a matter of right.
6. "Record" has the meaning found in A.R.S. § 41-1092.10 (C).

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-103. Commencement of an Appeal; Copies; Informal Settlement Conference

- A. To commence an appeal, the appellant shall file a notice of appeal with the Department of Environmental Quality. The Department of Environmental Quality shall deliver or mail a copy of the notice of appeal to the Clerk of the Water Quality Appeals Board. The appellant shall file the notice of appeal within 30 days after receiving the notice of appealable agency action. The date of filing is the date the Department of Environmental Quality receives the notice of appeal.
- B. The Clerk shall make available to all persons copies of the Notice of Appeal form in Appendix A and copies of this Article. The Clerk shall charge a reasonable fee for the cost of copies.
- C. If an informal settlement conference is requested by the appellant under A.R.S. § 41-1092.06, the Department of Environmental Quality shall notify the Board in writing of the request and the outcome of the conference.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-104. Docket; Case Number; Information on Documents

- A. The Clerk shall maintain a docket of all appeals and assign each appeal a case number. For each appeal, the Clerk shall enter all of the following information on the docket:
 1. The case number;
 2. The case name;
 3. The filing date of the notice of appeal;
 4. The receipt date of any answer;
 5. The receipt date of any disclosures;
 6. The receipt date of prehearing motions, responses, and replies;
 7. The dates of the evidentiary hearing;

8. The dates of orders by the Board and the Board's decision;
 9. The receipt date of any motion for rehearing or review;
 10. The Board's decision on any motion for rehearing or review and the date of the decision; and
 11. The Board's final decision and the date of the final decision.
- B.** A party shall place the case number and the name, address, and telephone number of the party or party's attorney on all pleadings, motions, or other documents filed with the Board.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-105. Filing and Service of Pleadings, Motions, or Other Documents

- A.** Within the time limits for filing, a party shall file the original and 1 copy of all pleadings, motions, or other documents with the Clerk and serve a copy on each party and the administrative law judge, if the Board has delegated hearing powers and duties to the Office of Administrative Hearings.
- B.** A party shall serve documents other than subpoenas by personal service or by regular mail. A party is considered served at the time of personal service of the document or upon deposit of the document in the United States mail, postage prepaid, in a sealed envelope, addressed to the party being served, at the party's last address of record with the Department of Environmental Quality or the Board. If there is a discrepancy between the records of these agencies, the party serving the document shall use the last address of record with the Board. Each party shall inform the Board of any change of address within 5 days of the change.
- C.** A party shall demonstrate proof of service by filing with the Clerk a written statement, signed by the party, indicating that service was made in person or by mail. The statement shall be attached to the pleading, motion, or other document being filed.
- D.** After receiving the Notice of Appeal or an Answer of a party, or when the Board finds that the interest of justice so requires, the Board may order any party to publish an appropriate notice in a newspaper of general circulation in the community or communities that may be adversely affected if the appellant is granted the relief requested in the appellant's Notice of Appeal. The party shall publish the notice in the manner prescribed by the Arizona Rules of Civil Procedure, unless the Board determines that another method of publication is more appropriate.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-106. Computation of Time; Additional Time After Service by Mail

- A.** In computing any period of time prescribed or allowed by these rules or by order of the Board, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, not including the time for mailing permitted in subsection (B), intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation. When that period of time is 11 days or more, not including the time for mailing permitted in subsection (B), intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.

- B.** Whenever a party has a right or is required to do some act or proceed within a prescribed period after the service of a notice or other document upon the party and the notice or document is served by mail, 5 calendar days shall be added to the prescribed period. This subsection does not apply when time is counted from the date that a party receives the notice or other document.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-107. Contents of a Notice of Appeal

- A.** The appellant may use the Notice of Appeal form in Appendix A and, where there is not enough space on the form, the appellant may attach additional sheets of paper. The notice of appeal shall contain the following statements:
1. "The appellant files this notice of appeal with the Department of Environmental Quality according to A.R.S. § 49-323."
 2. "Under A.R.S. § 49-323 and A.A.C. R2-17-101 et seq., if you, a Respondent in this case, have an interest in the final decision that may result from this Notice of Appeal, you are required to file an Answer to this Notice of Appeal within 20 days from the date of service of this Notice of Appeal on you."
- B.** The notice of appeal shall contain the following information:
1. The name, address, and telephone number of the appellant and, if the appellant is represented by an attorney, the name, address, telephone number, and Arizona Bar number of the appellant's attorney;
 2. The names, mailing addresses, and telephone numbers of all of the following interested parties:
 - a. The permittee or registrant, if the permittee or registrant is not the appellant;
 - b. All persons who filed a notice of appearance in the action before the Department of Environmental Quality that the appellant is appealing; and
 - c. The Department of Environmental Quality.
 3. The specific action of the Department of Environmental Quality involving the grant, denial, modification, or revocation of an individual permit issued under A.R.S. Title 49, Chapter 2, the issuance, denial, or revocation of a determination pursuant to A.R.S. § 49-241(B) or (C), or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§ 49-303 and 49-304;
 4. The date of the action by the Department of Environmental Quality;
 5. The date the notice of action by the Department of Environmental Quality was received by the appellant;
 6. The relief requested by the appellant and a concise statement of the reasons for the appeal;
 7. The date of the notice of appeal;
 8. The signature of the appellant or the appellant's attorney;
 9. A verification that the appellant has served or caused to be served, a copy of the notice of appeal on the Department of Environmental Quality and all parties named by the appellant.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-108. Time for Filing an Answer to a Notice of Appeal

The Department of Environmental Quality and all parties named by the appellant shall file an answer to appellant's notice of appeal within 20 days from service of the notice of appeal on that party.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-109. Contents of an Answer to a Notice of Appeal

The answer of each respondent shall contain the following information:

1. The name, address, and telephone number of the respondent preparing the answer and, if the respondent is represented by an attorney, the name, address, telephone number, and Arizona Bar number of the respondent's attorney;
2. A response to the appellant's allegations relating to the action taken by the Department of Environmental Quality involving the grant, denial, modification, or revocation of an individual permit issued under A.R.S. Title 49, Chapter 2, the issuance, denial, or revocation of a determination pursuant to A.R.S. § 49-241(B) or (C), or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§ 49-303 and 49-304;
3. The relief requested by the respondent;
4. The date of the answer;
5. The signature of the respondent or the respondent's attorney;
6. A verification that the respondent has served or caused to be served a copy of the answer on all other parties.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-110. Prehearing Disclosure

- A. Within the times set forth in subsection (B), each party shall disclose in writing to every other party:
 1. The factual basis of the appeal or response;
 2. The legal theory upon which the appeal or response is based, including citations of pertinent legal authorities;
 3. The names, addresses, and telephone numbers of all witnesses the party expects to call at the hearing, with a description of the substance of each witness' expected testimony;
 4. If a party is a corporation, the name of the state of incorporation. If the party is not an Arizona corporation, the party shall state whether it is qualified to do business in the state by the Arizona Corporation Commission;
 5. If the party is a partnership, the name, address, and telephone number of each partner;
 6. The names, mailing addresses, and telephone numbers of all of the following interested persons:
 - a. The permittee or registrant, if the permittee or registrant is not the appellant;
 - b. All persons who filed a notice of appearance in the action before the Department of Environmental Quality that the appellant is appealing;
 - c. The mayor of any city or town or the chair of the board of supervisors of any county that may be affected if the appellant is granted the relief requested;
 7. The name and address of each person whom the party expects to call as an expert witness at the hearing, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the qualifications of the witness and the name and address of the custodian of copies of any reports prepared by the expert;
 8. A list of documents which indicates the location, custodian, and a general description of any tangible evidence or relevant documents that the party plans to use during the hearing. Unless good cause is stated for not doing so, a copy of each document listed shall be served with the disclosure. If production is not made, the party shall indi-

cate the name and address of the custodian of the document. A party who produces documents for inspection shall produce them as they are kept in the usual course of business.

- B. The parties shall make the initial disclosure required by subsection (A) at least 15 days prior to the date set for hearing, unless the parties otherwise agree, or the Board shortens or extends the time for good cause. If feasible, counsel shall meet to exchange disclosures; otherwise, the parties shall serve the disclosures as prescribed in R2-17-105. At the same time the parties shall file with the Clerk the disclosures and 1 copy of each document listed.
- C. The duties described in subsections (A) and (B) are continuing duties, and each party shall make additional or amended disclosures whenever new or different information is discovered or revealed. A party shall serve additional or amended disclosures seasonably, but in no event later than 3 days before the hearing, except by leave of the Board.
- D. A party shall include in its disclosure, information and data in the possession, custody, and control of the parties as well as that which can be ascertained, learned, or acquired by reasonable inquiry and investigation.
- E. Each party shall make the disclosure in writing under oath and sign the disclosure.
- F. When information is withheld from disclosure or discovery on a claim that it is privileged or subject to protection as trial preparation materials, the party making the claim shall do so expressly and shall support the claim with a description of the nature of the documents, communications, or things not produced or disclosed that is sufficient to enable other parties to contest the claim.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-111. Depositions

The Board may allow the deposition of a witness who cannot be subpoenaed or is unable to attend the hearing, in the manner and upon the terms designated by the Board. The party requesting a deposition shall bear the expense of the deposition.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-112. Motions

- A. To obtain an order or other relief from the Board, a party shall make a motion. Unless the motion is made during a hearing, the party shall make the motion in writing. For all motions, the party shall state the grounds on which the motion is based and the relief or order sought. The Board shall decide prehearing motions based on the written materials submitted by the parties.
- B. Any party may file a response to a prehearing motion within 5 days after service of the motion and serve the response on all parties. The moving party has 2 days after service of a response to file a reply.
- C. For a written motion, a party shall state the grounds on which the motion is based and the relief or order sought in a supporting memorandum. A party's supporting memorandum shall not exceed 15 pages, exclusive of pages containing the table of contents, the table of cases, statutes or other authorities, and the appendix, if any. A reply memorandum shall not exceed 5 pages.
- D. A party shall support motion documents by affidavit or other satisfactory evidence if they contain facts not apparent in the record or facts that are not cognizable through judicial notice.
- E. When the Board directly conducts an administrative hearing, the Board shall rule on all motions. When the Board uses the

services of the Office of Administrative Hearings, the administrative law judge shall rule on all motions.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-113. Duties of the Board During a Hearing

- A.** The Board shall:
1. Conduct the hearing in an impartial, orderly, and informal manner;
 2. Regulate the course of the hearing;
 3. Rule upon procedural matters incidental to the hearing;
 4. Designate the order in which parties introduce their evidence; and
 5. Exercise the powers granted in A.R.S. §§ 41-1092.07 and 12-2212.
- B.** The Board may:
1. Exclude a witness from the hearing so the witness cannot hear the testimony of other witnesses;
 2. Set time limitations for arguments;
 3. Exclude a person from the hearing who is disruptive to the proceedings;
 4. Administer oaths and affirmations to witnesses; and
 5. Issue any orders necessary for the impartial, orderly, and informal conduct of the hearing.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-114. Location of Hearings

All hearings shall be held in Arizona, in Maricopa County, unless the Board finds that it will be more cost effective for the Board and the parties to hold a hearing elsewhere, in which event the Board shall set the location of the hearing.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-115. Notice of Hearing

- A.** If the Board conducts an administrative hearing, the Clerk shall set a date for the hearing no later than 60 days from the date the appellant filed the notice of appeal with the Department of Environmental Quality. The Clerk shall prepare and serve a notice of hearing as prescribed in A.R.S. § 41-1092.05. The Clerk may use the Notice of Hearing Form in Appendix B. If the Board uses the services of the Office of Administrative Hearings, the Clerk shall set the hearing date in consideration of and in conjunction with the Office of Administrative Hearings.
- B.** The notice of hearing shall contain the following information and statements:
1. The date, time, and place of the hearing;
 2. The hearing will be on the appellant's notice of appeal from an action of the Department of Environmental Quality;
 3. A.R.S. § 49-323 provides the authority and jurisdiction under which the hearing will be held;
 4. The particular sections of the statutes and rules involved in the substantive appeal are A.R.S. § 49-323 and A.A.C. R2-17-101 et seq. The parties should also refer to procedural statutes which may be applicable to this appeal, including A.R.S. §§ 41-1092.03 through 41-1092.11;
 5. The hearing will be a full evidentiary hearing for the purpose of reviewing the grant, denial, modification, or revocation of any individual permit issued under A.R.S. Title 49, Chapter 2, the issuance, denial, or revocation of a determination pursuant to A.R.S. § 49-241(B) or (C), or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§ 49-303 and 49-304;

6. The date the appellant filed the notice of appeal;
 7. The name of the administrative law judge, if any, when known at the time the notice of hearing is served;
 8. The Board may issue subpoenas on behalf of any party;
 9. All parties may be represented by counsel, may introduce evidence through witnesses and documents, and may cross-examine witnesses of other parties;
- C.** The Clerk shall provide written notification that reasonable accommodation will be made for the disabled, if the accommodation is requested. The notification shall be served with the notice of hearing.
- D.** At least 30 days prior to the date of the hearing the Clerk shall serve a copy of the notice of hearing on each Board member, the administrative law judge, if any, and each party.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-116. Consolidation

Upon the motion of a party, the Board may consolidate 2 or more appeals involving a common question of law or fact when consolidation will avoid unnecessary cost or delay.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-117. Continuances

- A.** A party applying for a continuance of a hearing shall file a motion with the Clerk and serve all parties no later than 10 days before the scheduled date of the hearing. The Board may accept a motion filed later than 10 days before the hearing for good cause. The motion shall state why the continuance is being requested, why a stipulation from adverse parties was not obtained, and the amount of time requested.
- B.** Any opposing party may, within 5 days after service of the motion, file and serve a response. The Board may permit a reply.
- C.** The parties may stipulate to a continuance. The Board is not required to accept the stipulation.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-118. Subpoenas

- A.** A party shall make a written request for a subpoena which clearly identifies the person, documents, or other evidence desired and the reason the evidence is relevant to the proceeding. The party requesting the subpoena shall file the request at least 15 days prior to the date set for hearing, provide the Board with a proposed subpoena for signature, and ensure that any subpoena issued is served in the manner prescribed by the Arizona Rules of Civil Procedure.
- B.** The person to whom a subpoena is directed shall comply with its provisions unless:
1. The person serving the subpoena has failed to comply with subsection (A) of this rule; or
 2. The person to whom the subpoena is directed, at least 10 days prior to the date set for the hearing, files a motion to quash or modify the subpoena and the motion is granted in whole or in part, prior to the hearing.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-119. Prehearing Conferences

- A.** Upon a motion by a party or on the initiative of the Board, the Board may order a prehearing conference, if the Board finds that a prehearing conference will assist the Board to:

Water Quality Appeals Board

1. Conduct the hearing within the 60-day period prescribed by A.R.S. § 41-1092.05(A); or
 2. Reach a just, speedy, and less expensive determination of the appeal.
- B.** If the Board takes any action at or after the prehearing conference, the Board shall prepare a written order reciting the action taken. The order shall become a part of the record of the appeal.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-120. Hearing

- A.** The Board shall conduct a full evidentiary hearing. A party may introduce new evidence or evidence that was considered by the Department of Environmental Quality when it took the action being appealed.
- B.** The Board shall use the standard of review prescribed in A.R.S. § 49-324(C) to decide an appeal.
- C.** Noncompliance with any order of the Board or disruption of any hearing is improper conduct and grounds for exclusion from the hearing.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-121. Evidence

- A.** All witnesses at a hearing shall testify under oath or affirmation. All parties shall have the right to present evidence and to conduct cross-examination as may be required for a full and true disclosure of the facts. The Board shall receive relevant, probative, and material evidence, rule upon offers of proof, and exclude all evidence determined to be irrelevant, immaterial, or unduly repetitious.
- B.** Any party may call additional witnesses or introduce into evidence additional documents not disclosed by the party in its notice of appeal, answer, initial prehearing disclosure, or an additional or amended disclosure if that witness or document was not or could not reasonably have been known to that party at the time the party filed its notice of appeal, answer, initial prehearing disclosure, and additional or amended disclosure.
- C.** The Board may conduct a hearing in an informal manner and without adherence to the rules of evidence required in judicial proceedings or follow that portion of the Arizona Rules of Evidence that the Board deems appropriate.
- D.** The Board may question any witness.
- E.** The Board may take judicial notice of judicially cognizable facts. In addition, the Board may take notice of generally recognized technical or scientific facts within the board members' specialized knowledge. The Board shall notify the parties either before or during the hearing, by reference in a preliminary report or otherwise, of the material noticed, including any staff memoranda or data. The parties shall be afforded an opportunity to contest the noticed material. The board members' experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-122. Recording Hearings

- A.** The Board shall tape-record the hearing unless it determines there will be a court reporter and is able to obtain state funds for the cost of the court reporter.
- B.** Any party may use a court reporter to produce a record of the hearing, but that party shall pay for all costs of the court reporter. Where a hearing is recorded by a party's court reporter, the Board shall determine whether the tape recording or the court reporter's recording will be used to prepare the

hearing transcript. The Clerk shall ensure that the proceedings are transcribed and provide copies of the transcript to the Board at the time the Board meets to consider its decision on the appeal.

- C.** Any party that requests a transcript of the proceeding from the Board shall pay the Clerk a fee for the cost of copying the transcript.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-123. Ex Parte Communications

- A.** In any appeal before the Board, except to the extent required for disposition of ex parte matters as authorized by law or these rules of procedure:
1. An interested person shall not make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to any Board member, administrative law judge, or employee of the State of Arizona who is or may reasonably be expected to be involved in the decision making process.
 2. A Board member, administrative law judge, or employee of the State of Arizona who is or may reasonably be expected to be involved in the decision making process shall not make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to any interested person.
- B.** A Board member, administrative law judge, or employee of the State of Arizona who is or may reasonably be expected to be involved in the decision making process and receives, makes, or knowingly causes to be made a communication prohibited by this Section shall place all written communications and all written responses to the communications in the public record of the proceeding and by oral testimony on the record state the substance of all oral communications.
- C.** Any interested person who receives a communication prohibited by this Section shall file a notice of the communication with the Clerk and serve a copy on the Solicitor General and all parties to the appeal. The interested person shall attach to the notice a copy of the communication, if written, or a summary of the communication, if oral.
- D.** When the Board is made aware under subsections (B) or (C) of a communication prohibited by this Section, the Board shall give all parties a reasonable opportunity to respond to the communication. The Board, to the extent consistent with the interests of justice and the policy of the underlying statutes and rules, may require the person responsible for the communication to show cause why the person's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.
- E.** The provisions of this Section apply to an appeal from the date the notice of appeal is filed to the date on the Board's final administrative decision, unless the person responsible for the communication knew the appeal would be noticed, in which case the prohibition applies from the time that the person acquired the knowledge.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-124. Notification of Decisions and Orders

The Clerk shall notify each party promptly by either delivering or mailing copies of all decisions and orders, including the findings of fact, conclusions of law, and the final administrative decision of the Board to each party's last known address.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-125. Decision of the Board

- A.** If the Board uses the services of the Office of Administrative Hearings, the Board will receive a copy of the administrative law judge's decision under A.R.S. § 41-1092.08. Within 30 days after receipt, the Board may review the decision and accept, reject, or modify it.
1. If the Board does not make a decision within 30 days, the Board has accepted the administrative law judge's decision as the final administrative decision.
 2. If the Board reviews the administrative law judge's decision, it shall request the record of the hearing, described in A.R.S. § 41-1092.10(C), and may accept, reject, or modify the decision. If the Board rejects or modifies the decision, the Board shall file with the Office of Administrative Hearings a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification. Under the circumstances in this subsection, the decision of the Board is the final administrative decision.
- B.** If the Board directly conducts an administrative hearing, the Board shall meet and render its final administrative decision on the appeal in writing within 15 days after the hearing. The Board's decision shall contain its findings of fact and conclusions of law, separately stated, and its decision.
- C.** The Board's final administrative decision shall contain the following statement: "This is a final administrative decision of the Water Quality Appeals Board, made according to A.R.S. § 49-323. You may file a motion for rehearing or review of this decision under R2-17-126. If you file a motion for rehearing or review, you shall file your motion within 30 days after service of this decision. You are not required to file a motion for rehearing or review before seeking judicial review. This decision may be reviewed by the Superior Court if you file a complaint in the manner prescribed in A.R.S. §§ 41-1092.10 and 41-1092.11."
- D.** The Board may incorporate by reference findings, conclusions, or a decision previously made by an administrative law judge.
- E.** When the Board has rendered a final administrative decision, it shall serve a copy of the decision on all parties.
2. Misconduct of the Board, its staff, an administrative law judge, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding; or
 6. That the findings of fact or decision is not justified by the evidence or is contrary to law.
- E.** The Board may affirm or modify the decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.
- F.** When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 5 days after service, serve opposing affidavits.
- G.** Not later than 15 days after the date of the decision, the Board may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.
- H.** If the Board makes specific findings that the immediate effectiveness of a decision is necessary for the preservation of the public health and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue a final administrative decision without an opportunity for rehearing or review. A party may seek judicial review of the decision under A.R.S. §§ 41-1092.10 and 41-1092.11.
- I.** The Board shall rule on the motion for rehearing or review within 15 days after it has been received. If a rehearing is granted, the Board shall hold the rehearing within 90 days after the issue date on the order granting the rehearing.
- J.** If a motion for rehearing or review is denied, the Clerk shall serve a notice of denial on all parties within 15 days after the denial.
- K.** If the motion for rehearing or review is granted, the Clerk shall serve the Board's final administrative decision on all parties within 15 days after the Board renders the decision.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-126. Rehearing or Review of Decision

- A.** Except as provided in subsection (H), any party to an appeal before the Board may file a motion for rehearing or review within 30 days after service of the final administrative decision. The party shall attach a supporting memorandum, specifying the grounds for the motion. The party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.
- B.** Any other party may file a response within 5 days after service of a motion for rehearing or review. The party shall support the response with a memorandum, discussing legal and factual issues.
- C.** The moving party, the responding party, or the Board may request oral argument.
- D.** The Board may grant a rehearing or review for any of the following causes materially affecting a party's rights:
1. Irregularity in the proceedings of the Board, or any order or abuse of discretion, that deprived the moving party of a fair hearing;

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-127. Judicial Review

The final administrative decision of the Board may be reviewed as provided by A.R.S. §§ 41-1092.10, 41-1092.11, 49-323 and A.R.S. § 12-901 et seq. (Title 12, Chapter 7, Article 6, Judicial Review of Administrative Decisions Act).

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-128. Record

The Clerk shall keep the record and ensure that it is preserved for a minimum of 5 years from the date of the final administrative decision.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

Appendix A. Notice of Appeal

(If this form does not give you adequate space, attach additional sheets of paper.)

BEFORE THE WATER QUALITY APPEALS BOARD
DEPARTMENT OF ADMINISTRATION
IN AND FOR THE STATE OF ARIZONA

Appellant,)
)
) CASE NO. _____
vs.)
) NOTICE OF APPEAL
)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
)
)
Respondents.)
_____)

- 1. The appellant files this Notice of Appeal with the Department of Environmental Quality according to A.R.S. § 49-323.
2. Under A.R.S. § 49-323 and A.A.C. R2-17-101 et seq., if you, a Respondent in this case, have an interest in the final decision that may result from this Notice of Appeal, you are required to file an Answer to this Notice of Appeal within 20 days from the date of service of this Notice of Appeal on you.
3. The name, address, and telephone number of the appellant is:

Name:
Address:
Telephone:

If I, the appellant, am represented by an attorney, the name, address, telephone number, and Arizona Bar number of my attorney is:

Name:
Address:
Telephone: Bar No.

- 4. The following is a list of names, mailing addresses, and telephone numbers of all of the following interested parties:
a. The permittee, if the permittee is not the appellant;
b. All persons who filed a notice of appearance in the action before the Department of Environmental Quality that the appellant is appealing; and
c. The Department of Environmental Quality.

Name:
Address:
Telephone:
Name:
Address:
Telephone:
Name:
Address:
Telephone:

- 5. The specific action of the Department of Environmental Quality which is the basis of this appeal is the following:
a.

b.

- 6. The date of the action complained of in the previous paragraph (5) is (month) (day), (year).
- 7. The date the appellant received notice of the action complained of in the previous paragraph (5) is (month) (day), (year).
- 8. I request the relief below for the following reasons:

DATED (month) (day), (year)

 Signature of the Appellant or
 the attorney for the Appellant

VERIFICATION

I verify that I have served or caused to be served a copy of this Notice of Appeal on the Department of Environmental Quality and all the persons listed in paragraph (4) above.

DATED (month) (day), (year)

 Signature of the Appellant or
 the attorney for the Appellant

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

Water Quality Appeals Board

Appendix B. Notice of Hearing

BEFORE THE WATER QUALITY APPEALS BOARD
DEPARTMENT OF ADMINISTRATION
IN AND FOR THE STATE OF ARIZONA

Appellant,)
)
)
vs.)
)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
)
)
Respondents.)
_____)

CASE NO. _____

NOTICE OF HEARING

TO ALL PARTIES:

- 1. The date of the hearing is (month) (day), (year), at _____ o'clock ____M. at the following address:
2. The hearing will be on the appellant's notice of appeal from an action of the Department of Environmental Quality.
3. A.R.S. § 49-323 provides the authority and jurisdiction under which the hearing will be held.
4. The particular Sections of the statutes and rules involved in the substantive appeal are A.R.S. § 49-323 and A.A.C. R2-17-101 et seq.
5. The hearing will be a full evidentiary hearing for the purpose of reviewing the grant, denial, modification, or revocation of any individual permit issued under A.R.S. Title 49, Chapter 2, the issuance, denial, or revocation of a determination pursuant to A.R.S. § 49-241(B) or (C), or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§ 49-303 and 49-304.
6. The date the appellant filed the Notice of Appeal is (month) (day), (year).
7. If known, the name of the administrative law judge, if any, is _____.
8. The Board may issue subpoenas on behalf of any party.
9. All parties may be represented by counsel, may introduce evidence through witnesses and documents, and may cross-examine witnesses of other parties.

DATED this (month) (day), (year)

Signature of the Clerk of the
Water Quality Appeals Board

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

12-2212. Subpoena by public officer; contempt

A. When a public officer is authorized by law to take evidence, he may issue subpoenas, compel attendance of witnesses and production of documentary evidence, administer oaths to witnesses, and cause depositions to be taken, in like manner as in civil actions in the superior court.

B. If a witness fails to appear at the time and place designated in the subpoena, or fails to answer questions relating to the matter about which the officer is authorized to take testimony, or fails to produce a document, the officer may, by affidavit setting forth the facts, apply to the superior court of the county where the hearing is held, and the court shall thereupon proceed as though such failure had occurred in an action pending before it.

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, which is published pursuant to section 41-1011.
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, which is:

(a) This state's official publication of rulemaking notices that are filed with the office of secretary of state.

(b) Published pursuant to section 41-1011.

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 to make a new rule or amend, repeal or renumber 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.

41-1092. Definitions

In this article, unless the context otherwise requires:

1. "Administrative law judge" means an individual or an agency head, board or commission that sits as an administrative law judge, that conducts administrative hearings in a contested case or an appealable agency action and that makes decisions regarding the contested case or appealable agency action.
2. "Administrative law judge decision" means the findings of fact, conclusions of law and recommendations or decisions issued by an administrative law judge.
3. "Appealable agency action" means an action that determines the legal rights, duties or privileges of a party and that is not a contested case. Appealable agency actions do not include interim orders by self-supporting regulatory boards, rules, orders, standards or statements of policy of general application issued by an administrative agency to implement, interpret or make specific the legislation enforced or administered by it or clarifications of interpretation, nor does it mean or include rules concerning the internal management of the agency that do not affect private rights or interests. For the purposes of this paragraph, administrative hearing does not include a public hearing held for the purpose of receiving public comment on a proposed agency action.
4. "Director" means the director of the office of administrative hearings.
5. "Final administrative decision" means a decision by an agency that is subject to judicial review pursuant to title 12, chapter 7, article 6.
6. "Office" means the office of administrative hearings.
7. "Self-supporting regulatory board" means any one of the following:
 - (a) The Arizona state board of accountancy.
 - (b) The board of barbers.
 - (c) The board of behavioral health examiners.
 - (d) The Arizona state boxing and mixed martial arts commission.
 - (e) The state board of chiropractic examiners.
 - (f) The board of cosmetology.
 - (g) The state board of dental examiners.
 - (h) The state board of funeral directors and embalmers.
 - (i) The Arizona game and fish commission.
 - (j) The board of homeopathic and integrated medicine examiners.
 - (k) The Arizona medical board.
 - (l) The naturopathic physicians medical board.

- (m) The state board of nursing.
- (n) The board of examiners of nursing care institution administrators and adult care home managers.
- (o) The board of occupational therapy examiners.
- (p) The state board of dispensing opticians.
- (q) The state board of optometry.
- (r) The Arizona board of osteopathic examiners in medicine and surgery.
- (s) The Arizona peace officer standards and training board.
- (t) The Arizona state board of pharmacy.
- (u) The board of physical therapy.
- (v) The state board of podiatry examiners.
- (w) The state board for private postsecondary education.
- (x) The state board of psychologist examiners.
- (y) The board of respiratory care examiners.
- (z) The state board of technical registration.
- (aa) The Arizona state veterinary medical examining board.
- (bb) The acupuncture board of examiners.
- (cc) The Arizona regulatory board of physician assistants.
- (dd) The board of athletic training.
- (ee) The board of massage therapy.

49-241. Permit required to discharge

A. Unless otherwise provided by this article, any person who discharges or who owns or operates a facility that discharges shall obtain an aquifer protection permit from the director.

B. Unless exempted under section 49-250, or unless the director determines that the facility will be designed, constructed and operated so that there will be no migration of pollutants directly to the aquifer or to the vadose zone, the following are considered to be discharging facilities and shall be operated pursuant to either an individual permit or a general permit, including agricultural general permits, under this article:

1. Surface impoundments, including holding, storage settling, treatment or disposal pits, ponds and lagoons.
2. Solid waste disposal facilities except for mining overburden and wall rock that has not been and will not be subject to mine leaching operations.
3. Injection wells.
4. Land treatment facilities.
5. Facilities that add a pollutant to a salt dome formation, salt bed formation, dry well or underground cave or mine.
6. Mine tailings piles and ponds.
7. Mine leaching operations.
8. Underground water storage facilities.
9. Sewage treatment facilities, including on-site wastewater treatment facilities.
10. Wetlands designed and constructed to treat municipal and domestic wastewater for underground storage.

C. The director shall provide public notice and an opportunity for public comment on any request for a determination from the director under subsection B of this section that there will be no migration of pollutants from a facility. A public hearing may be held at the discretion of the director if sufficient public comment warrants a hearing. The director may inspect and may require reasonable conditions and appropriate monitoring and reporting requirements for a facility managing pollutants that are determined not to migrate under subsection B of this section. The director may identify types of facilities, available technologies and technical criteria for facilities that will qualify for a determination. The director's determination may be revoked on evidence that pollutants have migrated from the facility. The director may impose a review fee for a determination under subsection B of this section. Any issuance, denial or revocation of a determination may be appealed pursuant to section 49-323.

D. The director shall annually make the fee schedule for aquifer protection permit applications available to the public on request and on the department's website, and a list of the names and locations of the facilities that have filed applications for aquifer protection permits, with a description of the status of each application, is available to the public on request.

E. The director shall prescribe the procedures for aquifer protection permit applications and fee collection under this section. The director shall deposit, pursuant to sections 35-146 and 35-147, all monies collected under this section in the water quality fee fund established by section 49-210 and may authorize expenditures from the fund, subject to legislative appropriation, to pay reasonable and necessary costs of processing and issuing permits and administering the registration program.

49-303. Pesticide evaluation process; reporting requirements

A. After satisfying the requirements of section 49-302, a registrant may use any of the following processes to demonstrate to the director whether the pesticide has the potential to pollute groundwater:

1. The use of specific numeric values established by the director for pesticides regarding water solubility, soil adsorption coefficient, hydrolysis, aerobic and anaerobic soil metabolism and field dissipation. The director of environmental quality in consultation with the Arizona department of agriculture and the department of water resources may revise the numeric values if the director of environmental quality finds that the revision is necessary to protect the groundwater of this state. The numeric values shall be at least as stringent as the values used by the United States environmental protection agency at the time the values are established or revised.
2. If adopted in rule, use of a procedure for establishing specific numeric values other than those established pursuant to paragraph 1 of this subsection. Any numeric values adopted by the director of environmental quality pursuant to this paragraph shall be at least as stringent as the numeric values used by the United States environmental protection agency.
3. If adopted in rule, use of an alternate procedure other than the use of specific numeric values to evaluate the potential of a pesticide to pollute groundwater. This procedure shall be consistent with the objective of this article.

B. In consultation with the Arizona department of agriculture and the department of water resources, the director of environmental quality shall adopt rules necessary to implement this section.

C. The director shall report on December 1 of each year the following information to the legislature for each pesticide registered for agricultural use:

1. A list of each active ingredient, other specified ingredient or degradation product of an active ingredient of a pesticide for which there is a groundwater protection data gap.
2. A list of each pesticide that contains an active ingredient, any other specified ingredient or a degradation product of an active ingredient which is greater than one or more of the numeric values established pursuant to subsection A of this section, or is less than the numeric value in the case of soil adsorption coefficient, in both of the following categories:
 - (a) Water solubility or soil adsorption coefficient.
 - (b) Hydrolysis, aerobic soil metabolism, anaerobic soil metabolism or field dissipation.
3. A list of each pesticide that contains an active ingredient, any other specified ingredient or a degradation product of an active ingredient that has been determined by an alternate procedure that is adopted pursuant to subsection B of this section to have the potential to pollute groundwater.
4. For each pesticide listed pursuant to paragraph 2 or 3 of this subsection for which information is available, a list of the amount of the pesticide that was applied to soil in this state during the most recent year, where it was applied and for what purpose the pesticide was used.

D. The director of environmental quality in consultation with the Arizona department of agriculture, the department of water resources and the department of health services may determine to the extent possible the toxicological significance of the degradation products and other specified ingredients identified pursuant to subsection C, paragraphs 2 and 3 of this section.

49-304. Penalty for groundwater protection data gap

A. A registrant of a pesticide is subject to a penalty of up to ten thousand dollars for each day that a groundwater protection data gap exists unless the information was waived pursuant to section 49-302, subsection D or a conditional registration was granted pursuant to section 49-310. In determining the amount of the penalty, the following shall be considered:

1. The extent to which the registrant has made every effort to submit the valid, complete and adequate information.
2. Circumstances beyond the control of the registrant that have prevented the registrant from submitting valid, complete and adequate information.

B. If there is a dispute between the director and a registrant regarding the existence of a groundwater protection data gap, the director or registrant shall submit the issues of the dispute to the water quality appeals board pursuant to section 49-323. The water quality appeals board shall review the evidence submitted by the registrant and the director and make recommendations to the director on whether or not the groundwater protection data gap exists.

C. The attorney general may enforce this section.

D. Any monetary penalties obtained under this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

49-322. Water quality appeals board

A. A water quality appeals board is established in the department of administration consisting of three members appointed by the governor pursuant to section 38-211 to terms of three years. One member of the board shall be an attorney licensed to practice law in this state, and all members shall possess technical competence to perform the duties of the board. Board members are entitled to compensation determined under section 38-611.

B. Members of the board are subject to title 38, chapter 3, article 8 and shall not receive a significant portion of their income directly or indirectly from persons subject to individual permits or enforcement orders under this chapter. In addition, the members shall not have been employed by such persons, other than state agencies, within two years before appointment and may not be employed by such persons, other than state agencies, within two years after their appointment expires. For purposes of this subsection "significant portion of income" means ten per cent or more of gross personal income for a calendar year or fifty per cent or more of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving that portion under retirement, pension or similar benefits.

C. The board may employ a staff. The real party in interest shall represent the board in any appeals from decisions of the board.

D. The board shall adopt rules of procedure to govern the conduct of hearings before the board.

49-323. Appeals to the board; judicial review

A. An appeal to the appeals board may be taken from any grant, denial, modification or revocation of any individual permit issued under this chapter, from any issuance, denial or revocation of a determination pursuant to section 49-241, subsections B and C or from the establishment of numeric values and data gap issues for pesticides pursuant to sections 49-303 and 49-304, by any person who is adversely affected by the action or by any person who may with reasonable probability be adversely affected by the action and who has exercised any right to comment on the action as provided in section 41-1092.03. Any interested person may intervene in the appeal as a matter of right. The board shall hold a hearing if questions of material fact are at issue in the appeal. Notice and hearing procedures are subject to title 41, chapter 6, article 10.

B. Final decisions of the board are subject to appeal to superior court pursuant to title 12, chapter 7, article 6. For the benefit of the people of this state, appeals under this section have precedence, in every court, over all other civil proceedings. The presiding judge for the county in which the appeal has been made shall assign the appeal to the appropriate judge designated by the chief justice of the supreme court pursuant to section 45-406 to hear appeals relating to groundwater.

49-324. [Stay pending appeal; standard of review](#)

A. If an appeal is taken from the director's decision to issue a permit for a new facility, the facility may not discharge any pollutants inconsistent with the director's decision until the appeal process is completed.

B. Except as provided in subsections D and E of this section:

1. If an appeal is taken from the director's decision to grant or deny a permit for an existing facility under circumstances in which that facility was previously subject to a permit, the facility may continue to operate pending final disposition of the appeal if there is no increase in the amount of pollutants discharged or change in the characteristics of the discharge.

2. If an appeal is taken from the director's decision to grant, deny, modify or revoke a permit for a facility already subject to a permit, the facility may continue to operate as long as the operation complies with the conditions of the existing permit until final disposition of the appeal.

C. Decisions by the director shall be affirmed by the appeals board unless, considering the entire record before the board, it concludes that the director's decision is arbitrary, unreasonable, unlawful or based upon a technical judgment that is clearly invalid.

D. The director or any interested person who has appealed or intervened before the board may apply to the superior court for an order requiring cessation of discharge or conditions for continued discharge pending final disposition of the appeal as necessary to prevent an imminent and substantial endangerment to public health and the environment. The court shall determine the matter under the standards applicable for granting preliminary injunctions.

E. Notwithstanding section 41-1092.11, if a notice of appeal of a permit that is issued under article 3.1 of this chapter is filed, those permit provisions that are specifically identified in the notice of appeal as being contested and those other permit provisions that cannot be severed from the contested provisions are automatically stayed while the appeal is pending, including during any court proceedings. Uncontested permit provisions that are severable from the contested provisions are effective and enforceable thirty days after the director serves notice on the applicant, the water quality appeals board and any party who commented on the proposed action of the conditions that are uncontested and severable.

Note: This Five Year Review report was previously considered at the March 30, 2021 Study Session and April 6, 2021 Council Meeting. At the April 6, 2021 Council Meeting, the Council voted to table consideration of this report to the April 27, 2021 Study Session and May 4, 2021 Council Meeting due to the unavailability of a Department representative to answer the Council's questions.

E-1

DEPARTMENT OF LIQUOR LICENSES AND CONTROL

Title 19, Chapter 1, Articles 1-7



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 6, 2021 and May 4, 2021

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

FROM: Council Staff

DATE: March 8, 2021

SUBJECT: DEPARTMENT OF LIQUOR LICENSES AND CONTROL (F21-0408)
Title 19, Chapter 1, Articles 1-7, Department of Liquor Licenses and Control

Summary:

This Five Year Review Report (5YRR) from the Department of Liquor Licenses and Control (Department) relates to rules in Title 19, Chapter 1, Articles 1-7, regarding the Department of Liquor Licenses and Control. The rules address the following:

- Article 1: General Provisions;
- Article 2: Licensing;
- Article 3: Licensee Responsibilities;
- Article 4: Required Notices to Department;
- Article 5: Required Records and Reports;
- Article 6: Violations; Hearing; Discipline; and
- Article 7: State Liquor Board.

As the Department indicates, "[t]he mission of the Department is to protect public safety, support economic growth through the responsible sale and consumption of liquor, and license qualified applicants efficiently."

In the previous 5YRR for these rules, which the Council approved in June 2016, the Department stated it would seek an exception to the rulemaking moratorium in place at that time to amend certain rules it identified in that report: R19-1-101, R19-1-102, R19-1-104, R19-1-105,

R19-1-202, R19-1-205, R19-1-207, R19-1-305, R19-1-315, R19-1-320, R19-1-327, R19-1-504, R19-1-603, R19-1-704, and R19-1-705. The Department stated in the previous 5YRR that if an exception from the rulemaking moratorium was granted, it would complete a rulemaking by June 30, 2017.

The Department indicates in this 5YRR that due to the moratorium and resource limitations in hiring or contracting with a professional rulewriter, it did not amend the rules since the last 5YRR.

Proposed Action

In this 5YRR, the Department notes that legislation from 2018, Laws 2018, Ch. 240, required the Department to amend its rules to add provisions regarding the training of security personnel. The Department states that it will work with the Council to determine if any rulemaking is required. Rules relating to the training of security personnel are not currently in Title 19, Chapter 1. Further, the Department states that due to pending legislation (HB2050) and other bills that may affect Title 4, it believes that any required rulemaking should be postponed until the end of the legislative session in May 2021.

However, if it is able to obtain an exception to the rulemaking moratorium, it proposes to amend the following rules: R19-1-101, R19-1-102, R19-1-103, R19-1-104, R19-1-105, R19-1-206, R19-1-207, R19-1-209, R19-1-304, R19-1-315, R19-1-316, R19-1-317, R19-1-320, R19-1-327, R19-1-401, R19-1-501, R19-1-504, R19-1-603, and R19-1-604, as discussed in the 5YRR.

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

Yes. The Department cites both general and specific statutory authority for the rules under review. Council staff notes that there are several statutes that correspond to the rules. Therefore, the applicable statutes are not included in the final materials. Council members may access the relevant statutes at: <https://www.azleg.gov/arsDetail/?title=4>.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department works to protect public safety, and support economic growth through the responsible sale and consumption of liquor. The Department states that even though statutory changes happened since 2014, the economic impact of the 2014 rule changes remains minimal.

Since the 2014 rulemaking, the number of licensees substantially increased. The regulations have not slowed the number of licensees, which increased by 23 percent since FY 2015.

The stakeholders include: the Department, licensees, and the general public.

The Department oversees the enforcement of the rules, and reviews licensee applications. Despite a substantial increase in the number of licensees, and a reduction in Department staff, the Department's licensing times decreased. The Department does not report additional costs due to the regulations.

The rules minimally affect licensees, which are commonplace for liquor licensing. These regulations include: maintaining records of liquor sales, notifying the Department when there are operational changes, and complying with liquor training courses.

The general public does not bear the cost burden of these regulations, but benefits from increased public safety associated with the rules.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Department states that the rules achieve their objective with the least burden and cost to those regulated. The Department further states that although compliance costs are imposed on those regulated, the benefits to the health, safety, and welfare of Arizonans outweigh these costs.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Department did not receive any written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes. The Department states that the rules are generally clear, concise, understandable, and consistent with current rule writing standards.

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

Yes. The Department states that the rules are consistent with federal law and the U.S. Constitution. The Department notes that pursuant to the 21st Amendment, regulation of spirituous liquors is delegated to the states. However, the Department indicates that due to recent changes to Arizona statutes, there are minor inconsistencies between the statutes and the rules under review.

In the 5YRR, for each affected rule, the Department describes the inconsistency(s) with the relevant statute(s).

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Yes. The Department states that the rules are effective in achieving their objectives because it is "able to fulfill its statutory responsibility to regulate and license the manufacture, sale, and distribution of spirituous liquor while protecting the health, safety,

and welfare of Arizona citizens, without finding that the rules hinder, delay, or complicate its processes.”

However, the Department notes that due to statutory changes since 2014, some rules have inconsistent statutory references due to renumbering. The Department states that those changes have not interfered with the effectiveness of the rules.

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

Yes. The Department indicates that it enforces the rules. However, it states that where there is an inconsistency with statute, the Department enforces the statute.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The corresponding federal regulations to these rules are located in 27 CFR Chapter 1, Subchapter A. The rules are not more stringent than the corresponding federal regulations.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Yes. The licenses defined in R19-1-101 and other authorizations and registrations required under A.R.S. Title 4 are general permits in compliance with A.R.S. § 41-1037.

11. Conclusion

Council staff finds that the Department completed an adequate analysis of the rules under review pursuant to A.R.S. § 41-1056. Council staff notes that due to pending legislation that affects the Department, the Department states that it plans to postpone any rulemaking until the current legislative session ends in May 2021. However, the Department notes that there are several rules that need to be amended. Accordingly, Council staff recommends approval of this report, but also recommends that the Council and the Department discuss a specific timeframe to amend the rules it cites in the 5YRR.



STATE OF ARIZONA
DEPARTMENT OF LIQUOR LICENSES AND CONTROL

Douglas A. Ducey
GOVERNOR

John Cocca
DIRECTOR

January 29, 2021

VIA Email: grrc@azdoa.gov

Chairperson Nicole Sornsin
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, AZ 85007

Re: Arizona Department of Liquor – Title 19, Chapter 1, Articles 1 through 7 Five Year Review Report

Dear Chairperson Sornsin,

Please find enclosed the Five Year Review Report of the Arizona Department of Liquor Licenses and Control for Title 19, Chapter 1, Articles 1 through 7 which is due on January 31, 2021.

The Department of Liquor Licenses and Control hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report please contact Assistant Director Jeffery Trillo at (602) 364-1952 or Jeffery.Trillo@azliquor.gov.

Sincerely,

John Cocca,
Director

DEPARTMENT OF LIQUOR LICENSES AND CONTROL

5YRR
19 A.A.C. 1, Articles 1 through 7

Submitted January 29, 2021
Approved ____ 2021

INTRODUCTION

The Department of Liquor Licenses and Control consists of the seven-member State Liquor Board and the Office of the Director of the Department. A.R.S. § 4-111. The Board meets in monthly open meetings primarily to hold hearings to grant or deny protested license applications and to resolve appeals of the Director's final decisions. *Id.*; A.R.S. § 4-210.02. The Director is responsible for administering Title IV and conducting the Department's day-to-day operations, including its investigations. A.R.S. § 4-112(B). Unlike most agencies, members of the neighboring public and local governing bodies (cities, towns, and counties) participate in the licensing process. A.R.S. § 4-201, -202, and -203. The public, local governing bodies, and the Director may protest liquor license applications, which requires a hearing before the Board. A.R.S. § 4-201(E). If no party protests, however, the Director may grant an application. *Id.*

The mission of the Department is to protect public safety, support economic growth through the responsible sale and consumption of liquor, and license qualified applicants efficiently.

Arizona, like many other states, regulates the sale and service of spirituous liquor under a three-tier system that separates producers, wholesalers, and retailers into generally distinct categories with limited exceptions.

Since the time of the Department's June 2016 five year rule review, the Department has not engaged in any rulemaking but the Legislature has amended the Department's statutes several times through omnibus bills that made numerous unrelated changes. *See* Laws 2016, Ch. 76; Laws 2016, Ch. 91, Laws 2016, Ch. 161; Laws 2016, Ch. 184; Laws 2016, Ch. 285; Laws 2016, Ch. 290; Laws 2016, Ch. 345; Laws 2017, Ch. 54; Laws 2017, Ch. 168; Laws 2017, Ch. 258; Laws 2018, Ch. 159; Laws 2018, Ch. 240; Laws 2019, Ch. 136, Highlights from these bills included the following:

Laws 2019, Ch. 136

- Allowed for the use of biometric identify verification devices.
- Allowed the Department to suspend or revoke noncompliant Title IV trainers.
- Expanded delivery privileges related to online ordering and the use of contractors.

- Created the joint premises license for contiguous licenses of the same type.
- Created a pilot program for up to ten regional shopping centers to designate a retail licensee who can extend its licensed premises to encompass pedestrian areas within the shopping center.

Laws 2018, Ch. 240

- Required that after January 1, 2019, the Department’s rules for Title IV training include de-escalation procedures for security personnel, required that licensees attempt to verify the validity of a security guard’s registration certification, and required the Department to adopt a form for licensees to use to for evaluating certain security guards’ criminal history.
- Clarified when a transfer of control of a liquor license occurs.
- Required local governing bodies to submit approval or disapproval of a special event license, farm-winery festival, or craft-distillery festival license to the Department within sixty days and modified festival license requirements and privileges.
- Modified the manner of calculating how many quota licenses (bar and liquor store) licenses the Department may issue each year and the method of license valuation.

Laws 2018, Ch. 159

- Clarified that peace officers may carry firearms in licensed premises even if they are off-duty.

Laws 2017, Ch. 258

- Modified the definition of “permanent occupancy.”

Laws 2017, Ch. 168

- Modified when an acquisition of control of a liquor license occurs and the process for local governing bodies to submit recommendations to the Department.
- Modified who may obtain a special event license, created the role of special event contractor and related requirements, and stated that the Department may create rules to implement and administer the new section.

- Modified how the Department calculates how many beer and wine bar licenses the Department may issue each year and how participants may enter the Department's liquor-license lottery.
- Modified the fee structure for entities making numerous licensure changes simultaneously.
- Modified restaurant audit procedures.
- Provided for jurisdiction over out-of-state businesses conducting business in this state that requires a liquor license and specified penalties for unlicensed conduct.

Laws 2017, Ch. 54

- Changed the lawful age of employees who can handle spirituous liquor from nineteen to eighteen.

Laws 2016, Ch. 290

- Added improper use of EBT cards at a liquor store and carrying firearms into licensed premises to the list of violations that constitute class 3 misdemeanors.

Laws 2016, Ch. 285.

- Permitted the Director to issue a license of any series to a trustee in bankruptcy that has acquired a debtor's spirituous liquor.
- Added retired law enforcement officers to the list of individuals who may carry a firearm inside a licensed premises.

Laws 2016, Ch. 345

- Modified the requirements for bars to obtain sampling privileges.

Laws 2016, Ch. 184

- Added a requirement for the Director to report on the use of license surcharge fees.

Laws 2016, Ch. 161

- Modified what constitutes “repeated acts of violence” based on an establishment’s occupancy limits.
- Required licensees to notify the Department within thirty days of a change of agent.
- Allowed certain licensees to apply for “growler” permits and established criteria for licensure using forms that the Director furnishes.
- Increased the limit on the amount of beer that a licensee can serve one patron at one time from thirty-two to fifty ounces.
- Increased the amount of producers or wholesalers who can participate in a sampling event to two per event.

Laws 2016, Ch. 91

- Modified the acceptable forms of identification that licensees may accept.

Laws 2016, Ch. 76

- Created the Direct-Shipment license for qualifying in-state and out-of-state wineries.

Statute that generally authorizes the agency to make rules: A.R.S. § 4-112(A)(2) and (B)

1. Specific statute authorizing the rule:

R19-1-101: A.R.S. § 4-112(B)(1)(a)

R19-1-102: A.R.S. §§ 4-112(G)(10), 4-205.02, 4-205.04(B), 4-206.01, 4-207.01(B), 4-209, 4-244.05, and 35-142(K)

R19-1-103: A.R.S. § 4-112(G)(2)

R19-1-104: A.R.S. § 4-112(B)(1)(a)

R19-1-105: A.R.S. § 4-101(29)

R19-1-106: A.R.S. § 4-112(B)(1)(b)

R19-1-107: A.R.S. § 4-112(G)(11)

R19-1-110: A.R.S. §§ 4-112(G)(4) and 4-243(A)(4)

R19-1-201: A.R.S. §§ 4-202(A) and 41-1080

R19-1-202: A.R.S. §§ 4-201, 4-202, 4-203, 4-203.01, 4-203.04, and 4-228

R19-1-203: A.R.S. §§ 4-112(B)(1)(d) and 4-222
R19-1-204: A.R.S. § 4-206.01
R19-1-205: A.R.S. § 4-203.02(I)
R19-1-206: A.R.S. § 4-205.02(E)
R19-1-207: A.R.S. §§ 4-101(28), 4-203(B), and 4-207.01(B)
R19-1-208: A.R.S. §§ 4-201(B) and 4-205.07(B)
R19-1-209: A.R.S. §§ 41-1073, 4-101(10), 4-201(E), and 4-202(B)
R19-1-302: A.R.S. § 4-112(G)(4)
R19-1-303: A.R.S. § 4-203(B)(1)
R19-1-304: A.R.S. §§ 4-203(B) and 4-207.01
R19-1-305: A.R.S. §§ 4-112(B)(1)(c), 4-205.04(I)(1), 4-205.08(H)(1), 4-205.10(G)(1), and 4-210(A)(5)
R19-1-306: A.R.S. § 4-112(B)(1)(a)
R19-1-307: A.R.S. §§ 4-244(21), (32), and (45)
R19-1-308: A.R.S. § 4-112(G)(6)
R19-1-309: A.R.S. § 4-112(B)(1)(b)
R19-1-310: A.R.S. § 4-112(B)(1)(b)
R19-1-312: A.R.S. § 4-243
R19-1-314: A.R.S. § 4-112(B)(1)(b)
R19-1-315: A.R.S. §§ 4-112(B)(1)(d), 4-203(J) and (M), 4-205.04(C)(9) and (D), 205.08(C)(1), and 4-205.10(C)(7)
R19-1-316: A.R.S. §§ 4-112(B)(1)(b) and 4-244(19)
R19-1-317: A.R.S. §§ 4-112(B)(1)(b), 4-205.01, and 4-205.02
R19-1-318: A.R.S. §§ 4-112(B)(1)(b) and 4-203.02(I)
R19-1-319: A.R.S. § 4-243(A)
R19-1-320: A.R.S. §§ 4-242, 4-243, and 4-244(3)
R19-1-321: A.R.S. §§ 4-203.02(I) and 4-243
R19-1-322: A.R.S. § 4-222
R19-1-323: A.R.S. §§ 4-112(B)(1)(b), 4-210(M) and 4-244(22)
R19-1-324: A.R.S. § 4-244.05
R19-1-325: A.R.S. §§ 4-229, 4-261, and 4-262

R19-1-326: A.R.S. § 4-243(A)(4)
R19-1-327: A.R.S. § 4-244.04
R19-1-401: A.R.S. §§ 4-203, 4-203.01, 4-205.02, and 4-210(I)
R19-1-402: A.R.S. § 4-222
R19-1-403: A.R.S. §§ 4-205.01(E) and 4-205.02(F)
R19-1-404: A.R.S. §§ 4-243(B)(3)(b) and 4-244.04
R19-1-405: A.R.S. § 4-203
R19-1-406: A.R.S. § 4-202(C)
R19-1-407: A.R.S. §§ 4-112(B)(3) and 4-210(J)
R19-1-408: A.R.S. §§ 4-112(B)(3) and 4-203(B)
R19-1-501: A.R.S. §§ 4-119 and 4-210(A)(7)
R19-1-502: A.R.S. § 4-119
R19-1-503: A.R.S. § 4-222
R19-1-504: A.R.S. §§ 4-112(B)(1)(d), 4-203(J) and (M), 4-203.04(H) and (J), 4-205.04(C)(10) and (H), 4-205.08(C)(1), and 4-205.10(C)(7) and (E)
R19-1-505: A.R.S. §§ 4-112(B)(1)(b) and 4-244(37)
R19-1-601: A.R.S. § 4-210(H)
R19-1-602: A.R.S. § 4-244(1)
R19-1-603: A.R.S. §§ 4-244 and 4-244.05(F)
R19-1-604: A.R.S. § 4-210
R19-1-701: A.R.S. § 4-111(C)
R19-1-702: A.R.S. § 4-201(I)
R19-1-703: A.R.S. §§ 4-210.02 and 41-1092.09
R19-1-704: A.R.S. §§ 4-112(A)(2) and 4-201(E)
R19-1-705: A.R.S. §§ 4-211 and 12-901 et seq.

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

R19-1-101: Definitions. The objective of the rule is to define words and phrases used in the rules in a manner that is more specific to the liquor industry to control interpretation over the ordinary meaning of the words and phrases. The definitions are designed to avoid ambiguity for the public and the Department and improve due process.

R19-1-102: Fees and Surcharges; Service Charges. The objective of the rule is to inform applicants of the timing and amount of statutorily-imposed licensing fees, surcharges, and service charges. This increases transparency for the public regarding the expenses of obtaining and holding a license.

R19-1-103: A.R.S. Title 4 Training Course: Minimum Standards. The objective of the rule is to establish minimum standards for Title IV training courses. The rule allows providers to create courses that comply with minimum standards, increases efficiency in the Department's course-approval process, and promotes quality educational programs for the public.

R19-1-104: Shipping Container Labeling; Shipping Requirements. The objective of the rule is to establish requirements regarding shipping or transporting spirituous liquor into or within the state. The rule protects public health and safety by creating a chain of custody for spirituous liquor and supporting the Department's goals of preventing unlicensed or unlawful activity.

R19-1-105: Standards for Non-contiguous Area of a Licensed Premise. The objective of the rule is to establish standards for approving inclusion of a non-contiguous area in a licensed premise. The rule protects public health and safety because non-contiguous areas within a licensed premises pose greater risks of underage service and overservice. The rule also provides transparency to the public regarding the Department's approval process.

R19-1-106: Severability. The objective of the rule is to state the principle that each rule provision is separate from the others and can be applied separately. This ensures an invalid provision does not impair the Department's ability to carry out the remaining provisions.

R19-1-107: Electronic Signatures. The objective of the rule is to permit licensees to submit all required forms and documents electronically. This increases efficiency for the public and the Department in both licensing and disciplinary actions.

R19-1-110: Sign Limitations. The objective of the rule is to establish exemptions to the general rule in A.R.S. § 4-243(A)(4) against producers and wholesalers giving or lending anything of value to retailers. The rule facilitates effective and efficient advertising across the three tiers of the industry while maintaining the three-tier system and preventing commercial coercion across tiers.

R19-1-201: Who May Apply for a License. The objective of the rule is to clearly specify the pre-requisites for licensure. The rule increases efficiency in the licensing process and promotes transparency.

R19-1-202: Application Required. The objective of the rule is to require the public to submit an application to obtain a license or other approval from the Department. The rule increases efficiency in the licensing process and promotes transparency.

R19-1-203: Registration of a Retail Agent. The objective of the rule is to establish minimum requirements for becoming a retail agent. The rule increases efficiency in the registration process and promotes transparency.

R19-1-204: Obtaining a Quota License. The objective of the rule is to require the Department to provide notice to the public of available quota licenses and to use a random-selection process to choose who obtains the licenses. The rule provides fairness to members of the public competing to obtain new quota licenses and promotes transparency.

R19-1-205: Requirements for a Special Event License. The objective of the rule is to create minimum standards for special event licenses and to establish a limit on the number of special event licenses that the Department will issue annually to an entity. The rule increases efficiency in the licensing process and promotes transparency.

R19-1-206: Criteria for Issuing a Restaurant License. The objective of the rule is to identify criteria that the Department will use to determine whether there is sufficient evidence that an application for a restaurant license can operate a bona-fide restaurant. The rule promotes

transparency and also increases efficiency in the licensing process allowing applicants to structure their operations to facilitate Department approval.

R19-1-207: Extension of Premises. The objective of the rule is to emphasize that spirituous liquor may be served only on a licensed premises and that an application is required to extend a licensed premise. The rule protects public health and safety by identifying and controlling where spirituous liquor is served and providing local governing bodies the opportunity to provide input regarding their communities. The rule increases efficiency in the licensing process and promotes transparency.

R19-1-208: Notice of Application for a Conveyance License. The objective of the rule is to clearly identify where applicants for conveyance licenses must post public notice of their application. The rule protects public health and safety and promotes due process by ensuring that interested parties receive notice of conveyance license applications. The rule increases efficiency in the licensing process and promotes transparency.

R19-1-209: Licensing Time-frames. The objective of this rule is to specify time frames within which the Department will act on a license or other approval application. The rule increases efficiency in the licensing process and promotes transparency.

R19-1-302: Knowledge of Law. The objective of this rule is to specify the individuals who must affirmatively acquire knowledge of A.R.S. Title 4, and related rules. The rule protects public health and safety by ensuring that every licensee's key persons are familiar with applicable statutes and rules governing the conduct of their business.

R19-1-303: Authorized Spirituous Liquor. The objective of this rule is to emphasize that licensees may only sell or deal in the categories of spirituous liquor that their license authorizes. The rule protects public health and safety by controlling the availability of spirituous liquor.

R19-1-304: Storing Spirituous Liquor on Unlicensed Premises. The objective of this rule is to provide licensees with an opportunity to store spirituous liquor off of their licensed premises. The rule promotes transparency for licensees regarding the Department's approval process and protects public health and safety by ensuring that licensees safeguard spirituous liquor stored off of their licensed premises.

R19-1-305: Paying Taxes Required. The objective of the rule is to limit the Director's power to issue interim permits on quota licenses where the applicants have unpaid state or local tax obligations. The rule promotes the satisfaction of tax-debt obligations and thereby assists the Department of Revenue to serve and protect the state's taxpayers.

R19-1-306: Bottle Labeling Requirements. The objective of the rule is to require licensees to comply with federal bottle-labeling laws. The rule protects public health and safety by ensuring a consumer knows what is being purchased or consumed.

R19-1-307: Bottle Reuse or Refilling Prohibited. The objective of the rule is to require all licensees to ensure that alcohol in their control complies with Federal bottling, packaging, and labeling laws. The rule protects public health and safety by preventing licensees from selling or dealing in inaccurately labeled or adulterated spirituous liquor.

R19-1-308: Age Requirement for Erotic Entertainers. The objective of the rule is to establish a minimum age requirement for erotic entertainers who perform on licensed premises. The rule protects the public disallowing persons who are 18 years old and minors from performing in sexually-oriented businesses.

R19-1-309: Prohibited Acts. The objective of the rule is to define a clear limit to behavior that is prohibited on licensed premises. The rule protects public health and safety by not exposing the public to conduct that violates public norms.

R19-1-310: Prohibited Films and Pictures. The objective of the rule is to define a clear limit regarding the nature of films and pictures that are prohibited on licensed premises. The rule

protects public health and safety by not exposing the public to indecent pornographic material.

R19-1-312: Accurate Labeling of Dispensing Equipment Required. The objective of the rule is to require that licensees accurately label dispensing equipment. The rule protects the public from possible fraud regarding the spirituous liquor purchased.

R19-1-314: Prohibited Inducement to Purchase or Consume Spirituous Liquor. The objective of the rule is to establish a clear limit to conduct that might induce a customer to purchase or consume spirituous liquor. The rule protects public health and safety by preventing licenses from rewarding patrons for consuming spirituous liquor and promotes due process for licensees by defining the boundaries of their conduct.

R19-1-315: Responsibilities of a Licensee that Operates a Delivery Service. The objective of the rule is to require that a licensee that delivers spirituous liquor delivers only to an individual and at a time consistent with the law. The rule protects public health and safety by ensuring delivery is not made to a minor or intoxicated or disorderly individual.

R19-1-316: Responsibilities of a Liquor Store or Beer and Wine Store Licensee. The objective of the rule is to require that, except in limited circumstances, licensed liquor or beer and wine stores make spirituous liquor available to consumers in only unopened bottles. The rule protects public health and safety and ensures that an off-sale retailer does not engage in on-sale retailing.

R19-1-317: Responsibilities of a Hotel-Motel or Restaurant Licensee. The objective of the rule is to specify the standards for a hotel-motel or restaurant licensee, including required recordkeeping. The rule ensures that a hotel-motel or restaurant licensee does not operate as a bar.

R19-1-318: Responsibilities of a Special Event Licensee. The objective of the rule is to specify the manner in which spirituous liquor is to be dispensed, sold, or served at a special

event depending on whether the special event occurs on or off the premises of a licensed retailer. The rule ensures that spirituous liquor is dispensed, sold, or served in a manner consistent with the license under which it is dispensed, sold, or served and protects the three-tier system.

R19-1-319: Commercial Coercion or Bribery Prohibited. The objective of the rule is to specify conduct that amounts to unlawful coercion between licensed retailers and producers or wholesalers. The rule provides a level playing field among producers and wholesalers and retailers and promotes due process for licensees by defining the boundaries of their conduct.

R19-1-320: Practices Permitted a Producer or Wholesaler. The objective of the rule is to specify conduct that is permitted by a producer or wholesaler because it does not amount to unlawful coercion of a licensed retailer. The rule provides a level playing field among producers and wholesalers and protects the public and licensees from the consequences of unlawful coercion in the spirituous liquor industry. The rule also promotes due process for licensees by defining the boundaries of their conduct.

R19-1-321: Practices Permitted a Wholesaler. The objective of the rule is to specify conduct that is permitted by a wholesaler because it does not amount to unlawful coercion and is a permitted industry practice. The rule provides a level playing field among wholesalers and protects the public and licensees from the consequences of unlawful coercion in the spirituous liquor industry. The rule also promotes due process for licensees by defining the boundaries of their conduct.

R19-1-322: Responsibilities of a Registered Retail Agent. The objective of the rule is to specify the manner in which a registered retail agent is to fulfill the purchases of those in the cooperative. The rule protects licensed retailers that enter a cooperative agreement and wholesalers that provide spirituous liquor under a cooperative agreement.

R19-1-323: Underage Individuals on Licensed Premises. The objective of the rule is to specify the circumstances under which an underage individual is allowed to be on licensed

premises. The rule protects public health and safety by not exposing underage individuals to consumption of spirituous liquor.

R19-1-324: Standards for Exemption of an Unlicensed Business. The objective of the rule is to specify the circumstances and conditions under which spirituous liquor may be served and consumed on unlicensed premises. The rule protects public health and safety by imposing limitations of serving and consuming spirituous liquor on unlicensed premises and protects the value of on-sale retail licenses.

R19-1-325: Display of Warning Sign Regarding Consumption of Alcohol; Posting Notice Regarding Firearms. The objective of the rule is to require that all licensed retailers post a sign warning about consumption of alcohol during pregnancy and licensed on-sale retailers that wish to prohibit possession of weapons on the licensed premises. The rule protects public health and safety by ensuring that licensees warn customers of the risks of alcohol consumption.

R19-1-326: Tapping Equipment. The objective of the rule is to specify the tapping equipment that a wholesaler may provide to a retailer without violating commercial coercion regulations. The rule provides a level playing field among wholesalers and retailers and promotes due process for licensees by defining the boundaries of their conduct.

R19-1-327: Domestic Farm Winery Sampling. The objective of the rule is to specify limits of sampling that a farm winery conducts on a retailers licensed premises. The rule protects public health and safety by ensuring that customers only receive samples. The rule also protects the three tier system by ensuring that producers are not engaging in retail sales, rather than sampling.

R19-1-401: Notice of License Surrender or Application Withdrawal. The objective of the rule is to inform a licensee that notice is required if the licensee intends to surrender the license and informs applicants that notice is required to withdraw an application. The rule also specifies the circumstances under which a license will be deemed surrendered and the

circumstances under which surrender will be denied. The rule protects public health and safety by ensuring the Department knows which licensees are not operating. The rule increases efficiency in the licensing process and promotes transparency.

R19-1-402: Registered Retail Agent: Notice of Change in Cooperative-purchase Agreement; List of Cooperative Members. The objective of the rule is to inform a registered retail agent that notice is required when a member of a cooperative-purchase agreement changes. This protects licensed retailers that enter a cooperative agreement and wholesalers that provide spirituous liquor under a cooperative agreement.

R19-1-403: Hotel-Motel or Restaurant Licensee: Notice of Change to Restaurant Facility. The objective of the rule is to inform hotel-motel or restaurant licensees that notice is required before licensees alter the licensed premises' seating capacity or dimension. The rule protects public health and safety by ensuring that a hotel-motel or restaurant licensee is operating as a hotel-motel or restaurant and not as a bar.

R19-1-404: Notice of Sampling on a Licensed Off-sale Retail Premises. The objective of the rule is to inform licensed producers and wholesalers that they must provide the Department with notice before conducting a sampling event at an off-sale retail premises. The rule protects public health and safety by limiting the circumstances under which consumption of spirituous liquor is allowed on licensed off-sale retail premises.

R19-1-405: Notice of Change in Status: Active or Nonuse. The objective of the rule is to inform all licensees that notice is required to move the license from active to nonuse status or vice versa. This protects public health and safety by ensuring the Department knows which licensees are not operating.

R19-1-406: Notice of Change in Manager. The objective of the rule is to inform all licensees that notice is required when there is a change in the designated manager. The rule protects public health and safety by ensuring the Department knows who is responsible for managing licensed premises.

R19-1-407: Notice of Legal or Equitable Interest. The objective of the rule is to inform all persons having a legal or equitable interest in a license that they may provide the Department notice of their interests. This protects public health and safety by ensuring that the Department knows who owns or claims an interest in a license. It also protects the holder of the legal or equitable interest by enabling the Department to provide notice of actions affecting the license.

R19-1-408: Notice of Change in Business Name, Address, or Telephone Number. The objective of the rule is to provide notice that the Department communicates with a licensee using the information that the licensee has provided and the importance of updating that information with the Department. The rule protects the public health and safety by ensuring that the Department and the public has up to date contact information for licensees and promotes due process by ensuring that licensees receive notice of Department actions.

R19-1-501: General Recordkeeping. The objective of the rule is to establish minimum recordkeeping standards for licensees. The rule protects public health and safety by enabling the Department to conduct audits to determine whether a licensee is complying with A.R.S. Title 4 and related rules.

R19-1-502: On-sale Retail Personnel Records. The objective of the rule is to establish minimum standards for records regarding on-sale retail personnel. This protects public health and safety by enabling the Department to ensure that on-sale retailers do not employ minors and by identifying persons that may have information about licensee and patron conduct during Department investigations.

R19-1-503: Records Regarding Cooperative Purchases. The objective of the rule is to establish minimum standards for recordkeeping regarding cooperative-purchase agreements and cooperative purchases. The rule protects the public health and safety by ensuring licensees purchase alcohol lawfully and it protects licensed retailers that enter a cooperative agreement and wholesalers that provide spirituous liquor under a cooperative agreement.

R19-1-504: Record of Delivery of Spirituous Liquor. The objective of the rule is to establish minimum standards for recordkeeping by licensees authorized to deliver spirituous liquor. The rule protects public health and safety by tracking deliveries and ensuring delivery is not made to an underage or overly intoxicated individual or at unauthorized times.

R19-1-505: Report of Act of Violence. The objective of the rule is to inform licensees that they must document and report acts of violence on their licensed premises to the Department or a law enforcement agency. The rule protects public health and safety by requiring contemporaneous accounts of acts of violence to enable the Department to conduct investigations and ensure licensed premises are safe for employees and patrons.

R19-1-601: Appeals and Hearings. The objective of the rule is to inform a party that they may appeal final decisions that the Director makes to the State Liquor Board and that hearings will be conducted under Title 41 uniform procedures. The rule protects the due process rights of a party by informing them of appeal rights and ensuring that hearings conform to uniform procedures.

R19-1-602: Actions During License Suspension. The objective of the rule is to inform the holder of a suspended license that it may not sell or deal in spirituous liquor during suspension and to inform consumers that a license is suspended. The rule protects public health and safety by making it clear to licensees and consumers when a licensee can lawfully sell spirituous liquor.

R19-1-603: Seizure of Spirituous Liquor. The objective of the rule is to provide notice that a peace officer is required to seize spirituous liquor if there is probable cause to believe the spirituous liquor is being or is intended to be used contrary to law. The rule protects public health and safety by ensuring that spirituous liquor is used only as provided by law.

R19-1-604: Closure Due to Violence. The objective of the rule is to provide notice that the Director is authorized to order a licensee to close its premises if the Director determines that an act of violence is apt to occur at the licensed premise. The rule protects public health and

safety by minimizing the chance that consumers can be harmed by an anticipated act of violence at a licensed premise.

R19-1-701: Election of Officers. The objective of the rule is to specify the Board officers and how the Board elects officers. The rule provides transparency regarding Board actions and the authority of its members.

R19-1-702: Determining Whether to Grant a License for a Certain Location. The objective of the rule is to specify the criteria considered by the Board to determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license to a specific unlicensed location. The rule promotes efficiency in the licensing process and provides transparency regarding the basis of Board licensing decisions.

R19-1-703: Rehearing or Review of Decision. The objective of the rule is to specify the procedures and standards for requesting a rehearing or review of a Board decision. The rule protects licensees due process rights by letting them know how to exhaust the licensee's administrative remedies before making application for judicial review under A.R.S. § 12-901.

R19-1-704: Submitting Documents to the Board. The objective of the rule is to specify the format and time for submitting documents for Board review and action. The rule promotes efficiency in the licensing process and protects the due process rights of parties to Board hearings.

R19-1-705: Judicial Review. The objective of the rule is to inform a party of the right to judicial review of a Board decision and to require that a complaint for judicial review be served on the Director. This increases efficiency in Board operations.

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

When the Department's rules were made in 2013 and 2014, they were consistent with statute and agency and industry practice. Although statutory changes have occurred since 2014, the changes, which have resulted in some of the rules having a few inconsistent statutory references due to renumbering, have not interfered with the effectiveness of the rules. The Department believes that the rules are effective in achieving their objectives because it is able to fulfill its statutory responsibility to regulate and license the manufacture, sale, and distribution of spirituous liquor while protecting the health, safety, and welfare of Arizona citizens, without finding that the rules hinder, delay, or complicate its processes. The Department has not experienced and is not aware of any industry or public complaints regarding the effectiveness of any rules. Data supporting these conclusions, including increased efficiency in licensing processes, is provided in section 8, below.

4. Consistency of the rule 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:

State statutes applicable to the rules are found at A.R.S. Title 4. Applicable federal law is found at 27 CFR, Chapter 1, Subchapter A. Generally speaking, under the 21st Amendment to the United State Constitution, regulation of spirituous liquors is delegated to the states. Nevertheless, the rules are consistent with federal law. As a result of recent changes to A.R.S. Title 4, there are minor inconsistencies between the statutes and rules. These include the following:

R19-1-101:

- By Legislative amendments and prior omissions, the list of statutes that contain definitions of words and phrases in Title IV in R19-1-101 is incomplete. The rule could be amended to also include A.R.S. §§ 4-205.10, -227.01, and -241.
- A.R.S. § 4-206.01 was amended and renumbered requiring a change to R19-1-101(A)(2)(b) and (3)(b)'s references from A.R.S. § 4-206.01(F) to subsection (G).
- A.R.S. § 4-244(32)(c) was amended so a container into which a licensee dispenses beer for consumption off-sale no longer has to be made of only glass. R19-1-101(A)(2)(c),

(A)(3)(c), (A)(4)(b), (A)(16), (A)(27) reference only a glass container, which is not consistent with the current statutes.

- A.R.S. § 4-209 was amended eliminating the out-of-state producer license and creating an out-of-state winery license with different production limitations. This rendered R19-1-101(26) obsolete.
- A.R.S. § 4-203.02(E) was amended to change the types of entities that can obtain a special event license, requiring a change to R19-1-101(41).
- The Department’s authority to issue a restaurant continuation authorization expired under A.R.S. § 4-213(E). This rendered R19-1-101(A)(38), which defines “restaurant continuation authorization,” obsolete.
- The legislature amended A.R.S. § 4-205.08 to increase the maximum amount of beer a microbrewery may produce to six million, two hundred thousand gallons. Rule R19-1-101(16) lists the former, lower limits and must be amended.

R19-1-102:

- The Department’s authority to issue a restaurant continuation authorization expired under A.R.S. § 4-213(E). This rendered R19-1-102(D), which establishes a related licensee fee, obsolete.
- The legislature removed date-specific limitations on various licensing fees in A.R.S. §§ 4-205.02(G), 4-207.01(B),(J), and 4-244.05(J)(4). This rendered the “until the date specified” language in R19-1-102(G) through (J) obsolete. As of the date of this review, the licensing fee amounts referenced in the rule are unchanged.

R19-1-103:

- The legislature amended A.R.S. § 4-112(G)(2) to require that Department rules pertaining to Title IV training include various security procedures for security personnel, requiring an amendment to R19-1-103 to add this requirement.

R19-1-104:

- The legislature amended A.R.S. § 4-205.08 regarding microbreweries and added A.R.S. § 4-205.10 regarding craft distillers so each can ship spirituous liquor to a retail licensee.

This requires that R19-1-104(C)(1) and (C)(2) be amended to add these license types to make it clear that they may also ship to retail licensees as well as wholesalers.

R19-1-105:

- Because the legislature added definitions to A.R.S. § 4-101, the following internal cross references to that statute need to be amended: R19-1-105(B), R19-1-207(A), and R19-1-209(I).

R19-1-206:

- The legislature amended A.R.S. § 4-205.02 which resulted in renumbering of that section, which requires an amendment to the statutory reference in A.A.C. R19-1-206(A), (B), and (C).

R19-1-207:

- Because the legislature added definitions to A.R.S. § 4-101, the following internal cross references to that statute need to be amended: R19-1-105(B), R19-1-207(A), and R19-1-209(I).

R19-1-209:

- The Department has identified R19-1-209, which deals with the Department's licensing time frames, as a rule deserving of possible amendment. Specifically, the unique nature of liquor licensing under A.R.S. §§ 4-201, -202, and -203 is that after receiving an application and determining that it is administratively complete, the Department forwards it to a local governing body (city, town, county), which in turn undertakes its own substantive review. The Department has a seventy-five day administrative completeness review process and only thirty days for substantive review. While the Department consistently meets the overall 105 day period for licensing, the rule is not consistent with the statutory time frames in that the statute provides a longer period of time for substantive review than the rule.

- Because the legislature added definitions to A.R.S. § 4-101, the following internal cross references to that statute need to be amended: R19-1-105(B), R19-1-207(A), and R19-1-209(I).

R19-1-304

- By legislative amendment and prior omissions, R19-1-304, which pertains to off-premises storage of spirituous liquor, requires licensees to notify only “wholesalers” of authorization to store liquor off premises. This section can be amended to clarify that in addition to wholesalers, farm wineries, craft distillers, and microbreweries may also deliver spirituous liquor to retailers.

R19-1-315:

- Because of legislative changes regarding microbreweries and craft distillers that permit the sale of spirituous liquor to retailers, amendments are needed to R19-1-315(A) and (B) and R19-1-504(A), (C), (D), and (E).to clarify that microbreweries and craft distillers (not only farm wineries) may sell and deliver to retailers and consumers.

R19-1-316:

- The legislature amended A.R.S. § 4-206.01 which resulted in renumbering requiring an amendment to R19-1-316(A)’s reference from A.R.S. § 4-206.01(J) to (K).

R19-1-317:

- The legislature amended A.R.S. § 4-205.02 which resulted in renumbering requiring an amendment to R19-1-317(D)’s reference from A.R.S. § 4-205.02(H) to (J).

R19-1-318:

- The legislature amended laws relating to special event contractors to create the concept of a “special event contractor” in A.R.S. § 4-203.02(E), (G), (H), and (O), including granting express authority to create rules to carry out these new provisions. The Department has not determined whether any rules are necessary at this time.

R19-1-320:

- The legislature amended A.R.S. § 4-243(B)(3)(c) regarding a wholesaler or producer providing samples of spirituous liquor on an off-sale retailer's premises. This requires that R19-1-320(M) be amended.

R19-1-327:

- R19-1-327 pertains to farm winery sampling. The legislature has created the craft distiller license in A.R.S. § 4-205.10 which also has sampling privileges. There is no corresponding rule governing conducting sampling for craft distiller licenses. The Department has not determined whether any rule are necessary at this time.

R19-1-401:

- A.A.C. R19-1-401 lists A.R.S. § 4-244(22) as authority for the rule. This reference is inapplicable, which requires amendment of the rule to remove the reference.

R19-1-501:

- A.A.C. R19-1-501 lists A.R.S. § 4-241(K) as authority for the rule. A.R.S. 4-241 permits licensees to record and retain records of checking purchasers. Subsection (K) only references acceptable forms of identification. Subsections (B), (C), (D), and (I) discuss keeping a record of checking identification. The rule can be amended to reflect the more accurate subsections of the statute that give authority for the rule.

R19-1-504:

- Because of legislative changes regarding microbreweries and craft distillers that permit the sale of spirituous liquor to retailers, amendments are needed to R19-1-315(A) and (B) and R19-1-504(A), (C), (D), and (E).to clarify that microbreweries and craft distillers (not only farm wineries) may sell and deliver to retailers and consumers.

R19-1-604:

- A.A.C. R19-1-604, which pertains to the Director's power to require licensees to close their premises and cease alcohol sales when an act of violence is apt to occur at the

licensed premises, lists A.R.S. § 4-210 as authority for the rule. Section 4-210 has no authority for the Director to suspend a licensee for a future act of violence. The more accurate statute to list as authority for the rule is A.R.S. § 41-1092.11(B), which gives agencies the power to summarily suspend licensees to protect the public health, safety, and welfare.

5. Agency enforcement policy including whether the rule is enforced and, if so, whether there are any problems with enforcement:

The Department enforces the rules. When there is an inconsistency with statute, such as the production limit for an out-of-state winery or a microbrewery described above, the Department enforces the statute. The Department has not experienced any inability to enforce its statutes and existing rules based on inconsistencies with statute. It has not had the enforceability of any of its rules under Title 41 challenged.

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

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

7. Summary of written criticisms of the rule received by the agency within 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:

The Department has no record of any written criticisms of its rules. It is aware, however, that upon the passage of Laws 2017, Ch. 54, which reduced the minimum age of employees who could handle spirituous liquor from nineteen to eighteen, that members of the industry inquired whether A.A.C. R19-1-308, which requires erotic entertainers to be at least nineteen years of age, would also be amended to reduce the minimum age of erotic entertainers to eighteen. The Department did not intend to amend the rule then and has no intention of amending the rule today.

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

In its last five-year-rule-review process, the Department compared its rules to the economic, small business, and consumer impact statements presented in rulemaking it had undertaken in 2013 and 2014, finding that there was minimal impact from the last rulemaking. The Department has not engaged in any further rulemaking in the intervening five-year-period. The Department's prior rule-review submission provided numerous key statistics regarding its licensing and investigative processes. Below are the most recent data for comparison to the 2015 data.

Comparing the data after five years from the last rule review, the Department continues to believe that its rules have minimal economic, small business, and consumer impact. No members of the public have raised concerns that the Department's rules, in the intervening five years, created any new impacts based on changing circumstances. While there were substantial increases in the number of licensees and a reduction in Department staff, the Department has decreased licensing times and increased enforcement revenues with fewer disruptive contacts. Below are key statistics regarding the Department's operation for FY2020, with the corresponding 2015 figures in parentheses for comparison.

As of FY 2020, the Department has 14,744 (FY 15 – 12,006) active licensees. Out-of-state licensees comprise 18.7 percent (FY15 - 15.5) of the total. In FY 2020, the Department issued 4,805 (FY15 – 4,888) new licenses, including special event permits and interim permits. Of these licenses, 31 (FY15 – 22) were for quota licenses, which the Department issued through its annual liquor-license lottery.

In FY2020, the Department collected \$10,816,782 (FY15 – \$7,246,392) in licensing fees. The increase from FY15 is largely comprised of \$212,050 of renewal fees for direct shipment

licenses that the Department began to receive in FY17 and \$2,836,241 of additional revenues from the annual lottery license (FY2020 – \$4,383,866 / FY15 – \$1,547,625). In addition to licensing fees, the Department collected late-renewal penalty fees of \$76,950 (FY15 – \$107,700). This decrease is likely attributable to the Department’s implementation of a new e-licensing platform in FY18. Late renewal fees were up to \$200,400 in FY18, before they dropped to \$134,250 in FY19, before dropping substantially again for FY2020. Customer use of this e-licensing platform in FY2019 was 27 percent, increasing to 33.7 percent in FY2020. Visits from walk-in customers decreased from 5,435 by the end of FY18 to 4,203 customers at the end of FY2020. When customers do visit the Department, they experience processes that have grown in efficiency. At the end of FY18, time spent with a walk-in customer averaged 30 minutes, as compared to only 15 minutes in FY2020. Lastly, the Department has substantially decreased the time it takes to process most license applications. In FY16, the Department resolved bar, liquor store, and restaurant applications in approximately 89 days. At the end of FY20, the Department reduced this time frame nearly 20 percent down to approximately 67 days.

In addition to its e-licensing system, the Department attributes its improvements to its implementation of the Arizona Management System and LEAN strategies in consultation with the Governor’s Transformation Office.

Regarding investigations and enforcement actions, in FY2020 the Department collected \$570,498 of fines for liquor-law violations (FY15 – \$472,490). In FY2020, the Department employed 10 nonsupervisory sworn enforcement officers (FY15 – 11). The ratio of officers to licensees was 1:1,474 (FY15 – 1:1095). Despite the increase in licensees and decrease in manpower, the Department reduced the average number of days it takes to resolve a priority citizen complaint by 42 days, from an average of 70 days in July 2016 to an average of 28 days at the end of FY2020.

In FY2020, the Department conducted audits of 42 restaurants (FY15 – 91) to ensure that they met the required 40% of gross sales derived from the sale of food. Of those audited, 14 licensees (FY15 –25) failed to meet the required food sale percentage. The reduction in

audits does not arise from any rule-based factors, because the rules have not changed. Instead, the Department attributes the change to that fact that in FY15, the Department employed two full-time auditors, whereas the Department currently has no employee dedicated to perform audits on a full-time basis.

Because the rules have not changed, and as the Department continues to enforce its regulations and does so more efficiently than in previous years, the Department does not believe that its rules have had any impact on its ability to enforce Title IV to protect the public health and safety.

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

The Department has not receiving any analyses.

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

In its previous five-year review, the Department indicated it had a number of primarily technical changes due to statutory renumbering and the creation of new license types. In 2015, Governor Ducey issued a moratorium on new rulemaking. The Department has therefore not engaged in any rulemaking in that time. In addition to the moratorium, the Department has resource limitations in hiring or contracting with a professional rule writer. Moreover, as noted herein, the Department has not experienced any substantial interruption or inefficiencies in licensing and enforcement actions due to any identified potential rule amendments.

11. A determination after analysis 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:

Title IV liquor law is constantly evolving. As noted herein, stakeholders from all three tiers of the liquor industry come together and pass a liquor omnibus bill, which—in addition to any separately passed bills—has consistently molded Title IV to address new or developing regulatory issues in the industry. For this reason, statutes—not rules—largely establish the licensing and enforcement authorities for the industry. The Department’s rules have remained unchanged since this last five-year review, but as noted above, the Department has increased the efficiency of its licensing and investigative processes despite a substantial reduction in the employee-to-licensee ratio. Furthermore, as noted above, the Department has received very limited public comment on the quality of its rules, despite the industry’s close involvement year-over-year in the amendment of Title IV and other policy issues.

The Department’s rules are generally either mundane, commonplace rules that most state agencies have to guide licensing and enforcement actions or they are liquor-specific regulations widely accepted at the federal and state level in the industry and well-known to licensees. Specifically, the following standard rule requirements result in minimal costs to licensees or others:

- Completing and submitting an initial and renewal license application;
- Complying with the minimum standards for a liquor law training course;
- Making application before extending license premises;
- Providing notice to the Department when changes are made regarding the licensee’s operations and key personnel; and
- Maintaining required records of employees and liquor purchases and sales.

In addition, many other Department rules are well known in the industry, having undergone very little change over the years and given that they are generally consistent with federal regulations or the regulations of other similarly-situated three-tier system states. These include, for example:

- Storing spirituous liquor only on licensed or otherwise approved premises and only selling liquor from the approved premises;
- Ensuring employees handling spirituous liquor are at least 18 years old and that an erotic entertainer is at least 19 years old;

- Labeling shipping containers and ensuring liquor delivery is made to only individuals who may lawfully purchase spirituous liquor;
- Taking actions to educate key employees and maintain records for the purpose of preventing the overservice of alcohol and underage drinking;
- Accurately labeling alcohol dispensing equipment;
- Avoiding conduct that creates threats of commercial coercion between the three tiers of the liquor industry that are largely consistent with federal regulations and the regulations of other three-tier system states.

As noted above, the number of licensees has increased by several thousand since FY15, or approximately 23 percent. Interest in quota licensees has resulted in revenues from the liquor-license lottery nearly tripling. It does not appear that any rule-based issues have had a negative impact on the substantial growth that the industry has shown year-over-year, and the Department is unaware of any public comment that its regulations have any deterring effects to entering into or remaining in the marketplace. It is common knowledge that the liquor industry is “highly regulated,” but it is generally accepted that the Department’s regulations are no impediment to operating a successful liquor-licensed business.

For these reasons, the Department concludes that the probable benefits of its rules outweigh within this state the probable costs of the rules and that the rules impose the least burdens and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

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

None of the rules is more stringent than the applicable federal law, 27 CFR, Chapter 1, Subchapter A.

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:

All the licenses defined in R19-1-101 and other authorizations and registrations required under A.R.S. Title 4 comply with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

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:

In its last five-year review, the Department indicated that it intended to seek an exception to Governor Ducey's rulemaking moratorium to enable it to address the issues identified in its report. Due to uncertainty about the availability of an exemption, recourse limitations, and the fact that the Department had not experienced any substantial inefficiencies or impediments to carrying out its regulatory function from the issues that merited consideration for rulemaking, that did not occur. As noted above, in Laws 2018, Ch. 240, the legislature *required* the Department to amend its rules to add provisions regarding the training of security personnel. The Department will work with the Council to determine if any rulemaking is required. Any rulemaking will be done in close and substantial contact with the members of the regulated industry, which could delay and complicate the initial drafting of proposed rules. Moreover, given that the industry presently has a new omnibus liquor bill (HB2050) pending, along with numerous other bills that may substantially impact Title IV, the Department believes it would be wise to postpone any required rulemaking until the end of the legislative session in May 2021. Other than any rulemaking that the Council requires, the Department does not currently intend to engage in rulemaking at any specific time.

Assuming the Department is able to obtain an exception, it has identified possible amendments to the following rules, and detailed in Section 4.

R19-1-101, R19-1-102, R19-1-103, R19-1-104, R19-1-105, R19-1-206, R19-1-207, R19-1-209, R19-1-304, R19-1-315, R19-1-316, R19-1-317, R19-1-320, R19-1-327, R19-1-401, R19-1-501, R19-1-504, R19-1-603, and R19-1-604.

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING**CHAPTER 1. DEPARTMENT OF LIQUOR LICENSES AND CONTROL**

(Authority: A.R.S. § 4-101 et seq.)

*Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 01-4).**Editor's Note: Some Sections of this Chapter were amended, adopted, and repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Chapter 307, § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and conduct a hearing. The changes were not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).**Editor's Note: Some Sections of this Chapter were amended, adopted, and repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Chapter 234, § 22. Although exempt from certain portions of the rulemaking process, the Department was required to provide a notice of hearing and a public hearing before adopting these changes. At the time the Sections were amended, adopted, and repealed the Office of the Secretary of State was not allowed by law to file and publish exempt rules. The Department has now filed these changes with the Office of the Secretary of State as required pursuant to Laws 1991, Chapter 136 §§ 2 and 3 (Supp. 96-4).**19 A.A.C. 1, consisting of R19-1-101 through R19-1-111, and R19-1-201 through R19-1-257 recodified from 4 A.A.C. 15 consisting of R4-15-101 through R4-15-111, and R4-15-201 through R4-15-257 pursuant to R1-1-102 (Supp. 95-1).**Portions of this Chapter have been adopted under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6), pursuant to Laws 1993, Ch. 133, § 49 and Laws 1994, Ch. 373, § 9. Exemption from A.R.S. Title 41, Chapter 6 means that the Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council; the Department was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.**Because this Chapter contains rules which are exempt from the regular rulemaking process, it is printed on blue paper.***ARTICLE 1. GENERAL PROVISIONS**

(A.R.S. § 4-112(A))

Article 1 heading amended effective September 14, 1990, under an exemption from the provisions of the Administrative Procedure Act (Supp. 96-4).

Section

R19-1-101.	Definitions
R19-1-102.	Fees and Surcharges; Service Charges
R19-1-103.	A.R.S. Title 4 Training Course: Minimum Standards
R19-1-104.	Shipping Container Labeling; Shipping Requirements
R19-1-105.	Standards for a Non-contiguous Area of a Licensed Premises
R19-1-106.	Severability
R19-1-107.	Electronic Signatures
R19-1-108.	Repealed
R19-1-109.	Repealed
R19-1-110.	Sign Limitations
R19-1-111.	Repealed
R19-1-112.	Repealed
R19-1-113.	Repealed

ARTICLE 2. LICENSING

(A.R.S. § 4-112(B)(1))

*Article 2 heading amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act (Supp. 97-2).**Article 2 heading amended effective September 14, 1990, under an exemption from the provisions of the Administrative Procedure Act (Supp. 96-4).*

Section

R19-1-201.	Who May Apply for a License
R19-1-202.	Application Required
R19-1-203.	Registration of a Retail Agent
R19-1-204.	Repealed Obtaining a Quota License
R19-1-205.	Requirements for a Special Event License
R19-1-206.	Criteria for Issuing a Restaurant License

R19-1-207.	Extension of Premises
R19-1-208.	Notice of Application for a Conveyance License
R19-1-209.	Licensing Time-frames
R19-1-210.	Renumbered
R19-1-211.	Repealed
R19-1-212.	Repealed
R19-1-213.	Repealed
R19-1-214.	Repealed
R19-1-215.	Repealed
R19-1-216.	Repealed
R19-1-217.	Repealed
R19-1-218.	Repealed
R19-1-219.	Repealed
R19-1-220.	Repealed
R19-1-221.	Repealed
R19-1-222.	Repealed
R19-1-223.	Repealed
R19-1-224.	Repealed
R19-1-225.	Repealed
R19-1-226.	Repealed
R19-1-227.	Repealed
R19-1-228.	Renumbered
R19-1-229.	Repealed
R19-1-230.	Repealed
R19-1-231.	Repealed
R19-1-232.	Repealed
R19-1-233.	Repealed
R19-1-234.	Repealed
R19-1-235.	Repealed
R19-1-236.	Recodified
R19-1-237.	Recodified
R19-1-238.	Repealed
R19-1-239.	Recodified
R19-1-240.	Recodified
R19-1-241.	Recodified
R19-1-242.	Recodified
R19-1-243.	Recodified
R19-1-244.	Recodified
R19-1-245.	Recodified

Department of Liquor Licenses and Control

R19-1-246.	Recodified
R19-1-247.	Recodified
R19-1-248.	Recodified
R19-1-249.	Repealed
R19-1-250.	Recodified
R19-1-251.	Repealed
R19-1-252.	Recodified
R19-1-253.	Recodified
R19-1-254.	Recodified
R19-1-255.	Recodified
R19-1-256.	Repealed
R19-1-257.	Recodified

ARTICLE 3. LICENSEE RESPONSIBILITIES

Article 3, consisting of R19-1-301 through R19-1-304, adopted effective September 14, 1990 (Supp. 96-4).

Section

R19-1-301.	Recodified
R19-1-302.	Knowledge of Liquor Law; Responsibility
R19-1-303.	Authorized Spirituous Liquor
R19-1-304.	Storing Spirituous Liquor on Unlicensed Premises
R19-1-305.	Paying Taxes Required
R19-1-306.	Bottle Labeling Requirements
R19-1-307.	Bottle Reuse or Refilling Prohibited
R19-1-308.	Age Requirement for Erotic Entertainers
R19-1-309.	Prohibited Acts
R19-1-310.	Prohibited Films and Pictures
R19-1-312.	Accurate Labeling of Dispensing Equipment Required
R19-1-314.	Prohibited Inducement to Purchase or Consume Spirituous Liquor
R19-1-315.	Responsibilities of a Licensee that Operates a Delivery Service
R19-1-316.	Responsibilities of a Liquor Store or Beer and Wine Store Licensee
R19-1-317.	Responsibilities of a Hotel-Motel or Restaurant Licensee
R19-1-318.	Responsibilities of a Special Event Licensee
R19-1-319.	Commercial Coercion or Bribery Prohibited
R19-1-320.	Practices Permitted by a Producer or Wholesaler
R19-1-321.	Practices Permitted by a Wholesaler
R19-1-322.	Responsibilities of a Registered Retail Agent
R19-1-323.	Underage Individuals on Licensed Premises
R19-1-324.	Standards for Exemption of an Unlicensed Business
R19-1-325.	Display of Warning Sign Regarding Consumption of Alcohol; Posting Notice Regarding Firearms
R19-1-326.	Tapping Equipment
R19-1-327.	Domestic Farm Winery Sampling
Table A.	Repealed

ARTICLE 4. REQUIRED NOTICES TO DEPARTMENT

Article 4, consisting of R19-1-401 through R19-1-408 made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Section

R19-1-401.	Notice of License Surrender or Application Withdrawal
R19-1-402.	Registered Retail Agent: Notice of Change in Cooperative-purchase Agreement; List of Cooperative Members
R19-1-403.	Hotel-Motel or Restaurant Licensee: Notice of Change to Restaurant Facility
R19-1-404.	Notice of Sampling on a Licensed Off-sale Retail Premises
R19-1-405.	Notice of Change in Status: Active or Nonuse
R19-1-406.	Notice of Change in Manager

Supp. 14-2

R19-1-407.	Notice of Legal or Equitable Interest
R19-1-408.	Notice of Change in Business Name, Address, or Telephone Number

ARTICLE 5. REQUIRED RECORDS AND REPORTS

Article 5, consisting of R19-1-501 through R19-1-505 made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Section

R19-1-501.	General Recordkeeping
R19-1-502.	On-sale Retail Personnel Records
R19-1-503.	Records Regarding Cooperative Purchases
R19-1-504.	Record of Delivery of Spirituous Liquor
R19-1-505.	Report of Act of Violence

ARTICLE 6. VIOLATIONS; HEARINGS; DISCIPLINE

Article 6, consisting of R19-1-601 through R19-1-604 made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Section

R19-1-601.	Appeals and Hearings
R19-1-602.	Actions During License Suspension
R19-1-603.	Seizure of Spirituous Liquor
R19-1-604.	Closure Due to Violence

ARTICLE 7. STATE LIQUOR BOARD

Article 7, consisting of R19-1-701 through R19-1-705 made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Section

R19-1-701.	Election of Officers
R19-1-702.	Determining Whether to Grant a License for a Certain Location
R19-1-703.	Rehearing or Review of Decision
R19-1-704.	Submitting Documents to the Board
R19-1-705.	Judicial Review

ARTICLE 1. GENERAL PROVISIONS

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

R19-1-101. Definitions

- A.** The definitions in A.R.S. §§ 4-101, 4-205.02, 4-205.03, 4-205.06, 4-207, 4-210, 4-227, 4-243, 4-243.01, 4-244, 4-248, 4-251, and 4-311 apply to this Chapter. Additionally, in A.R.S. Title 4 and this Chapter, unless the context otherwise requires:
1. "Association" means a group of individuals who have a common interest that is organized as a non-profit corporation or fraternal or benevolent society and owns or leases a business premises for the group's exclusive use.
 2. "Bar license" (Series 6) means authorization issued to an on-sale retailer to sell:
 - a. Spirituous liquors in individual portions for consumption on the licensed premises;
 - b. Spirituous liquors in an original, unopened, container for consumption off the licensed premises provided sales for consumption off the licensed premises, by total retail sales of spirituous liquor at the licensed premises, are no more than the percent-

- age of the sales price of on-sale spirituous liquor established under A.R.S. § 4-206.01(F); and
- c. Beer in a clean glass container that is sealed and labeled as described in A.R.S. § 4-244(32).
3. "Beer and wine bar license" (Series 7) means authorization issued to an on-sale retailer to sell:
 - a. Beer and wine in individual portions for consumption on the licensed premises;
 - b. Beer and wine in an original, unopened, container for consumption off the licensed premises provided sales for consumption off the licensed premises, by total retail sales of spirituous liquor at the licensed premises, are no more than the percentage of the sales price of on-sale spirituous liquor established under A.R.S. § 4-206.01(F); and
 - c. Beer in a clean glass container that is sealed and labeled as described in A.R.S. § 4-244(32).
 4. "Beer and wine store license" (Series 10) means authorization issued to an off-sale retailer to sell:
 - a. Wine and beer in an original, unopened, container for consumption off the licensed premises; and
 - b. Beer in a clean glass container that is sealed and labeled as described in A.R.S. § 4-244(32).
 5. "Business" means an enterprise or organized undertaking conducted regularly for profit, which may be licensed or unlicensed.
 6. "Business premises" means real property and improvements from which a business operates.
 7. "Catering establishment" means a business that is available for hire for a particular event and at which food and service is provided for people who attend the event.
 8. "Club license" (Series 14) means authorization issued to a club to sell spirituous liquors only to members and members' bona fide guests for consumption only on the premises of the club.
 9. "Cocktail mixer" means a non-alcoholic liquid or solid mixture used for mixing with spirituous liquor to prepare a beverage.
 10. "Conveyance license" (Series 8) means authorization issued to the owner or lessee of an airplane, train, or boat to sell spirituous liquors for consumption only on the airplane, train, or boat.
 11. "Cooler product" means an alcoholic beverage made from wine or beer and fruit juice or fruit flavoring, often in combination with a carbonated beverage and sugar but does not include a formula wine as defined at 27 CFR 24.10.
 12. "Deal" means to sell, trade, furnish, distribute, or do business in spirituous liquor.
 13. "Department" means the Director of the Department of Liquor Licenses and Control and the State Liquor Board.
 14. "Direct shipment license" (Series 17) means authorization issued to producer, exporter, importer, or rectifier to take an order for spirituous liquor and ship the order under A.R.S. § 4-203.04(A)-(I).
 15. "Domestic farm winery license" (Series 13) means authorization issued to a domestic farm winery that produces at least 200 gallons but not more than 40,000 gallons of wine annually. For the purposes of A.R.S. § 4-243, a domestic farm winery is considered an "other producer."
 16. "Domestic microbrewery license" (Series 3) means authorization issued to a domestic microbrewery that produces at least 5,000 gallons of beer following its first year of operation and not more than 1.24 million gallons of beer annually and includes authorization to sell beer in a clean glass container that is sealed and labeled as described in A.R.S. § 4-244(32). For the purposes of A.R.S. § 4-243, a domestic microbrewery is considered an "other producer."
 17. "Entertainment," as used in A.R.S. § 4-244.05, means any form of amusement including a theatrical, opera, dance, or musical performance, motion picture, videotape, audiotape, radio, television, carnival, game of chance or skill, exhibit, display, lecture, sporting event, or similar activity.
 18. "Erotic entertainer," as used in A.R.S. § 4-112(G), means an employee who performs in a manner or style designed to stimulate or arouse sexual thoughts or actions.
 19. "Government license" (Series 5) has the meaning set forth at A.R.S. § 4-101.
 20. "Hotel-motel license" (Series 11) means authorization issued to a hotel or motel that has a restaurant where food is served to sell spirituous liquors for consumption on the premises of the hotel or motel or by means of a mini-bar.
 21. "Incidental convenience," as used in A.R.S. § 4-244.05(I), means allowing a customer to possess and consume the amount of spirituous liquor stated in R19-1-324 while at a business to obtain goods or services regularly offered to all customers.
 22. "In-state producer license" (Series 1) means authorization issued to an entity to produce or manufacture spirituous liquor in Arizona.
 23. "Interim permit" means temporary authorization issued under A.R.S. § 4-203.01 that allows continued sale of spirituous liquor.
 24. "Licensed" means a license or interim permit is issued under A.R.S. Title 4 and this Chapter, including a license or interim permit on nonuse status.
 25. "Licensed retailer" means an on-sale or off-sale retailer.
 26. "Limited out-of-state producer license" (Series 2L) means authorization issued to an out-of-state producer to sell no more than 50 cases of spirituous liquor through a wholesaler annually.
 27. "Liquor store license" (Series 9) means authorization issued to an off-sale retailer to sell:
 - a. Spirituous liquors in an original, unopened, container for consumption off the licensed premises; and
 - b. Beer in a clean glass container that is sealed and labeled as described in A.R.S. § 4-244(32).
 28. "Non-technical error" means a mistake on an application that has the potential to mislead regarding the truthfulness of information provided.
 29. "Nonuse" means a license is not used to engage in business activity authorized by the license for at least 30 consecutive days.
 30. "Out-of-state producer license" (Series 2) means authorization issued to an entity to produce, export, import, or rectify spirituous liquors outside of Arizona and ship the spirituous liquors to a wholesaler.
 31. "Party" has the same meaning as prescribed in A.R.S. § 41-1001.
 32. "Physical barrier" means a wall, fence, rope, railing, or other temporary or permanent structure erected to restrict access to a designated area of a licensed premises.
 33. "Producer" means the holder of an in-state, out-of-state, or limited out-of-state producer license.
 34. "Product display" means a wine rack, bin, barrel, cask, shelving, or similar item with the primary function of holding and displaying spirituous liquor or other products.

35. "Quota license" means a bar, beer and wine bar, or liquor store license.
36. "Rectify" means to color, flavor, or otherwise process spirituous liquor by distilling, blending, percolating, or other processes.
37. "Reset" means a wholesaler adjusts spirituous liquor on the shelves of a licensed retailer.
38. "Restaurant continuation authorization" means authorization issued to the holder of a restaurant license to operate under the restaurant license after it is determined that food sales comprise at least 30 percent but less than 40 percent of the business's gross revenue.
39. "Restaurant license" (Series 12) means authorization issued to a restaurant, as defined in A.R.S. § 4-205.02, to sell spirituous liquors for consumption only on the restaurant premises.
40. "Second-party purchaser" means an individual who is of legal age to purchase spirituous liquor and buys spirituous liquor for an individual who may not lawfully purchase spirituous liquor in Arizona.
41. "Special event license" (Series 15) means authorization issued to a charitable, civic, fraternal, political, or religious organization to sell spirituous liquors for consumption on or off the premises where the spirituous liquor is sold only for a specified period.
42. "Tapping equipment" means beer, wine, and distilled spirit dispensers as stated in R19-1-326.
43. "Technical error" means a mistake on an application that does not mislead regarding the truthfulness of the information provided.
44. "Transfer" means to:
- Move a license from one location to another location within the same county; or
 - Change ownership, directly or indirectly, in whole or in part, of a business.
45. "Wholesaler license" (Series 4) means authorization issued to a wholesaler, as prescribed at A.R.S. § 4-243.01, to warehouse and distribute spirituous liquors to a licensed retailer or another licensed wholesaler.
46. "Wine festival or fair license" (Series 16) means authorization issued for a specified period to a domestic farm winery to serve samples of its products and sell the products in individual portions for consumption on the premises or in original, unopened, containers for consumption off the premises.
- B.** This Section is authorized by A.R.S. § 4-112(B)(1)(a).

Historical Note

Former Rule 1; Former Section R4-15-01 renumbered as Section R4-15-101 without change effective October 8, 1982 (Supp. 82-5). Section repealed, new Section adopted effective March 3, 1993 (Supp. 93-1). R19-1-101 recodified from R4-15-101 (Supp. 95-1). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-102. Fees and Surcharges; Service Charges

- A.** Most of the fees and surcharges collected by the Department are established by statute.
- B.** After a license other than a special event, wine festival or fair, or direct shipment license is approved but before the license is issued, the person that applied for the license shall pay the

- issuance fee and all applicable surcharges. If the license will be issued less than six months before it is scheduled to be renewed, the person that applied for the license shall also pay one-half of the annual renewal fee.
- C.** After a new bar, beer and wine bar, or liquor store license is approved but before the license is issued, the person that applied for the license shall, as required by A.R.S. § 4-206.01(A)-(E), pay the fair market value of the license.
- D.** After a restaurant continuation authorization is approved but before the authorization is issued, the person that applied for the authorization shall pay a one-time fee of \$30,000.
- E.** A licensee shall pay the renewal fee established under A.R.S. 4-209(D) annually or double the renewal fee established under A.R.S. 4-209(D) biennially, as specified by the Department. A licensee that fails to submit a renewal application by the deadline established by the Department shall pay a penalty of \$150 in addition to the renewal fee.
- F.** At the time of application for a license, an individual required under A.R.S. Title 4 or this Chapter to submit fingerprints for a criminal history background check, shall pay the charge established by the Department of Public Safety for processing the fingerprints. The individual may have the fingerprints taken by a law enforcement agency, other qualified entity, or the Department. If the fingerprints are taken by the Department, the individual shall pay to the Department the actual cost of this service to a maximum of \$20.
- G.** Until the date specified in A.R.S. § 4-205.02(G), the Director shall collect from an applicant for a restaurant license the actual amount incurred to conduct a site inspection to a maximum of \$50.
- H.** Until the date specified in A.R.S. § 4-207.01(B), the Director shall collect from a licensee the actual amount incurred to review and act on an application for approval to alter or change a licensed premises to a maximum of \$50.
- I.** Until the date specified in A.R.S. § 4-206.01(J), the Director establishes and shall collect a fee of \$100 from an applicant that applies for sampling privileges associated with a liquor or beer and wine store license and \$60 to renew the sampling privilege.
- J.** Until the date specified in A.R.S. § 4-244.05(J)(4), the Director shall collect from the owner of an unlicensed establishment or premises acting under A.R.S. § 4-244.05 the actual amount incurred to conduct an inspection for compliance with R19-1-324 to a maximum of \$50.
- K.** If a check provided to the Department by an applicant or licensee is dishonored by the bank upon presentment, the Department shall:
- As allowed by A.R.S. § 44-6852, require the applicant or licensee to pay the actual charges assessed by the bank plus a service fee of \$25;
 - Not issue a license, permit, or other approval to the applicant or licensee until all fees, including those referenced in subsection (K)(1), are paid by money order; and
 - Require the applicant or licensee to pay all future fees to the Department by money order.
- L.** As allowed under A.R.S. § 35-142(K), the Department may impose a convenience fee for accepting payment made by credit or debit card.
- M.** This Section is authorized by A.R.S. §§ 4-112(G)(10), 4-205.02, 4-206.01, 4-207.01(B), 4-209, 4-244.05, and 35-142(K).

Historical Note

Former Rule 2; Former Section R4-15-02 renumbered as Section R4-15-102 without change effective October 8, 1982 (Supp. 82-5). Repealed effective July 11, 1983 (Supp. 83-4). New Section adopted effective March 3,

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1993 (Supp. 93-1). R19-1-102 recodified from R4-15-102 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 5119, effective January 9, 2006 (Supp. 05-4). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

R19-1-103. A.R.S. Title 4 Training Course: Minimum Standards

- A.** As authorized by A.R.S. § 4-112(G)(2), the Department establishes the following minimum standards for an A.R.S. Title 4 training course.
1. A provider of a training course shall ensure that course content, training materials, and examination provide current reference and practical application of statute and this Chapter for:
 - a. Basic liquor law applicable to an on-sale retail licensee,
 - b. Management training applicable to an on-sale retail licensee,
 - c. Basic liquor law applicable to an off-sale retail licensee, and
 - d. Management training applicable to an off-sale retail licensee;
 2. A provider of a Basic On-sale training course shall ensure that the course is a minimum of three hours, excluding sign-in and break times, and course content includes the following topics:
 - a. General law regarding spirituous liquor.
 - i. Review of requirements for licensees and employees in Title 4 and this Chapter,
 - ii. Role and function of the Arizona Department of Liquor Licenses and Control,
 - iii. Potential legal risks to an on-sale retail licensee,
 - iv. Potential legal risks to an employee of an on-sale retail licensee,
 - v. Distinction between off- and on-sale license privileges, and
 - vi. Types and privileges of on-sale retail licenses,
 - b. Law regarding a licensed premises.
 - i. The licensed premises defined;
 - ii. Entertainment within or on the licensed premises, private parties, special events, or gambling;
 - iii. Spirituous liquor brought onto or removed from the licensed premises; and
 - iv. Extending or changing the licensed premises.
 - c. Law regarding age.
 - i. Selling spirituous liquor to persons of legal age;
 - ii. When to require identification of legal age;
 - iii. Recognizing acceptable forms of identification;
 - iv. Recognizing invalid forms of identification;
 - v. Documenting identification inspection by using an ID Log;
 - d. Law regarding intoxication.
 - i. The effects of spirituous liquor and recognizing signs of obvious intoxication;
 - ii. Responsibility for the safety of customers;
 - iii. Service limitations of spirituous liquor at a licensed premises, special event, or sampling event;
 - iv. Monitoring customer consumption and intervention techniques using skill assessment; and
 - v. Refusing spirituous liquor service or sale to an intoxicated individual using policy, procedure, and skill assessment;
 - e. Law regarding second-party sales of spirituous liquor.
 - i. Definition of second-party sale,
 - ii. Licensee responsibilities regarding second-party sales,
 - iii. Recognizing a second-party purchaser,
 - iv. Preventing a second-party sale, and
 - v. Refusing to sell to a second-party purchaser;
 - f. Employee consumption of spirituous liquor;
 - g. Law regarding legal hours of sale and payment for spirituous liquor at retail locations;
 - h. Disorderly conduct and acts of violence.
 - i. Defining disorderly conduct and acts of violence;
 - ii. Maintaining order on the licensed premises using policy, procedures, and skill assessment;
 - iii. Locating forms and reporting requirements for an act of violence;
 - iv. Repeated acts of violence; and
 - v. Firearms on the licensed premises;
 - i. Management of problem situations.
 - i. Kinds of problem situations that may arise,
 - ii. Recognizing a problem situation, and
 - iii. Employee responsibilities in a problem situation; and
 - j. Course review.
 - i. Summarize course content,
 - ii. Administer to all participants the examination required under subsection (A)(10),
 - iii. Have all participants complete the Course Evaluation Form required under subsection (A)(9), and
 - iv. Issue to qualifying participants the Certificate of Completion required under subsection (A)(11).
 3. A provider of a Management On-sale training course shall ensure that the course is a minimum of two hours, excluding sign-in and break times, is preceded by the Basic On-sale training course outlined in subsection (A)(2), and management content includes the following topics:
 - a. Making changes to and deactivating a liquor license.
 - i. Liquor license application requirements;
 - ii. The "capable, qualified, and reliable" requirements for licensure;
 - iii. Definition of controlling person, types of ownership, and ownership that is unlawful;
 - vi. Underage individuals in a bar or restaurant at which spirituous liquor is served;
 - vii. The Covert Underage Buyer Program; and
 - viii. Refusing to sell spirituous liquor to an underage individual using policy, procedure, and skill assessment;

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- iv. Local government approval of liquor license application, including an application for a special event;
 - v. Distinction between the Director and the Board; and
 - vi. License application protests, requirements, and procedure;
 - b. Law enforcement regarding spirituous liquor.
 - i. Routine liquor inspection of premises,
 - ii. Common liquor law violations,
 - iii. Compliance meetings and actions,
 - iv. Office of Administrative Hearings,
 - v. Grounds for suspension or revocation,
 - vi. Administrative liability,
 - vii. Criminal liability, and
 - viii. Civil liability;
 - c. Licensed premises.
 - i. Diagramming licensed premises, including hotel and motel locations;
 - ii. Altering licensed premises;
 - iii. Changing name of business;
 - iv. Patio requirements; and
 - v. Unlicensed locations;
 - d. Liquor license.
 - i. Posting the liquor license,
 - ii. Required and optional signs,
 - iii. Renewing license,
 - iv. Recordkeeping requirements,
 - v. Employee log, and
 - vi. Change in active or nonuse status;
 - e. Management requirements.
 - i. Defining on-site manager, responsibilities, and completion of the required questionnaire;
 - ii. Managing employee and customer safety;
 - iii. Changing managers;
 - iv. Changing agents;
 - v. Restructure; and
 - vi. Locating forms and required reporting;
 - f. Spirituous liquor marketing.
 - i. Coupons and rebates,
 - ii. Happy hour,
 - iii. Advertising and signage, and
 - iv. Promotional and novelty items;
 - g. General business practices.
 - i. Sources of spirituous liquor;
 - ii. Credit purchase of spirituous liquor;
 - iii. Delivering, shipping, and internet selling of spirituous liquor;
 - iv. Off-premise storage of spirituous liquor;
 - v. Wholesaler and retailer relationship and inducements;
 - vi. Sampling events of spirituous liquor;
 - vii. Special events and auction of spirituous liquor;
 - viii. Wine and food clubs;
 - ix. Cooperative purchase of spirituous liquor,
 - x. Locking entrance to licensed premises and private parties,
 - xi. Limiting service to and consumption of spirituous liquor by employees, and
 - xii. Owner service and consumption of spirituous liquor;
 - h. Disorderly conduct and acts of violence. The information specified under subsection (A)(2)(h) and management responsibilities; and
 - i. Course review. The activities specified under subsection (A)(2)(j).
- 4. A provider of a Basic Off-sale training course shall ensure that the course is a minimum of two hours, excluding sign-in and break times, and course content includes the following topics:
 - a. General law regarding spirituous liquor.
 - i. The information specified under subsections (A)(2)(a)(i) and (ii),
 - ii. Potential legal risks to an off-sale retail licensee,
 - iii. Potential legal risks to an employee of an off-sale retail licensee, and
 - iv. Types and privileges of off-sale retail licenses;
 - b. Law regarding a licensed premises. The information specified under subsections (A)(2)(b)(i), (ii), and (iv);
 - c. Law regarding age. The information specified under subsections (A)(2)(c)(i) through (v) and (vii) and (viii);
 - d. Law regarding intoxication. The information specified under subsections (A)(2)(d)(i) through (iii), and (v);
 - e. Law regarding second-party sales of spirituous liquor. The information specified under subsections (A)(2)(e);
 - f. Employee consumption of spirituous liquor.
 - g. Law regarding legal hours of sale.
 - i. Legal hours of sale in Arizona, and
 - ii. Refusing an after-hour sale using skill assessment;
 - h. Law regarding sale of broken packages and on-premises consumption.
 - i. Definition of broken package and on-premises consumption,
 - ii. Advising a customer of off-sale consumption restrictions using skill assessment,
 - iii. Refusing to allow a customer to open or consume spirituous liquor on the licensed premises using skill assessment, and
 - iv. Refusing to allow a customer to consume spirituous liquor in parking area or property adjacent to licensed premises using skill assessment;
 - i. Disorderly conduct and acts of violence. The information specified under subsection (A)(2)(h);
 - j. Management of problem situations. The information specified under subsections (A)(2)(i); and
 - k. Course review. The activities specified under subsection (A)(2)(j).
 - 5. A provider of a Management Off-sale training course shall ensure that the course is a minimum of two hours, excluding sign-in and break times, and is preceded by the Basic Off-sale training course outlined in subsection (A)(4), and management content includes the following topics:
 - a. Making changes to and deactivating a liquor license. The information specified under subsection (A)(3)(a);
 - b. Law enforcement regarding spirituous liquor. The information specified under subsection (A)(3)(b);
 - c. Licensed premises. The information specified under subsection (A)(3)(c);
 - d. Liquor license. The information specified under subsection (A)(3)(d);
 - e. Management requirements. The information specified under subsection (A)(3)(e);

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- f. Spirituous liquor marketing. The information specified under subsections (A)(3)(f)(i), (iii), and (iv);
 - g. General business practices.
 - i. The information specified under subsections (A)(3)(g)(i) through (vii) and (ix) through (xii), and
 - ii. Drive-through purchase of spirituous liquor;
 - h. Disorderly conduct and acts of violence. The information specified under subsection (A)(2)(h) and management responsibilities; and
 - i. Course review. The activities specified under subsection (A)(2)(j).
6. A provider of a Basic Off-sale with On-sale Privileges training course shall ensure that the course addresses the topics specified under subsections (A)(2) and (4).
 7. A provider of a Management Off-sale with On-sale Privileges training course shall ensure that the course addresses the topics specified under subsections (A)(3) and (5).
 8. A provider of a management training course shall ensure that a sign-in roster is completed and provides the following information:
 - a. Name of the course provider,
 - b. Date on which the course was conducted,
 - c. Location at which the course was conducted,
 - d. Name of individual who taught the course,
 - e. Printed name and signature of each participant, and
 - f. Form of identification accepted by the provider to verify each participant's identity and the number and expiration date of the identification;
 9. The Department shall provide a training provider with a Course Evaluation Form that allows a course participant to evaluate the knowledge and competence of the course trainer and the quality of the course.
 10. A provider of a training course shall administer an objective examination to measure each participant's completion of the course.
 11. The Department shall provide a training provider with an authorized Certificate of Completion form to issue to each participant who attends the course in its entirety, takes the examination required under subsection (A)(10), and completes the Course Evaluation form required under subsection (A)(9). The Department shall ensure that the Certificate of Completion contains the following information:
 - a. Name of the participant who completed the course,
 - b. Date on which the course was attended,
 - c. Notice that the Certificate of Completion expires three years from the date of issuance,
 - d. Whether the completed course addressed on-sale or off-sale retail requirements or a combination of both,
 - e. Whether the completed course addressed basic or management information or a combination of both,
 - f. Name of individual who taught the training course, and
 - g. Name of the course provider.
 12. A provider of a training course shall:
 - a. Maintain for two years:
 - i. A record of all Certificates of Completion issued under subsection (A)(11),
 - ii. Course Evaluation Forms completed by participants as required under subsection (A)(9),
 - iii. Examination results for each course participant as required under subsection (A)(10), and
 - iv. Course sign-in rosters required under subsection (A)(8); and
 - b. Submit to the Department by August 1 of each year, either by mail or electronically, an updated syllabus, examination, and other course materials for each training course provided. The provider shall ensure that the updated syllabus, course materials, and examination clearly indicate:
 - i. Whether the course is on-sale, off-sale, or a combination of both;
 - ii. Whether the course is basic or basic plus management;
 - iii. The name of each trainer authorized by the provider to teach each course;
 - iv. A list of individuals who are no longer authorized by the provider to teach its courses; and
 - v. The name, daytime telephone number, and e-mail address of the person responsible for the course provider.
- B. Before providing a training course to participants, the provider of the training course shall apply to the Department for approval of the course content.
 - C. The provider of an approved training course shall, upon request, make the following available to the Department:
 1. Record of the Certificates of Completion maintained under subsection (A)(11);
 2. All current training course syllabi, course materials, examinations, and Employee Information Forms;
 3. A copy of all materials provided to course participants;
 4. A copy of all teaching aids used in the training course; and
 5. A copy of the Course Evaluations Forms completed under subsection (A)(9).
 - D. The Department may, at any time, review an approved training course to determine that the course continues to meet the minimum standards specified in this Section. A provider shall inform the Department, upon request, of the date, time, and location of all scheduled training courses and allow the Department to audit the courses for:
 1. Compliance with this Section, and
 2. Quality and accuracy of the training course content.
 - E. If the Department determines that a training course fails to meet the minimum standards specified in this Section, the Department shall give notice to the course provider regarding the areas of non-compliance, the steps required to be in compliance, and the date by which compliance must be achieved.
 - F. If the Department determines that a provider who received notice under subsection (E) failed to achieve compliance by the date specified, the Department may take action to suspend or revoke approval of the training course.
 - G. This Section is authorized by A.R.S. § 4-112(G)(2).

Historical Note

Former Rule 3; Former Section R4-15-03 renumbered as Section R4-15-103 without change effective October 8, 1982 (Supp. 82-5). Section repealed, new Section adopted effective March 3, 1993 (Supp. 93-1). R19-1-103 recodified from R4-15-103 (Supp. 95-1). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-104. Shipping Container Labeling; Shipping Requirements

- A. An individual or entity, whether licensed or unlicensed under A.R.S. Title 4 and this Chapter, shall ensure that spirituous liquor shipped or offered for shipping within this state for a commercial purpose is in a container that is clearly and conspicuously labeled with or is accompanied by a shipping document containing the following information:
1. Name of the individual or entity consigning or shipping the spirituous liquor,
 2. Name and address of the individual or entity to whom the spirituous liquor will be delivered, and
 3. Identification of the spirituous liquor.
- B. An individual who transports spirituous liquor other than beer from a wholesaler to a licensed retailer shall ensure that:
1. The individual possesses a bill or memorandum from the wholesaler to the licensed retailer showing the:
 - a. Name and address of the wholesaler,
 - b. Name and address of the licensed retailer, and
 - c. Quantity and type of the spirituous liquor sold and transported; and
 2. The bill or memorandum referenced under subsection (B)(1) is exhibited on demand by any peace officer.
- C. An individual or entity that ships or offers for shipping spirituous liquor from a point outside Arizona to a final destination in Arizona shall ensure that:
1. With the exception of wine that is being shipped under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(7) or (9) by a domestic farm winery licensee or beer that is being shipped under A.R.S. § 4-205.08(D)(5) by a domestic microbrewery licensee, the spirituous liquor is consigned to a wholesaler authorized to sell or deal in the particular spirituous liquor being shipped; and
 2. The spirituous liquor is placed for shipping with:
 - a. A common carrier or transportation company that is in compliance with all Arizona and federal law regarding operation of an interstate transportation business, or
 - b. The wholesaler to whom the spirituous liquor is consigned.
- D. A common carrier or transportation company hired to transport spirituous liquor from a point outside Arizona to a final destination in Arizona shall ensure that:
1. The common carrier or transportation company maintains possession of the spirituous liquor from the time the spirituous liquor is placed for shipping until it is delivered; and
 2. With the exception of spirituous liquor that is being shipped under A.R.S. § 4-203.04(J) or A.R.S. § 4-205.04(C)(7) or (9) by a domestic farm winery licensee, the spirituous liquor is delivered to the licensed premises of the wholesaler to whom the spirituous liquor is consigned.
- E. An individual or entity shall not construe this Section in a manner that interferes with the interstate shipment of spirituous liquor, including beer and wine, through this state if the spirituous liquor, as it passes through this state, is under the control of a common carrier or transportation company hired to transport the spirituous liquor.
- F. This Section is authorized by A.R.S. § 4-112(B)(1)(a).

Historical Note

Former Rule 4; Former Section R4-15-04 renumbered as Section R4-15-104 without change effective October 8, 1982 (Supp. 82-5). Repealed effective March 3, 1993 (Supp. 93-1). R19-1-104 recodified from R4-15-104 (Supp. 95-1). New Section made by final rulemaking at

19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Chapter 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

R19-1-105. Standards for a Non-contiguous Area of a Licensed Premises

- A. When an application is made for inclusion of a non-contiguous area in a licensed premises, the Department shall approve inclusion of the non-contiguous area only if the following standards are met:
1. Unless application is made by a club licensee, the public convenience requires and the best interest of the community will be substantially served by approving inclusion of the non-contiguous area in the licensed premises;
 2. The non-contiguous area does not violate A.R.S. § 4-207;
 3. The non-contiguous area will be a permanent part of the licensed premises;
 4. The walkway or driveway that separates the non-contiguous area from the remainder of the licensed premises is no more than 30 feet wide;
 5. The non-contiguous area is completely enclosed by a permanently installed fence that is at least three feet in height;
 6. Construction of the business premises in the non-contiguous area will comply with all applicable building and safety standards before spirituous liquor is sold or served in the non-contiguous area; and
 7. The licensee demonstrates control of the taking of spirituous liquor between the non-contiguous area and the remainder of the licensed premises.
- B. This Section is authorized by A.R.S. § 4-101(26).

Historical Note

Former Rule 5; Former Section R4-15-05 renumbered as Section R4-15-105 without change effective October 8, 1982 (Supp. 82-5). R19-1-105 recodified from R4-15-105 (Supp. 95-1). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section renumbered to R19-1-108, new Section R19-1-105 made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

R19-1-106. Severability

- A. In this Chapter, the subsections of each Section are severable and each Section is severable from the Chapter. If a Section or subsection or the application of a Section or subsection to a particular individual, entity, or circumstance is held to be invalid, the invalidity does not affect the validity of other Sections or subsections and does not affect the validity of the Sec-

tion or subsection to a different individual, entity, or circumstance.

- B.** This Section is authorized by A.R.S. § 4-112(B)(1)(b).

Historical Note

Former Rule 6; Former Section R4-15-06 renumbered as Section R4-15-106 without change effective October 8, 1982 (Supp. 82-5). Amended effective July 11, 1983 (Supp. 83-4). Section repealed, new Section adopted effective March 3, 1993 (Supp. 93-1). R19-1-106 recodified from R4-15-106 (Supp. 95-1). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

R19-1-107. Electronic Signatures

- A.** An applicant, licensee, or other person that submits to the Department a form or document required under A.R.S. Title 4 or this Chapter may submit the form or document electronically.
- B.** This Section is authorized by A.R.S. § 4-112(G)(11).

Historical Note

Adopted effective April 26, 1977 (Supp. 77-2). Former Section R4-15-07 renumbered as Section R4-15-107 without change effective October 8, 1982 (Supp. 82-5). Amended effective January 28, 1987 (Supp. 87-1). R19-1-107 recodified from R4-15-107 (Supp. 95-1). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-108. Repealed

Historical Note

New Section R19-1-108 renumbered from R19-1-105 by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2). Section repealed by final rulemaking at 20 A.A.R. 1207, effective July 6, 2014 (Supp. 14-2).

R19-1-109. Repealed

Historical Note

Adopted as an emergency effective September 30, 1981, pursuant to A.R.S. § 1003, valid for only 90 days (Supp. 81-5). Former Section R4-15-09, Quota license selection process, adopted as an emergency, renumbered as Section R4-15-109, expired (Supp. 82-5). Adopted effective December 9, 1982 (Supp. 82-6). Spelling correction, subsection (B), paragraph (3) to adoption effective December 9, 1982 (Supp. 87-1). R19-1-109 recodified from R4-15-109 (Supp. 95-1). Section repealed by final rulemaking at

19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

R19-1-110. Sign Limitations

- A.** A person, firm, or corporation engaged in business as a manufacturer, distiller, brewer, vintner, or wholesaler or any officer, director, agent, or employee of such person may lend, to the retailer any sign for interior or exterior use provided:
1. The sign must bear conspicuous and substantial advertising matter about a product of the manufacturer, distiller, brewer, vintner, or wholesaler.
 2. The cost of the sign may not exceed \$400.
 3. A sign may not be utilitarian except as to its advertising or information content.
 4. No such signs shall be offered or furnished by any manufacturer, distiller, brewer, vintner or wholesaler or by any officer, director, agent, or employee thereof, or by any other person as an inducement to the retailer to purchase or use the products of such manufacturer, distiller, brewer, vintner or wholesaler to the exclusion in whole or in part of the product of any competitor.
- B.** No signs or other advertising matter used in connection with the licensed premises of any retailer of alcoholic beverages shall be obscene as determined by applying contemporary state standards.
- C.** Licensed special events are not subject to the limitations of subsections (A)(1) through (3).

Historical Note

New Section R19-1-110 renumbered from R19-1-210 by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-111. Repealed

Historical Note

Adopted effective March 3, 1993 (Supp. 93-1). R19-1-111 recodified from R4-15-111 (Supp. 95-1). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

R19-1-112. Repealed

Historical Note

New Section R19-1-112 renumbered from R19-1-228 by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2). Section repealed by final rulemaking at 20 A.A.R. 1207, effective July 6, 2014 (Supp. 14-2).

R19-1-113. Repealed

Historical Note

New Section R19-1-113 renumbered from R19-1-315 by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2). Section repealed by final rulemaking at 20 A.A.R. 1207, effective July 6, 2014 (Supp. 14-2).

ARTICLE 2. LICENSING

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-201. Who May Apply for a License

- A. Except as provided in subsection (B) and notwithstanding any other law, the following pre-requisites apply for a license under A.R.S. Title 4 and this Chapter.
1. If an individual applies for a license, the individual shall be:
 - a. A citizen of the United States or a legal resident alien, and
 - b. A bona fide resident of Arizona;
 2. If a partnership applies for a license, each partner shall meet the criteria in subsection (A)(1);
 3. Except as provided in subsection (A)(6), if a corporation or limited liability company applies for a license, the corporation or limited liability company shall:
 - a. Be qualified to do business in Arizona, and
 - b. Hold the license through an agent who is an individual that meets the criteria in subsection (A)(1);
 4. If a limited partnership applies for a license:
 - a. An individual general partner, but not a limited partner, shall meet the criteria in subsection (A)(1); and
 - b. A corporate general partner shall meet the criteria in subsection (A)(3);
 5. If a club or governmental entity applies for a license, the club or governmental entity shall hold the license through an agent who is an individual that meets the criteria in subsection (A)(1);
 6. If an out-of-state entity applies for a license, the out-of-state entity shall hold the license through an agent who meets the standard described in A.R.S. § 4-202(A).
- B. An entity organized outside the U.S. that applies for an out-of-state producer or limited out-of-state producer license is not required to meet the pre-requisites in subsection (A) if the person makes application through an agent who meets the criteria listed in A.R.S. § 41-1080(B).
- C. The Department shall accept as evidence that an individual is a citizen of the United States or a legal resident alien the documents listed in A.R.S. § 41-1080(A).
- D. The Department shall accept a driver license or voter registration card as evidence that an individual is a bona fide resident of Arizona.
- E. The Department shall accept the following, provided by or filed with the Arizona Corporation Commission, as evidence that an entity is qualified to do business in Arizona:
 1. Corporation file number, or
 2. L.L.C. file number.
- F. This Section is authorized by A.R.S. §§ 4-202(A) and 41-1080.

Historical Note

Former Rule 1; Former Section R4-15-20 renumbered as Section R4-15-201 without change effective October 8, 1982 (Supp. 82-5). R-19-1-201 recodified from R4-15-201 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996, as required pursuant to Laws 1996, Ch. 307, § 19 (Supp. 96-4). Historical note corrected for clarification. Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-201 recodified to R19-1-314; new Section R19-1-201 recodified from R19-1-301 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6,

2013 (Supp. 13-2).

R19-1-202. Application Required

- A. An individual or entity that wishes to obtain a license or other approval from the Department shall complete and submit to the Department an application using a form that is available from the Department at its office or online.
- B. This Section is authorized by A.R.S. §§ 4-201, 4-202, 4-203, 4-203.01, 4-203.04, and 4-228.

Historical Note

Former Rule 2; Former Section R4-15-21 renumbered as Section R4-15-202 without change effective October 8, 1982 (Supp. 82-5). R19-1-202 recodified from R4-15-202 (Supp. 95-1). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-203. Registration of a Retail Agent

- A. Pre-requisites for registration as a retail agent. A person may act as a retail agent only if the person:
 1. Holds one of the licenses listed in A.R.S. § 4-222(A);
 2. Has a written Cooperative-purchase Agreement, using a form available from the Department, with one or more licensees; and
 3. Submits the materials required under subsections (B) and (C) to the Department.
- B. To register as a retail agent, a licensee shall submit to the Department the application form prescribed by the Department. The licensee registering shall include the licensee's notarized signature affirming that the licensee will comply with all laws and this Chapter regarding cooperative purchases and that all information provided is true, correct, and complete.
- C. In addition to submitting the application form required under subsection (B), an applicant for registration as a retail agent shall submit:
 1. A copy of every Cooperative-purchase Agreement reached with another licensee, and
 2. The fee prescribed at A.R.S. § 4-222(B).
- D. This Section is authorized by A.R.S. §§ 4-112(B)(1)(d) and 4-222.

Historical Note

Former Rule 3; Former Section R4-15-22 renumbered as Section R4-15-203 without change effective October 8, 1982 (Supp. 82-5). R19-1-203 recodified from R4-15-203 (Supp. 95-1). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-204. Obtaining a Quota License

- A. The number of quota licenses that the Department may issue in a county is limited.
- B. Before issuing a new quota license in a particular county, the Department shall provide notice through available media of its intent to issue a new quota license, the particular kind of quota license to be issued, and invite interested persons in the county

to inform the Department of their interest in the manner prescribed by the Department.

- C. If the number of interested persons in a particular county exceeds the number of specified quota licenses available, the Department shall use a random selection method to determine priority of individuals who have applied for a new quota license.
- D. Before a new quota license is issued to a successful applicant, the applicant shall pay:
 1. The issuance fee and applicable surcharges prescribed under A.R.S. § 4-209;
 2. One-half of the annual renewal fee if the license will be issued less than six months before it is scheduled to be renewed; and
 3. The fair market value of the quota license, as determined by the Department.
- E. This Section is authorized by A.R.S. § 4-206.01.

Historical Note

Former Rule 4; Amended effective September 10, 1979 (Supp. 79-5). Former Section R4-15-23 renumbered as Section R4-15-204 without change effective October 8, 1982 (Supp. 82-5). R19-1-204 recodified from R4-15-204 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended by exempt rulemaking at 7 A.A.R. 5252, effective November 2, 2001 (Supp. 01-4). Former Section R19-1-204 recodified to R19-1-210; new Section R19-1-204 recodified from R19-1-220 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-205. Requirements for a Special Event License

- A. To apply for a special event license, an entity authorized under A.R.S. § 4-203.02 (B) shall submit to the Department an application form, which is available from the Department.
- B. At the same time application is made to the Department under subsection (A), the entity shall submit a copy of the application form to the board of supervisors if the special event is to be held in an unincorporated area or to the governing body of a city or town if the special event is to be held in a city or town. The Department shall issue a special event license subject to the approval of the board of supervisors or governing body.
- C. The Department shall issue a special event license to an entity authorized under A.R.S. § 4-203.02 (B) for no more than 10 days in each calendar year.
- D. This Section is authorized by A.R.S. § 4-203.02.

Historical Note

Former Rule 5; Former Section R4-15-24 renumbered as Section R4-15-205 without change effective October 8, 1982 (Supp. 82-5). R19-1-205 recodified from R4-15-205 (Supp. 95-1). Former Section R19-1-205 recodified to R19-1-211; new Section R19-1-205 recodified from R19-1-253 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 1784, effective January 31, 2006 (Supp. 06-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was repealed and a new Section adopted under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6), pursuant to

Laws 1993, Ch. 133, § 49. Exemption from A.R.S. Title 41, Chapter 6 means that the Department did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council; the Department was not required to hold public hearings on these rules; and the Attorney General did not certify these rules.

R19-1-206. Criteria for Issuing a Restaurant License

- A. The Department shall not issue a restaurant license to an applicant if the Department finds there is sufficient evidence that the applicant will be unable to operate as a restaurant as defined at A.R.S. § 4-205.02(H)(2).
- B. The following criteria are evidence of an ability to operate a restaurant as defined at A.R.S. § 4-205.02(H)(2). The Department shall consider these criteria when determining whether to issue a restaurant license to an applicant:
 1. Number of cooks, other food preparation personnel, and wait staff are sufficient to prepare and provide the proposed restaurant services;
 2. Restaurant equipment is of sufficient grade or appropriate for the offered menu;
 3. Proposed menu is of a type and price likely to achieve 40 percent food sales; and
 4. Dinnerware and small-ware, including dining utensils, are compatible with the offered menu.
- C. The following criteria are evidence of an inability to operate a restaurant as defined at A.R.S. § 4-205.02(H)(2). The Department shall consider these criteria when determining whether to issue a restaurant license to an applicant:
 1. More than 60 percent of the public seating area consists of barstools, cocktail tables, and similar seating indicating the area is used primarily for consumption of spirituous liquor;
 2. Name, signage, or promotional materials of the proposed business premises contain a term such as bar, tavern, pub, spirits, club, lounge, cabaret, or saloon that denotes sale of spirituous liquor;
 3. Proposed business premises has a jukebox, live entertainment, or dance floor; and
 4. Proposed business premises contain bar games and equipment.
- D. This Section is authorized by A.R.S. § 4-205.02(E).

Historical Note

Former Rule 6; Former Section R4-15-25 renumbered as Section R4-15-206 without change effective October 8, 1982 (Supp. 82-5). Section repealed, new Section adopted effective May 26, 1993, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1993, Ch. 133, § 49 (Supp. 93-2). R19-1-206 recodified from R4-15-206 (Supp. 95-1). Former Section R19-1-206 recodified to R19-1-221; new Section R19-1-206 recodified from R19-1-217 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-207. Extension of Premises

- A. A licensee shall ensure that no spirituous liquor is served to a customer seated outside the licensed premises, as defined at A.R.S. § 4-101(26), without first making application for an extension of premises.
- B. An application under subsection (A) is required for either a temporary or permanent extension of premises.
- C. This Section is authorized by A.R.S. §§ 4-101(26) and 4-203(B).

Historical Note

Former Rule 7; Former Section R4-15-26 renumbered as Section R4-15-207 without change effective October 8, 1982 (Supp. 82-5). R19-1-207 recodified from R4-15-207 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Repealed effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). New Section R19-1-207 recodified from R19-1-221 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-208. Notice of Application for a Conveyance License

- A. An individual or entity qualified under R19-1-201 who submits an application under R19-1-202 for a conveyance license shall post a copy of the application and the notice required under A.R.S. § 4-201(B) conspicuously at the location from which the applicant conducts its principal business in Arizona.
- B. This Section is authorized by A.R.S. § 4-201(B).

Historical Note

Former Rule 8; Former Section R4-15-27 renumbered as Section R4-15-208 without change effective October 8, 1982 (Supp. 82-5). R19-1-208 recodified from R4-15-208 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996, as required pursuant to Laws 1996, Ch. 307, § 19 (Supp. 96-4). Historical note corrected for clarification. Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-208 recodified to R19-1-219; new Section R19-1-208 recodified from R19-1-231 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355,

effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-209. Licensing Time-frames

- A. For the purpose of compliance with A.R.S. § 41-1073, the Department establishes time-frames that apply to licenses issued by the Department. The licensing time-frames consist of an administrative completeness review time-frame, a substantive review time-frame, and an overall time-frame as defined in A.R.S. § 41-1072.
- B. The Department shall not forward a liquor license application for review and consideration by local governing authorities until the application is administratively complete. A liquor license application is administratively complete when:
 1. Every piece of information required by the form prescribed by the Department is provided;
 2. All required materials specified on the form prescribed by the Department are attached to the form;
 3. The non-refundable license application fee specified at A.R.S. § 4-209(A) is attached to the form; and
 4. If required, a questionnaire and complete set of fingerprints are attached to the form from:
 - a. Every individual who is a controlling person of the business to be licensed,
 - b. Every individual who has an aggregate beneficial interest of at least 10 percent in the business to be licensed,
 - c. Every individual who owns at least 10 percent of the business to be licensed,
 - d. Every individual who holds a beneficial interest of at least 10 percent of the liabilities of the business to be licensed, and
 - e. The agent and managers of the business to be licensed.
- C. Except as provided in subsection (D), the time-frame for the Department to act on a license application is as follows:
 1. Administrative completeness review time-frame: 75 days;
 2. Substantive review time-frame: 30 days; and
 3. Over-all time-frame: 105 days.
- D. The time-frame for the Department to act on an application for a special event license, wine festival or fair license, extension or change of licensed premises, or approval of a liquor law training course is as follows:
 1. Administrative completeness review time-frame: 10 days;
 2. Substantive review time-frame: 20 days; and
 3. Over-all time-frame: 30 days.
- E. Administrative completeness review time-frame.
 1. The administrative completeness review time-frame begins when the Department receives an application. During the administrative completeness review-time-frame, the Department shall determine whether the application is:
 - a. Complete,
 - b. Contains a technical error, or
 - c. Contains a non-technical error.

2. If the Department determines that an application is incomplete or contains a non-technical error, the Department shall return the application to the applicant. If the applicant wishes to be considered further for a license, the applicant shall submit to the Department a new, completed application and non-refundable application fee.
 3. If the Department determines that an application contains a technical error, the Department shall notify the applicant in writing of the technical error.
 4. An applicant that receives a notice regarding a technical error in an application shall correct the technical error within 30 days from the date of the notice or within the time specified by the Department. The administrative completeness review and over-all time-frames are suspended from the date of the notice referenced under subsection (E)(3) until the date the technical error is corrected.
 5. If an applicant fails to correct a technical error within the specified time, the Department shall close the file. An applicant whose file is closed may apply again for a license by submitting a new, completed application and non-refundable application fee.
- F. Substantive review time-frame.**
1. The substantive review time-frame begins when an application is administratively complete or at the end of the administrative completeness review time-frame listed in subsection (C)(1) or (D)(1). If a hearing is required under A.R.S. § 4-201 regarding the license application, the Department shall ensure that the hearing occurs during the substantive review time-frame.
 2. If the Department determines during the substantive review that additional information is needed, the Department shall send the applicant a comprehensive written request for additional information. An applicant from whom additional information is requested shall supply the additional information within 30 days from the date of the request or within the time specified by the Department. Both the substantive review and over-all time-frames are suspended from the date of the Department's request until the date that the Department receives the additional information.
 3. If an applicant fails to submit the requested information within the specified time, the Department shall close the file. An applicant whose file is closed may apply again for a license by submitting a new, completed application and non-refundable application fee.
- G. Within the overall time-frame, the Department shall:**
1. Deny a license to an applicant if the Department determines that the applicant does not meet all the substantive criteria required by A.R.S. Title 4 and this Chapter, or
 2. Grant a license to an applicant if the Department determines that the applicant meets all the substantive criteria required by A.R.S. Title 4 and this Chapter.
- H. If the Department denies a license under subsection (G)(1), the Department shall provide a written notice of denial to the applicant that explains:**
1. The reason for the denial, with citations to supporting statutes or rules;
 2. The applicant's right to appeal the denial; and
 3. The time for appealing the denial.
- I. This Section is authorized by A.R.S. §§ 41-1073, 4-101(9), 4-201(E), and 4-202(B).**

Historical Note

Former Rule 9; Former Section R4-15-28 renumbered as Section R4-15-209 without change effective October 8, 1982 (Supp. 82-5). R19-1-209 recodified from R4-15-

209 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-209 recodified to R19-1-232; new Section R19-1-209 recodified from R19-1-210 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-210. Renumbered**Historical Note**

Former Rule 10; Former Section R4-15-29 renumbered as Section R4-15-210 without change effective October 8, 1982 (Supp. 82-5). R19-1-210 recodified from R4-15-210 (Supp. 95-1). Former Section R19-1-210 recodified to R19-1-209; new Section R19-1-210 recodified from R19-1-204 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section renumbered to R19-1-110 by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-211. Repealed**Historical Note**

Former Rule 11; Former Section R4-15-30 renumbered as Section R4-15-211 without change effective October 8, 1982 (Supp. 82-5). R19-1-211 recodified from R4-15-211 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-211 recodified to R19-1-224; new Section R19-1-211 recodified from R19-1-205 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

R19-1-212. Repealed**Historical Note**

Former Rule 12; Former Section R4-15-31 renumbered

as Section R4-15-212 without change effective October 8, 1982 (Supp. 82-5). R19-1-212 recodified from R4-15-212 (Supp. 95-1). Repealed effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). New Section R19-1-212 recodified from R19-1-228 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: *The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).*

Editor's Note: *Previous amendments were made under a different exemption (Supp. 96-4).*

R19-1-213. Repealed

Historical Note

Former Rule 13; Former Section R4-15-32 renumbered as Section R4-15-213 without change effective October 8, 1982 (Supp. 82-5). R19-1-213 recodified from R4-15-213 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997; amended again effective June 10, 1997. Both amendments were made under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-213 recodified to R19-1-234; new Section R19-1-213 recodified from R19-1-235 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 11 A.A.R. 1564, effective June 4, 2005 (Supp. 05-2).

Editor's Note: *The following Section was repealed and a new Section adopted under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1991, Ch. 136, § 2 and 3. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was repealed and new Section adopted by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.*

R19-1-214. Repealed

Historical Note

Former Rule 14; Former Section R4-15-33 renumbered as Section R4-15-214 without change effective October 8, 1982 (Supp. 82-5). Former Section R4-15-214 repealed, new Section R4-15-214 adopted effective April 26, 1984 (Supp. 84-2). R19-1-214 recodified from R4-15-214 (Supp. 95-1). Section repealed, new Section adopted effective April 1, 1992, under an exemption from the Administrative Procedure Act pursuant to Laws 1991, Ch. 136, §§ 2 and 3; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-214 recodified to R19-1-235; new Section R19-1-214 recodified from R19-1-236 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed; new Section made by final rulemaking at 11 A.A.R. 1564,

effective June 4, 2005 (Supp. 05-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: *The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.*

R19-1-215. Repealed

Historical Note

Former Rule 15; Former Section R4-15-34 renumbered as Section R4-15-215 without change effective October 8, 1982 (Supp. 82-5). R19-1-215 recodified from R4-15-215 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-215 recodified to R19-1-225; new Section R19-1-215 recodified from R19-1-237 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: *The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.*

R19-1-216. Repealed

Historical Note

Former Rule 16; Former Section R4-15-35 renumbered as Section R4-15-216 without change effective October 8, 1982 (Supp. 82-5). R19-1-216 recodified from R4-15-216 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-216 recodified to R19-1-222; new Section R19-1-216 recodified from R19-1-255 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: *The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.*

R19-1-217. Repealed

Historical Note

Former Rule 17; Former Section R4-15-36 renumbered as Section R4-15-217 without change effective October 8, 1982 (Supp. 82-5). R19-1-217 recodified from R4-15-217 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Pro-

cedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-217 recodified to R19-1-206; new Section R19-1-217 recodified from R19-1-248 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: *The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).*

Editor's Note: *Previous amendments were made under a different exemption (Supp. 96-4).*

R19-1-218. Repealed

Historical Note

Former Rule 18; Former Section R4-15-37 renumbered as Section R4-15-218 without change effective October 8, 1982 (Supp. 82-5). R19-1-218 recodified from R4-15-218 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-218 recodified to R19-1-305; new Section R19-1-218 recodified from R19-1-222 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: *The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).*

Editor's Note: *Previous amendments were made under a different exemption (Supp. 96-4).*

R19-1-219. Repealed

Historical Note

Former Rule 19; Former Section R4-15-38 renumbered as Section R4-15-219 without change effective October 8, 1982 (Supp. 82-5). R19-1-219 recodified from R4-15-219 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-219 recodified to R19-1-306; new Section R19-1-219 recodified from R19-1-208 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R.

1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: *The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).*

Editor's Note: *Previous amendments were made under a different exemption (Supp. 96-4).*

R19-1-220. Repealed

Historical Note

Former Rule 20; Former Section R4-15-39 renumbered as Section R4-15-220 effective October 8, 1982 (Supp. 82-5).* R19-1-220 recodified from R4-15-220 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997; amended again effective June 10, 1997. Both amendments were exempt from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-220 recodified to R19-1-204; new Section R19-1-220 recodified from R19-1-229 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: *The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.*

R19-1-221. Repealed

Historical Note

Former Rule 21; Former Section R4-15-40 renumbered as Section R4-15-221 without change effective October 8, 1982 (Supp. 82-5). R19-1-221 recodified from R4-15-221 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-221 recodified to R19-1-207; new Section R19-1-221 recodified from R19-1-206 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: *The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).*

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-222. Repealed

Historical Note

Former Rule 22; Former Section R4-15-41 renumbered as Section R4-15-222 without change effective October 8, 1982 (Supp. 82-5). R 19-1-222 recodified from R4-15-222 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-222 recodified to R19-1-218; new Section R19-1-222 recodified from R19-1-216 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was repealed and a new Section adopted under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was repealed and a new Section adopted by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-223. Repealed

Historical Note

Former Rule 23; Former Section R4-15-42 renumbered as Section R4-15-223 without change effective October 8, 1982 (Supp. 82-5). R19-1-223 recodified from R4-15-223 (Supp. 95-1). Section repealed, new Section adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-223 recodified to R19-1-312; new Section R19-1-223 recodified from R19-1-226 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was repealed by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-224. Repealed

Historical Note

Former Rule 24; Former Section R4-15-43 renumbered as Section R4-15-224 without change effective October 8, 1982 (Supp. 82-5). R-19-1-224 recodified from R4-15-224 (Supp. 95-1). Repealed effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). New Section R19-1-224 recodified from R19-1-211 at 8 A.A.R. 2636, effective May 30, 2002

(Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-225. Repealed

Historical Note

Former Rule 25; Former Section R4-15-44 renumbered as Section R4-15-225 without change effective October 8, 1982 (Supp. 82-5). R19-1-225 recodified from R4-15-225 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-225 recodified to R19-1-307; new Section R19-1-225 recodified from R19-1-215 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

R19-1-226. Repealed

Historical Note

Former Rule 26; Former Section R4-15-45 renumbered as Section R4-15-226 without change effective October 8, 1982 (Supp. 82-5). R19-1-226 recodified from R4-15-226 (Supp. 95-1). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-226 recodified to R19-1-223; new Section R19-1-226 recodified from R19-1-245 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was repealed by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-227. Repealed**Historical Note**

Former Rule 27; Former Section R4-15-46 renumbered as Section R4-15-227 without change effective October 8, 1982 (Supp. 82-5). R19-1-227 recodified from R4-15-227 (Supp. 95-1). Repealed effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). New Section R19-1-227 recodified from R19-1-254 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-228. Renumbered**Historical Note**

Former Rule 28; Former Section R4-15-47 renumbered as Section R4-15-228 without change effective October 8, 1982 (Supp. 82-5). R19-1-228 recodified from R4-15-228 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-228 recodified to R19-1-212; new Section R19-1-228 recodified from R19-1-250 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section renumbered to R19-1-112 by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-229. Repealed**Historical Note**

Former Rule 29; Former Section R4-15-48 renumbered as Section R4-15-229 without change effective October 8, 1982 (Supp. 82-5). R19-1-229 recodified from R4-15-229 (Supp. 95-1). Former Section R19-1-229 recodified to R19-1-220; new Section R19-1-229 recodified from R19-1-247 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

R19-1-230. Repealed**Historical Note**

Former Rule 30; Former Section R4-15-49 renumbered as Section R4-15-230 without change effective October 8, 1982 (Supp. 82-5). R19-1-230 recodified from R4-15-230 (Supp. 95-1). Repealed effective June 4, 1997, under an exemption from certain provisions of the Administra-

tive Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). New Section R19-1-230 recodified from R19-1-241 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-231. Repealed**Historical Note**

Former Rule 31; Former Section R4-15-50 renumbered as Section R4-15-231 without change effective October 8, 1982 (Supp. 82-5). R19-1-231 recodified from R4-15-231 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-231 recodified to R19-1-208; new Section R19-1-231 recodified from R19-1-246 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was repealed by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-232. Repealed**Historical Note**

Former Rule 32; Former Section R4-15-51 renumbered as Section R4-15-232 without change effective October 8, 1982 (Supp. 82-5). R19-1-232 recodified from R4-15-231 (Supp. 95-1). Repealed effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). New Section R19-1-232 recodified from R19-1-209 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-233. Repealed**Historical Note**

Former Rule 33; Former Section R4-15-52 renumbered as Section R4-15-233 without change effective October 8, 1982 (Supp. 82-5). R19-1-233 recodified from R4-15-233 (Supp. 95-1). Amended effective September 14,

1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-233 recodified to R19-1-311; new Section R19-1-233 recodified from R19-1-305 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was repealed by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-234. Repealed

Historical Note

Former Rule 34; Former Section R4-15-53 renumbered as Section R4-15-234 without change effective October 8, 1982 (Supp. 82-5). R19-1-234 recodified from R4-15-234 (Supp. 95-1). Repealed effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). New Section R19-1-234 recodified from R19-1-213 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-235. Repealed

Historical Note

Former Rule 35; Former Section R4-15-54 renumbered as Section R4-15-235 without change effective October 8, 1982 (Supp. 82-5). R19-1-235 recodified from R4-15-235 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Former Section R19-1-235 recodified to R19-1-213; new Section R19-1-235 recodified from R19-1-214 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-236. Recodified

Historical Note

Former Rule 36; Former Section R4-15-55 renumbered

as Section R4-15-236 without change effective October 8, 1982 (Supp. 82-5).* R19-1-236 recodified from R4-15-236 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Section R19-1-236 recodified to R19-1-214 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-237. Recodified

Historical Note

Former Rule 37; Former Section R4-15-56 renumbered as Section R4-15-237 without change effective October 8, 1982 (Supp. 82-5). R19-1-237 recodified from R4-15-237 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Section R19-1-237 recodified to R19-1-215 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was repealed by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-238. Repealed

Historical Note

Former Rule 38; Former Section R4-15-57 renumbered as Section R4-15-238 without change effective October 8, 1982 (Supp. 82-5). R19-1-238 recodified from R4-15-238 (Supp. 95-1). Repealed effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-239. Recodified

Historical Note

Former Section R4-15-58 renumbered as Section R4-15-239 without change effective October 8, 1982 (Supp. 82-5). R19-1-239 recodified from R4-15-239 (Supp. 95-1).

Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4).

Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section R19-1-239 recodified to R19-1-302 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: *The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act. Exemption from this Act means that the rule was not reviewed by the Governor's Regulatory Review Council; the rule not submitted to the Secretary of State's Office for publication as a proposed rule in the Arizona Administrative Register; the public did not have an opportunity to comment on the rule; and the rule was not certified by the Attorney General.*

R19-1-240. Recodified

Historical Note

Adopted effective October 11, 1977 (Supp. 77-5). Repealed effective January 5, 1979 (Supp. 79-1). Former Section R4-15-59 renumbered as Section R4-15-240 effective October 8, 1982 (Supp. 82-5). Amended effective August 3, 1994, under an exemption from the Administrative Procedure Act (Supp. 94-3). R19-1-240 recodified from R4-15-240 (Supp. 95-1). Section R19-1-240 recodified to R19-1-310 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: *The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was amended by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.*

R19-1-241. Recodified

Historical Note

Adopted effective October 8, 1982 (Supp. 82-5). R19-1-241 recodified from R4-15-241 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Section R19-1-241 recodified to R19-1-230 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: *The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).*

Editor's Note: *Previous amendments were made under a different exemption (Supp. 96-4).*

R19-1-242. Recodified

Historical Note

Adopted effective April 9, 1979; Amended effective April 10, 1979 (Supp. 79-2). Former Section R4-15-61

renumbered as Section R4-15-242 without change effective October 8, 1982 (Supp. 82-5). R19-1-242 recodified from R4-15-242 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section R19-1-242 recodified to R19-1-303 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: *The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).*

Editor's Note: *Previous amendments were made under a different exemption (Supp. 96-4).*

R19-1-243. Recodified

Historical Note

Adopted effective Aug. 2, 1982 (Supp. 82-4). Former Section R4-15-62 renumbered as Section R4-15-243 without change effective October 8, 1982 (Supp. 82-5). Correction, (A)(3)(a) (Supp. 83-3). R19-1-243 recodified from R4-15-243 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section R19-1-243 recodified to R19-1-308 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: *The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).*

Editor's Note: *Previous amendments were made under a different exemption (Supp. 96-4).*

R19-1-244. Recodified

Historical Note

Adopted effective March 31, 1981 (Supp. 81-2). Former Section R4-15-63 renumbered as Section R4-15-2 without change effective October 9, 1982 (Supp. 82-5). R19-1-244 recodified from R4-15-244 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws

1996, Ch. 307, § 18 (Supp. 97-2). Section R19-1-244 recodified to R19-1-309 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-245. Recodified

Historical Note

Adopted effective January 29, 1982 (Supp. 82-1). Former Section R4-15-64 renumbered and amended subsection (A), paragraph (1) effective October 8, 1982 (Supp. 82-5). Correction, (A)(1) and (4) (Supp. 83-3). R19-1-245 recodified from R4-15-245 (Supp. 95-1). Amended effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section R19-1-245 recodified to R19-1-226 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was repealed and a new Section adopted under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was repealed and a new Section adopted by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-246. Recodified

Historical Note

Adopted as an emergency effective Feb. 8, 1985 pursuant to A.R.S. SS 41-1003, valid for only 90 days (Supp. 85-1). Emergency expired. Adopted as a permanent rule effective Aug. 6, 1985 (Supp. 85-4). R19-1-246 recodified from R4-15-246 (Supp. 95-1). Section repealed, new Section adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Section R19-1-246 recodified to R19-1-231 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was adopted under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was adopted by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-247. Recodified

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Section R19-1-247 recodified to R19-1-229 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was adopted under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was adopted by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.

R19-1-248. Recodified

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Section R19-1-248 recodified to R19-1-217 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: The following Section was repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-249. Repealed

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Repealed effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2).

Editor's Note: The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).

Editor's Note: Previous amendments were made under a different exemption (Supp. 96-4).

R19-1-250. Recodified

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the

Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Amended by exempt rulemaking at 7 A.A.R. 5252, effective November 2, 2001 (Supp. 01-4). Section R19-1-250 recodified to R19-1-228 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: *The following Section was repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).*

Editor's Note: *Adoption was made under a different exemption (Supp. 96-4).*

R19-1-251. Repealed

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4).

Repealed effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2).

Editor's Note: *The following Section was amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).*

Editor's Note: *Adoption was made under a different exemption (Supp. 96-4).*

R19-1-252. Recodified

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4).

Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section R19-1-252 recodified to R19-1-313 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: *The following Section was adopted under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was adopted by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.*

R19-1-253. Recodified

Historical Note

Adopted effective September 14, 1990, under an exemp-

tion from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Section R19-1-253 recodified to R19-1-205 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: *The following Section was adopted under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was adopted by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.*

R19-1-254. Recodified

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Section R19-1-254 recodified to R19-1-227 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: *The following Section was adopted under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1989, Ch. 234, § 22. The Office of the Secretary of State was not allowed by law to file or publish exempt rules when the Section was adopted by the Department. The Department has now filed this Section with the Office of the Secretary of State as required pursuant to Laws 1996, Ch. 307, § 19.*

R19-1-255. Recodified

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Section R19-1-255 recodified to R19-1-216 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

Editor's Note: *The following Section was amended and then repealed under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1996, Ch. 307 § 18. Although exempt from certain provisions of the rulemaking process, the Department was required to provide for reasonable notice and hearing. This Section was not reviewed by the Governor's Regulatory Review Council; and the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register (Supp. 97-2).*

Editor's Note: *Adoption was made under a different exemption (Supp. 96-4)*

R19-1-256. Repealed

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997; repealed effective June 10, 1997. Both actions were exempt from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2).

Editor's Note: *The following Section was adopted under an exemption from the provisions of the Arizona Administrative Pro-*

cedure Act. Exemption from this Act means that the rule was not reviewed by the Governor's Review Council; the rule was not submitted to the Secretary of State's Office for publication as a proposed rule in the Arizona Administrative Register; the public did not have an opportunity to comment on the rule; and the rule was not certified by the Attorney General.

R19-1-257. Recodified

Historical Note

Adopted effective August 3, 1994, under an exemption from the Administrative Procedure Act (Supp. 94-3). R19-1-257 recodified from R4-15-257 (Supp. 95-1). Section R19-1-257 recodified to R19-1-304 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

ARTICLE 3. LICENSEE RESPONSIBILITIES

R19-1-301. Recodified

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997; amended again effective June 10, 1997. Both amendments were exempt from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Section R19-1-301 recodified to R19-1-201 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2).

R19-1-302. Knowledge of Liquor Law; Responsibility

- A.** A licensee shall take reasonable steps to ensure the following individuals acquire knowledge of A.R.S. Title 4 and this Chapter:
1. The licensee;
 2. The manager;
 3. Any employee who serves, sells, or furnishes spirituous liquor to a retail customer; and
 4. Any individual who will be physically present and operating the licensed premises.
- B.** This Section is authorized by A.R.S. § 4-112(G)(2).

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-302 recodified to R19-1-315; new Section R19-1-302 recodified from R19-1-239 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 20 A.A.R. 1207, effective July 6, 2014 (Supp. 14-2).

R19-1-303. Authorized Spirituous Liquor

- A.** A licensee shall not directly or indirectly manufacture, sell, or deal in spirituous liquor in Arizona other than the spirituous liquors authorized by the license issued to the licensee under A.R.S. Title 4 and this Chapter.
- B.** A licensee shall ensure that no spirituous liquor other than the spirituous liquors authorized by the license issued to the licensee under A.R.S. Title 4 and this Chapter is on the licensed premises for any purpose.
- C.** This Section is authorized by A.R.S. § 4-203(B)(1).

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Repealed effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Adopted by final rulemaking at 5 A.A.R. 386, effective January 8, 1999 (Supp. 99-1). Former Section R19-1-303 recodified to R19-1-317; new Section R19-1-303 recodified from R19-1-242 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-304. Storing Spirituous Liquor on Unlicensed Premises

- A.** Except as provided in subsection (B), a licensee shall not accept delivery of or store spirituous liquor at any premises other than the business premises described on the license issued to the licensee under A.R.S. Title 4 and this Chapter.
- B.** The Department shall authorize a licensee to accept delivery of or store spirituous liquor at a premises other than the business premises described on the license issued to the licensee under A.R.S. Title 4 and this Chapter if:
1. The licensee submits a written request to the Department that:
 - a. Identifies the unlicensed premises,
 - b. Provides a diagram that shows the geographical location of the unlicensed premises in relation to the business premises, and
 - c. Explains how the licensee will safeguard the spirituous liquor at the unlicensed premises; and
 2. The Department determines that the licensee will safeguard the spirituous liquor at the unlicensed premises in a manner that protects the public health, safety, and welfare and that authorizing the licensee to store spirituous liquor at the unlicensed premises is consistent with the best interest of the state.
- C.** A licensee granted authorization under subsection (B) shall provide evidence of the authorization to a wholesaler before asking the wholesaler to make delivery of spirituous liquor at the unlicensed premises.
- D.** This Section is authorized by A.R.S. § 4-203(B).

Historical Note

Adopted effective September 14, 1990, under an exemption from the Administrative Procedure Act pursuant to Laws 1989, Ch. 234, § 22; filed with the Office of the Secretary of State October 25, 1996 (Supp. 96-4). Amended effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Former Section R19-1-304 recodified to R19-1-316; new Section R19-1-304 recodified from R19-1-257 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-305. Paying Taxes Required

- A.** The Director shall not issue an interim permit on a quota license if the Director has notice that the quota-license licensee is delinquent in paying any tax to the state or a political subdivision unless:

1. The licensee or transferee enters into an agreement with the taxing authority to pay the delinquent tax; and
2. The taxing authority submits written verification of the agreement to the Director.

- B.** This Section is authorized by A.R.S. §§ 4-112(B)(1)(c), 4-205.04(E), and 4-210(A)(5).

Historical Note

Adopted effective June 4, 1997, under an exemption from certain provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 307, § 18 (Supp. 97-2). Amended effective November 24, 1998, under an exemption from provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 259, § 23 (Supp. 98-4). Former Section R19-1-305 recodified to R19-1-233; new Section R19-1-305 recodified from R19-1-218 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-306. Bottle Labeling Requirements

- A.** A licensee and any officer, director, agent, or employee of the licensee shall not directly or indirectly or through an affiliate sell, ship, deliver for sale or shipment, or receive or remove from federal custody any bottled spirituous liquor unless the spirituous liquor is bottled, packaged, and labeled in conformity with all federal requirements.
- B.** This Section is authorized by A.R.S. § 4-112(B)(1)(a).

Historical Note

New Section R19-1-306 recodified from R19-1-219 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-307. Bottle Reuse or Refilling Prohibited

- A.** Except as authorized under A.R.S. § 4-244(32), a retail licensee shall ensure that a bottle or other container authorized by law for packaging spirituous liquor:
1. Is not reused to package spirituous liquor after the spirituous liquor originally packaged in the bottle or other container is removed from the bottle or other container, and
 2. Bears a label that accurately indicates the kind and brand of spirituous liquor in the bottle or other container.
- B.** Except as authorized under A.R.S. § 4-244(32) and (45), a retail licensee shall ensure that no substance is added to a bottle or other container authorized by law for packaging spirituous liquor that has the effect of increasing the amount of liquid originally packaged or remaining in the bottle or other container.
- C.** This Section is authorized by A.R.S. § 4-244(21), (32), and (45).

Historical Note

New Section R19-1-307 recodified from R19-1-225 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-308. Age Requirement for Erotic Entertainers

- A.** A licensee shall ensure that an individual employed by or performing as an erotic entertainer at the licensed premises is at least 19 years old.

- B.** This Section is authorized by A.R.S. § 4-112(G)(6).

Historical Note

New Section R19-1-308 recodified from R19-1-243 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-309. Prohibited Acts

- A.** A licensee or an employee of a business shall take reasonable steps to ensure that an individual on the licensed premises, including an employee or independent contractor of the licensed premises, does not:
1. Expose any portion of the individual's anus, vulva, or genitals;
 2. Grope, caress, or fondle or cause to be groped, caressed, or fondled the breasts, anus, vulva, or genitals of another individual with any part of the body; or
 3. Perform an act of sexual intercourse, masturbation, sodomy, bestiality, or oral copulation.
- B.** This Section is authorized by A.R.S. § 4-112(B)(1)(b).

Historical Note

New Section R19-1-309 recodified from R19-1-244 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-310. Prohibited Films and Pictures

- A.** A licensee shall ensure that a film, slide picture, or other reproduction is not shown on the licensed premises if the film, slide picture, or other reproduction depicts:
1. An act of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, or a sexual act prohibited by law;
 2. An individual being touched, caressed, or fondled on the breast, anus, vulva, or genitals;
 3. An individual displaying a portion of the individual's pubic hair, anus, vulva, or genitals; or
 4. Use of an artificial device or inanimate object to depict an activity described under subsections (1) through (3).
- B.** This Section is authorized by A.R.S. § 4-112(B)(1)(b).

Historical Note

New Section R19-1-310 recodified from R19-1-240 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-311. Repealed

Historical Note

New Section R19-1-311 recodified from R19-1-233 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

R19-1-312. Accurate Labeling of Dispensing Equipment Required

- A.** A licensee shall ensure that equipment through which spirituous liquor is dispensed is accurately labeled with the brand, grade, or class of spirituous liquor, including wine and beer, dispensed and that nothing on the equipment label directly or indirectly misleads the public regarding the spirituous liquor dispensed, sold, or used.

- B.** Except as provided in subsection (C), a licensee shall ensure that a faucet, spigot, or other outlet from which spirituous liquor is dispensed is clearly and conspicuously labeled with the name or brand adopted by the manufacturer of the spirituous liquor being dispensed.
- C.** If a faucet, spigot, or other outlet from which spirituous liquor is dispensed is not located in the area in which the spirituous liquor is served, a licensee shall post a notice in the area in which the spirituous liquor is served that lists the names or brands adopted by the manufacturers of only the spirituous liquors served.
- D.** This Section is authorized by A.R.S. § 4-243.

Historical Note

New Section R19-1-312 recodified from R19-1-223 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-313. Repealed**Historical Note**

New Section R19-1-313 recodified from R19-1-252 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2).

R19-1-314. Prohibited Inducement to Purchase or Consume Spirituous Liquor

- A.** Except as specified in subsection (B), an on-sale retailer shall not offer or furnish to a customer an inducement such as a gift, prize, coupon, premium, or rebate, including assumption of an excise or transaction privilege tax, if receipt of the inducement is contingent on the purchase or consumption of spirituous liquor.
- B.** A bar or beer and wine bar licensee may offer or furnish a coupon to a customer if the coupon can be used only for an off-sale purchase.
- C.** An on-sale retailer may furnish to a customer an advertising novelty of nominal value or a service that is a customary trade practice if receipt of the novelty or service is not contingent on the purchase or consumption of spirituous liquor.
- D.** This Section is authorized by A.R.S. § 4-112(B)(1).

Historical Note

New Section R19-1-314 recodified from R19-1-201 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 1784, effective January 31, 2006 (Supp. 06-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-315. Responsibilities of a Licensee that Operates a Delivery Service

- A.** A licensed retailer that operates a delivery service under A.R.S. § 4-203(J) or a licensed domestic farm winery that delivers wine under A.R.S. § 4-205.04(C)(9) shall ensure that delivery of spirituous liquor:
1. Is made only to an individual who is at least 21 years old,
 2. Is made only after an inspection of identification shows that the individual accepting delivery of the spirituous liquor is of legal drinking age,
 3. Is made only during the hours of lawful service of spirituous liquor,
 4. Is not made to an intoxicated or disorderly individual, and
 5. Is not made to the licensed premises of a licensed retailer.

- B.** A licensed retailer that operates a delivery service under A.R.S. § 4-203(J) or a licensed domestic farm winery that delivers wine under A.R.S. § 4-205.04(C)(9) shall refuse to complete a delivery if the licensee believes the delivery may constitute a violation of A.R.S. Title 4 or this Chapter.
- C.** This Section is authorized by A.R.S. §§ 4-112(B)(1)(d), 4-203(J) and (M), and 4-205.04(C)(9) and (D).

Historical Note

New Section R19-1-315 recodified from R19-1-302 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section renumbered to R19-1-113, new Section R19-1-315 made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-316. Responsibilities of a Liquor Store or Beer and Wine Store Licensee

- A.** Except for a broken package, as defined at A.R.S. § 4-101, used in sampling conducted under A.R.S. § 4-206.01(J), 4-243(B)(3) or 4-244.04, a liquor store or beer and wine store licensee shall not have a broken package of spirituous liquor on the licensed premises.
- B.** This Section is authorized by A.R.S. § 4-244(19).

Historical Note

New Section R19-1-316 recodified from R19-1-304 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-317. Responsibilities of a Hotel-Motel or Restaurant Licensee

- A.** If a hotel-motel or restaurant licensee ceases to provide complete restaurant services before 10:00 p.m., the licensee shall cease to sell spirituous liquor at the same time that the licensee ceases to provide complete restaurant services.
- B.** If a hotel-motel or restaurant licensee provides complete restaurant services until at least 10:00 p.m., the licensee may continue to sell spirituous liquor during the hours allowed by law.
- C.** If a hotel-motel or restaurant licensee refuses to serve a meal requested before 10:00 p.m. and continues to serve spirituous liquor, the Department shall assume that the hotel-motel or restaurant licensee has ceased to operate as a restaurant and has the primary purpose of selling or dispensing spirituous liquor for consumption.
- D.** In the event of an audit to determine whether a hotel-motel or restaurant licensee meets the standard at A.R.S. § 4-205.02(H), the licensee shall submit records that enable the Department to determine the amount of gross revenue that the licensee derives from the sale of food and from the sale of spirituous liquor. If the Department is unable to determine the amount of gross revenue attributed to the sale of food, the Department shall assume that the licensee does not meet the standard at A.R.S. § 4-205.02(H).
- E.** To ensure that the Department is able to determine the amount of gross revenue derived from the sale of food and from the sale of spirituous liquor, a hotel-motel or restaurant licensee shall maintain the majority of the following documents in the following order for the time specified in R19-1-501:
1. Vendor invoices. Sorted by vendor by year;
 2. Inventory records; financial statements; general ledger; sales journals or schedules; cash receipts or disbursement journals; and bank statements. Sorted by month by year;

3. Daily sales report, guest checks, and cash register journal. Segregated by the sale of food and the sale of spirituous liquor and sorted by day by month by year;
 4. Bank deposit slips. Sorted by day by month by year and maintained with the daily sales report, guest checks, and cash register journal;
 5. Transaction privilege tax returns. Sorted by month by year;
 6. Income tax returns. Sorted by year; and
 7. Payroll records. Sorted by pay period by year.
- F.** If a licensee holds multiple licenses for business premises, one of which is for a hotel-motel or restaurant, the licensee shall ensure that records for purchases and sales for the hotel-motel or restaurant are maintained and accounted for separate from records for purchases and sales for the other license on the same premises.
- G.** This Section is authorized by A.R.S. §§ 4-205.01 and 4-205.02.

Historical Note

New Section R19-1-317 recodified from R19-1-303 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Section repealed by final rulemaking at 19 A.A.R. 1355, effective July 6, 2013 (Supp. 13-2). New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-318. Responsibilities of a Special Event Licensee

- A.** If a special event occurs at an otherwise unlicensed location, the special event licensee shall conduct all dispensing, serving, and selling of spirituous liquor;
- B.** If a special event occurs at the licensed premises of a licensed retailer, the special event licensee shall ensure that one of the following occurs during the special event:
1. The licensed retailer places the license in non-use status and ceases to sell spirituous liquor and the special event licensee dispenses and serves spirituous liquor and ensures that all sales of spirituous liquor comply with A.R.S. Title 4 and this Chapter;
 2. The licensed retailer dispenses and serves all spirituous liquor under the licensed retailer's license and the special event licensee does not dispense or serve spirituous liquor. The licensed retailer shall dispense and serve only spirituous liquor purchased from a wholesaler and ensure that all sales of spirituous liquor comply with A.R.S. Title 4 and this Chapter;
 3. The licensed retailer dispenses and serves all spirituous liquor under the special event license and the special event licensee does not dispense or serve spirituous liquor. The licensed retailer shall dispense and serve only spirituous liquor purchased by or donated to the special event licensee. Both the licensed retailer and special event licensee shall ensure that all sales of spirituous liquor comply with A.R.S. Title 4 and this Chapter; or
 4. The licensed premises of the licensed retailer are divided into two areas as follows:
 - a. In the first area, the licensed retailer shall dispense and serve spirituous liquor that is purchased from a wholesaler and ensure that all sales of spirituous liquor comply with A.R.S. Title 4 and this Chapter; and
 - b. In the second area, the special event licensee shall dispense and serve spirituous liquor purchased by or donated to the special event licensee and ensure that all sales of spirituous liquor comply with A.R.S. Title 4 and this Chapter.
- C.** If a special event involving sampling of spirituous liquor occurs at the licensed premises of a licensed retailer, the special event licensee shall comply with the procedures in A.R.S. § 4-243(B).
- D.** This Section is authorized by A.R.S. §§ 4-112(B)(1)(b) and 4-203.02(E).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-319. Commercial Coercion or Bribery Prohibited

- A.** A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler shall not directly or indirectly or through an affiliate engage in any of the following activities unless specifically authorized under A.R.S. Title 4 or this Chapter:
1. Furnishing, giving, renting, lending, or selling to a licensed retailer an article of primary utilitarian value in the conduct of the business;
 2. Selling food or food products to a licensed retailer at less than the cost that the producer or wholesaler paid for the food or food products;
 3. Selling non-alcoholic malt beverage, non-alcoholic wine, or other non-alcoholic beverage or cocktail mixer to a licensed retailer at less than the cost that the producer or wholesaler paid for the non-alcoholic malt beverage, non-alcoholic wine, or cocktail mixer.
 4. Extending credit or furnishing financing to a licensed retailer through the licensed retailer's purchase of spirituous liquor or other products;
 5. Providing a service to a licensed retailer, including stocking, resetting, or pricing merchandise;
 6. Paying or crediting a licensed retailer for a promotion, advertising, display, public relations effort, or distribution service;
 7. Sharing with a licensed retailer the cost of a promotion or advertising through any medium;
 8. Guaranteeing a loan to or repayment of a financial obligation of a licensed retailer;
 9. Providing financial assistance to a licensed retailer;
 10. Engaging in a practice that requires a licensed retailer to take and dispose of a quota of spirituous liquor;
 11. Offering or giving a meal, local ground transportation, or event ticket to a licensed retailer unless the item is deductible as a business entertainment expense under the Internal Revenue Code;
 12. Offering a product to an on-sale licensee at a price not available to all on-sale licensees. A price based on the volume delivered within a 24-hour period is permitted if the volume-based price is available to all on-sale licensees; or
 13. Offering a product to an off-sale licensee at a price not available to all off-sale licensees. A price based on the volume delivered within a 24-hour period is permitted if the volume-based price is available to all off-sale licensees.
- B.** A licensed retailer shall not require that a producer or wholesaler provide stocking or resetting services as a condition for being allocated shelf, cold box, or product display space.
- C.** A licensed retailer shall not solicit from a distiller, vintner, brewer, rectified, blender, or other producer or wholesaler any activity outlined in subsections (A)(1) through (A)(13) unless specifically authorized under A.R.S. Title 4 or this Chapter.
- D.** This Section is authorized by A.R.S. § 4-243(A).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-320. Practices Permitted by a Producer or Wholesaler

- A.** In addition to practices specifically authorized under A.R.S. Title 4 and 27 CFR, Chapter 1, Subchapter A, the practices outlined in subsections (B) through (Q) allow a distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler to furnish something of value to a licensed retailer or other specified licensee as long as the producer or wholesaler does not furnish something of value to induce the licensed retailer or other specified licensee to purchase spirituous liquor from the producer or wholesaler to the exclusion, in whole or in part, of another producer or wholesaler. A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler shall not furnish something of value to a licensed retailer or other specified licensee unless specifically authorized under A.R.S. Title 4, 27 CFR, Chapter 1, Subchapter A, or this Chapter. If there is a conflict between the practices authorized in 27 CFR, Chapter 1, Subsection A and this Chapter, this Chapter governs.
- B.** A licensed retailer shall not solicit or knowingly accept from a distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler any activity not outlined in subsections (C) through (Q) unless the activity is specifically authorized under A.R.S. Title 4 or this Chapter.
- C.** Participating in a special event.
1. A producer or wholesaler may furnish advertising, sponsorship, services, or other things of value at a special event at which spirituous liquor is sold if:
 - a. A special event license is issued for the special event. A producer or wholesaler shall not pay for advertising, sponsorship, services, or other things of value until the wholesaler or producer confirms that a special event application has been submitted for approval under A.R.S. § 4-203.02;
 - b. The special event license is issued to a charitable, civic, religious, or fraternal organization;
 - c. The special event license is not issued to a political committee or organization;
 - d. The producer or wholesaler ensures that nothing of value given to a licensed retailer or employees of a licensed retailer during or after the special event is left on the licensed premises of a licensed retailer except that the wholesaler may leave items of value with the licensed retailer or at the licensed premises if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D); and
 - e. The producer or wholesaler pays financial sponsorship, if any, to the organization to which the special event license is issued.
 2. A producer or wholesaler may donate spirituous liquor to a special event licensee identified under subsection (C)(1)(b).
 3. A producer or wholesaler may dispense spirituous liquor donated by the producer or wholesaler at a special event.
 4. A producer or wholesaler may provide a sign to a special event licensee identified under subsection (C)(1)(b). If the producer or wholesaler provides a sign to a special event licensee, the sign is not subject to R19-1-313.
 5. A producer or wholesaler may furnish a vehicle for use by a special event licensee identified under subsection (C)(1)(b). The producer or wholesaler shall ensure the vehicle is used to dispense spirituous liquor only during the days of the special event.
- D.** Providing an item of value to a customer of a licensed retailer. A producer or wholesaler or its employee or independent contractor may provide an item of value to a customer of a licensed retailer if:
1. The item is provided directly to the customer of the licensed retailer by the producer or wholesaler or an employee or independent contractor of the producer or wholesaler except that a schedule of sporting events, as defined in subsection (F), may be provided to the customer through the licensed retailer;
 2. The item provided has a value less than \$5 and bears advertising about the producer, wholesaler, or spirituous liquor available from the producer or wholesaler. The producer or wholesaler may provide an unlimited number of items;
 3. The item provided has a value more than \$5 and bears advertising about the producer, wholesaler, or spirituous liquor available from the producer or wholesaler. The producer or wholesaler shall ensure that the total value of all items provided does not exceed \$100 during any 6:00 a.m. to 2:00 a.m. period per licensed premises; and
 4. The producer or wholesaler ensures that no item of value is provided to the licensed retailer or an employee of the licensed retailer or is left on the licensed premises.
- E.** Furnishing advertising. A producer or wholesaler may furnish advertising copy in the form of a digital file or camera- or internet-ready images of nominal value to a licensed retailer.
- F.** Sponsoring a sporting event. If the licensed premises of a licensed retailer has a permanent occupancy of more than 1,000 people and is used primarily for live sporting events, a producer or wholesaler may sponsor and provide advertising to the licensed retailer in conjunction with a live sporting event or telecast of a sporting event at the licensed premises. If the producer or wholesaler provides a sign as part of the sponsorship of a sporting event, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure no item of value remains with the licensed retailer or at the licensed premises after the sporting event except that the wholesaler may leave items of value with the licensed retailer or at the licensed premises if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D). For the purpose of this subsection, live sporting event means an athletic competition governed by a set of rules or customs to which pre-sold tickets are made available to the public. For nationally recognized sporting events that are seasonal, including but not limited to baseball, football, basketball, soccer, and NASCAR, the conclusion of a live sporting event occurs when the season ends rather than after each individual event of the season. A golf tournament is not a live sporting event unless:
1. The golf tournament is regulated by a golf association; or
 2. The golf tournament is held for the benefit of an unlicensed organization and the sponsoring producer or wholesaler ensures that:
 - a. All sponsorship proceeds are provided to the unlicensed organization, and
 - b. Nothing of utilitarian value or other consideration is provided to a licensed retailer.
- G.** Sponsoring a concert. If the licensed premises of a licensed retailer has a permanent occupancy of more than 1,000 people and is used primarily as a concert or live sporting event venue, a producer or wholesaler may sponsor and provide advertising to the licensed retailer in conjunction with a concert at the licensed premises. For the purpose of this subsection, "concert" is a live event with pre-sold tickets for a musical, vocal, theatrical, or comedic performance at the licensed premises or a live musical, vocal, theatrical, or comedic performance at the

licensed premises that is not open to the public. If the producer or wholesaler provides a sign as part of the sponsorship of a concert, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure that no item of value remains with the licensed retailer or at the licensed premises after the conclusion of the concert event except that the wholesaler may leave items of value with the licensed retailer or at the licensed premises if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D).

- H.** Participating in a tradeshow or convention. A producer or wholesaler may provide for a licensee sampling, advertising, and event sponsorship to a trade association in conjunction with a tradeshow or convention if the trade association consists of five or more retail licensees that have no common ownership. If the producer or wholesaler provides a sign as part of the sponsorship of a tradeshow or convention, the sign is not subject to the value limitation or information content restrictions in R19-1-313. The producer or wholesaler shall ensure the sign is physically placed at the location where the tradeshow or convention is held. The producer or wholesaler shall remove the sign within one business day after the conclusion of the tradeshow or convention and ensure that no item of value remains with the licensed retailer after the conclusion of the tradeshow or convention event except that the wholesaler may leave items of value with the licensed retailer if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D).
- I.** Participating in an educational seminar. A producer or wholesaler may participate in an educational seminar for employees of a licensed retailer if:
1. The educational seminar occurs on the licensed premises of a producer, wholesaler, or retailer;
 2. Content of the educational seminar is substantially related to spirituous liquor available from the producer or wholesaler;
 3. Lodging and transportation expenses incurred by employees of the licensed retailer or the licensed retailer to attend the educational seminar are not paid or reimbursed by the producer or wholesaler. The producer or wholesaler may provide a meal and snacks of nominal value to participants in the education seminar;
 4. The retailer's expenses associated with organizing, producing, or hosting the educational seminar are not paid or reimbursed by the producer or wholesaler; and
 5. No item of value remains with the licensed retailer after the conclusion of the educational seminar event except that the wholesaler may leave items of value with the licensed retailer if the retailer is an on-sale retailer and leaving the items of value complies with the restrictions at A.R.S. § 4-243(D).
- J.** Furnishing a printed menu. A producer or wholesaler may furnish a printed menu for use by a retailer if:
1. All printed menus furnished to the licensed retailer during a calendar year have a fair market value within the limit prescribed by A.R.S. § 4-243(D),
 2. A similar menu is made available to all retail accounts that use menus,
 3. The menu has no utilitarian value to the licensed retailer except as a menu, and
 4. The menu conspicuously bears the name of spirituous liquor available from the producer or wholesaler or the name of the producer or wholesaler.
- K.** Distributing coupons or rebates. A producer or wholesaler may distribute coupons or rebates to consumers by any means including providing the coupons or rebates to a licensed retailer if the coupons or rebates:
1. Can be used only for an off-sale purchase by the consumer from a licensed retailer,
 2. Do not specify a licensed retailer at which the coupons or rebates are required to be used, and
 3. Are available in approximately the same number of qualifying products the licensed retailer has available for customers if the coupons or rebates are ultimately redeemed by the licensed retailer.
- L.** Providing holiday decorations. A producer or wholesaler may lend decorations commonly associated with a specific holiday to a licensed retailer for use on the licensed premises if the decorations:
1. Bear advertising about a brand, producer, or wholesaler that is substantial, conspicuous, and permanently inscribed or securely affixed; and
 2. The decorations have no utilitarian value to the licensed retailer other than as decorations for a specific holiday.
- M.** Providing a sample to a customer of a licensed retailer. A producer or wholesaler may provide a sample of spirituous liquor to a customer of a licensed:
1. On-sale retailer without off-sale privileges if the producer or wholesaler complies with the procedures at A.R.S. § 4-243(B)(2)(b), which limit sampling to 12 ounces of beer or cooler product, six ounces of wine, or two ounces of distilled spirits per person, per brand to be consumed on the licensed premises;
 2. Off-sale retailer if the producer or wholesaler complies with the procedures at A.R.S. § 4-243(B)(3)(c), which limit sampling to three ounces of beer, one and one-half ounces of wine, or one ounce of distilled spirits per person, per day. If the sample provided is for off-sale consumption, the producer or wholesaler shall ensure the sample is in an unbroken package; or
 3. On-sale retailer with off-sale privileges if the producer or wholesaler complies with subsection (M)(1) when providing samples under the on-sale portion of the license and subsection (M)(2) when providing samples under the off-sale portion of the license.
- N.** Conducting market research. A producer or wholesaler may participate in market research regarding spirituous liquor under the following conditions:
1. The spirituous liquor is provided to research participants by personal delivery or through a delivery service provider;
 2. The spirituous liquor provided to research participants is obtained from or shipped through a wholesaler;
 3. All research participants are of legal drinking age;
 4. Any employee of the producer or wholesaler and any employee of a marketing research business conducting the market research that handles the spirituous liquor is at least 19 years old; and
 5. The amount of spirituous liquor provided to each research participant does not exceed 72 ounces of beer, cooler product, or wine or 750 milliliters of distilled spirits.
- O.** Providing a sample to a licensed retailer. A producer or wholesaler may provide a licensed retailer with a sample of a brand of spirituous liquor that the licensed retailer has not purchased for sale within the last 12 months if the sample does not exceed the following:
1. Wine. Three liters;
 2. Beer. Three gallons; and
 3. Distilled spirits. Three liters.
- P.** Providing a shelf plan or schematic. A producer or wholesaler may provide a recommended shelf plan or schematic for use

- by a licensed retailer in displaying spirituous liquor or other product in a point-of-sale area.
- Q.** Providing meals, beverages, event tickets, and local ground transportation. Except as provided under subsection (I), a producer or wholesaler may provide a licensed retailer with meals, beverages, event tickets, and local ground transportation if:
1. The producer or wholesaler accompanies the licensed retailer while meals and beverages are consumed and ground transportation is used; and
 2. The value of the meals, beverages, event tickets, and local ground transportation is deductible as a business entertainment expense under the Internal Revenue Code.
- R.** A producer or wholesaler that sells spirituous liquor to another producer or wholesaler is exempt from the credit prohibition in A.R.S. § 4-242.
- S.** Section is authorized by A.R.S. §§ 4-242, 4-243 and 4-244(3).
- Historical Note**
New Section made by final rulemaking at 20 A.A.R. 1207, effective July 6, 2014 (Supp. 14-2).
- R19-1-321. Practices Permitted by a Wholesaler**
- A.** In addition to practices specifically authorized under A.R.S. Title 4 and 27 CFR, Chapter 1, Subchapter A, the following practices allow a wholesaler to furnish something of value to a licensed retailer or other specified licensee as long as the wholesaler does not furnish something of value to induce the licensed retailer or other specified licensee to purchase spirituous liquor from the wholesaler to the exclusion, in whole or in part, of another wholesaler. A wholesaler shall not furnish something of value to a licensed retailer or other specified licensee unless specifically authorized under A.R.S. Title 4, 27 CFR, Chapter 1, Subchapter A, or this Chapter. If there is a conflict between the practices authorized in 27 CFR, Chapter 1, Subsection A and this Chapter, this Chapter governs.
- B.** A licensed retailer shall not solicit or knowingly accept from a wholesaler any activity not outlined in subsections (C) through (N) unless the activity is specifically authorized under A.R.S. Title 4 or this Chapter.
- C.** Providing stocking services. A wholesaler may stock any spirituous liquor or other product that the wholesaler sells to a licensed retailer. The stocking service provided by a wholesaler:
1. Shall not alter or disturb any spirituous liquor or other product of another wholesaler;
 2. Shall be performed at a point-of-sale area, including a cold box, from which a consumer may purchase spirituous liquor sold by the retailer. A wholesaler may move spirituous liquor to or from the following locations on the licensed premises:
 - a. A designated delivery entrance, and
 - b. A storage area; and
 3. May include:
 - a. Rotating, cleaning, or otherwise preparing the spirituous liquor or other product for sale at a point-of-sale area; and
 - b. Furnishing advertising materials displayed at a point-of-sale area as authorized under R19-1-313.
- D.** Providing resetting services. A wholesaler may reset spirituous liquor sold to a licensed retailer if requested by the licensed retailer and the resetting does not alter or disturb the product of another wholesaler. The resetting services provided by a wholesaler:
1. Shall be performed only in a point-of-sale area, including a cold box;
 2. Shall not be performed unless the retailer provides at least two working days' notice to any other wholesaler whose product needs to be affected so the resetting can be performed; and
 3. Shall not be performed more frequently than once per year if the resetting involves a substantial reconfiguration of the spirituous liquor department of a retailer.
- E.** Furnishing tapping equipment. A wholesaler may furnish tapping equipment under R19-1-326 to a retail licensee.
- F.** Making a driver sale. A wholesaler may sell to a licensed retailer, through a driver sale, at the current market price, spirituous liquor not previously ordered.
- G.** Delivering a specially discounted quantity purchase. A wholesaler may provide a licensed retailer with a specially discounted price for a quantity purchase if the wholesaler delivers the entire quantity purchased to an approved storage facility of the licensed retailer.
- H.** Accepting returned spirituous liquor products.
1. A wholesaler may allow a licensed retailer that intends to be closed for at least 30 days to exchange beer or other malt beverage products purchased from the wholesaler or to receive a credit for or refund of the amount paid for the malt beverage products;
 2. With permission from the Director, a wholesaler may allow a licensed retailer that is discontinuing sale of a particular beer or other malt beverage product to exchange the product purchased from the wholesaler or to receive a credit for or refund of the amount paid for the beer or other malt beverage product; and
 3. A wholesaler may exchange or accept return of other spirituous liquors as permitted under 27 U.S.C. 205(d) and 27 C.F.R. Subchapter A, Part 11.
- I.** Selling tobacco products or foodstuffs. A wholesaler may sell tobacco products or foodstuffs to a licensed retailer if the price paid by the retailer equals or exceeds the cost to the wholesaler.
- J.** Furnishing promotional items. A wholesaler may provide promotional items to an on-sale retailer. Promotional items, as defined and limited by A.R.S. § 4-243(D) does not include spirituous liquor.
- K.** Facilitating a special event. A wholesaler may facilitate a special event by:
1. Donating spirituous liquor directly to the special event licensee and issuing a net zero cost billing invoice in the name of the special event licensee,
 2. Leaving a delivery vehicle and other equipment necessary for the sale or service of spirituous liquor on the premises of the special event for the duration of the special event and up to one business day before and after the special event,
 3. Leaving spirituous liquor at the special event if:
 - a. The spirituous liquor is properly described on a preliminary billing invoice issued in the names of both the off-sale retailer from which the special event licensee is purchasing the spirituous liquor and the special event licensee,
 - b. The wholesaler issues a final billing invoice in the names of both the off-sale retailer from which the special event licensee is purchasing the spirituous liquor and the special event licensee within five business days after the special event ends, and
 - c. The spirituous liquor is stored securely to ensure only intended persons gain access to the spirituous liquor; and
 4. Selling spirituous liquor directly to the special event licensee at the same price the wholesaler sells the spirituous liquor.

ous liquor to on-sale retailers. If the wholesaler sells spirituous liquor directly to the special event licensee, both the preliminary and final billing invoices shall be in the name of the special event licensee.

- L.** Providing shelves, bins, or racks. A wholesaler may lend a shelf, bin, or rack to a licensed off-sale retailer if the following conditions are met:
1. The shelf, bin, or rack lent to the licensed off-sale retailer is located in a point-of-sale area.
 2. The shelf, bin, or rack lent to the licensed off-sale retailer does not have an actual cost of more than \$300 per brand, as defined at 27 C.F.R. Subchapter A, Section 6.11, at any one time in the licensed premises. The cost of the shelf, bin, or rack excludes the cost of transporting and installing the shelf, bin, or rack. The wholesaler shall not pool or combine dollar limitations to provide the licensed off-sale retailer with a shelf, bin, or rack that exceeds the dollar limitation in this subsection;
 3. The shelf, bin, or rack bears advertising regarding spirituous liquor available from the wholesaler that is conspicuous, substantial, and permanently inscribed or securely affixed. The name and address of the licensed off-sale retailer may appear on the shelf, bin, or rack;
 4. The primary function of the shelf, bin, or rack is to hold and display spirituous liquor available from the wholesaler;
 5. The spirituous liquor on the shelf, bin, or rack is only the spirituous liquor advertised on the shelf, bin, or rack by the wholesaler. The shelf, bin, or rack may also hold non-spirituous-liquor products that are being promoted or advertised with the spirituous liquor available from the wholesaler; and
 6. The shelf, bin, or rack is not temperature controlled.
- M.** Providing product display enhancers. A wholesaler may lend to a licensed off-sale retailer a non-functional copy or reproduction of an item that enhances the display of spirituous liquor sold from the display.
- N.** Providing staff assistance. A wholesaler may use its staff to provide a licensed retailer with assistance in performing the activities outlined in this Section. A wholesaler shall not maintain full-time staff or permanently occupy office space on the licensed premises or at the corporate office of a licensed retailer.
- O.** This Section is authorized by A.R.S. §§ 4-203.02(H) through (J) and 4-243.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1207, effective July 6, 2014 (Supp. 14-2).

R19-1-322. Responsibilities of a Registered Retail Agent

- A.** A retail agent registered under A.R.S. § 4-222 and R19-1-203 shall provide a licensee that enters into a cooperative-purchase agreement with the registered retail agent a copy of the cooperative-purchase agreement. The licensee shall make the copy of the cooperative-purchase agreement available for inspection on request by the Department or a peace officer.
- B.** A retail agent registered under A.R.S. § 4-222 and R19-1-203 shall:
1. Display the Certificate of Registration obtained from the Department on request by the Department, a peace officer, or a licensee;
 2. Place all cooperative-purchase orders with a wholesaler;
 3. Pay the wholesaler for all cooperative-purchase orders;
 4. Not attempt to exchange merchandise after it is delivered by the wholesaler but may request that a delivery error be

corrected if the error is recognized at the time of delivery and documented;

5. Provide each licensee under subsection (A) with a copy of the master invoice prepared by the wholesaler from which a cooperative purchase is made; and
 6. Charge each licensee under subsection (A) the price listed on the master invoice prepared by the wholesaler for spirituous liquor delivered to the licensee.
- C.** A retail agent registered under A.R.S. § 4-222 and R19-1-203 may charge a licensee with which the registered retail agent has a cooperative-purchase agreement a fee for services provided to the licensee.
- D.** This Section is authorized by A.R.S. § 4-222.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-323. Underage Individuals on Licensed Premises

- A.** An individual under the legal drinking age may be on the licensed premises of an on-sale retailer under the conditions established in A.R.S. § 4-244(22).
- B.** Additionally, an individual under the legal drinking age may be on the licensed premises of an on-sale retailer if:
1. The licensed premises have an occupancy limit of at least 1,000 as determined by the fire marshal;
 2. The primary purpose of the licensed premises is not to sell spirituous liquor but rather, to show live sporting events or concerts;
 3. The on-sale retailer ensures that spirituous liquor is sold only to individuals who are of the legal drinking age; and
 4. The on-sale retailer implements security measures necessary to ensure that an individual under the legal drinking age does not purchase, possess, or consume spirituous liquor on the licensed premises.
- C.** Additionally, an individual under the legal drinking age may be on the licensed premises of an on-sale retailer if:
1. The licensed premises have an occupancy limit less than 1,000 as determined by the fire marshal;
 2. The primary purpose of the licensed premises is not to sell spirituous liquor but rather, to show live sporting events or concerts; and
 3. The on-sale retailer establishes a physical barrier that prevents an underage individual from:
 - a. Entering a portion of the licensed premises where spirituous liquor is sold, possessed, or served; and
 - b. Receiving, purchasing, possessing, or consuming spirituous liquor in that portion of the licensed premises.
- D.** This Section is authorized by A.R.S. § 4-210(M) and 4-244(22).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-324. Standards for Exemption of an Unlicensed Business

- A.** The owner of a small restaurant or business establishment, business premises, or association hosting a private social function may act under A.R.S. § 4-244.05 if the owner of the small restaurant or business establishment, business premises, or association hosting a private social function:
1. Submits a Request for Exemption form, which is available from the Department and on its web site;
 2. Pays the inspection fee specified in R19-1-102(J); and
 3. Ensures that:

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- a. Possession or consumption of spirituous liquor on the business premises is permitted only as an incidental convenience to customers;
 - b. Possession or consumption of spirituous liquor on the business premises is limited as follows:
 - i. Small restaurant: between noon and 10:00 p.m.; and
 - ii. Business establishment, business premises, or association hosting a private social function: between 4:00 p.m. and 2:00 a.m.
 - c. A customer is allowed to possess or consume no more than:
 - i. Forty ounces of beer,
 - ii. Seven hundred fifty milliliters of wine, or
 - iii. Four ounces of distilled spirits;
 - d. The occupancy limitation of the small restaurant or business establishment, business premises, or association hosting a private social function does not exceed the following maximum:
 - i. Small restaurant: 50; and
 - ii. Business establishment, business premises, or association hosting a private social function: 300; and
 - e. The owner, manager, comptroller, controlling person, and any employee of the small restaurant or business establishment, business premises, or association hosting a private social function complies with all applicable provisions of A.R.S. Title 4 and this Chapter.
- B.** As provided under A.R.S. § 4-244.05 (J)(4), the Director, agent of the Director, or peace officer empowered to enforce A.R.S. Title 4 and this Chapter may visit and inspect a small restaurant, business establishment, business premises, or association operating under A.R.S. § 4-244.05 and this Section during business hours of the premises.
- C.** This Section is authorized by A.R.S. § 4-244.05.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1207, effective July 6, 2014 (Supp. 14-2).

R19-1-325. Display of Warning Sign Regarding Consumption of Alcohol; Posting Notice Regarding Firearms

- A.** As prescribed under A.R.S. § 4-261, a licensed retailer shall post one or more warning signs, which are available without charge from the Department, regarding consumption of alcohol during pregnancy.
- B.** An on-sale retailer that wishes to prohibit possession of a weapon on the licensed premises shall post the notice described in A.R.S. § 4-229, which is available without charge from the Department:
 - 1. In a conspicuous location accessible to the general public, and
 - 2. Immediately adjacent to the license posted as required under A.R.S. § 4-262 and R19-1-301.
- C.** This Section is authorized by A.R.S. §§ 4-229, 4-261 and 4-262.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-326. Tapping Equipment

- A.** A wholesaler may furnish, install, and maintain tapping equipment for a licensed retailer for use with all spirituous liquor. The wholesaler shall maintain ownership of the tapping equipment that is provided free.
- B.** A wholesaler that sells tapping equipment listed in subsection (C) to a licensed retailer shall maintain a written record of the name and address of the licensed retailer to which the tapping

equipment is sold, the equipment sold, and an invoice indicating payment was made. The wholesaler shall make these records available to the Department upon request.

- C.** A wholesaler may only sell the following items to a licensed retailer for cash at the market value for the items:
 1. CO2 or other dispensing gas,
 2. CO2 or other dispensing gas regulator,
 3. CO2 or other dispensing gas filter,
 4. Faucet or complete faucet standard,
 5. Shank or bent tube,
 6. Air distributor,
 7. Blower assembly,
 8. Switch;
 9. Drip pan,
 10. P.V.C. pipe;
 11. Sanitizing materials,
 12. Backflow device,
 13. Coupling gasket,
 14. Beer pump,
 15. Tower,
 16. Trunk line, and
 17. Another item necessary to prepare and maintain a tapping-equipment system in proper operating condition.
- D.** A wholesaler may replace at no charge to a licensed retailer the following items:
 1. Bonnet washer;
 2. Friction ring;
 3. Valve stem;
 4. Hardware, unions, clamps, air tees, and screws;
 5. Tapping devices, including tower heads; and
 6. Single air and beer lines.
- E.** A wholesaler may clean a tapping-equipment system for a licensed retailer at no charge to the licensed retailer.
- F.** This Section is authorized by A.R.S. § 4-243(A)(4).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-327. Domestic Farm Winery Sampling

- A.** A licensed domestic farm winery that conducts sampling of the product of the licensed domestic farm winery on the premises of an off-sale retailer or a retailer with off-sale privileges, as allowed by A.R.S. § 4-244.04, shall ensure that:
 1. No more than six ounces of the product of the licensed domestic farm winery is served to each consumer each day,
 2. An employee of the licensed domestic farm winery serves or supervises the serving of the product of the licensed domestic farm winery, and
 3. There is no violation of A.R.S. Title 4 or this Chapter.
- B.** As provided in A. R. S. § 4-205.04(C)(2), a licensed domestic farm winery may provide samples of the product of the licensed domestic farm winery on the premises of the domestic farm winery.
- C.** This Section is authorized by A.R.S. § 4-244.04.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Table A. Repealed**Historical Note**

Table adopted by final rulemaking at 5 A.A.R. 386, effective January 8, 1999 (Supp. 99-1). Table A recodified from a position after R19-1-305 to a position after R19-1-317 under A.R.S. § 41-1011 at 8 A.A.R. 2636, effective May 30, 2002 (Supp. 02-2). Table A repealed by final

rulemaking at 19 A.A.R. 1355, effective July 6, 2013
(Supp. 13-2).

ARTICLE 4. REQUIRED NOTICES TO DEPARTMENT

R19-1-401. Notice of License Surrender or Application Withdrawal

- A. A licensee that intends to surrender a license that is not a quota license or an applicant that intends to withdraw an application shall submit to the Department a file deactivation form prescribed by the Department.
- B. The Department shall deem a license surrendered if all of the following apply:
1. The licensed premises are vacant during normal operating hours for at least 30 consecutive days;
 2. The licensee fails to notify the Department of the licensee's intention to suspend the business authorized by the license, as required under A.R.S. § 4-203;
 3. The Department is unable to contact the licensee using information available in the Department's records; and
 4. The individual who informs the Department that the licensee has abandoned the license submits to the Department:
 - a. The license, if available; and
 - b. A signed and notarized statement indicating that to the best of the individual's knowledge, the licensed premises have been vacant during normal operating hours for at least 30 consecutive days and the licensee has abandoned the license and licensed premises.
- C. The Department shall deny surrender of a license if the Department determines that:
1. It has notice that the licensee is delinquent in paying taxes to the state or a political subdivision,
 2. A complaint is pending against the licensee alleging violation of A.R.S. Title 4 or this Chapter,
 3. Ownership of the license is contested,
 4. Civil proceedings involving the license are pending before any court, or
 5. A hearing is pending before the Board.
- D. This Section is authorized by A.R.S. §§ 4-203, 4-203.01, 4-205.02 and 4-210(I).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-402. Registered Retail Agent: Notice of Change in Cooperative-purchase Agreement; List of Cooperative Members

- A. As required under A.R.S. § 4-222(A), a retail agent registered under R19-1-203 shall provide written notice to the Department within 10 days after a licensee with whom the registered retail agent has a cooperative-purchase agreement terminates the registered retail agent's authority. The registered retail agent shall ensure that the notice identifies the licensee terminating the cooperative-purchase agreement and shall send a copy of the notice to all affected wholesalers.
- B. A retail agent registered under R19-1-203 shall submit to the Department a copy of a new cooperative purchase agreement between the registered retail agent and another licensee within 10 days after entering into the cooperative-purchase agreement.
- C. In addition to submitting a copy of each cooperative-purchase agreement to the Department, a retail agent registered under R19-1-203 shall submit to the Department a list that includes the following information regarding each licensee with which

the registered retail agent has a cooperative-purchase agreement:

1. Name of licensee,
 2. Address of licensed premises, and
 3. License numbers of each licensee with which the registered retail agent has a cooperative-purchase agreement.
- D. A registered retail agent shall report to the Department a change in any of the information submitted under subsection (C) within 10 days of the change.
- E. This Section is authorized by A.R.S. § 4-222.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-403. Hotel-Motel or Restaurant Licensee: Notice of Change to Restaurant Facility

- A. Under A.R.S. § 4-205.01(E) or 4-205.02(F), a hotel-motel or restaurant licensee that intends to alter the seating capacity or dimensions of a restaurant facility shall provide advance notice to the Department.
- B. To provide the notice required under subsection (A), a hotel-motel or restaurant licensee shall complete and submit to the Department the form prescribed by the Department.
- C. This Section is authorized by A.R.S. § 4-205.02(F).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-404. Notice of Sampling on a Licensed Off-sale Retail Premises

- A. A distiller, vintner, brewer, rectifier, blender, or other producer or wholesaler that intends to conduct a sampling under A.R.S. § 4-243(B)(3) or 4-244.04 on the licensed premises of a licensed off-sale retailer shall submit a Store Sampling Notice, which is a form available from the Department, to the Department at least 10 days before the sampling.
- B. This Section is authorized by A.R.S. §§ 4-243(B)(3)(b) and 4-244.04.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-405. Notice of Change in Status: Active or Nonuse

- A. A licensee that ceases to manufacture, sell, or deal in spirituous liquor for 30 consecutive days shall submit notice to the Department, on a form that is available from the Department.
- B. Except as provided in subsection (D), a licensee that puts a license on nonuse status by complying with subsection (A) may put the license on active status by submitting notice to the Department, on a form that is available from the Department.
- C. If a license is on nonuse status for more than five months, the licensee shall pay the surcharge prescribed at A.R.S. § 4-203(G) when the license is returned to active status by complying with subsection (B).
- D. Under A.R.S. § 4-203(G), if a license is on nonuse status for 36 months, the license automatically reverts to the state unless extended by the Director for good cause.
- E. This Section is authorized by A.R.S. § 4-203.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-406. Notice of Change in Manager

- A. As required under A.R.S. § 4-202(C), a licensee shall provide notice to the Department and file a manager's agreement within 30 days after a change in manager.

- B. If a licensee is designated as the manager, the licensee shall comply with subsection (A) when the licensee will be away from the licensed premises, while under normal operating conditions, for more than 30 days.
- C. This Section is authorized by A.R.S. § 4-202(C).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-407. Notice of Legal or Equitable Interest

- A. To enable the Department to fulfill its responsibility under A.R.S. § 4-112(B)(3), a person that has a legal or equitable interest in a license issued under A.R.S. Title 4 and this Chapter shall file with the Department a statement of the interest. A person filing a statement of legal or equitable interest shall use a form that is available from the Department.
- B. A person that has a legal or equitable interest in a license issued under A.R.S. Title 4 and this Chapter shall file with the Department an amended statement of the interest by complying with subsection (A) when:
 1. Any of the information provided in a previous statement of interest changes, or
 2. The person's legal or equitable interest terminates.
- C. To enable the Department to fulfill its responsibility under A.R.S. § 4-112(B)(3), the Department shall periodically request that the holders of a legal or equitable interest in a license verify in writing to the Director that the statement on file with the Department is correct and accurate. If the holder of a legal or equitable interest in a license fails to respond within 30 days to the Department's request for verification of interest, the Department shall deem the interest terminated.
- D. The Department shall provide notice to a person that files a statement of interest under subsection (A) when there is a disciplinary or compliance action or transfer affecting the license in which the person has an interest and shall allow the person to participate in any proceeding regarding the license.
- E. This Section is authorized by A.R.S. § 4-112(B)(3).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-408. Notice of Change in Business Name, Address, E-mail, or Telephone Number

- A. A licensee shall not change the name of the business as specified on the license issued by the Department without first providing notice, using a form that is available from the Department.
- B. The Department shall communicate with a licensee using the business name, U.S. Postal Service address on file with the Department, and e-mail, when provided. To ensure timely communication from the Department, a licensee shall provide the Department with current contact information for the licensee. When contact information for a licensee changes, the licensee shall submit a notice, using a form that is available from the Department.
- C. If the name or U.S. Postal Service address of a business changes and notice is provided under subsection (A) or (B), the Department shall issue a replacement license that reflects the current name and U.S. Postal Service address of the business.
- D. This Section is authorized by A.R.S. § 4-112(B)(1)(a).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

ARTICLE 5. REQUIRED RECORDS AND REPORTS

R19-1-501. General Recordkeeping

- A. A licensee may maintain any record required under A.R.S. Title 4 or this Chapter in electronic form so long as the licensee is readily able to access and produce a paper copy of the electronic record.
- B. A licensee shall maintain all invoices, records, bills, and other papers and documents relating to the purchase, sale, or delivery of spirituous alcohol for two years.
- C. A hotel-motel or restaurant licensee shall maintain all invoices, records, bills, and other papers and documents relating to the purchase, sale, or delivery of food in the manner specified in R19-1-317 for two years.
- D. A licensee shall make the invoices, records, bills, and other papers and documents maintained under subsections (B) and (C) available, upon request, to the Department for examination or audit. During an examination or audit and upon request, the licensee shall provide valid identification to the Department.
- E. This Section is authorized by A.R.S. §§ 4-210(A)(7), 4-119, and 4-241(K).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-502. On-sale Retail Personnel Records

- A. As required by A.R.S. § 4-119, an on-sale retail licensee shall maintain a record of every employee of the business that includes the following information about the employee:
 1. Full legal name,
 2. Residential address,
 3. Date of birth, and
 4. Description of the employee's responsibilities.
- B. A licensee shall maintain the records required under subsection (A) for two years after an individual ceases to be an employee of the business.
- C. A licensee shall make the records maintained under subsection (A) available, upon request, to the Department for examination.
- D. This Section is authorized by A.R.S. § 4-119.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-503. Records Regarding Cooperative Purchases

- A. A retail agent registered under A.R.S. § 4-222 and R19-1-203 shall maintain a copy of every cooperative-purchase agreement between the registered retail agent and another licensee for two years after termination of the cooperative-purchase agreement.
- B. A retail agent registered under A.R.S. § 4-222 and R19-1-203 shall maintain in accordance with R19-1-501:
 1. A copy of a cooperative purchase order placed with a wholesaler,
 2. A copy of a cooperative-purchase invoice provided by a wholesaler, and
 3. A record of the following regarding each cooperative member:
 - a. The kind and quantity of spirituous liquor ordered and delivered,
 - b. Monies received from the cooperative member, and
 - c. The date on and location at which spirituous liquor is delivered to the cooperative member.
- C. A wholesaler that fills a cooperative-purchase order submitted by a retail agent registered under A.R.S. § 4-222 and R19-1-203 shall prepare and provide to the registered retail agent a master invoice of the cooperative purchase that shows the spir-

ituous liquor purchased by each cooperative member and the amount of the discount provided for the cooperative purchase.

- D. This Section is authorized by A.R.S. § 4-222.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-504. Record of Delivery of Spirituous Liquor

- A. A retail licensee having off-sale privileges or licensed domestic farm winery that delivers spirituous liquor, as authorized by A.R.S. § 4-203(J) or 4-205.04(C)(9) and R19-1-315, shall complete a record of each delivery at the time of delivery. The licensee shall ensure that the record provides the following information:

1. Name of licensee making the delivery,
2. Address of licensee making the delivery,
3. License number,
4. Date and time of delivery,
5. Address at which delivery is made,
6. Type and brand of spirituous liquor delivered, and
7. Printed name and signature of the individual making the delivery.

- B. In addition to the information required under subsection (A), a retail licensee having off-sale privileges that delivers spirituous liquor, as authorized by A.R.S. § 4-203(J), shall obtain the following information about the individual accepting delivery of the spirituous liquor:

1. Name,
2. Date of birth,
3. Type of and number on the identification used to verify the individual's date of birth, and
4. The signature of the individual accepting delivery. The retail licensee making delivery may use an electronic signature system to comply with this subsection.

- C. A licensed domestic farm winery that delivers spirituous liquor, as authorized by A.R.S. § 4-205.04(C)(9), may rely on an electronic signature system operated by the United Parcel Service or Federal Express to comply with the requirements in subsection (A).

- D. A licensed retailer that delivers spirituous liquor under A.R.S. § 4-203.04(H) or a direct shipment licensee that ships wine under A.R.S. § 4-203.04(J) may rely on an electronic signature system operated by the United Parcel Service or Federal Express.

- E. This Section is authorized by A.R.S. §§ 4-112(B)(1)(d), 4-203(J) and (M), 4-203.04(H) and (J), 4-205.04(C)(9) and (D).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-505. Report of Act of Violence

- A. As required under A.R.S. § 4-244(37), a licensee shall report an act of violence that occurs on the licensed premises.

- B. A licensee shall report an act of violence that occurs on property immediately adjacent to the licensed premises if the act of violence involves a customer who is entering or leaving the licensed premises and if the licensee knew or reasonably should have known of the act of violence.

- C. A licensee shall submit the report required under subsection (A) to the Department or a law enforcement agency. A licensee shall submit the report required under subsection (B) to the Department.

- D. A licensee shall submit the report required under subsection (A) or (B) within seven days after the act of violence occurs.

- E. A licensee that submits a report under subsection (A) or (B) to the Department shall use a form that is available from the

Department and provide the following information to the best of the licensee's knowledge:

1. Name of licensee or licensee's agent;
2. License number;
3. Name of business;
4. Address of licensed premises;
5. Date of the report;
6. Date and time of the incident being reported;
7. A statement whether the police were summoned and if so:
 - a. Name of the police jurisdiction summoned,
 - b. Name of the individual who placed the call to the police,
 - c. Police report number, and
 - d. A statement whether an arrest was made;
8. A statement whether emergency services were summoned and if so, the name of the individual who placed the call for emergency services;
9. Names or description of participants in the incident;
10. Names of individuals injured in the incident and a description of the injury;
11. Detailed description of the incident; and
12. Name, title, and signature of the individual preparing the report affirming that the information provided is true and accurate to the best of the individual's knowledge.

- F. This Section is authorized by A.R.S. § 4-244(37).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

ARTICLE 6. VIOLATIONS; HEARINGS; DISCIPLINE

R19-1-601. Appeals and Hearings

- A. Under A.R.S. § 4-210.02(A), a decision of the Director, except as provided under A.R.S. § 4-203.01(E), is not final until it is appealed to and ruled on by the Board or until the time for appeal expires.

- B. As required by A.R.S. § 4-210(H), the Department, Board, or a panel of the Board established under A.R.S. § 4-111(D) shall ensure that all hearings are conducted according to the procedures at A.R.S. Title 41, Chapter 6, Article 10.

- C. This Section is authorized by A.R.S. § 4-210(H).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-602. Actions During License Suspension

- A. If the Director suspends a license issued under A.R.S. Title 4 and this Chapter, the licensee:

1. Shall not take any action on or about the business premises for which a license is required under A.R.S. Title 4 or this Chapter, and
2. Shall prominently display the notice of suspension on the business premises during the suspension.

- B. This Section is authorized by A.R.S. § 4-244(1).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-603. Seizure of Spirituous Liquor

- A. If a peace officer has probable cause to believe that a spirituous liquor is being or is intended to be used in a manner that is inconsistent with a provision of A.R.S. Title 4 or this Chapter, the peace officer shall seize the spirituous liquor.

- B. This Section is authorized by A.R.S. § 4-244.05(F).

Historical Note

New Section made by final rulemaking at 19 A.A.R.

1338, effective July 6, 2013 (Supp. 13-2).

R19-1-604. Closure Due to Violence

- A.** If the Director determines that an act of violence is apt to occur at a licensed premises and that action is needed to protect the public health, safety, or welfare, the Director shall order that:
1. The licensee closes the doors of the licensed premises to the public;
 2. No spirituous liquor be sold or served to any individual on the licensed premises; and
 3. Only the licensee, employees of the licensee, and peace officers are allowed on the licensed premises.
- B.** This Section is authorized by A.R.S. § 4-210.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

ARTICLE 7. STATE LIQUOR BOARD

R19-1-701. Election of Officers

- A.** The Board shall elect a chairperson and vice chairperson in February of each year.
- B.** If a vacancy occurs in the chairperson or vice chairperson office, the Board shall hold an election for the vacant office at its next scheduled meeting.
- C.** This Section is authorized by A.R.S. § 4-111(C).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-702. Determining Whether to Grant a License for a Certain Location

- A.** To determine whether public convenience requires and the best interest of the community will be substantially served by issuing or transferring a license at a particular unlicensed location, local governing authorities and the Board may consider the following criteria:
1. Petitions and testimony from individuals who favor or oppose issuance of a license and who reside in, own, or lease property within one mile of the proposed premises;
 2. Number and types of licenses within one mile of the proposed premises;
 3. Evidence that all necessary licenses and permits for which the applicant is eligible at the time of application have been obtained from the state and all other governing bodies;
 4. Residential and commercial population of the community and its likelihood of increasing, decreasing, or remaining static;
 5. Residential and commercial population density within one mile of the proposed premises;
 6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers;
 7. Effect on vehicular traffic within one mile of the proposed premises;
 8. Compatibility of the proposed business with other activity within one mile of the proposed premises;
 9. Effect or impact on the activities of businesses or the residential neighborhood that might be affected by granting a license at the proposed premises;
 10. History for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant received a detailed report of the violations and criminal activity at least 20 days before the hearing by the Board;

11. Comparison of the hours of operation at the proposed premises to the hours of operation of existing businesses within one mile of the proposed premises; and
 12. Proximity of the proposed premises to licensed childcare facilities as defined by A.R.S. § 36-881.
- B.** This Section is authorized by A.R.S. § 4-201(I).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-703. Rehearing or Review of a Decision

- A.** As permitted under A.R.S. § 41-1092.09, a party may file with the Board a motion for rehearing or review of a decision issued by the Board.
- B.** A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- C.** The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings or any order or abuse of discretion that deprived the moving party of a fair hearing;
 2. Misconduct of the Director or Board, Department staff, or an administrative law judge;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 5. Excessive or insufficient penalty;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings; and
 7. The findings of fact or decision is not justified by the evidence or is contrary to law.
- D.** The Board may affirm or modify a decision or grant a rehearing or review to all or some of the parties on all or some of the issues for any of the reasons listed in subsection (C). The Board shall specify with particularity the grounds for an order modifying a decision or granting a rehearing or review. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.
- E.** Not later than 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of the decision for any reason it might have granted a rehearing or review on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in a motion. The Board shall specify with particularity the grounds on which a rehearing or review is granted under this subsection.
- F.** When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. This period may be extended by the Board for five additional days for good cause or by written stipulation of the parties. Reply affidavits may be permitted.
- G.** If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public health, safety, or welfare 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.
- H.** This Section is authorized by A.R.S. §§ 4-210.02 and 41-1092.09.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-704. Submitting Documents to the Board

- A.** To facilitate the Board's review of documents submitted to it, a party shall submit documents to the Board in printed form and:
1. In an electronic format directed by the Board, or
 2. By means of a removable data-storage device such as a compact disc or flash drive.
- B.** To provide the Board with time to consider adequately documents requiring its action, the following deadlines apply:
1. An applicant, local governing body, or aggrieved party that wishes to submit information regarding an application shall submit the information at least 15 calendar days before the meeting at which the Board will consider the application;
 2. An applicant, local governing body, or aggrieved party that wishes to rebut information submitted under subsection (B)(1) shall submit the rebuttal information within five calendar days before the meeting at which the Board will consider the application; and
 3. An appellant shall submit a brief at least 21 calendar days before the meeting at which the Board will consider the appeal.

- C.** A party who is unable to submit documents in an electronic format or by means of a removable data storage device may ask the Board for an exemption from the requirement in subsection (A).
- D.** This Section is authorized by A.R.S. §§ 4-112(A)(2) and 4-201(E).

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

R19-1-705. Judicial Review

- A.** A party may file a complaint for judicial review of a final decision of the Board under A.R.S. § 12-901 et seq.
- B.** A party that files a complaint for judicial review of a final decision of the Board shall serve a copy of the complaint for judicial review on the Director at the Department's office in Phoenix, Arizona.
- C.** This Section is authorized by A.R.S. §§ 4-211 and 12-901et seq.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1338, effective July 6, 2013 (Supp. 13-2).

Note: This Five Year Review Report was previously considered at the March 30, 2021 Study Session and April 6, 2021 Council Meeting. At the April 6, 2021 Council Meeting, the Council voted to table consideration of this report until the Lottery could submit a revised report with an updated proposed course of action. The revised report and an updated staff memo are included with the enclosed materials.

E-2

ARIZONA LOTTERY

Title 19, Chapter 3, Article 10, Promotions



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 6, 2021 and May 4, 2021

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

FROM: Council Staff

DATE: March 8, 2021, revised April 19, 2021

SUBJECT: ARIZONA LOTTERY (F21-0404)
Title 19, Chapter 3, Article 10, Promotions

***Note:** This Five Year Review Report was previously considered at the March 30, 2021 Study Session and April 6, 2021 Council Meeting. At the April 6, 2021 Council Meeting, the Council voted to table consideration of this report until the Lottery could submit a revised report with an updated proposed course of action. This memorandum has been updated to reflect the revised report.*

Summary:

This Five Year Review Report (5YRR) from the Arizona Lottery (Lottery) relates to rules in Title 19, Chapter 3, Article 10 regarding lottery promotions. The Lottery provides an overview of the history of lottery games and the scope of its activities in the overview section of the 5YRR. As the Lottery indicates, "[t]he promotions rules set forth provisions unique to the conduct of Arizona Lottery promotions with the objective of stimulating sales, as well as public and retailer awareness of Lottery games and benefits."

In the previous 5YRR for these rules, which the Council approved in April 2016, the Lottery stated that it would revise the rules in June 2018 provided that the rulemaking moratorium was lifted or that the Lottery met the requirements for an exemption. The Lottery states that staff turnover caused a change in priorities, and did not complete the prior proposed course of action.

Proposed Action

For each individual rule under review, the Lottery identifies how it plans to amend the rule to address issues specified in the report. However, the Lottery states in Item 10 of its report (Completion of course of action in previous five-year review report) that it proposes to complete changes to the rules in Article 10 and potential Article 7 revisions in June 2022.

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

Yes. The Lottery cites both general and specific statutory authority for the rules under review.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

In the 2016 5YRR for these rules, the Lottery provided a 2007 economic, small business, and consumer impact statement (EIS) that the Attorney General's office prepared. The rules are requirements on the Lottery and predominantly affect the Lottery's operations. Therefore, the Lottery believes the economic impact of the rules remains consistent with the determinations in the 2007 EIS.

The rules primarily affect the Lottery, Lottery retailers, Lottery players, and to some degree, state revenues.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

While the 5YRR notes that individual rules can be improved, the Lottery has confidence that the rules as a whole impose the least burden and costs to regulated persons. These rules provide for fair and consistent procedures with respect to the conduct of Lottery promotions, while also serving to protect the interests of the Lottery and the state. Promotion costs are included in the agency's budget and player participation is voluntary.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Lottery did not receive any written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes. For all of the rules under review, the Department identifies issues with their clarity, conciseness, and understandability, and indicates how those rules can be improved.

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

Yes. The Lottery states that all of the rules under review are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Yes. The Lottery states that many of the rules are “mostly effective” but identifies issues that interfere with the effectiveness of certain rules, and identifies how their effectiveness could be improved.

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

Yes. The Lottery states that most of the rules are enforced as written. However, it identifies two rules, R19-3-1002 (Promotion Profile) and R19-3-1007 (Procedure for Claiming Prizes and Claim Period), that are not enforced as written for the reasons specified in the 5YRR.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

Not applicable. There is no corresponding federal law to the rules under review.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The rules under review do not require a permit, license, or agency authorization.

11. Conclusion

The Lottery submitted an adequate report that meets the requirements of A.R.S. § 41-1056. The Lottery states that it plans to complete revisions to the rules in Article 10 and potential revisions to the rules in Article 7 by June 2022. Council staff recommends approval of this report.



Douglas A. Ducey
Governor

Gregory R. Edgar
Executive Director

April 12, 2021

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 402
Phoenix, AZ 85007

**Re: Revised Five Year Review Report
19 A.A.C. 3
Article 10: Promotions**

Dear Ms Sornsin,

As per the Arizona State Lottery (Lottery) statements at the April 6, 2021 GRRC meeting, attached is the revised Five Year Review Report for 19 A.A.C. 3, Article 10. The report has identified rules that should be updated and the revised report indicates a completion date of June 2022 for the proposed revisions.

Should you have any questions, please contact Sherri Zendri at (480) 921-4401, or email szendri@azlottery.gov

Sincerely,

A handwritten signature in black ink, appearing to read "Gregg Edgar", with a long horizontal flourish extending to the right.

Gregg Edgar
Executive Director

Enclosures

ARIZONA LOTTERY

Five-Year-Review Report

19 A.A.C. 3

Article 10: Promotions

Submitted January 2021

REVISED April 2021

HISTORICAL OVERVIEW OF AGENCY

Agency Mission:

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

Agency Background:

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

Lottery sales began July 1, 1981, with a single \$1 “Scratch it Rich” instant game that sold out 21.4 million tickets in 10 days! Scratchers remained the only product until 1984 when the Lottery introduced its first on-line (draw) game, The Pick. Over the years, additional draw games were periodically introduced and the number of instant ticket games has grown significantly. The Lottery currently offers seven draw games and has more than 50 instant ticket games in market each year. As a result of legislation in the 2010 Legislative Session, the Lottery also became the provider of instant tab games that are sold by charitable organizations. These organizations earned approximately \$1 million in commissions to help support charitable activities in FY20, with \$900 thousand allocated to the Internet Crimes Against Children Fund and \$100 allocated to the Victim’s Rights Enforcement Fund.

Since its inception, the Lottery’s mandate has been to maximize net revenue consonant with the dignity of the state. The Lottery is overseen by an Executive Director appointed by the Governor, in addition to a 5-member Commission, also appointed by the Governor. The Lottery is entirely self-supporting, receiving no General Fund monies. The Lottery sells products and redeems prizes through a statewide network of approximately 3100 licensed retailers, who receive a commission on each ticket sold.

A portion of Lottery proceeds is appropriated to pay for Lottery operating costs, and at least 50% of revenues must be utilized for payment of prizes. Remaining Lottery funds are statutorily directed to various benefiting funds including the General Fund:

University Bond Fund

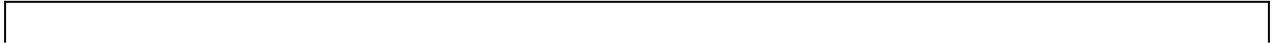
Healthy Arizona

Mass Transit (LTAF)

Heritage Fund
Court Appointed Special Advocates (CASA)
Economic Security Homeless Services
Internet Crimes Against Children/
Victims' Rights Enforcement Fund
Department of Gaming
Tribal College Dual Enrollment Fund

In FY10, the State issued bonds against future Lottery revenues for \$450 million. In FY19, the State issued approximately \$250 million in new bonds, which refinanced the remaining principal from the 2010 bonds. The Lottery is responsible for meeting the bond debt service payments through 2029, in addition to other more traditional statutory beneficiary obligations.

The Lottery has achieved record sales levels in recent years, despite challenging economic conditions. For FY20, total sales were a record \$ 1.097 billion and transfers to state beneficiaries were \$ 226, million. Innovations over the last five years have included three new products: Fast Play, Triple Twist, and Quickcard, as well as a new "Players Club" loyalty program.



OVERVIEW OF 5-YEAR REVIEW

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

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

The review of this rule was conducted by Arizona Lottery staff, Lottery Administrative Counsel, and the Lottery's Assistant Attorney General. The rules were reviewed for consistency with actual practice, for future promotional needs, and for overall clarity. The rules continue to provide an adequate framework for large number of promotions the agency runs. While there are areas where the promotion approval process could be more efficient, any proposed changes must meet the Governor's Rule Moratorium Exception criteria. The Lottery will request an exemption in order to complete the amendments, but recognizes the proposed changes may not sufficiently meet the exemption requirements set forth in Executive Order 2020-02.

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

1. **Statutory authority:**

General: A.R.S. § 5-554(B).

Specific: A.R.S. § 5-554(C).

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

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

7. **Written criticisms:**

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

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

This Council last reviewed the promotions rules in April 2016. At that time, the Lottery provided a 2007 economic impact statement (EIS) that was prepared by the Attorney General's Office. The rules are requirements on the Lottery and predominantly effect the Lottery's behavior; therefore, the Lottery believes the economic impact of the rules has remained consistent with the 2007 EIS.

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

Promotions are a tool to expand knowledge and visibility of various Lottery game products. In FY20 the Lottery conducted 103 total promotions, which included a combination of game, retailer, and marketing promotions spanning the range of acceptable playstyles for the promotions.

Lottery retailers are the only businesses impacted by these rules. Lottery promotions benefit retailers through the potential to earn incremental commissions and the Lottery believes the actual impact has been as projected. There are currently about 3100 licensed Lottery retailers that receive on average a commission of 6.5% for each Lottery transaction. Although there is no practical way to separate commissions due to promotional activities, traditional retailers earned \$74.5 million in commissions in FY20 as compared to \$49.8 million five years ago in FY15.

As estimated in the previous economic impact statement, Lottery game promotions provide financial benefit to the state. Although not directly measurable, incremental revenues generated by promotions are revenues that would not be otherwise realized. A percentage of Lottery game revenue is returned to the state to fund various beneficiary programs as specified in A.R.S. § 5-572. In FY20, the overall percentage returned to the state was about 20% of revenues, for a total of \$226 million.

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

9. Analysis submitted by another person regarding business competitiveness:

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

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

The previous five-year review was prepared for this Article in January 2016. At that time, rule revisions were proposed for June 2018 provided the rulemaking moratorium was lifted or that the Lottery met the requirements for an exemption. Extensive staff turnover, including an entirely new executive team since early 2016, has shuffled agency priorities. The current agency focus on revenue generation prioritizes rule revisions that will substantially increase sales and decrease impact to retailers. However, as there are areas this rule can be improved the agency proposes to revise Article 10 along with potential Article 7 revisions to be completed by June 2022.

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

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

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

There are no federal laws applicable to these rules.

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

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

ANALYSIS OF INDIVIDUAL RULES

R19-3-1001. Definitions

2. Objective/Purpose:

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

3. Effectiveness in achieving the objective:

The rule is mostly effective, but requires minor rewording for an existing definition.

5. Agency enforcement of the rule:

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

6. Clarity, conciseness and understandability:

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

14. Proposed course of action:

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

R19-3-1002. Promotion Profile

2. Objective/Purpose:

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

3. Effectiveness in achieving the objective:

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

5. Agency enforcement of the rule:

The Lottery enforces the rule for promotion development generally; however it does not enforce the rule as written for every individual promotion. To streamline processes, the Lottery develops generic profiles approved by the Commission that allow additional promotions as long as they are within the criteria of the approved generic profile. The official rules adopted under those generic profiles for each individual promotion are posted on the Lottery's website.

6. Clarity, conciseness and understandability:

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

14. Proposed course of action:

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

R19-3-1003. Promotion Playstyle – Promotion Type

2. Objective/Purpose:

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

3. Effectiveness in achieving the objective:

The rule is mostly effective, but could be more effective by adding playstyles for “coupon” and “buy one, get one” promotions, in addition to redefining “public contest” to include contests that are related to specific Lottery games. The current definitions create artificial limitations that do not serve a useful purpose and unreasonably restrict the Lottery’s flexibility to design effective promotions.

5. Agency enforcement of the rule:

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

6. Clarity, conciseness and understandability:

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

14. Proposed course of action:

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

R19-3-1004. Determination of a Winning Promotion

2. Objective/Purpose:

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

3. Effectiveness in achieving the objective:

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

5. Agency enforcement of the rule:

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

6. Clarity, conciseness and understandability:

The rule is partially clear, concise, and understandable to the general public, but clarity could be improved by generally ensuring term usage is consistent throughout the rule and rewriting the description for “customer service” to clarify this promotion playstyle pertains to generic customer service issues.

14. Proposed course of action:

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

R19-3-1005. Repealed

R19-3-1006. Repealed

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

2. Objective/Purpose:

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

3. Effectiveness in achieving the objective:

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

5. Agency enforcement of the rule:

The Lottery does not enforce the rule as written for every individual promotion. As mentioned for R19-3-1002, the Lottery develops generic profiles approved by the Commission. The official rules adopted under those generic profiles for each individual promotion are posted on the Lottery's website. Detailed claim procedures included in the individual promotion's official rules.

6. Clarity, conciseness and understandability:

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

14. Proposed course of action:

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

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

2. Objective/Purpose:

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

3. Effectiveness in achieving the objective:

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

5. Agency enforcement of the rule:

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

6. Clarity, conciseness and understandability:

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

14. Proposed course of action:

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

ATTACHMENT A:

Current Rules

ARIZONA ADMINISTRATIVE CODE
TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING
CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION
ARTICLE 10. PROMOTIONS

R19-3-1001. Definitions

In this Article, unless the context otherwise requires:

1. "Category" means player, consumer, retailer, vendor, or other person who participates in the promotion.
2. "Charitable organization" means a non-profit organization organized and operated exclusively for charitable purposes and is qualified under § 502(c)(3) of the United States Internal Revenue Code.
3. "Media" means the method of communication, as in television, radio, print, outdoor, or Internet, with wide reach and influence.
4. "Prize type" means cash, free ticket or tickets, coupon or coupons, merchandise, retailer or vendor product or service, or discount on retailer or vendor product or service.
5. "Promotion" means a program designed to increase awareness of the Lottery, Lottery beneficiaries, and Lottery games that is intended to increase the sale of Lottery tickets to produce the maximum amount of net revenue for the state.
6. "Promotion playstyle" means the type of process or procedure used to control the promotion.
7. "Promotion Profile" means the written document in which the Lottery Commission authorizes the Director to issue an order that contains all of the non-confidential promotion fundamentals required by these rules for a promotion.
8. "Promotional merchandise" means Lottery related goods, consumer products, or services provided by the Lottery for use in a promotion.
9. "Promotional ticket" means a Lottery ticket from a current, active game or a specially designed game provided by the Lottery for use in a promotion.
10. "Targeted game or targeted games" means the specific game or games a promotion is intended to increase sales or awareness of.
11. "Tickets" means one or more Lottery game plays from the targeted game or games.

R19-3-1002. Promotion Profile

- A. Each promotion shall have a Promotion Profile and at a minimum, the Profile shall contain the following information:
1. Promotion name;
 2. Promotion playstyle;
 3. Category;
 4. Targeted game, games or Lottery beneficiaries involved in the promotion;
 5. Promotion description;
 6. Promotion selection criteria, if applicable;
 7. Prize type and structure, including the estimated number and size of monetary prizes, free tickets, coupons, certificates, discounts, and merchandise prizes available, if applicable;
 8. Retail sales price, if applicable;
 9. Promotion date range (beginning and ending promotion dates);
 10. Time range, if applicable;

11. Day or days of the week, if applicable;
 12. Special feature, if any; and
 13. Prize draw eligibility requirements, including filing period for eligibility in a winners drawing, if applicable.
- B.** The Commission shall approve the Promotion Profile prior to the promotion being introduced to the public for participation.

R19-3-1003. Promotion Playstyle - Promotion Type

- A.** The playstyle for a specific promotion shall be fully described in the Promotion Profile and shall be one of the following methods of play unless a different method is prescribed by another rule:
1. Second Chance Drawing – Player.
 2. Second Chance Drawing – Retailer.
 3. Retailer’s Second Chance Drawing – Retailer/Player.
 4. Increased Prize Payment.
 5. Buy X and Get Y Free – Player.
 6. Sell X and Get Y Free – Retailer.
 7. Validate X and Get Y Free – Retailer.
 8. Buy X and Get Y Free, Every Nth Transaction – Player.
 9. Sell X and Get Y Free, Every Nth Transaction – Retailer.
 10. Complete Survey.
 11. Special Events – Player.
 12. Retailer Incentive.
 13. Cross Promotion.
 14. Media Promotion.
 15. Customer Service.
 16. Mystery Shopper – Retailer.
 17. Ask For the Sale – Retailer.
 18. Charitable Organization.
 19. Public Contest – not related to specific Lottery game.
 20. Multi-State Lottery (MUSL) Promotions.
- B.** More than one promotion may run concurrently.
- C.** Promotion may be held only on specific days of the week.
- D.** Promotion may be held only during specific hours of the day.
- E.** Promotion may be available for selected regions, zones, retailer groups or player groups. Groups may be made by business codes, regions, county, zip code, chain designator, field representative or sales quota.

R19-3-1004. Determination of a Winning Promotion

Eligibility to win a prize is based on compliance with the designated promotion playstyle as follows:

1. Second Chance Drawing – Player. The player shall submit, as entry into a second chance drawing, the required coupon, tickets or entry form as defined in the Promotion Profile. The player or players selected in the prize drawing procedure shall win the prize type designated in the Promotion Profile.

2. Second Chance Drawing – Retailer. The retailer shall submit, as entry into a second chance drawing, the required coupon, tickets or entry form as defined in the Promotion Profile, or the Lottery may use information collected on its database as defined in the Promotion Profile to qualify the retailer. The retailer or retailers selected in the prize drawing procedure shall win the prize type designated in the Promotion Profile.
3. Retailer’s Second Chance Drawing – Retailer/Player. Retailers participating in the promotion shall ask players to deposit the required coupon, tickets or entry form into a Drawing Container at the retailer’s location. The retailer shall perform random drawings according to the Promotion Profile. The players selected in the drawings shall win the prize type designated in the Promotion Profile. The Lottery shall provide the participating retailer with a predetermined number of prizes for the promotion.
4. Increased Prize Payout. Players who win a particular prize denomination in the target game or games shall win an additional amount specified in the Promotion Profile. The Promotion Profile shall define any required level of participation to be eligible.
5. Buy X and Get Y Free – Player. Each time a player buys a predetermined number of tickets from the targeted game or games, the player shall receive the prize type designated in the Promotion Profile. The Buy X requirement and the Get Y Free shall be specified in the Promotion Profile.
6. Sell X and Get Y Free – Retailer. Each time a retailer sells a predetermined number of tickets from the targeted game or games, the retailer shall receive the prize type designated in the Promotion Profile. The Sell X requirement and the Get Y Free shall be specified in the Promotion Profile.
7. Validate X and Get Y Free – Retailer. Each time a retailer validates a predetermined number or prize amount from the targeted game or games, the retailer shall receive the prize type designated in the Promotion Profile. The Validate X requirement and the Get Y Free shall be specified in the Promotion Profile.
8. Buy X and Get Y Free, Every Nth Transaction – Player. Each time a player buys a predetermined number or type of ticket or tickets from the target game or games and that purchase is the Nth transaction produced by the on-line system, the player shall receive the prize type designated in the Promotion Profile. The Buy X requirement, the Get Y Free, and the Nth transaction shall be specified in the Promotion Profile.
9. Sell X and Get Y Free, Every Nth Transaction – Retailer. Each time a retailer sells a predetermined number of tickets from the target game or games and that sale is the Nth transaction produced by the on-line system, the retailer shall receive the prize type designated in the Promotion Profile. The Sell X requirement, the Get Y Free, and the Nth transaction shall be specified in the Promotion Profile.
10. Complete Survey. The player or retailer who completes a designated survey shall receive the prize type designated in the Promotions Profile.
11. Special Events – Players. Players who attend a Lottery sponsored special event may participate in activities designed to promote Lottery products. Player participation may include spinning the Lottery prize wheel, various carnival type games of little or no skill, or purchase of tickets for targeted game or games. The prize type shall be designated and awarded according to the Promotion Profile.
12. Retailer Incentive. The retailer shall become eligible to earn the designated prize type through participation as defined in the Promotion Profile.

13. Cross Promotion. Players who present a predetermined number of non-winning tickets of the targeted game or games to a participating retailer or vendor shall win the prize type designated in the Promotion Profile.
14. Media Promotion. Players who participate in media-related promotions shall be eligible to receive the prize type designated in the Promotion Profile. The Lottery shall provide the participating media outlet with coupons or tickets from the targeted game or games or promotional merchandise items.
15. Customer Service. If a player is inconvenienced or dissatisfied as a result of Lottery actions below the usual level of service the Lottery provides, the Lottery may provide the player with the prize type designated in the Promotions Profile.
16. Mystery Shopper – Retailer. The Lottery shall send mystery shoppers or spotters to visit randomly selected retailers in the promotional area. Each retailer who meets the requirements specified in the Promotion Profile shall win the designated prize type.
17. Ask For The Sale – Retailer. Each retailer participating in the promotion shall ask all customers who are determined to be of legal gaming age if they want to purchase a Lottery ticket for the targeted game or games. If the retailer does not ask an eligible customer, the customer shall receive a free coupon or ticket from the designated game. The Lottery shall provide the participating retailer with a predetermined number of coupons or tickets from the targeted game or games according to the Promotion Profile.
18. Charitable Organization. The Lottery shall provide a qualifying charitable organization with a predetermined number of tickets, coupons, or promotional merchandise from a targeted game or games to distribute during their charitable event.
19. Public Contest – not related to specific Lottery game. The Lottery may conduct a contest not related to any specific Lottery game as defined in the Promotion Profile.
20. Multi-State Lottery (MUSL) Promotions. The Lottery may participate in a Multi-State Lottery game-related promotion adopted by the MUSL board.

R19-3-1005. Repealed

R19-3-1006. Repealed

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

- A. To claim a promotion prize, a claimant must follow the procedure provided in the Promotion Profile.
- B. Promotion details are subject to the terms of the Promotion Profile which may modify or specify the ownership, authentication, validation procedures, or the time period for claiming a prize.

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

- A. If a dispute between the Lottery and a claimant occurs concerning a promotion ticket or the winning of a promotion prize, the Director is authorized to replace the disputed ticket or promotion prize with a ticket or promotion prize of equivalent value from any current promotion. The decision of the Director is a final, appealable agency action.
- B. Upon claim verification and payment of a prize, the Lottery shall be discharged of all liability to the claimant.

- C. By accepting a prize, the winner, his or her heirs, or legal representative agrees to indemnify and hold harmless, release, and discharge the Lottery, its employees, directors, and Commissioners from and against loss, claim, damage, suit, or injury arising out of or relating to the acceptance of the prize.

ATTACHMENT B:

General & Specific Statutes

[note: got page # to appear in center by – “insert footer/page#/current position” w/cursor in front of right footer and then “tab”]

ARIZONA REVISED STATUTES
TITLE 5. AMUSEMENTS AND SPORTS
CHAPTER 5.1. STATE LOTTERY

5-554. Commission; director; powers and duties; definitions

- A. The commission shall meet with the director not less than once each quarter to make recommendations and set policy, receive reports from the director and transact other business properly brought before the commission.
- B. The commission shall oversee a state lottery to produce the maximum amount of net revenue consonant with the dignity of the state. To achieve these ends, the commission shall authorize the director to adopt rules in accordance with title 41, chapter 6. Rules adopted by the director may include provisions relating to the following:
1. Subject to the approval of the commission, the types of lottery games and the types of game play-styles to be conducted.
 2. The method of selecting the winning tickets or shares for noncomputerized online games, except that no method may be used that, in whole or in part, depends on the results of a dog race, a horse race or any sporting event.
 3. The manner of payment of prizes to the holders of winning tickets or shares, including providing for payment by the purchase of annuities in the case of prizes payable in installments, except that the commission staff shall examine claims and may not pay any prize based on altered, stolen or counterfeit tickets or based on any tickets that fail to meet established validation requirements, including rules stated on the ticket or in the published game rules, and confidential validation tests applied consistently by the commission staff. No particular prize in a lottery game may be paid more than once, and in the event of a binding determination that more than one person is entitled to a particular prize, the sole remedy of the claimants is the award to each of them of an equal portion of the single prize.
 4. The method to be used in selling tickets or shares, except that no elected official's name may be printed on such tickets or shares. The overall estimated odds of winning some prize or some cash prize, as appropriate, in a given game shall be printed on each ticket or share.
 5. The licensing of agents to sell tickets or shares, except that a person who is under eighteen years of age shall not be licensed as an agent.
 6. The manner and amount of compensation to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public, including provision for variable compensation based on sales volume.
 7. Matters necessary or desirable for the efficient and economical operation and administration of the lottery and for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares.
- C. The commission shall authorize the director to issue orders and shall approve orders issued by the director for the necessary operation of the lottery. Orders issued under this subsection may include provisions relating to the following:
1. The prices of tickets or shares in lottery games.

2. The themes, game play-styles, and names of lottery games and definitions of symbols and other characters used in lottery games, except that each ticket or share in a lottery game shall bear a unique distinguishable serial number.
3. The sale of tickets or shares at a discount for promotional purposes.
4. The prize structure of lottery games, including the number and size of prizes available. Available prizes may include free tickets in lottery games and merchandise prizes.
5. The frequency of drawings, if any, or other selections of winning tickets or shares, except that:
 - (a) All drawings shall be open to the public.
 - (b) The actual selection of winning tickets or shares may not be performed by an employee or member of the commission.
 - (c) Noncomputerized online game drawings shall be witnessed by an independent observer.
6. Requirements for eligibility for participation in grand drawings or other runoff drawings, including requirements for the submission of evidence of eligibility within a shorter period than that provided for claims by section 5-568.
7. Incentive and bonus programs designed to increase sales of lottery tickets or shares and to produce the maximum amount of net revenue for this state.
8. The method used for the validation of a ticket, which may be by physical or electronic presentation of a ticket.

D. Notwithstanding title 41, chapter 6 and subsection B of this section, the director, subject to the approval of the commission, may establish a policy, procedure or practice that relates to an existing online game or a new online game that is the same type and has the same type of game play-style as an online game currently being conducted by the lottery or may modify an existing rule for an existing online game or a new online game that is the same type and has the same type of game play-style as an online game currently being conducted by the lottery, including establishing or modifying the matrix for an online game by giving notice of the establishment or modification at least thirty days before the effective date of the establishment or modification.

E. The commission shall maintain and make the following information available for public inspection at its offices during regular business hours:

1. A detailed listing of the estimated number of prizes of each particular denomination expected to be awarded in any instant game currently on sale.
2. After the end of the claim period prescribed by section 5-568, a listing of the total number of tickets or shares sold and the number of prizes of each particular denomination awarded in each lottery game.
3. Definitions of all play symbols and other characters used in each lottery game and instructions on how to play and how to win each lottery game.

F. Any information that is maintained by the commission and that would assist a person in locating or identifying a winning ticket or share or that would otherwise compromise the integrity of any lottery game is deemed confidential and is not subject to public inspection.

- G.** The commission, in addition to other games authorized by this article, may establish multistate lottery games to be conducted concurrently with other lottery games authorized under subsection B of this section. The monies for prizes, for operating expenses and for payment to the state general fund shall be accounted for separately as nearly as practicable in the lottery commission's general accounting system. The monies shall be derived from the revenues of multistate lottery games.
- H.** The commission, in addition to other games authorized by this article, shall establish special instant ticket games with play areas protected by paper tabs designated for use by charitable organizations. The monies for prizes and for operating expenses shall be accounted for separately as nearly as practicable in the lottery commission's general accounting system. Monies saved from the revenues of the special games, by reason of operating efficiencies, shall become other revenue of the lottery commission and revert to the state general fund, except that the commission shall transfer the proceeds from any games that are sold from a vending machine in an age-restricted area to the state treasurer for deposit in the following amounts:
1. Nine hundred thousand dollars each fiscal year in the internet crimes against children enforcement fund established by section 41-199.
 2. One hundred thousand dollars each fiscal year in the victims' rights enforcement fund established by section 41-1727.
 3. Any monies in excess of the amounts listed in paragraphs 1 and 2 of this subsection, in the state lottery fund established by section 5-571.
- I.** The commission or director shall not establish or operate any online or electronic keno game or any game played on the internet.
- J.** The commission or director shall not establish or operate any lottery game or any type of game play-style, either individually or in combination, that uses gaming devices or video lottery terminals as those terms are used in section 5-601.02, including monitor games that produce or display outcomes or results more than once per hour.
- K.** The director shall print, in a prominent location on each lottery ticket or share, a statement that help is available if a person has a problem with gambling and a toll-free telephone number where problem gambling assistance is available. The director shall require all licensed agents to post a sign with the statement that help is available if a person has a problem with gambling and the toll-free telephone number at the point of sale as prescribed and supplied by the director. The requirements of this subsection apply to tickets and shares printed after July 18, 2000.
- L.** For the purposes of this section:
1. "Charitable organization" means any nonprofit organization, including not more than one auxiliary of that organization, that has operated for charitable purposes in this state for at least two years before submitting a license application under this article.
 2. "Game play-style" means the process or procedure that a player must follow to determine if a lottery ticket or share is a winning ticket or share.
 3. "Matrix" means the odds of winning a prize and the prize payout amounts in a given game.

ATTACHMENT C:
2007 Economic Impact Statement

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT
TITLE 19: ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING
CHAPTER 3: ARIZONA STATE LOTTERY COMMISSION

ARTICLE 10. PROMOTIONS

The rules for Article 10, Promotions, describe various types of Lottery promotions and procedures relating to these promotions. The Lottery anticipates amendments to Article 10 will impact the agency, Lottery retailers, Lottery players, and potentially State revenues.

- A. *The Arizona State Lottery.* Costs to the agency related to this rulemaking are included in the agency's appropriated budget. They include the cost of cash or merchandise prizes, as well as administrative operating expenses associated with personnel, point-of-sale items, and related advertising. The Lottery does not anticipate any additional costs to the agency as a result of this rulemaking.
- B. *Businesses Directly Affected by this Rulemaking.* Businesses affected by these rules are Lottery retailers who sell Lottery game products to the public. The only impact the rules have upon Lottery retailers is to specify how to determine a winning promotion, and if applicable, the premium amount. Currently, retailers receive a base commission of \$.065 for each \$1 Lottery game transaction. An increase in sales as a result of Lottery promotions will also increase the amount of commissions earned by retailers.
- C. *Consumers and the Public.* There are no costs to the public associated with this rulemaking. The description of promotion procedures will assist players in understanding how to participate in Lottery promotions and claim winning promotional prizes.
- D. *State Revenues.* These rules allow the Lottery to introduce various product promotions, thus providing the State with a potential to increase revenue.

This rulemaking clarifies Lottery promotion procedures and will not have any identifiable economic impact on political subdivisions of the state, private and public employment, or the general public.

DEPARTMENT OF ECONOMIC SECURITY

Title 6, Chapter 18, Office of Licensing, Certification, and Regulation



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: May 4, 2021

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

FROM: Council Staff

DATE: April 9, 2021

SUBJECT: DEPARTMENT OF ECONOMIC SECURITY (F21-0501)
Title 6, Chapter 18, Office of Licensing, Certification, and Regulation

This Five-Year-Review Report (5YRR) from the Department of Economic Security relates to rules in Title 6, Chapter 18 regarding Office Licensing, Certification, and Regulation. The report covers the following:

Article 1 - Definitions

Article 7 - Life-Safety Inspection

In the last 5YRR of these rules the Department indicated that after they consolidated the life-safety inspection rules to Title 6, Chapter 6, and DCS had promulgated its life-safety inspection rules, they would repeal the rules in Title 6, Chapter 18. DES indicates they received an exemption to consolidate the life-safety inspection rules into Title 6, Chapter 6 and repeal rules in Title 6, Chapter 18. The Department indicates they were not able to finalize the rule consolidation as they had to allow staff the time to work on responding to COVID-19 issues and associated activities.

Proposed Action

The Department is again proposing to consolidate the rules into Title 6, Chapter 6, and then repeal the rules in Title 6, Chapter 18. DES indicates it plans to submit a Notice of Final Rulemaking to consolidate the rules by December 2021, and repeal the rule in Title 6, Chapter 18

by July 2022. Additionally, the Department is proposing to amend the rules identified in the report to improve their overall effectiveness by December 2021.

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

Yes, the Department cites to both general and specific statutory authority.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

An Economic Impact Statement was not required for the original rulemaking in Chapter 18, filed by Notice of Exempt Rulemaking, 11 A.A.R. 3501, September 16, 2005. Major changes have occurred since the 2015 rules review due to the creation of the Department of Child Safety (DCS), which is now assigned responsibility in licensing foster homes and other child welfare programs that no longer fall under the Title 6 purview.

The Office of Licensing, Certification, and Regulation (OLCR) is authorized by Arizona Revised Statutes to license child developmental homes and adult developmental homes and to certify home and community-based services for individuals with developmental disabilities. The OCLR is funded through legislative appropriations. No fees are currently charged for licensing, certification, or inspections conducted by OLCR.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Department believes that the probable benefits of the rules will outweigh within this state the probable costs of the rules, and the rules will impose the least burden and costs to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

4. Has the agency received any written criticisms of the rules over the last five years?

No, the Department indicates they have not received any written criticisms to the rules.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes, the Department indicates the rules are overall clear, concise, and understandable with the exception of the following:

- R6-18-701** - Application;
- R6-18-703** - Safeguarding of Hazards;
- R6-18-704** - Storage of Medication;
- R6-18-705** - Safe Appliances;
- R6-18-707** - Plumbing Requirements; and
- R6-18-709** - Pool Requirements.

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

Yes, the Department indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are overall effective in achieving their objectives with the exception of the following:

R6-18-701 - Application;
R6-18-703 - Safeguarding of Hazards;
R6-18-704 - Storage of Medication;
R6-18-705 - Safe Appliances;
R6-18-707 - Plumbing Requirements; and
R6-18-709 - Pool Requirements.

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

Yes, the Department indicates the rules are enforced as written with the exception of the following:

R6-18-707 (B) - Plumbing Requirements

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. The Department indicates there are no corresponding federal laws.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require the issuance of a permit or license.

11. **Conclusion**

As mentioned above, the Department is proposing to consolidate the rules into Title 6, Chapter 6 and amend the rules identified in the report to make them more clear, concise, understandable and effective, by submitting a rulemaking to the Council by December 2021. Additionally, the Department is proposing to repeal the rules in Title 6, Chapter 18 by July 2022. Council staff recommends approval of this report.



DEPARTMENT OF ECONOMIC SECURITY

Your Partner For A Stronger Arizona

Douglas A. Ducey
Governor

Michael Wisehart
Director

February 18, 2021

Ms. Nicole Sornsin
Council Chair
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Dear Ms. Sornsin:

Enclosed is the Arizona Department of Economic Security (Department) Five-Year Review Report on A.A.C. Title 6, Chapter 18, Office of Licensing, Certification, and Regulation. Included with the report are copies of the authorizing statutes and rules.

Pursuant to A.R.S. § 41-1056(A) and A.A.C. R1-6-301(C)(4), the Department certifies that it is in compliance with A.R.S. § 41-1091.

Thank you for your attention to this report. The Department will be present at the Council meetings to respond to any questions the Council members may have about the report. If you have any questions, please contact Christian Eide, Rules Analyst, Governance and Innovation Administration, at (480) 340-8308.

Sincerely,

Christian Eide

Christian Eide.
Legal and Administrative Rules Analyst

Enclosure

**Department of Economic Security
Title 6, Chapter 18
Five-Year Review Report**

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 8-503(A)(4), 36-554(A)(2-10) and (C)(6), and 41-1954(A)(3)

Specific Statutory Authority: A.R.S. §§ 8-504(A), 36-592(A), (B), (D), and (F)

2. The objective of each rule:

Rule	Objective
R6-18-101	The objective of this rule is to define terms used in Article 7.
R6-18-701	The objective of this rule is to identify the entities regulated by this Article.
R6-18-702	The objective of this rule is to establish the minimum standards for cleanliness and the general condition of a setting used to provide regulated care. It specifies items to consider when inspecting premises for cleanliness.
R6-18-703	The objective of this rule is to identify the safeguards care providers are required to implement to reduce the risk of hazards to children and vulnerable adults in a regulated setting. It specifies hazards to consider when inspecting premises for safety.
R6-18-704	The objective of this rule is to require the locked storage of all medications, and to protect children and vulnerable adults from unauthorized access to potentially dangerous substances. It specifies the ways in which various medications shall be stored.
R6-18-705	The objectives of this rule are to ensure the availability of specific appliances within a regulated setting and to ensure such appliances are in safe working order. It identifies the requirements of these appliances.
R6-18-706	The objectives of this rule are to ensure the availability of specific electrical systems within a regulated setting and to ensure such systems are in safe working order. It identifies the specifics of electrical system requirements.
R6-18-707	The objectives of this rule are to ensure the availability of specific plumbing systems within a regulated setting and to ensure such systems

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	are in safe working order. It identifies the specifics of plumbing system requirements.
R6-18-708	The objectives of this rule are to ensure the availability of specific fire safety equipment, establish procedural safeguards, and reduce the risk of fire hazards to children and vulnerable adults. It specifies items to consider when inspecting premises for fire safety.
R6-18-709	The objective of this rule is to require safeguards to reduce the risk of drowning to children and vulnerable adults. It specifies items to consider when inspecting premises for pool safety.

3. **Are the rules effective in achieving their objectives?** Yes ___ No X

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
R6-18-701	R6-18-701(1) states that the rules are applicable to Foster homes regulated under Title 6, Chapter 5, Article 58. R6-18-701(4) states that the rules are applicable to Child welfare agencies. Both citations are obsolete as the rules are no longer applicable to foster homes or child welfare agencies.
R6-18-703	R6-18-703(4)(b) requires ammunition to be locked separate from firearms. Providers inquire about whether this means in a separate container or if it is acceptable to be in the same location as the firearms except under a different lock and key. R6-18-703(6) prohibits the Office of Licensing, Certification, and Regulation (OLCR) regulated settings from having animals that pose a hazard due to behavior or disease. Without further explanation, the rule has been difficult to enforce and has created frustration for care providers. For example, care providers have inquired about whether certain breeds of dogs, reptiles, and exotic pets are permissible in a licensed setting.

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R6-18-704	<p>The rule pertains to the storage of medication. Although medication is defined in R6-18-101(7), providers often ask about vitamins, minerals, and dietary supplements.</p> <p>R6-18-704(B) is no longer applicable since child welfare group homes and shelters are licensed under the Department of Child Safety (DCS).</p>
R6-18-705	<p>R6-18-705 pertains to the operation and safety of appliances in the licensed setting but fails to prohibit the indoor use of appliances intended solely for outdoor use.</p>
R6-18-707	<p>R6-18-707(B) requires the OLCR to collect a sample of water for testing by a state-certified laboratory for all homes with a non-municipal source of water. This does not represent current practice. The OLCR requires the provider to submit a sample to a state certified laboratory and assume the cost of the testing. Once the test is complete, the provider forwards a copy of the results to the OLCR.</p> <p>R6-18-707(B) does not specify how often the water is to be tested.</p> <p>R6-18-707(D) specifies a maximum hot water temperature but does not set a minimum hot water temperature. As a result, it is possible for a setting that does not have any hot water to pass the inspection, even though the service may include food preparation and personal care.</p> <p>R6-18-707(E) requires a shower or tub for every ten persons receiving care; however, these regulations also apply to non-residential environments which may not include personal care services.</p>
R6-18-709	<p>R6-18-709(A) requires rescue equipment for pools deeper than four feet. The required equipment (shepherd's crook and ring buoy) has a collective cost of approximately \$100 and can be cost-prohibitive for some</p>

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	<p>applicants. There is no empirical evidence that the rescue equipment is effective in protecting or saving lives in residential pools.</p> <p>R6-18-709(B) requires a fenced enclosure for swimming pools. Questions are frequently raised by care providers regarding whether certain types of fencing are permissible, suggesting that the rule language may require clarification. Additionally, the rule implies but does not explicitly state that the fence must remain intact throughout the term of the license. Providers also ask about locking requirements for when there is an RV gate that opens into the pool area.</p>
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4. Are the rules consistent with other rules and statutes? Yes No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
NA	NA

5. Are the rules enforced as written? Yes No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation
R6-18-707(B)	The procedures outlined in R6-18-707(B) are not reflective of current practice. The OLCR requires the provider to submit a sample of the non-municipally sourced water to a state certified laboratory.

6. Are the rules clear, concise, and understandable? Yes No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation

**Department of Economic Security
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R6-18-701	The rules in Chapter 18 are clear, concise, and understandable, except as explained in items 3 and 5 above.
R6-18-703	
R6-18-704	
R6-18-705	
R6-18-707	
R6-18-709	

7. Has the agency received written criticisms of the rules within the last five years?

Yes ___ No X

If yes, please fill out the table below:

Commenter	Comment	Agency's Response
NA	NA	NA

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

An Economic Impact Statement was not required for the original rulemaking in Chapter 18, filed by Notice of Exempt Rulemaking, 11 A.A.R. 3501, September 16, 2005. Major changes have occurred since the 2015 rules review due to the creation of the DCS, which is now assigned responsibility in licensing foster homes and other child welfare programs that no longer fall under the Title 6 purview.

The OLCR is authorized by Arizona Revised Statutes to license child developmental homes and adult developmental homes and to certify home and community-based services for individuals with developmental disabilities. The purpose of regulating The Department of Economic Security (Department) developmental homes and contracted care providers is to protect vulnerable children and adults receiving services through the establishment and enforcement of safe standards for care.

The Department contracts with private agencies and individuals to provide a variety of services to children and vulnerable adults, including residential care in foster, developmental and group home environments; attendant care; day treatment and training; habilitation; respite care; and

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therapies, including respiratory, occupational, physical, and speech therapy. The contracts for these services are coordinated through the Division of Developmental Disabilities (DDD).

One component of licensing and certification is the inspection of homes and facilities used for the provision of services. The Regulatory Support Unit within the DDD schedules and conducts these inspections. The Arizona Administrative Code also requires periodic inspections for renewal licensure, relocation of licensed settings, and for significant new construction. Inspections directly impact the health and wellbeing of clients. Additionally, impacted are contracted agencies, individual care providers, and other Divisions within the Department.

The OLCR is funded through legislative appropriations. No fees are currently charged for licensing, certification, or inspections conducted by the OLCR.

Fiscal Year (FY) 2015 expenditures reflect inspections done since the OLCR became an entity within the DDD and separate from the DCS child welfare licensing program, while FY 2020 expenditures reflect inspections performed while the units were combined. This explains the significant change from FY 2015 to FY 2020.

Estimated Expenditures for the Regulatory Support Unit

	FY 2015	FY 2020
Expenditures:		
Personnel Related	268,403	272,670
Workspace, Equipment, Services	5,370	23,980
Travel/Vehicles	1,948	1,347
Total	275,721	297,997
Inspection Data:		
SOGHs and ICFs*	NA	NA
Initial Inspections	1,722	179
Re-inspections	NA	11
Renewal	1,040	139

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Relocation	608	97
Special (new construction/pool install, etc.)	126	2
Total	3,496	428

*OLCR added inspections of State Operated Group Homes (SOGHs) and Independent Care Facilities (ICFs) beginning Fall 2015 at the request of the DDD Assistant Director.

9. Has the agency received any business competitiveness analyses of the rules?

Yes ___ No X

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

In the previous Five-year Review Report, approved by the Council on February 2, 2016, the Department had indicated that after the Department consolidates the life-safety inspection rules into Title 6, Chapter 6, and the DCS promulgates its life-safety inspection rules, the Department plans to repeal the rules in Title 6, Chapter 18. On May 16, 2016, the Department received an exemption to consolidate the life-safety inspection rules into Title 6, Chapter 6 and repeal the rules in Title 6, Chapter 18. The Department has completed a preliminary draft of the life-safety inspection rules to incorporate into Title 6, Chapter 6. The draft is in the final stages of the review process before filing with the Secretary of State. However, in March 2020 the review for finalizing the draft was put on hold to allow staff the time to work on responding to the COVID-19 issues and associated activities.

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 regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

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The Department believes that the probable benefits of the rules will outweigh within this state the probable costs of the rules, and the rules will impose the least burden and costs to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

12. **Are the rules more stringent than corresponding federal laws?** Yes No

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

The Department has determined that there is no corresponding federal law applicable to the rules contained in this Chapter.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The Department has determined that A.R.S. § 41-1037 does not apply to these rules because the Department is not proposing a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license or agency authorization.

14. **Proposed course of action**

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department plans to resolve the ineffectiveness of the rules identified in Item 3 (Effective in achieving their objective) as the Life-Safety Inspection rules are being consolidated into Title 6, Chapter 6. After the Department consolidates the Life-Safety Inspection rules into Title 6, Chapter 6, the Department plans to repeal the rules in Title 6, Chapter 18. In the Title 6, Chapter 6 Five-Year Review Report approved by the Council on January 5, 2021, the Department proposed to submit the Notice of Final Rulemaking to the Governor's Regulatory Council to consolidate the Life-Safety Inspection rules into Title 6, Chapter 6 by December 2021. The Department plans to repeal the rules in Title 6, Chapter 18 by July 2022.

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TITLE 6. ECONOMIC SECURITY

**CHAPTER 18. DEPARTMENT OF ECONOMIC SECURITY
OFFICE OF LICENSING, CERTIFICATION, AND REGULATION**

(Authority: A.R.S. § 41-1954 et seq.)

Editor's Note: The Chapter heading was updated at the request of the Department. The request was dated June 26, 2008, and filed on June 30, 2008 (Supp. 08-3).

Editor's Note: Sections of this Chapter were made under an exemption from the provisions of A.R.S. Title 41, Chapter 6, under Laws 2004, Chapter 199, § 4.

ARTICLE 1. DEFINITIONS

Section
R6-18-101. Definitions

ARTICLE 2. RESERVED

ARTICLE 3. RESERVED

ARTICLE 4. RESERVED

ARTICLE 5. RESERVED

ARTICLE 6. RESERVED

ARTICLE 7. LIFE-SAFETY INSPECTION

Article 7, consisting of Sections R6-18-701 through R6-18-709, made by exempt rulemaking at 11 A.A.R. 3501, effective October 24, 2005 (Supp. 05-3).

Section
R6-18-701. Application
R6-18-702. General Condition and Cleanliness of the Setting
R6-18-703. Safeguarding of Hazards
R6-18-704. Storage of Medication
R6-18-705. Safe Appliances
R6-18-706. Electrical safety
R6-18-707. Plumbing Requirements
R6-18-708. Fire Safety
R6-18-709. Pool Requirements

ARTICLE 1. DEFINITIONS

Article 1, consisting of Section R6-18-101 made by exempt rulemaking at 11 A.A.R. 3501, effective October 24, 2005 (Supp. 05-3).

R6-18-101. Definitions

1. "Care provider" means a person licensed or certified to provide care or supervision in a home or program that is regulated by OLCR.
2. "Firearm" means a handgun, pistol, revolver, rifle, shotgun, or other weapon that is designed to expel a projectile by the action of an explosive.
3. "Hazard" means a condition or situation that may cause or result in physical injury or illness to a child or vulnerable adult.
4. "Individual receiving care" means a child or adult who receives or is eligible for the services listed in R6-18-701.
5. "Life-Safety Inspection" means an examination of the premises by OLCR to verify compliance with standards intended to safeguard children and vulnerable adults from fire hazards and from other hazardous conditions.
6. "Lock" means a device operated by a key, combination, magnet, or keycard to safeguard medications, swimming pools, and highly toxic substances.
7. "Medication" means both prescription and over-the-counter remedies approved as drugs by the U.S. Food and Drug Administration (FDA).
8. "Mobile home" means a trailer that is mounted on wheels or a platform with utility connections exposed under the trailer.
9. "OLCR" means the Office of Licensing, Certification, and Regulation, which is based in the Arizona Department of Economic Security.
10. "Pool" means any natural or man-made body of water that:
 - a. Could be used for swimming, recreational, or decorative purposes;
 - b. Is greater than 18 inches in depth; and
 - c. Includes swimming pools, spas, hot tubs, fountains, and fish-ponds.
11. "Safeguard" means to take reasonable measures to eliminate the risk of harm to an individual receiving care. Where a specific method is not otherwise prescribed in this Article, safeguarding may include:
 - a. Locking up a particular substance or item;
 - b. Putting a substance or item out of reach;
 - c. Erecting a barrier that prevents an individual receiving care from reaching a particular place, item, or substance;
 - d. Using protective safety devices; or
 - e. Providing supervision.
12. "Setting" means:
 - a. The home or building used to provide care or supervision; and

- b. The surrounding property and buildings that are owned, leased, or controlled by the care-provider.
13. "Skirting" means the barrier around the base of a mobile home that is intended to protect utility connections from damage or unauthorized contact.
14. "Slip-resistant surface" means the flooring provides friction to help prevent falls when the surface is wet. A slip resistant surface may be achieved by rippling or corrugating the surface, applying textured strips, installing a secured carpet, using rubber mats, and other similar measures.
15. "Trigger locked" means a firearm has been rendered temporarily or permanently inoperable by blocking the firing or discharge mechanism for the firearm with a locked device.
16. "UL Approved" means an electrical device bears the safety certification mark of a recognized testing laboratory, such as UL (Underwriters Laboratories) or ETL (Electrotechnical Laboratory).

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 3501, effective October 24, 2005 (05-3).

ARTICLE 2. RESERVED

ARTICLE 3. RESERVED

ARTICLE 4. RESERVED

ARTICLE 5. RESERVED

ARTICLE 6. RESERVED

ARTICLE 7. LIFE-SAFETY INSPECTION

R6-18-701. Application

This Article applies to:

1. Foster homes, regulated under Title 6, Chapter 5, Article 58;
2. Adult developmental homes, regulated under Title 6, Chapter 6, Article 11;
3. Child developmental foster homes, regulated under Title 6, Chapter 6, Article 10;
4. Child welfare agencies operating residential group care facilities and shelter care facilities regulated under Title 6, Chapter 5, Article 74, but not outdoor experience programs; and
5. Settings providing home and community based services for individuals with developmental disabilities, regulated under Title 6, Chapter 6, Article 15.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 3501, effective October 24, 2005 (05-3).

R6-18-702. General Condition and Cleanliness of the Setting

The care provider shall ensure:

1. The interior and exterior of the setting are maintained in good repair and do not constitute a hazard. Damage that constitutes a hazard includes:
 - a. Broken glass;
 - b. Surfaces that are rusted, have sharp or jagged edges, or have nails protruding;
 - c. Holes in walls, ceilings, or floors; or
 - d. Broken furniture, fixtures, appliances, or equipment.
2. Play areas and therapy equipment are in good repair.
3. The setting is clean to the degree that the condition does not constitute a hazard. Conditions that constitute a hazard include rotting food, stale or accumulated urine or feces, or an accumulation of mold.
4. Garbage is removed from the setting at least once each week.
5. The setting and outside play areas are free of insect and rodent infestation, or the setting has an ongoing system to eliminate insects or rodents.
6. Water in a pool on the premises is maintained, is not stagnant, and is clear enough to see through the water to the bottom surface of the pool.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 3501, effective October 24, 2005 (05-3).

R6-18-703. Safeguarding of Hazards

The care provider shall ensure:

1. Highly toxic substances and materials are safeguarded in locked storage. Highly toxic substances include gasoline, lighter fluid, pesticides, radiator fluid, drain cleaner, ammonia, bleach, spray paint, turpentine, and other substances that can cause serious bodily harm or death if improperly used.
2. Household cleaning supplies are safeguarded to prevent unsafe or improper use. Household cleaning supplies are substances that are not intended for ingestion, but generally will not cause serious bodily harm or death if improperly used. Examples of household cleaning supplies include spray cleaners, laundry detergent, furniture polish, and dishwasher detergent.
3. Access to personal grooming supplies is not restricted unless the case plan or service plan for an individual receiving care specifically restricts such access. Personal grooming supplies include toothpaste, hand-soap, shampoo, and deodorant.
4. Firearms, ammunition, and other weapons, including crossbows, stun guns, air guns, and hunting knives are safeguarded to prevent unsafe or improper use. In addition,
 - a. Firearms are unloaded, trigger locked, and kept in a locked storage container that is made of unbreakable material.
 - b. Ammunition is maintained in locked storage that is separate from firearms.
5. All dogs older than 6 months have current rabies vaccination. Vaccination records are maintained in the setting.
6. Animals in the setting or on the property do not pose a hazard due to behavior or disease.
7. Ramps, bathtubs, and showers have slip-resistant surfaces.
8. Handrails and grab-bars are securely attached and stationary.
9. Skirting is intact around the base of the setting, if the setting is a mobile home.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 3501, effective October 24, 2005 (05-3).

R6-18-704. Storage of Medication

A. The care provider shall ensure:

1. Medication is maintained in locked storage, with the exception of the following:

- a. Medication that may be accessed by an individual receiving care, as specified in that individual's case plan or service plan; and
 - b. Medication that must be readily and immediately accessible, such as an asthma inhaler or Epi-pen.
2. Medication that may be unlocked under subsection (1)(a) or (1)(b) is safeguarded to prevent improper use.
 3. Medication that must be refrigerated is safeguarded in locked storage, without preventing access to refrigerated food. This may be accomplished by storing refrigerated medication in a locked box within the refrigerator.
- B.** Programs licensed as child welfare group homes or shelters shall safeguard medications using a double-lock system. A locked box stored inside a locked cabinet is an example of a double-lock system.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 3501, effective October 24, 2005 (05-3).

R6-18-705. Safe Appliances

The care provider shall ensure:

1. Safe and functioning appliances are available for food refrigeration and cooking, if applicable. Safe and functioning refrigerators shall maintain food at or below a temperature of 45° F.
2. Electrical lighting is available in bedrooms, living areas, and rooms used to provide services.
 - a. Lighting is sufficient to perform normal activities; and
 - b. Light sockets are equipped with light bulbs or safely covered to prevent electrical shock.
3. Adequate heating, cooling, and ventilation are available in bedrooms, living areas, and rooms used to provide services. Temperatures outside the range of 65° - 85° F are indicators of inadequate heating or cooling.
4. At least one operable telephone is available in the setting, unless the licensing authority has approved an alternative system for communication. Telephone includes cellular phones, digital phones, and phones with traditional land lines.
5. If the setting has a clothes dryer, the dryer is safely vented with a non-flammable vent hose.
6. If a portable heater is in the setting, it has a protective covering to keep hands and objects away from the heating element and, it is:
 - a. Electric;
 - b. UL Approved;
 - c. Equipped with a tip-over shut-off switch;
 - d. Placed at least 3 feet from curtains, paper, furniture, and any flammable object when in use;
 - e. Not used as the primary source for heat in the setting; and
 - f. Not used in bedrooms.
7. A carbon monoxide detector-alarm is functioning on each level of the setting that has an appliance or heating device using combustible fuel such as gas, oil, kerosene, wood, or charcoal.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 3501, effective October 24, 2005 (05-3).

R6-18-706. Electrical Safety

The care provider shall ensure:

1. Electrical cords are in good condition; no broken or frayed cords are in use.
2. Electrical panels and outlets are in good condition; no wiring is exposed, and covers are in place.
3. Extension cords are not used on a permanent basis.
4. Electrical outlets are not overloaded.
5. Major appliances are plugged directly into grounded outlets. Major appliances include refrigerators, freezers, dishwashers, stoves, ovens, washers, and dryers.
6. Mid-sized appliances, which include computers, televisions, and stereo equipment, are plugged into:
 - a. Grounded outlets; or
 - b. Power strips or surge protectors that are plugged into grounded outlets.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 3501, effective October 24, 2005 (05-3).

R6-18-707. Plumbing Requirements

- A.** The care provider shall ensure that a continuous source of safe drinking water is available to individuals receiving care.
- B.** If the setting has a non-municipal source of water, the OLCR inspector shall collect a water sample at the time of an initial inspection and may collect a sample at subsequent inspections.
1. The OLCR inspector shall submit the water sample to a state-certified laboratory for total coliform testing. The water sample shall also be tested for nitrate content when care is provided to children under 2 years of age.
 2. If the water sample is not within acceptable levels for safe drinking water, the care provider shall provide OLCR a signed, written statement that:
 - a. Certifies that individuals receiving care will be provided with safe drinking water, and
 - b. Describes the care provider's plan for obtaining safe drinking water.
- C.** The care provider shall ensure that the sewage disposal for the setting is functioning. If the setting has a septic tank, it shall be in good working order, with no visible signs of leakage on the ground.
- D.** The care provider shall ensure that hot water temperature in areas for bathing does not exceed 120° F.
- E.** The care provider shall ensure that at least one working toilet, wash basin, and shower or tub is available for every ten persons living or receiving care in the setting at the same time.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 3501, effective October 24, 2005 (05-3).

R6-18-708. Fire Safety

The care provider shall ensure:

1. Flammables and combustibles are stored more than 3 feet from water heaters, furnaces, portable heaters, and fireplaces, and wood-burning stoves.
2. If the setting has a working fireplace or wood-burning stove, it is protected by a fire screen.
3. A functioning fire extinguisher with a rating of "2A 10BC" or greater is available near the kitchen area. If the setting has multiple levels at least one functioning fire extinguisher with a rating of "2A 10BC" or greater is available on each level.
4. A working smoke detector is installed:
 - a. In the main living or program area of the setting;
 - b. In each bedroom, if overnight care is provided; and

- c. On each level of a multiple-level setting.
- 5. A written emergency evacuation plan is developed to provide guidance on the safe and rapid evacuation of the setting. An emergency evacuation plan shall:
 - a. Identify two routes of evacuation from each bedroom used by individuals residing in or receiving care in the setting. At least one of the exit routes for these bedrooms leads directly to the outside of the setting.
 - b. Identify the location of fire extinguishers and fire evacuation equipment, including rope or chain ladders and emergency lighting, as applicable;
 - c. Designate a safe meeting place outside the setting; and
 - d. Be maintained in the setting to review with individuals residing in or receiving care in the setting.
- 6. Settings authorized to provide care or services to six or more individuals shall practice and document the completion of an evacuation drill at least once every three months.
- 7. The exit routes for the setting are clear of obstruction that could prevent safe and rapid evacuation.
- 8. The locks on exterior doors and windows, including the front door, screen doors, and bars on windows, are equipped with a quick release mechanism. A quick release mechanism is a lock that can be opened from inside the setting without special knowledge (such as a combination) or equipment (such as a key). The Department may grant an exception to this requirement for a double-key deadbolt on a door if:
 - a. There is breakable glass within 40 inches of the interior locking mechanism;
 - b. There is another exit with a quick release mechanism on the same level of the setting; and
 - c. The key for the deadbolt is permanently maintained in a location that is:
 - i. Within 6 feet of the locking mechanism,
 - ii. Accessible to all household members,
 - iii. Reviewed with persons residing in or receiving care in the setting, and
 - iv. Identified on the emergency evacuation plan, specified in subsection (5).
- 9. The address for the setting is posted and visible from the street, or the local emergency response team, such as the local fire department, is notified of the location of the setting in writing, with a copy of this notification maintained in the setting.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 3501, effective October 24, 2005 (05-3).

R6-18-709. Pool Requirements

- A. For settings with a pool that is deeper than 4 feet, the care provider shall ensure the following safety equipment is available within the pool enclosure:
 - 1. A shepherd's crook attached to a pole; and
 - 2. A ring buoy attached to a rope that measures half the distance across the pool plus 10 feet.
- B. A care provider who has a pool on the premises and provides services to a child age 5 and under or to an individual with developmental disabilities:
 - 1. Shall ensure the pool is fenced with an enclosure that meets the following requirements:
 - a. The exterior side of the fence is at least 5 feet high;
 - b. If the fence is chain link, the mesh measures less than 1 3/4 inches horizontally;
 - c. If the fence is constructed of vertical bars or wooden slats, the openings between bars or slats measure less than 4 inches;
 - d. The exterior side of the fence is free of hand holds or foot holds or other means that could be used to climb over the fence;
 - e. Gates for the fence are self-closing and self-latching and open out or away from the pool.
 - f. The gate latch is at least 54" above the ground and is equipped with a key or combination lock.
 - g. The gate to the enclosure is locked, except when there is an adult within the enclosure to supervise the pool and spa area.
 - 2. Shall ensure the following, if the home or building used to provide care or supervision constitutes part of the enclosure:
 - a. The enclosure does not interfere with safe egress from the setting.
 - b. A door from the setting does not open within the pool enclosure.
 - c. A window from the setting and located in a room that is designated as a bedroom for an individual receiving care is not positioned within the pool enclosure.
 - d. Other windows from the setting and within the pool enclosure are permanently secured to open no more than 4 inches.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 3501, effective October 24, 2005 (05-3).

8-503. Powers and duties

A. The division shall:

1. Exercise supervision over all child welfare agencies.
2. Advise and cooperate with the governing boards of all child welfare agencies.
3. Assist the staffs of all child welfare agencies by giving advice on progressive methods and procedures of child care and improvement of services.
4. Establish rules, regulations and standards for:
 - (a) Licensing of child welfare agencies.
 - (b) Licensing of foster homes.
 - (c) Classifications of foster homes as:
 - (i) Receiving foster homes.
 - (ii) Regular foster homes.
 - (iii) Special classes of foster homes as are needed according to the types of problems involved.
 - (iv) Group foster homes.
 - (d) Certifying each foster home according to one or more of the categories prescribed in subdivision (c) of this paragraph.
 - (e) Initial and ongoing foster parent training programs.
 - (f) The method of approving foster parent training programs.
 - (g) Uniform amounts of payment for all foster homes according to certification. However, variations in uniform amounts of payments may be allowed for foster homes based on consideration of geographical location or age or mental or physical condition of a foster child.
 - (h) Renewal of licenses of child welfare agencies and foster homes.
 - (i) Form and content of investigations, reports and studies concerning disposition of children and foster home placement.
5. Establish a program of counseling and rehabilitation of parents whose children have been placed in foster homes.

6. Establish foster parent training programs or contract with other agencies, institutions or groups for the provision of training programs to foster parents. Foster parent training programs shall be established in at least the following areas:

(a) Initial and ongoing training as a foster parent for a regular or group foster home.

(b) Initial and ongoing training as a foster parent for a special foster home.

7. Regulate the importation and exportation of children.

8. In conjunction with the department of education and the department of juvenile corrections, develop and implement a uniform budget format to be submitted by licensed child welfare agencies. The budget format shall be developed in such a manner that, at a minimum, residential and educational instructional costs are separate and distinct budgetary items.

9. Establish as a goal that, at any given time, not more than fifty percent of the total number of children whose maintenance is subsidized by title IV, part E of the social security act, as amended, shall be in foster care in excess of twenty-four consecutive months. The division shall establish through regulations appropriate procedures to achieve the goal.

10. Maintain a goal that infants who are taken into custody by the department be placed in a prospective permanent placement within one year after the filing of a dependency petition.

B. Except as provided in section 8-514.01, large group settings for children, group homes for children and child developmental homes that have one or more residents who are clients of the department with developmental disabilities shall be licensed pursuant to title 36, chapter 5.1, article 3. Rules, regulations and standards adopted pursuant to subsection A, paragraph 4 of this section shall not apply to group homes for children or child developmental homes licensed pursuant to title 36, chapter 5.1, article 3.

8-504. Sanitation, fire and hazard inspection

A. The division shall visit each child welfare agency and foster home and inspect the premises used for care of children for sanitation, fire and other actual and potential hazards. The division shall take action it deems necessary to carry out the duties imposed by this section including the denial of the application for licensure and the suspension or revocation of a license.

B. The division may delegate any additional inspection, examination or study provided for by this article, including inspection of premises for fire hazards, to an agency, department, political subdivision or governmental entity deemed appropriate by the division.

36-554. Powers and duties of director

A. The director shall:

1. Be responsible for developing and annually revising a statewide plan and initiating statewide programs and services for persons with developmental disabilities in locations where the programs and services are necessary, which shall include:

(a) Child services, which may include infant stimulation, developmental training for pre-school children and special education at Arizona training program facilities for school-age, children with developmental disabilities residing at Arizona training program facilities who do not attend public school.

(b) Adult services, in coordination with the vocational rehabilitation services of the department, which may include but not be limited to job training and training and adjustment services, job development and placement, sheltered employment and other nonvocational day activity services for adults.

(c) Residential services, including various community residential settings, Arizona training program facilities and state operated service centers which provide varying levels of supervision in accordance with the developmental disability levels of the persons placed at such settings, facilities or centers. The department shall contract with private profit or nonprofit agencies to provide appropriate residential settings for persons with developmental disabilities which provide for regular assistance and supervision of such persons and which provide varied developmental disability programs and services on or near the community residential setting.

(d) Resource services, which may include comprehensive evaluation services, information and referral services and outpatient rehabilitation and social development services. The department in providing developmental disability programs and services shall whenever practicable utilize qualified private contractors. In selecting private contractors, the department shall utilize those contractors which can clearly demonstrate an ability to perform such contract in accordance with standards and specifications adopted by the department.

2. Establish standards, provide technical assistance, and supervise all developmental disability programs and services operated by or supported by the department.

3. Coordinate the planning and implementation of developmental disability programs and activities, institutional and community, of all state agencies, provided this shall not be construed as depriving other state agencies of jurisdiction over, or the right to plan for, control, and operate programs that pertain to developmental disability programs but that fall within the primary jurisdiction of such other state agencies.

4. Periodically assess the effectiveness of the quality assurance system as required by 42 Code of Federal Regulations section 434.34 as it pertains to developmental disabilities programs.

5. License community residential settings pursuant to this chapter.

6. Develop rules establishing a procedure for handling complaints about community residential settings.

7. Inform in writing every parent or guardian of a client with a developmental disability residing at or transferring to a community residential setting of the complaint handling procedure.

8. As new community residential settings are developed over a period of time, reduce the clientele at Arizona training program facilities to those persons with developmental disabilities who are required to be in Arizona training program facilities because the community lacks an appropriate community residential setting that meets their individual needs or whose parents or legal guardians want them in an Arizona training program facility.

9. In conjunction with the division, individuals with developmental disabilities and their families, advocates, community members and service providers, develop, enhance and support environments that enable individuals with developmental disabilities to achieve and maintain physical well-being, personal and professional satisfaction, participation as family and community members and safety from abuse and exploitation.

10. Do all other things reasonably necessary and proper to carry out the duties and the provisions of this chapter.

11. Adopt rules regarding procurement procedures similar to those found in title 41, chapter 23.

B. Programs and services offered pursuant to subsection A, paragraph 1 of this section shall be provided in cooperation with public and private resources that can best meet the needs of persons with developmental disabilities and that are located in the community and in proximity to the persons being served.

C. The director may:

1. Establish nonresidential outpatient programs for placement, evaluation, care, treatment and training of persons with developmental disabilities residing in the community who are not eligible for public school programs, and who do not have access to other state supported programs providing equivalent services.

2. Develop cooperative programs with other state departments and agencies, political subdivisions of the state, and private agencies concerned with and providing services for persons with developmental disabilities.

3. Contract for the purchase of services with other state and local governmental or private agencies. Such agencies are authorized to accept and expend funds received pursuant to such contracts.

4. Stimulate research by public and private agencies, institutions of higher learning, and hospitals in the interest of the prevention of developmental disabilities and improved methods of care and training for persons with developmental disabilities.

5. Apply for, accept, receive, hold in trust or use in accordance with the terms of the grant or agreement any public or private funds or properties, real or personal, granted or transferred to it for any purpose authorized by this chapter.

6. Make and amend rules from time to time as deemed necessary for the proper administration of programs and services for the treatment of persons with developmental disabilities, for the admission of persons with developmental disabilities to the programs and services and to carry out the purposes of this chapter.

36-592. Adult developmental homes; child developmental homes; license applications; investigation and operation; third-party contractors; rules; definitions

A. An applicant for an adult developmental home or child developmental home license shall submit an application on a form prescribed by the department.

B. Before issuing or renewing a license to an applicant, the department shall investigate the activities and standards of care within the setting, the financial stability of the applicant, the character and training of the applicant and the adequacy of services. Before issuing or renewing a license, the department shall determine that the applicant is able to meet the emotional, physical, social, developmental, educational, cultural and intellectual needs of clients. The department by rule shall establish standards for licensure. The department shall maintain a system of independent oversight of licensing. The department may contract with third parties to perform services in connection with oversight and licensing. The department may not contract with the same third party for both oversight and licensure under this subsection.

C. Each license shall state in general terms the kind of setting the licensee is authorized to operate and shall prescribe the number, ages and sex of clients.

D. A licensee who holds an adult developmental home or child developmental home license shall:

1. Comply with applicable health, safety and sanitation codes or standards and document its compliance.
2. File reports as prescribed by the department.
3. Allow the department to inspect or monitor its services and facility and the facility's books and records.
4. Comply with rules adopted by the department.
5. Provide for the health, safety and welfare of the licensee's clients.
6. Allow the inspection of the developmental home at reasonable times pursuant to section 36-595.01.

E. A license expires one year from the date of issuance.

F. For each adult developmental home and child developmental home, the department shall:

1. Conduct an annual licensing home visit.
2. Monitor the settings for compliance with health, safety, contractual, programmatic and quality assurance standards at least two times per year. The department shall maintain a system of independent oversight of monitoring. The department may enter into a contract with third parties to perform services in connection with oversight and monitoring. The department may not contract with the same third party for both oversight and monitoring under this paragraph.

3. Investigate a complaint within ten working days after receiving notice of the complaint, except that if there is a danger to a client, the department shall conduct the investigation immediately.

G. The department shall establish by rule minimum qualifications, responsibilities and oversight for the licensing and monitoring of adult developmental homes and child developmental homes. The rules regarding minimum qualifications shall address professional judgment, conflicts of interest and training. The rules shall establish the frequency and type of visits for licensing and monitoring, maximum caseload ratios for those performing licensing and monitoring services and a system for appropriate public access to information regarding licensing and monitoring findings.

H. The department may contract with the same third party to perform services in connection with the licensing and monitoring of an adult developmental home or a child developmental home.

I. For the purposes of this section:

1. "Licensing" includes recruiting and verifying qualifications of applicants.

2. "Monitoring" includes monitoring health, safety, contractual, programmatic and quality assurance standards of an adult developmental home or child developmental home.

41-1954. Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

1. Administer the following services:

(a) Employment services, including manpower programs and work training, field operations, technical services, unemployment compensation, community work and training and other related functions in furtherance of programs under the social security act, as amended, the Wagner-Peyser act, as amended, the federal unemployment tax act, as amended, 33 United States Code, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(b) Individual and family services, which shall include a section on aging, services to children, youth and adults and other related functions in furtherance of social service programs under the social security act, as amended, title IV, except parts B and E, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, the older Americans act, as amended, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(c) Income maintenance services, including categorical assistance programs, special services unit, child support collection services, establishment of paternity services, maintenance and operation of a state case registry of child support orders, a state directory of new hires, a support payment clearinghouse and other related functions in furtherance of programs under the social security act, title IV, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, as amended, and other related federal acts and titles.

(d) Rehabilitation services, including vocational rehabilitation services and sections for the blind and visually impaired, communication disorders, correctional rehabilitation and other related functions in furtherance of programs under the vocational rehabilitation act, as amended, the Randolph-Sheppard act, as amended, and other related federal acts and titles.

(e) Administrative services, including the coordination of program evaluation and research, interagency program coordination and in-service training, planning, grants, development and management, information, legislative liaison, budget, licensing and other related functions.

(f) Manpower planning, including a state manpower planning council for the purposes of the federal-state-local cooperative manpower planning system and other related functions in furtherance of programs under the comprehensive employment and training act of 1973, as amended, and other related federal acts and titles.

(g) Economic opportunity services, including the furtherance of programs prescribed under the economic opportunity act of 1967, as amended, and other related federal acts and titles.

(h) Intellectual disability and other developmental disability programs, with emphasis on referral and purchase of services. The program shall include educational, rehabilitation, treatment and training services and other related functions in furtherance of programs under the developmental disabilities services and facilities construction act (P.L. 91-517) and other related federal acts and titles.

(i) Nonmedical home and community based services and functions, including department-designated case management, housekeeping services, chore services, home health aid, personal care, visiting nurse services, adult day care or adult day health, respite sitter care, attendant care, home delivered meals and other related services and functions.

2. Provide a coordinated system of initial intake, screening, evaluation and referral of persons served by the department.

3. Adopt rules it deems necessary or desirable to further the objectives and programs of the department.

4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

5. Employ and determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons subject to chapter 4, article 4 and, as applicable, article 5 of this title as may be necessary in the performance of its duties, contract for the services of outside advisors, consultants and aides as may be reasonably necessary and reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business.

6. Make contracts and incur obligations within the general scope of its activities and operations subject to the availability of funds.

7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of its purposes, objectives and programs.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

10. 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 its duties subject to the departmental rules on the confidentiality of information.

11. Establish and maintain separate financial accounts as required by federal law or regulations.

12. Advise and make recommendations to the governor and the legislature on all matters concerning its objectives.

13. Have an official seal that is judicially noticed.

14. Annually estimate the current year's population of each county, city and town in this state, using the periodic census conducted by the United States department of commerce, or its successor agency, as the basis for such estimates and deliver such estimates to the economic estimates commission before December 15.

15. Estimate the population of any newly annexed areas of a political subdivision as of July 1 of the fiscal year in which the annexation occurs and deliver such estimates as promptly as is feasible after the annexation occurs to the economic estimates commission.

16. Establish and maintain a statewide program of services for persons who are both hearing impaired and visually impaired and coordinate appropriate services with other agencies and organizations to avoid duplication of these services and to increase efficiency. The department of economic security shall enter into agreements for the utilization of the personnel and facilities of the department of economic security, the department of health services and other appropriate agencies and organizations in providing these services.

17. Establish and charge fees for deposit in the department of economic security prelayoff assistance services fund to employers who voluntarily participate in the services of the department that provide job service and retraining for persons who have been or are about to be laid off from employment. The department shall charge only those fees necessary to cover the costs of administering the job service and retraining services.

18. Establish a focal point for addressing the issue of hunger in this state and provide coordination and assistance to public and private nonprofit organizations that aid hungry persons and families throughout this state. Specifically such activities shall include:

(a) Collecting and disseminating information regarding the location and availability of surplus food for distribution to needy persons, the availability of surplus food for donation to charity food bank organizations, and the needs of charity food bank organizations for surplus food.

(b) Coordinating the activities of federal, state, local and private nonprofit organizations that provide food assistance to the hungry.

(c) Accepting and disbursing federal monies, and any state monies appropriated by the legislature, to private nonprofit organizations in support of the collection, receipt, handling, storage and distribution of donated or surplus food items.

(d) Providing technical assistance to private nonprofit organizations that provide or intend to provide services to the hungry.

(e) Developing a state plan on hunger that, at a minimum, identifies the magnitude of the hunger problem in this state, the characteristics of the population in need, the availability and location of charity food banks and the potential sources of surplus food, assesses the effectiveness of the donated food collection and distribution network and other efforts to alleviate the hunger problem, and recommends goals and strategies to improve the status of the hungry. The state plan on hunger shall be incorporated into the department's state comprehensive plan prepared pursuant to section 41-1956.

(f) Establishing a special purpose advisory council on hunger pursuant to section 41-1981.

19. Establish an office to address the issue of homelessness and to provide coordination and assistance to public and private nonprofit organizations that prevent homelessness or aid homeless individuals and families throughout this state. These activities shall include:

(a) Promoting and participating in planning for the prevention of homelessness and the development of services to homeless persons.

(b) Identifying and developing strategies for resolving barriers in state agency service delivery systems that inhibit the provision and coordination of appropriate services to homeless persons and persons in danger of being homeless.

(c) Assisting in the coordination of the activities of federal, state and local governments and the private sector that prevent homelessness or provide assistance to homeless people.

(d) Assisting in obtaining and increasing funding from all appropriate sources to prevent homelessness or assist in alleviating homelessness.

(e) Serving as a clearinghouse on information regarding funding and services available to assist homeless persons and persons in danger of being homeless.

(f) Developing an annual state comprehensive homeless assistance plan to prevent and alleviate homelessness.

(g) Submitting an annual report to the governor, the president of the senate and the speaker of the house of representatives on the status of homelessness and efforts to prevent and alleviate homelessness. The department shall provide a copy of this report to the secretary of state.

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. Exchange information, including case specific information, and cooperate with the department of child safety for the administration of the department of child safety's programs.

B. If the department of economic security has responsibility for the care, custody or control of a child or is paying the cost of care for a child, it may serve as representative payee to receive and administer social security and United States department of veterans affairs benefits and other benefits payable to such child. Notwithstanding any law to the contrary, the department of economic security:

1. Shall deposit, pursuant to sections 35-146 and 35-147, such monies as it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use such monies to defray the cost of care and services expended by the department of economic security for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.

3. Shall maintain separate records to account for the receipt, investment and disposition of funds received for each child.

4. On termination of the department of economic security's responsibility for the child, shall release any funds remaining to the child's credit in accordance with the requirements of the funding source or in the absence of such requirements shall release the remaining funds to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person responsible for the child if the child is a minor and not emancipated.

C. Subsection B of this section does not pertain to benefits payable to or for the benefit of a child receiving services under title 36.

D. Volunteers reimbursed for expenses pursuant to subsection A, paragraph 5 of this section are not eligible for workers' compensation under title 23, chapter 6.

E. In implementing the temporary assistance for needy families program pursuant to Public Law 104-193, the department shall provide for cash assistance to two-parent families if both parents are able to work only on documented participation by both parents in work activities described in title 46, chapter 2, article 5, except that payments may be made to families who do not meet the participation requirements if:

1. It is determined on an individual case basis that they have emergency needs.

2. The family is determined to be eligible for diversion from long-term cash assistance pursuant to title 46, chapter 2, article 5.

F. The department shall provide for cash assistance under temporary assistance for needy families pursuant to Public Law 104-193 to two-parent families for no longer than six months if both parents are able to work, except that additional assistance may be provided on an individual case basis to families with extraordinary circumstances. The department shall establish by rule the criteria to be used to determine eligibility for additional cash assistance.

G. The department shall adopt the following discount medical payment system for persons who the department determines are eligible and who are receiving rehabilitation services pursuant to subsection A, paragraph 1, subdivision (d) of this section:

1. For inpatient hospital admissions and outpatient hospital services the department shall reimburse a hospital according to the rates established by the Arizona health care cost containment system administration pursuant to section 36-2903.01, subsection G.

2. The department's liability for a hospital claim under this subsection is subject to availability of funds.

3. A hospital bill is considered received for purposes of paragraph 5 of this subsection on initial receipt of the legible, error-free claim form by the department if the claim includes the following error-free documentation in legible form:

(a) An admission face sheet.

(b) An itemized statement.

(c) An admission history and physical.

(d) A discharge summary or an interim summary if the claim is split.

(e) An emergency record, if admission was through the emergency room.

(f) Operative reports, if applicable.

(g) A labor and delivery room report, if applicable.

4. The department shall require that the hospital pursue other third-party payors before submitting a claim to the department. Payment received by a hospital from the department pursuant to this subsection is considered payment by the department of the department's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For inpatient hospital admissions and outpatient hospital services rendered on and after October 1, 1997, if the department receives the claim directly from the hospital, the department shall pay a hospital's rate established according to this section subject to the following:

(a) If the hospital's bill is paid within thirty days of the date the bill was received, the department shall pay ninety-nine percent of the rate.

(b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the department shall pay one hundred percent of the rate.

(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the department shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. For medical services other than those for which a rate has been established pursuant to section 36-2903.01, subsection G, the department shall pay according to the Arizona health care cost containment system capped fee-for-service schedule adopted pursuant to section 36-2904, subsection K or any other established fee schedule the department determines reasonable.

H. The department shall not pay claims for services pursuant to this section that are submitted more than nine months after the date of service for which the payment is claimed.

I. To assist in the location of persons or assets for the purpose of establishing paternity, establishing, modifying or enforcing child support obligations and other related functions, the department has access, including automated access if the records are maintained in an automated database, to records of state and local government agencies, including:

1. Vital statistics, including records of marriage, birth and divorce.
2. State and local tax and revenue records, including information on residence address, employer, income and assets.
3. Records concerning real and titled personal property.
4. Records of occupational and professional licenses.
5. Records concerning the ownership and control of corporations, partnerships and other business entities.
6. Employment security records.
7. Records of agencies administering public assistance programs.
8. Records of the motor vehicle division of the department of transportation.
9. Records of the state department of corrections.
10. Any system used by a state agency to locate a person for motor vehicle or law enforcement purposes, including access to information contained in the Arizona criminal justice information system.

J. Notwithstanding subsection I of this section, the department or its agents shall not seek or obtain information on the assets of an individual unless paternity is presumed pursuant to section 25-814 or established.

K. Access to records of the department of revenue pursuant to subsection I of this section shall be provided in accordance with section 42-2003.

L. The department also has access to certain records held by private entities with respect to child support obligors or obligees, or individuals against whom such an obligation is sought. The information shall be obtained as follows:

1. In response to a child support subpoena issued by the department pursuant to section 25-520, the names and addresses of these persons and the names and addresses of the employers of these persons, as appearing in customer records of public utilities, cable operators and video service providers.

2. Information on these persons held by financial institutions.

M. Pursuant to department rules, the department may compromise or settle any support debt owed to the department if the director or an authorized agent determines that it is in the best interest of this state and after considering each of the following factors:

1. The obligor's financial resources.

2. The cost of further enforcement action.

3. The likelihood of recovering the full amount of the debt.

N. Notwithstanding any law to the contrary, a state or local governmental agency or private entity is not subject to civil liability for the disclosure of information made in good faith to the department pursuant to this section.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 14, Article 7, Health Screening Services



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: May 4, 2021

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

FROM: Council Staff

DATE: April 9, 2021

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F21-0502)
Title 9, Chapter 14, Article 7, Health Screening Services

This Five-Year-Review Report (5YRR) from the Department of Health services relates to rules in Title 9, Chapter 14, Article 7, regarding Health Screening Services. The report covers one rule only, R9-14-701.

The Department did not propose to make any changes to the rule in the last 5YRR of the rule.

Proposed Action

The Department is not proposing any changes to the rule. The rule is effective, clear, concise and understandable.

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

Yes, the Department cites both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department identifies stakeholders as the Department, persons performing health screening laboratory services, entities paying for health screening laboratory services, individuals receiving health screening laboratory services, and the general public.

Based on the Department's analysis of comparing the 2006 EIS with current enforcement of the rule, the Department expects that the actual economic impact of the rules is consistent with the 2006 EIS provided with the 2006 Notice of Final Rulemaking.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department has determined that the rule is effective and the benefit of the rule outweighs the probable cost of the rule, and the rule imposes the least burden and costs to persons regulated by the rule while achieving the regulatory objective consistent with its statutory requirement in A.R.S. § 36-405.01

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Department indicates they have not received any written criticisms to the rule.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rule is clear, concise, and understandable.

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

Yes, the Department indicates the rule is consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rule is effective in achieving its objective.

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

Yes, the Department indicates the rule is enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

No. The Department indicates the rule is not more stringent than the corresponding federal law. 42 C.F.R. 493.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The rule does not require the issuance of a permit or license.

11. Conclusion

As mentioned above, the Department is not proposing any changes to the rule. The rule is over clear, concise, and understandable. Council staff recommend approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

February 22, 2021

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsins, Chair

Arizona Department of Administration

100 N. 15th Avenue, Suite 305

Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 14, Article 7 Five Year Review Report

Dear Ms. Sornsins:

Please find enclosed the Five Year Review Report of the Department of Health Services for A.A.C. Title 9, Chapter 14, Article 7, which is due on February 28, 2021.

The Department of Health Services reviewed the following rules with the intention that they do not expire pursuant to A.R.S. § 41-1056(J).

The Department of Health Services hereby certifies compliance with A.R.S. § 41-1056(A).

For questions about this report, please contact Teresa Koehler at 602-364-0813 or Teresa.Koehler@azdhs.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "RL", is written over the printed name of Robert Lane.

Robert Lane

Director's Designate

RL:tk

Enclosures

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director



Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 14. Department of Health Services – Laboratories

Article 7. Health Screening Services

February 2021

1. Authorization of the rule by existing statutes

Authorizing statutes: A.R.S. §§ 36-132(A) and 36-136(G)

Implementing statutes: A.R.S. § 36-405.01

2. The objective of each rule:

Rule	Objective
R9-14-701	The objective of the rule is to provide definitions, a specific requirement for certified laboratories to perform health screening laboratory services, and list circumstances when the rule do not apply.

3. Are the rules effective in achieving their objectives? Yes No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
R9-14-701	The rule is effective in achieving its objective.

4. Are the rules consistent with other rules and statutes? Yes No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R9-14-701	The rule is consistent with state and federal statutes and rules.

5. Are the rules enforced as written? Yes No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation
R9-14-701	The rule is enforce as written without difficulty.

6. **Are the rules clear, concise, and understandable?** Yes No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
R9-14-701	The rule is clear, concise, and understandable.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

If yes, please fill out the table below:

Commenter	Comment	Agency's Response

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

The Department submitted an economic, small business, and consumer impact statement (EIS) with the final rulemaking approved by the Governor's Regulatory Review Council in November 2006 and effective February 3, 2007. The rule in R9-14-701 contains definitions, clarifies a requirement for certified laboratories to perform health screening laboratory services, and specifies circumstances in which the rule does not apply. The rule, as required by A.R.S. § 36-405.01, specifies the manner in which health screening services are provided when a health screening service is an examination of secretions, body fluids or excretions of the human body performed pursuant to Title 36, Chapter 4.1., Clinical Laboratories; and the rule by definition, clarifies that a "certified laboratory" is a laboratory certified by the U.S. Department of Health and Human Services and complies with the Clinical Laboratory Improvement Amendments (CLIA) of 1988, 42 C.F.R. 493, Laboratory Requirements. The 2006 EIS identified cost bearers and beneficiaries as the Department, persons performing health screening laboratory services, entities paying for health screening laboratory services, individuals receiving health screening laboratory services, and the general public. In the 2006 EIS, costs or revenues were designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000. Additionally, some costs and benefits were listed as significant when meaningful or important, but not readily subject to quantification.

The 2006 EIS identified that the Department could incur a minimal-to-moderate costs for reviewing, writing, and implementing the new rule. The Department also expected to incur an additional minimal-to-moderate cost for educational activities related to persons who perform health screening laboratory services that had not yet completed an initial certification application and for conducting surveys required for certification. The Department anticipated minimal benefit to the Department as a result of the rulemaking.

In addition, the Department anticipated that persons conducting health screening laboratory services may receive a minimal benefit from having rules that clarify requirements and are consistent with CLIA requirements. The

Department also stated in the 2006 EIS that persons conducting health screening laboratory services would not experience any costs associated with the rulemaking. However, the Department anticipated that a person conducting health screening laboratory services may incur some cost associated with complying with CLIA requirements. Similarly, the Department stated that entities who pay for health screening laboratory services will receive a minimal benefit for having rules that ensures persons providing health screening laboratory services may provide better quality services with fewer testing errors and may incur a minimal cost from a person providing health screening laboratory services who pass any additional costs to complying with CLIA requirements to entities that pay for health screening laboratory services.

Additionally, the Department anticipated that individuals who receive health screening laboratory services from a person conducting health screening laboratory services compliant with CLIA requirements will not benefit from or bear a cost due to this rulemaking. However, some individuals who receive health screening laboratory services from a person that is not compliant with CLIA requirements may incur a minimal cost increase for a service if the person passes on costs for complying with CLIA requirements. The Department expects that some individuals, who receive health screening laboratory services from a person, compliant with CLIA may receive a benefit for improved quality of services provided, as well as increased general public wellbeing. The Department expected the general public may benefit from increased compliance with CLIA requirements and making individuals who receive health screening laboratory services healthier and more productive.

The Department's Office of Laboratory Licensure and Certification, by contract with the federal government CMS, surveys laboratories for certificate of compliance on behalf of CLIA. The Department may also survey a laboratory if a laboratory has conditional deficiencies on an initial survey or if requested to perform a complaint survey. The Department does not routinely survey for certificate of accreditation, certificate of waiver, or certificate of provider-performed microscopy procedures. The Department does not collect fees for laboratory certification of compliance or laboratory surveys; all certification fees are collected by CMS-CLIA. Based on effective certificates, the Department in 2019 reports that Arizona laboratories consist of 317 certificates of compliance; 4,799 certificates of waiver; and 316 certificates of accreditation, and in 2020, 391 certificates of compliance; 5,297 certificates of waiver; and 323 certificates of accreditation. CMS suspended site surveys during March 2020 through September 2020 due to the COVID-19 pandemic and the 2020 fiscal year data is not reflective of a typical year. The Department reports that during the March 2020 through September 2020, the Department was inundated with CLIA initial applications and survey inspections for facilities wanting to conduct COVID-19 testing and is evident in the 2019 and 2020 data provided above. Based on the Department's analysis of comparing the 2006 EIS with current enforcement of the rule, the Department expect that the actual economic impact of the rule is consistent with the 2006 EIS provided with the 2006 Notice of Final Rulemaking.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No √

10. Has the agency completed the course of action indicated in the agency’s previous five-year-review report?

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

Yes. The Department stated in the 2016 five-year-review report course of action that the Department did not plan to amend 9 A.A.C. 14, Article 7 until substantive issues with the rule arise. As stated, the Department did not amend 9 A.A.C. 14, Article 7.

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 regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The Article 7 rule establishes definitions related to health screening laboratory services, clarifies that a certified laboratory provides health screening laboratory services, and clarifies circumstances when the rule does not apply. The 2006 EIS identified affected groups as the Department, persons providing health screening laboratory services, entities paying for health screening laboratory services, and individuals receiving health screening laboratory services. In this 2021 five-year-review report, the Department designates in this determination costs and benefits as “moderate” if between \$1,000 to \$5,000 and “significant” for some costs or benefits when meaningful or imports, but not readily subject to quantification.

Since the information in the 2006 EIS does not include actual costs incurred, the Department expects that the Department incurred a moderate costs in 2006 for reviewing, writing, and implementing the rulemaking for the rule and for providing educational activities related to some persons who provide health screening laboratory services that had not yet completed an initial certification application and survey requirements. The Department also expects having the rule agrees with the Department’s contract with CMS-CLIA that provides a significant benefit to the Department. With the rulemaking having been promulgated in 2006, the Department believes that the estimated cost to complete the rulemaking and provide educational activities is reasonable and has diminished over time. The Department has received a significant benefit for having a clear, simple rule that defines and clarifies that a certified laboratory provides health screening laboratory services. The Department determines that the benefit of having the rules is greater than the costs or burdens the Department may have occurred.

Additionally, the Department anticipates that persons conducting health screening laboratory services have received a significant benefit for having a rule that clarifies a “certified laboratory” comply with CLIA¹ requirements and

¹ This rule does not certify persons who perform health screening laboratory services. A.A.C. Title 9, Chapter 14, Article 6, Licensing of Laboratories, licenses laboratories in Arizona. CLIA certification is in addition to state license. Article 7 does not add or increase fees or costs for laboratories in Arizona; Article 7 clarifies that Arizona is consist with federal regulations of clinical laboratories. The [Clinical Laboratory Improvement Amendments of 1988](#) was established by Congress in Public Law 100-578, 102 STAT. 2903, and provides authority to promulgate standards for certain laboratory testing to ensure the accuracy, reliability and timeliness of test results regardless of where or by whom the test was performed. Sec. 353. (b) specifies “...No person may solicit or accept materials derived from the human body for laboratory examination or other procedure unless there is an affect for the laboratory a certificate issued by the Secretary under this section applicable to the category of examinations or procedures which includes such examination or procedure.”

specifies that only laboratories defined in A.R.S. § 36-401 may provide health screening laboratory services. The Department, in the 2006 EIS, expected persons providing health screening laboratory services would not experience any costs associated with the rulemaking since the Article 7 rule did not add any additional certification requirement. The Department expects that once a laboratory meets the requirements of a “certified laboratory,” revenues would most likely increase consistent with increases in fees for providing better-quality testing. Persons conducting health screening laboratory services for a certified laboratory that increased fees-revenues could have received a nominal increase in monthly incomes. The Department determines that the benefit of having the rule is significant and no costs or burdens occurred for persons conducting health screening laboratory services. In addition, the Department expect entities who pay for health screening laboratory services received a significant benefit for having a rule that ensure compliance with CLIA regulations, improved quality of services including fewer testing errors; and benefit by physicians’ making better medical decisions for patients that may not have been known if provided by non-compliance entities provide health screening laboratory services. If moderate costs had incurred for some entities, the Department anticipates that most likely any cost incurred for Article 7 rule would have be passed on to individuals who receive health screening laboratory services. The Department determines that the benefit of having the rule is significant and no costs or burdens have occurred for entities who pay for health screening laboratory services.

Lastly, the Department expect individuals who receive health screening laboratory services from an entity providing health screening laboratory services would not benefit from or bear a cost due to the rulemaking. However, some individuals who receive health screening laboratory services may have incurred a nominal increase cost for an increased testing fee passed on to the individual from an entity who payed for health screening laboratory services. Additionally, some individuals may have received a benefit for having an accurate testing result that produced a medical decision that reduced or eliminated other requested medical services and ensured correct medical service were identified for the individual. The Department has determined that the rule is effective and the benefit of the rule outweighs the probable cost of the rule, and the rule imposes the least burden and costs to persons regulated by the rule while achieving the regulatory objective consistent with its statutory requirement in A.R.S. § 36-405.01.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No √

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

No, the rule is not more stringent than federal laws. The rule by definition clarifies that a certified laboratory² means the same as in A.R.S. § 36-451(3) that specifies that a “certified laboratory” is “a laboratory certified by the United States department of health and human services.” The rule is consistent with a laboratory certified by the

² [A.R.S. § 36-451\(3\)](#) "Certified laboratory" means a “laboratory certified by the United States department of health and human services.”

U.S. Department of Health and Human Services and consistent with the Clinical Laboratory Improvement Amendments (CLIA) of 1988, 42 C.F.R. 493, Laboratory Requirements.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The rule was last amended by final rulemaking at 12 A.A.R. 4694 and effective February 3, 2007. Since the rule was adopted before July 29, 2010 and the rule does not establish a permit, license, or agency authorization, the Department believes an exception applies.

14. Proposed course of action

The Department in its review of the Article 7 rule has determined that the rule is effective, clear, and understandable. In this five-year-review report, the Department identifies no substantive issues or health and safety concerns with the rule and determines there is no need to amend the rule. The Article 7 rule is enforced as written and provides necessary requirement to ensure “health screening services” specified in A.R.S. § 36-405.01(A) are performed by certified laboratories and clarifies when the rule does not apply. The Department does not plan to take action with regard to 9 A.A.C. 14 Article 7.

TITLE 9. HEALTH SERVICES
CHAPTER 14. DEPARTMENT OF HEALTH SERVICES
LABORATORIES

ARTICLE 7. HEALTH SCREENING SERVICES

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 14. DEPARTMENT OF HEALTH SERVICES

LABORATORIES

ARTICLE 7. HEALTH SCREENING SERVICES

1. Identification of the rule

A.R.S. § 36-405.01, which was passed by the Legislature in 1977, specifies the manner in which health screening services shall be conducted and authorizes the Arizona Department of Health Services (Department) to “adopt such ... regulations necessary or appropriate to carry out the purposes of this section.” “Health screening services” is defined in A.R.S. § 36-401 as “the acquisition, analysis and delivery of health-related data of individuals to aid in the determination of the need for medical services.” Health screening services may include vision screening, hearing screening, blood pressure screening, and health screening laboratory services. Health screening laboratory services are those health screening services that determine the need for medical services through laboratory analysis of materials derived from the human body. The Department implemented A.R.S. § 36-405.01 for health screening laboratory services in 9 A.A.C. 14, Article 7, which included definitions and requirements for health screening laboratory services.

In preparing the 2006 Five-Year-Review Report for 9 A.A.C. 14, Article 7, the Department determined that the requirements in Article 7 for health screening laboratory services were duplicative of requirements for certification by the U.S. Department of Health and Human Services, including those requirements contained in the Clinical Laboratory Improvement Amendments (CLIA) of 1988, 42 C.F.R. 493, Laboratory Requirements, which are applicable to almost all facilities performing health screening laboratory services in Arizona. The Department decided to allow all Sections of Article 7 except R9-14-701 to expire and to revise R9-14-701 to include appropriate definitions and all requirements for health screening laboratory services. As stated in the 2006 Five-Year-Review Report for R9-14-701, approved by the Governor’s Regulatory Review Council (Council) on August 1, 2006, the Department is initiating rulemaking to delete unnecessary definitions, clarify requirements, and make the rule conform to current rulemaking format and style requirements of the Council and the Office of the Secretary of State. The new R9-14-701 contains definitions and requirements for persons conducting health screening laboratory services and specifies situations in which the rule does not apply.

2. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the rules

a. Cost bearers

- The Department
- Entities performing health screening laboratory services
- Entities paying for health screening laboratory services
- Individuals for whom persons that do not currently comply with CLIA requirements perform health screening laboratory services

b. Beneficiaries

- The Department
- Entities performing health screening laboratory services
- Entities paying for health screening laboratory services or medical services
- Individuals receiving health screening laboratory services
- Society in general

3. Cost/Benefit Analysis

Annual costs or revenues are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000. Costs are listed as significant when meaningful or important, but not readily subject to quantification.

Description of Affected Groups	Description of effect	Increased Cost/ Decreased Revenue	Decreased Cost/ Increased Revenue
A. State and Local Government Agencies			
Department	Reviewing, writing, and implementing the new rules	Minimal-to-moderate	Minimal
B. Privately Owned Businesses			
Persons performing health screening laboratory services	Greater understanding of the simplified rule and CLIA requirements	None	Minimal
	Complying with CLIA requirements	Minimal-to-moderate	None
Entities paying for health screening laboratory services or medical services	More accurate test results for health screening laboratory services due to complying with CLIA requirements may result in reduced costs of medical expenses, but the costs associated with compliance may be passed on	Minimal	Minimal
C. Consumers			
Individuals receiving services from entities providing health screening laboratory services	More accurate test results for health screening laboratory services as a result of complying with CLIA requirements, but the costs associated with compliance may be passed on	Minimal	Minimal
Society in general	Healthier individuals leading more productive lives	None	Significant

CLIA Requirements

With some specific exceptions, such as facilities under the jurisdiction of the Department of Defense or the Department of Veteran's Affairs, any person that performs health screening laboratory services must meet the requirements contained in the Clinical Laboratory Improvement Amendments (CLIA) of 1988, 42 C.F.R. 493, Laboratory Requirements, and obtain a CLIA certificate. Facilities operated by the Indian Health Service must also comply with CLIA requirements. In almost all cases, a certified laboratory, defined in this rulemaking as a laboratory with certification by the U.S. Department of Health and Human Services (HHS), will have a CLIA certificate. An exception is a laboratory certified by the Substance Abuse and Mental Health Services Administration (SAMHSA), a part of HHS, to perform drug testing that meets SAMHSA guidelines and regulations. Thus, in this Economic Impact Statement, the benefits or costs of being a certified laboratory will be related to complying with CLIA requirements.

There are four types of CLIA certificates issued; the type a person receives depends on the types and complexity of the laboratory tests performed by the person. The types of CLIA certificates are:

- Certificate of compliance – A certificate of compliance indicates that the facility (laboratory) has been surveyed by staff of the HHS Centers for Medicare and Medicaid Services (CMS) or an entity contracted with CMS to do surveys and was found to be in compliance with applicable standards for the tests performed. A certificate of compliance is generally held by a laboratory performing tests of moderate-to-high complexity. To obtain a certificate of compliance, a laboratory pays a one-time registration fee of \$100, a compliance survey fee, and a certificate fee. Compliance survey fees depend on the number and types of tests performed and range from \$300 every two years for a laboratory performing fewer than 2,000 tests per year to more than \$2,675 every two years for laboratories performing more than 1,000,000 tests per year (\$2,675 for the first 1,000,000 tests and \$228 more for each additional 500,000 tests). Certificate fees also depend on the number and types of tests performed and range from \$150 every two years for a laboratory performing fewer than 2,000 tests per year to \$7,940 every two years for a laboratory performing more than 1,000,000 tests per year.
- Certificate of accreditation – Like a certificate of compliance, a certificate of accreditation indicates that the facility (laboratory) has been surveyed and found to be in compliance with applicable standards for the tests performed and is generally held by a laboratory performing tests of moderate-to-high complexity. However, the entity conducting the survey is an accrediting agency that is approved by CMS, such as the College of American Pathologists or the Joint Commission on Accreditation of Healthcare Organizations, rather than CMS staff or an entity under contract with CMS to perform surveys. To obtain a certificate of accreditation, a laboratory pays a one-time registration fee of \$100, a validation fee, and a certificate fee. The certificate fee is the same as that for a certificate of compliance and also depends on the number and types of tests performed, while the validation fee is 5 % of what the compliance survey fee would have been had CMS or an entity under contract with CMS performed the survey.

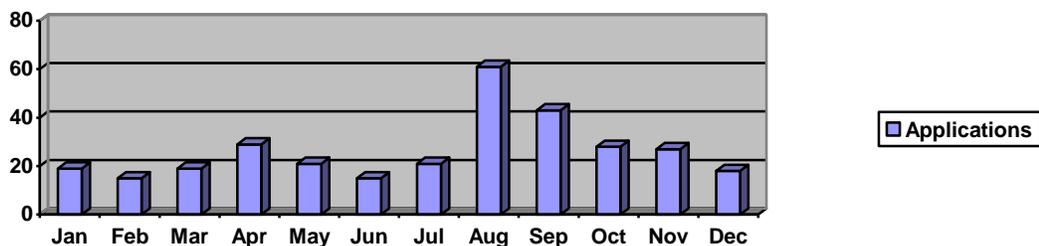
- Certificate of provider-performed microscopy (PPM) procedures – A certificate of provider-performed microscopy (PPM) procedures indicates that the person holding the certificate performs only tests requiring microscopic examination of a sample or waived tests. Waived tests are tests that are so simple to perform that the HHS, through the Centers for Disease Control and Prevention (CDC) or the Food and Drug Administration (FDA), has deemed the tests waived from the requirements of CLIA. The cost of the certificate is \$200 every two years.
- Certificate of waiver – A certificate of waiver indicates that the person holding the certificate performs only waived tests. The cost of the certificate is \$150 every two years.

The Department receives \$173,881 annually under a contract with CMS to review submitted paperwork and conduct CLIA surveys for certificates of compliance and a limited number of surveys of facilities with certificates of waiver or certificates of accreditation. In federal fiscal year 2006 (October 1, 2005, to September 30, 2006), the Department performed 134 compliance surveys, 5 validation surveys for the approximately 236 facilities in Arizona having a certificate of accreditation, and 40 surveys for the approximately 2,050 facilities in Arizona having a certificate of waiver.

Cost Bearers and Beneficiaries

- The annual costs to the Department resulting from this rulemaking are expected to be minimal-to-moderate. Although almost every person that performs health screening laboratory services must meet CLIA requirements, a few persons that should have a CLIA certificate to perform health screening laboratory services may not be aware of the CLIA requirements and may not have a CLIA certificate. For example, in July 2004, the Department sent letters explaining CLIA requirements to 373 entities that may have been performing health screening laboratory services. As shown in Figure 1, shortly after the letter was sent, there was an increase in the number of initial CLIA applications, which quickly dropped back to baseline. These data may indicate that some entities were not aware of CLIA requirements until informed of the requirements by the Department, and applied for CLIA certificates shortly thereafter. The Department did not experience a concomitant increase in the number of surveys conducted, indicating that the applications were almost all for certificates of waiver, for which the Department surveys only 2% of facilities.

Figure 1



The Department expects to send letters explaining the CLIA requirements to other entities that may perform health screening laboratory services and to develop a website to provide additional information about CLIA requirements and a link to CLIA application forms and the CLIA website. Beyond the costs for these initial educational activities, the Department anticipates minimal additional costs for processing a few more initial applications than usual. The Department estimates that the average cost of conducting a survey is between \$500 and \$1,000, depending on the type of survey, where the facility is located, and whether surveys for several facilities can be combined in one trip. The Department may possibly incur minimal-to-moderate costs for conducting a few more surveys per year.

- If additional entities that were unaware of CLIA requirements apply for CLIA certification, the Department may perform more CLIA-related paperwork review and conduct more CLIA surveys. It is possible, although unlikely, that the funding of the Department's contract with CMS may increase slightly due to these additional activities. With a clear, simple rule requirement for health screening laboratory services, the Department may also spend less time explaining the rule requirements to individuals who call the Department with questions about health screening laboratory services. However, the Department anticipates minimal benefit to the Department as a result of this rulemaking.
- The Department anticipates that this rulemaking may reduce the burden on persons conducting health screening laboratory services by clarifying requirements and aligning health screening laboratory services requirements with CLIA requirements, with which these persons already must comply. Although the rulemaking itself does not affect whether or not a person must comply with CLIA requirements, the rulemaking may make persons aware of CLIA requirements. A person that performs health screening laboratory services and is complying with CLIA requirements will experience no costs associated with the rulemaking. However, if a person that performs health screening laboratory services without a CLIA certificate becomes aware of the CLIA requirements as a result of the rulemaking, the person may bear minimal-to-moderate costs associated with complying with CLIA requirements and obtaining an initial certificate, depending on the types of tests performed. The Department cannot estimate how many persons performing health screening laboratory services do not have a CLIA certificate, but it is likely that a person unaware of CLIA requirements would only be performing waived tests and would incur only minimal costs to comply with CLIA requirements.
- Entities that pay for health screening laboratory services or medical services will benefit to a minimal degree from the rulemaking because a person complying with CLIA requirements for health screening laboratory services may provide better quality services with fewer testing errors. More accurate test results may result in better medical decisions being made for patients and may reduce the expense of medical services required. Entities that cover the costs of health screening laboratory services may bear a minimal cost as a result of the rulemaking if a person providing health screening laboratory services increases prices to pass on the costs of complying with CLIA requirements.

- The Department anticipates that individuals who are receiving health screening laboratory services from a person that is complying with CLIA requirements will not benefit from or bear a cost due to this rulemaking. However, an individual who is receiving health screening laboratory services from a person that is not complying with CLIA requirements may bear a minimal cost increase for these services if the person increases prices to pass on the costs of complying with CLIA requirements. As a result of increased compliance with CLIA requirements, an individual may benefit through improvement in the quality of services being provided, more accurate test results, and improved wellbeing.
- The general public may also benefit as a result of increased compliance with CLIA requirements because individuals who receive health screening laboratory services from a CLIA-certified laboratory may be healthier and more productive.

The Department has determined that the benefits to public health and safety outweigh the costs associated with this rulemaking.

4. A general description of the probable impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the rulemaking

Public and private employment in the State of Arizona is not expected to be affected due to any of the changes in the rules.

5. A statement of the probable impact of the rules on small business

a. Identification of the small businesses subject to the rules

The Department estimates that more than 90% of the persons in Arizona having certificates of waiver are small businesses, mostly the practices of physicians. It is even more likely that any person unaware of CLIA requirements but performing health screening laboratory services would be a small business, and that the person would qualify for a certificate of waiver.

b. The administrative and other costs required for compliance with the rules

Any costs are the result of coming into compliance with CLIA requirements and are described under “CLIA Requirements.”

c. A description of the methods that the agency may use to reduce the impact on small businesses

The Department has reduced the impact of these rules on small businesses and other persons affected by the rules by making the requirements for health screening laboratory services consistent with federal CLIA requirements, with which persons performing health screening laboratory services already must comply.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rules

The probable costs and benefits to private persons and consumers are contained in the cost/benefit analysis in paragraph (3)(B).

6. A statement of the probable effect on state revenues

The Department anticipates minimal or no effect on state revenue as a result of this rulemaking, as is explained in paragraph (3)(B).

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking

There are no less intrusive or less costly alternatives for achieving the purpose of the rule.

9 A.A.C. 14, ARTICLE 7 – CURRENT RULES

ARTICLE 7. HEALTH SCREENING SERVICES

R9-14-701. Health Screening Laboratory Services

- A. In this Section, unless otherwise specified, the following definitions apply:
1. “Activities of daily living” means the tasks that support everyday life, such as toileting, bathing, dressing, eating, moving about, and getting in or out of bed.
 2. “Assist” means to give help, support, or aid to an individual in performing a task.
 3. “Caregiver” means an individual, such as a home health aide, who receives monetary compensation for assisting another individual with activities of daily living.
 4. “Certified laboratory” means the same as in A.R.S. § 36-451.
 5. “Drug of abuse” means a chemical substance, such as a narcotic or hallucinogen, that is used by an individual for non-medicinal reasons.
 6. “Family member” means an individual related to another individual by birth, marriage, or adoption.
 7. “Forensic” means relating to the use of science or technology in the investigation and establishment of facts or evidence intended for use in a court of law.
 8. “Guardian” means an individual appointed as a legal guardian by a court of competent jurisdiction.
 9. “Health screening laboratory services” means health screening services that determine the need for medical services, as defined in A.R.S. § 36-401, through the performance of laboratory analyses.
 10. “Health screening services” means the same as in A.R.S. § 36-401.
 11. “Home health aide” means an individual who receives monetary compensation from a home health agency, as defined in A.R.S. § 36-151, or a hospice service agency, as defined in A.R.S. § 36-401, to provide assistance to another individual who is not physically or mentally able to perform one or more of the activities of daily living.
 12. “In vitro diagnostic device” means a piece of equipment or tool:
 - a. Approved by the U.S. Food and Drug Administration for home use,
 - b. Used for the measurement of specific chemicals in materials derived from the human body,
 - c. Sold without a prescription, and
 - d. Specified in a list available at <http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfIVD/Search.cfm>.

9 A.A.C. 14, ARTICLE 7 – CURRENT RULES

13. “Laboratory analysis” means a test performed by a laboratory on body fluid, tissue, or excretion for the purpose of determining the presence, absence, or concentration of various substances in the human body.
 14. “Research” means a systematic investigation to establish facts that may contribute to knowledge from which an individual may draw inferences or a general conclusion.
- B. Except as specified in subsection (C), only a certified laboratory shall perform health screening laboratory services.
- C. This Section does not apply when:
1. A test is performed by an individual, a family member or guardian of the individual, or another individual under A.R.S. § 32-1471:
 - a. Using an in vitro diagnostic device, and
 - b. On materials derived from the individual’s body;
 2. An individual’s caregiver assists the individual to perform a test:
 - a. Using an in vitro diagnostic device, and
 - b. On materials derived from the individual’s body;
 3. A laboratory analysis is performed solely for forensic or research purposes;
 4. A laboratory analysis is performed on urine to test for drugs of abuse solely for employment purposes; or
 5. A laboratory analysis is performed under the jurisdiction of the U.S. Department of Veteran’s Affairs or a component of the U.S. Department of Defense.

Historical Note: Adopted effective December 2, 1993 (Supp. 93-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4694, effective February 3, 2007 (Supp. 06-4).

9 A.A.C. 14, ARTICLE 7 – STATUTES

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

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 this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with 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 schoolchildren, 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 this 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 I, 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 (52 Stat. 1040; 21 United States Code sections 1 through 905).

9 A.A.C. 14, ARTICLE 7 – STATUTES

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. Powers and duties of director; compensation of personnel; rules; definitions

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.

9 A.A.C. 14, ARTICLE 7 – STATUTES

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 this state.
 6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this 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 this 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 this state, the director may inspect any person or property in transportation through this 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, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.
- D. 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.
- E. 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 of the department of health services.
 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 ensure 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

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reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, 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.

I. 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, that are 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 that are 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 ensure 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 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) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states

9 A.A.C. 14, ARTICLE 7 – STATUTES

the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." 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 complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products 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.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

5. Prescribe reasonably necessary measures to ensure 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 ensure 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 ensure 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. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

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

9 A.A.C. 14, ARTICLE 7 – STATUTES

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 cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. 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.

K. 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.

L. 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.

M. 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.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I 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.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section:

1. "Cottage food product":

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(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151

36-405.01. Health screening services; violation; classification

A. Health screening services shall be conducted in the following manner:

1. Health screening services shall be conducted under the direction of or, when required by good medical practice, under the supervision of a physician.

2. Any diagnosis of collected health-related data shall be performed by a physician.

3. Any examination of secretions, body fluids or excretions of the human body shall be performed pursuant to title 36, chapter 4.1.

4. Individuals may obtain health screening services on their own initiative.

5. Data given health-screened individuals shall be properly informative and not misleading.

6. Activities engaged in or materials used to educate, promote or otherwise solicit individuals to use health screening services shall not:

(a) Be misleading.

(b) Include the name of any physician, physician's office or clinic.

(c) Use or contain any language that directly or indirectly lauds the professional competence, skill or reputation of any physician.

7. A patient who is in need of medical care shall be informed that he should see a physician without referral to any particular physician.

B. The director may adopt such other regulations necessary or appropriate to carry out the purposes of this section.

C. Physicians affiliated with health screening services shall continue to be bound by the laws and ethics governing their practice. However, affiliation with health screening services conducted in conformity with this chapter shall not constitute a violation of such laws or ethics.

D. Health-screened individuals, with respect to their disclosures to and records with health screening services, shall have the same protections regarding privileged communication and the same rights to the possession and confidentiality of their records as are accorded by law to patients of physicians.

E. Health screening services shall be exempt from the provisions of articles 2 through 5 of this chapter.

F. Any person who conducts health screening services in violation of this section or in violation of any rule or regulation adopted by the director is guilty of a class 2 misdemeanor. In addition, the director may exercise the same powers with respect to health screening services as are provided in section 36-427, subsection B with respect to licensed health care institutions.

ARIZONA STATE RETIREMENT SYSTEM

Title 2, Chapter 8, Articles 6 and 7, State Retirement System Board



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: May 4, 2021

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

FROM: Council Staff

DATE: April 2, 2021

SUBJECT: ARIZONA STATE RETIREMENT SYSTEM (F21-0504)
Title 2, Chapter 8, Articles 6 and 7, State Retirement System Board

Summary:

_____ This Five Year Review Report (5YRR) from the Arizona State Retirement System (ASRS) relates to rules in Title 2, Chapter 8, Articles 6 (Public Participation in Rulemaking) and 7 (Contributions Not Withheld).

In the previous 5YRRs for these rules, which the Council approved in May 2016 and January 2017, respectively, the ASRS proposed the following:

- Article 6: Except for R2-8-601, amend all of the rules by December 2016; and
- Article 7: No proposed course of action.

In this 5YRR, the ASRS indicates that it amended 6 rules in Article 6 by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017, and 2 rules in Article 7 by final rulemaking at 25 A.A.R. 303, effective March 18, 2019.

Proposed Action

In this 5YRR, the ASRS states that it proposes to make changes to the rules to address issues with clarity, conciseness, and understandability as described in the 5YRR by December 2021.

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

Yes. The ASRS cites both general and specific statutory authority for the rules under review.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The economic impact of the rules does not differ from the impact that was anticipated in the Economic, Small Business, and Consumer Impact Statement (EIS) prepared with the final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 for Article 6 and at 25 A.A.R. 303, and effective March 18, 2019 for Article 7.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The probable benefits of the rules outweigh the probable costs of the rules because the rules simply clarify statutory requirements without imposing any additional requirements. The rules impose the least burdens and costs because they simply contain the information necessary for members of the public to participate in the rulemaking process or for ASRS members and employers to correct a "contributions not withheld" situation.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The ASRS did not receive any written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes. The ASRS states that the rules are mostly clear, concise, and understandable. However, it identifies the following rules whose clarity, conciseness, and understandability could be improved, for the reasons specified in the 5YRR:

- R2-8-701(2)(b) (Definitions);
- R2-8-704(B) (Member's Discovery of Error); and
- R2-8-707(a) (Submission of Payment).

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

Yes. The ASRS indicates that the rules under review are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

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

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

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

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

No. The ASRS indicates that there are no corresponding federal laws to the rules under review.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The rules under review do not require the issuance of a permit, license, or agency authorization.

11. **Conclusion**

Council staff finds that the ASRS prepared a 5YRR that meets the requirements of A.R.S. § 41-1056. Council staff further notes that the ASRS proposes to make changes to the rules under review by December 2021. Council staff recommends approval of this report.

February 9, 2021

Nicole Sornsin, 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 Articles 6 & 7

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, Articles 6 & 7 and submits the enclosed report to the Council for approval. The ASRS does not intend for any rules in these articles 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 Thomas, Rules Writer, who may be reached at (602) 240-2039.

Sincerely,



Jeremiah Scott
Assistant Director
Arizona State Retirement System

Enclosure

Arizona State Retirement System

5 YEAR REVIEW REPORT

2 A.A.C. 8, Articles 6 & 7

January 29, 2021

- 1. Authorization of the rules by existing statutes:** A.R.S. §§ 41-1021 et seq. and 38-735, 38-738, 38-743, and 38-747.
- 2. The objective of each rule:**

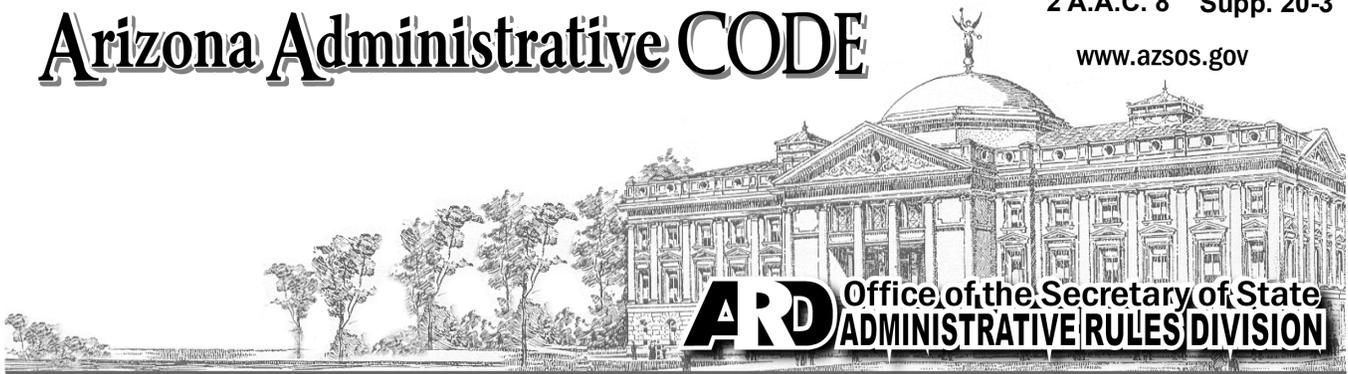
Rule	Objective
R2-8-601. Definitions	To provide definitions used in Article 6.
R2-8-602. Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements	To identify when and where members of the public may review the rulemaking record and directory.
R2-8-603. Petition for Rulemaking	To clarify how a member of the public may petition the ASRS to make or amend a rule.
R2-8-604. Review of a Rule, Agency Practice, or Substantive Policy Statement	To clarify how a member of the public may petition the ASRS to review a substantive policy statement or agency practice.
R2-8-605. Objection to Rule Based Upon Economic, Small Business and Consumer Impact	To clarify how a member of the public may object to a rule.
R2-8-606. Oral Proceedings	To clarify how members of the public may participate in an Oral Proceeding.
R2-8-607. Petition for Delayed Effective Date	To clarify how a member of the public may petition the ASRS to delay the effective date of a rule.
R2-8-701. Definitions	To provide definitions used in Article 7.
R2-8-702. General Information	To provide notice to the public of requirements and/or limitations that apply to contributions not withheld.
R2-8-703. Employer's Discovery of Error	To provide notice to the public of how the Employer must notify the ASRS of any

	Contributions Not Withheld error the Employer discovers.
R2-8-704. Member’s Discovery of Error	To provide notice to the public of the information that should be provided to the ASRS when a member discovers a Contributions Not Withheld error.
R2-8-705. ASRS’ Discovery of Error	To provide notice to the public of how the member and Employer will be notified when the ASRS discovers a Contributions Not Withheld error and identifies the information the ASRS will request.
R2-8-706. Determination of Contributions Not Withheld	To provide notice to the public of how the ASRS will make a Contributions Not Withheld determination and how the Employer and member will be notified.
R2-8-707. Submission of Payment	To provide notice to the public of the deadlines and methods for the Employer and member to submit payment and the penalties if payment is not submitted timely.

3. **Are the rules effective in achieving their objectives:** Yes
4. **Are the rules consistent with other rules and statutes:** Yes
5. **Are the rules enforced as written:** Yes
6. **Are the rules clear, concise, and understandable:** Mostly; R2-8-701(2)(b) could be clearer by adding “or was Engaged to Work.” R2-8-704(B) could be clearer by indicating how an Employer may correct inaccurate information or cancel a request for documentation provided by the eligible member. R2-8-706 could be clearer by adding an additional subsection to indicate that “the ASRS shall send the member an invoice pursuant to subsection (E) after the Employer has remitted the full amount due to be paid by the Employer.” R2-8-707(a) could be clearer by changing “statement” to “invoice.”
7. **Has the agency received written criticisms of the rules in the last five years:** No
8. **Economic, small business, and consumer impact comparison:** The economic impact has not differed from the impact that was anticipated in the final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 for Article 6 and at 25 A.A.R. 303, effective March 18, 2019 for Article 7.
9. **Has the agency received any business competitiveness analyses of the rules:** No
10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report:** Yes; the rules in 2 A.A.C. 8, Article 6 were amended by final rulemaking at 22 A.A.R. 3323,

effective January 1, 2017 and the rules in 2 A.A.C. 8, Article 7 were amended by final rulemaking 25 A.A.R. 303, effective March 18, 2019.

- 11. A determination that the probable benefits of the rule outweigh within this state the probably costs of the rule, and the rule imposes the least burden and costs to regulated persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:** The probably benefits of the rules outweigh the probable costs of the rules because the rules simply clarify statutory requirements without imposing any additional requirements. The rules impose the least burdens and costs because they simply contain the information necessary for members of the public to participate in the rulemaking process or for ASRS members and Employers to correct a contributions not withheld situation.
- 12. Are the rules more stringent than corresponding federal laws:** There are no corresponding federal laws.
- 13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:** The rules do not issue a permit, license or agency authorization.
- 14. Proposed Course of Action:** The ASRS anticipates making the changes identified in item 6 above by December 2021.



TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of July 1, 2020 through September 30, 2020.

R2-8-115.	Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death	5	R2-8-129.	Period Certain and Life Annuity Retirement Options	15
R2-8-120.	Repealed	8	R2-8-130.	Rescind or Revert Retirement Election; Change of Contingent Annuitant	15
R2-8-126.	Retirement Application	12	R2-8-131.	Designating a Beneficiary; Spousal Consent to Beneficiary Designation	17
R2-8-127.	Re-Retirement Application	14	R2-8-132.	Survivor Benefit Options	18
R2-8-128.	Joint and Survivor Retirement Benefit Options	15	R2-8-133.	Survivor Benefit Applications	19

Questions about these rules? Contact:

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Phoenix, AZ 85012-0250
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E-mail: JessicaT@azasrs.gov

The release of this Chapter in Supp. 20-3 replaces Supp. 20-1, 1-44 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.



Administrative Rules Division
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TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Authority: A.R.S. § 38-701 et seq.

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ARTICLE 1. RETIREMENT SYSTEM

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. The definitions in A.R.S. § 38-711 apply to this Chapter.
- B. Unless otherwise specified, in this Chapter:
 - 1. "Actuarial assumption" means an estimate of an uncertain future event that affects pension liabilities, or assets, or both.
 - 2. "Assumed actuarial investment earnings rate" means the assumed rate of investment return approved by the Board and contained in R2-8-118(A).
 - 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. "Contribution" means:
 - a. Amounts required by A.R.S. Title 38, Chapter 5, Articles 2 and 2.1 to be paid to the ASRS by a member or an employer on behalf of a member;
 - b. Any voluntary amounts paid to the ASRS by a member to be placed in the member's account; and
 - c. Amounts credited by transfer under A.R.S. § 38-924.
 - 5. "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.

- 6. "Designated beneficiary" means the same as in A.R.S. § 38-762(G).
- 7. "Director" means the Director appointed by the Board as provided in A.R.S. § 38-715.
- 8. "Individual retirement account" or "IRA" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(a) and (b).
- 9. "Party" means the same as in A.R.S. § 41-1001(14).
- 10. "Person" means the same as in A.R.S. § 41-1001(15).
- 11. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-712(B), and as administered by the ASRS.
- 12. "Retirement account" means the same as in A.R.S. § 38-771(J)(2).
- 13. "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 (H)(3).
- 14. "Terminate employment" means to end the employment relationship between a member and an ASRS employer with the intent that the member does not return to employment with an ASRS employer.
- 15. "United States" means the same as in A.R.S. § 1-215(39).

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) "required" corrected to "required" (Supp. 97-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

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

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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

- A.** The following definitions apply to this Section unless otherwise specified:
1. "DRO" means the same as "domestic relations order" in A.R.S. § 38-773(H)(1).
 2. "Eligible retirement plan" means the same as in A.R.S. § 38-770(D)(3).
 3. "Employer number" means a unique identifier the ASRS assigns to a member employer.
 4. "Employer plan" means the types of eligible retirement plans specified in A.R.S. § 38-770(D)(3)(c), (d), (e), and (f).
 5. "LTD" Means the same as in R2-8-301.
 6. "On file" means ASRS has received the information.
 7. "Process date" means the calendar day the ASRS generates contribution withdrawal documents to be sent to a member.
 8. "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 request to withdraw by the member, the ASRS shall provide:
1. An Application for Withdrawal of Contributions and Termination of Membership form to the member, and
 2. An Ending Payroll Verification - Withdrawal of Contribution and Termination of Membership form to the employer, if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS.
- 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 or U.S. Tax Identification number;
 3. The member's current mailing address, if not On File with ASRS;
 4. The member's birth date, if not On File with ASRS;
 5. Notarized signature of the member certifying that the member:
 - a. Is no longer employed by any Employer;
 - b. Is neither under contract nor has any verbal or written agreement for future employment with an Employer;
 - c. Is not currently in a leave of absence status with an Employer;
 - d. Understands that each of the member's former Employers will complete an ending payroll verification form if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS;
 2. The member's Social Security number or U.S. Tax Identification number;
- E.** If ASRS has received contributions for the member within six months immediately preceding the date the member submitted the request to ASRS each Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the following information:
1. The member's full name;
 2. The member's Social Security number or U.S. Tax Identification number;
 3. The member's current mailing address, if not On File with ASRS;
 4. The member's birth date, if not On File with ASRS;
 5. Notarized signature of the member certifying that the member:
 - a. Is no longer employed by any Employer;
 - b. Is neither under contract nor has any verbal or written agreement for future employment with an Employer;
 - c. Is not currently in a leave of absence status with an Employer;
 - d. Understands that each of the member's former Employers will complete an ending payroll verification form if ASRS has received contributions for the member within the six months immediately preceding the date the member submitted the request to ASRS;
 6. Specify that:
 - a. The entire amount of the distribution be paid directly to the member,
 - b. The entire amount of the distribution be rolled over to an eligible retirement plan, or
 - c. An identified amount of the distribution be rolled over to an eligible retirement plan and the remaining amount be paid directly to the member; and
 7. If the member selects all or a portion of the withdrawal be rolled over to an eligible retirement plan, specify:
 - a. The type of eligible retirement plan; and
 - b. The name and mailing address of the eligible retirement plan.
- F.** Understands that the member's most recent Employer will complete an ending payroll verification form for the member if the member has reached the member's required beginning date pursuant to A.R.S. § 38-775;
- G.** Has read and understands the Special Tax Notice Regarding Plan Payments the member received with the application and the member elects to waive the member's 30-day waiting period to consider a rollover or a cash distribution;
- H.** Understands that the member is forfeiting all future retirement rights and privileges of membership with ASRS;
- I.** Understands that LTD benefits will be canceled if the member elects to withdraw contributions while receiving or electing to receive long-term disability benefits;
- J.** 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;
- K.** 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
- L.** Understands that if the member elects a rollover to another employer plan or individual retirement account, any portion of the distribution not designated for roll over will be paid directly to the member and any taxable amounts will be subject to applicable state and federal tax withholding;
- M.** Understands that the member is not considered terminated and cannot withdraw the member's ASRS contribution if the member was called to active military service and is not currently performing services for an Employer;
- N.** Understands that any person who knowingly makes any false statement with an intent to defraud the ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793.

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3. The member's termination date;
4. The member's final pay period ending date;
5. The final amount of contributions, including any adjustments or corrections, but not including any long-term disability contributions;
6. The Employer's name and telephone number;
7. The Employer Number;
8. The name and title of the authorized Employer representative;
9. Certification by the authorized Employer representative that:
 - a. The member Terminated Employment and is neither under contract nor bound by any verbal or written agreement for employment with the Employer;
 - b. There is no agreement to re-employ the member;
 - c. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
 - d. The authorized Employer representative certifies that they are the Employer user named on the Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form and their title and contact information is current and correct.
- F. If the member has attained a required beginning distribution date as of the date the member submitted the request to ASRS, the most recent Employer shall complete an Ending Payroll Verification - Withdrawal of Contributions and Termination of Membership form electronically that includes the information contained in subsection (E).
- G. 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.
- H. If the member requests a return of contributions after the first fiscal year of membership, the ASRS shall credit interest at the rate specified in Column 3 of the table in R2-8-118(A) 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.
- I. Upon submitting to the ASRS the completed and accurate Application for Withdrawal of Contributions and Termination of Membership form and, if applicable, after the ASRS has received 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 (G) or (H) unless a present or former spouse submits to the ASRS a certified copy or original DRO 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.
- J. A member may cancel an Application for Withdrawal of Contributions and Termination of Membership form at any time before the return of contributions is disbursed by submitting written notice to ASRS to cancel the request.
- K. If an Application for Withdrawal of Contributions and Termination of Membership form is completed through the member's secure ASRS account, the secure login and successful submission of the knowledge based answers shall serve as the member's notarized signature required under subsection (D)(5).

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). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-116. Alternate Contribution Rate

- A.** For purposes of this Section, the following definitions apply:
1. "ACR" means an alternate contribution rate pursuant to A.R.S. § 38-766.02, the resulting amount of which is not deducted from the employee's compensation.
 2. "Class of positions" means all employment positions of the employer that perform the same, or substantially similar, function or duties, for the employer as determined by the ASRS in subsection (B).
 3. "Compensation" has the same meaning as A.R.S. § 38-711(7) and does not include ACR amounts.
 4. "Leased from a third party" means:
 - a. The employee is not employed by an employer; and
 - b. A co-employment relationship, as defined in A.R.S. § 23-561(4), does not exist.
- B.** An employer that employs a retired member shall pay an ACR to the ASRS, unless the employer provides proof that:
1. The retired member is leased from a third party; and
 2. All employees in the entire class of positions, to which the retired member's position belongs, have been leased from a third party; and
 3. No employee who has not been leased is performing the same, or substantially similar, function or duties, as the retired member.
- C.** In order to determine whether an employer satisfies the criteria in subsection (B), the employer shall submit information and documentation, pursuant to A.R.S. § 38-766.02(E), within 14 days of written request by the ASRS.
- D.** The employer shall directly remit payment of an ACR to the ASRS from the employer's funds, through the employer's secure ASRS account within 14 days of the first pay period end date after the hire of the retired member.
- E.** If the employer does not remit the ACR by the date it is due pursuant to subsection (D), the ASRS shall charge interest on the ACR amount from the date it was due to the date the ACR payment is remitted to the ASRS at the assumed actuarial investment earnings rate listed in R2-8-118(A).
- F.** A payment of an ACR on behalf of a retired member pursuant to A.R.S. § 38-766.02, shall not entitle a retired member to a refund of an ACR payment or any additional ASRS benefit as described in A.R.S. § 38-766.01(E).

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). New Section made by final rulemaking at 22 A.A.R. 1341, effective July 4, 2016 (Supp. 16-2). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

R2-8-117. Return to Work After Retirement

- A.** Unless otherwise specified, in this Section:

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- 1. "Commencing employment" means the date a retired member who is not independently contracted or leased from a third party pursuant to R2-8-116(A)(4) renders services directly to an Employer for which the retired member is entitled to be paid.
- 2. "Returns to work" means the member retired from the ASRS prior to commencing employment with an Employer.
- B.** Pursuant to A.R.S. § 38-766.01(C), a retired member who returns to work directly with an Employer shall submit a Working After Retirement form to each of the retired member's current Employers through the retired member's secure website account within 30 days of the retired member commencing employment with an Employer.
- C.** Pursuant to A.R.S. § 38-766.02(E), within 14 days of receipt of a Working After Retirement form, an Employer shall verify the retired member's employment information and submit the verified Working After Retirement form to the ASRS through the Employer's secure website account for each retired member who returns to work with the Employer.
- D.** After a retired member returns to work, the Employer shall submit a verified Working After Retirement form to the ASRS through the Employer's secure website account within 30 days of a change in the intent of each retired member's employment that results in:
 - 1. The member's number of hours worked per week increasing from less than 20 hours per week to 20 or more hours per week; or
 - 2. The member's number of weeks worked in a fiscal year increasing from less than 20 weeks per fiscal year to 20 or more weeks per fiscal year.
- E.** The Working After Retirement form shall contain the following information:
 - 1. The retired member's social security number;
 - 2. The retired member's full name;
 - 3. The date the member retired;
 - 4. Whether the retired member terminated employment, and if so, the date the retired member terminated employment;
 - 5. The first date of commencing employment upon the retired member's return to work;
 - 6. The intent of the retired member's employment reflected as:
 - a. The anticipated number of hours the retired member is engaged to work per week and the anticipated number of weeks the retired member is engaged to work per fiscal year; or
 - b. The actual number of hours the retired member works for an Employer per week and the actual number of weeks the retired member works for an Employer in a fiscal year.
 - 7. Acknowledgement by the retired member that the retired member has read the Return to Work information on the ASRS website and intends to continue submitting the Working After Retirement form to the retired member's Employer.
- F.** Upon discovering that the retired member's employment violates A.R.S. §§ 38-766 or 38-766.01, the ASRS shall send the retired member a Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- G.** By the due date specified on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form, the retired member shall return the completed form and any supporting documentation to the ASRS indicating the action the retired member will take to correct the violation of A.R.S. §§ 38-766 or 38-766.01.

- H.** If the member does not submit the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form pursuant to subsection (G), the ASRS shall suspend the retired member's retirement benefits from the date on the Retiree Return to Work Notice of Non-Compliance with ASRS Statutes form.
- I.** If the ASRS suspends the retired member's retirement benefits pursuant to subsection (H), the ASRS shall reinstate the retired member's retirement benefits upon notice from the Employer that all violations pursuant to subsection (F) have been corrected.

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). New Section made by final rulemaking at 23 A.A.R. 209, effective March 5, 2017 (Supp. 17-1).

R2-8-118. Application of Interest Rates

- A.** Application of interest from inception of the ASRS Plan through the present is as follows:

Effective Date of Interest Rate Change	Assumed Actuarial Investment Earnings Rate	Interest Rate Used to Determine Return of Contributions Upon Termination of Membership by Separation from Service by Other Than Retirement or Death
7-1-1953	2.50%	2.50%
7-1-1959	3.00%	3.00%
7-1-1966	3.75%	3.75%
7-1-1969	4.25%	4.25%
7-1-1971	4.75%	4.75%
7-1-1975	5.50%	5.50%
7-1-1976	6.00%	5.50%
7-1-1981	7.00%	5.50%
7-1-1982	7.00%	7.00%
7-1-1984	8.00%	8.00%
7-1-2005	8.00%	4.00%
7-1-2013	8.00%	2.00%
7-1-2018	7.50%	2.00%

- B.** 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 members pursuant to A.R.S. §§ 38-742, 38-743, 38-744, and 38-745, if applicable;
 - 3. Amounts credited by transfer under A.R.S. § 38-922; and
 - 4. Interest credited in previous years.
- C.** Notwithstanding subsection (B), the retirement account of each member stops accruing interest the last full month prior to the retirement date.

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-

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2). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

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. Repealed**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 made by final rulemaking at 20 A.A.R. 2236, effective October 4, 2014 (Supp. 14-3). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Repealed by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

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.** Each Employer shall certify on each payroll the amount to be contributed by each one of their employee members of the ASRS and shall remit the amount of employee member contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- B.** Each Employer shall remit the amount of employer contributions to the ASRS not later than 14 days after the last day of each payroll period. Payments of employer contributions not received in the offices of the ASRS by the 14th day after the last day of the applicable payroll period shall become delinquent after that date and shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A) per annum from and after the date of delinquency until payment is received by the ASRS.
- C.** Each Employer shall remit contributions pursuant to this Section based on the contribution rate in effect on the pay period end date.

- D.** Each Employer shall certify on each payroll that each employee included on that payroll has met the requirements for active member eligibility and that all contributions to be remitted are for eligible compensation under A.R.S. § 38-711.

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). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2). Amended by final rulemaking at 26 A.A.R. 371, effective April 11, 2020 (Supp. 20-1).

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

- A.** For the purposes of this Section, “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 made by final rulemaking at 20 A.A.R. 3043, effective January 3, 2015 (Supp. 14-4). Amended by final

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rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

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

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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. Termination Incentive Program by Agreement; Unfunded Liability Calculations

- A. The following definitions apply to this Section unless otherwise specified:
1. "Compensation" means the same as in A.R.S. § 38-711(7).
 2. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(2).

- B. An Employer that intends to implement a Termination Incentive Program shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. Within 90 days before implementation of the program, a complete description of the program terms and conditions, including the program contract, understanding, or agreement; and
 2. Within 90 days before implementation of the program, the following information for each member who may be eligible to participate in the program:
 - a. The member's full name;
 - b. The member's date of birth; and
 - c. The member's current Compensation;
- C. The ASRS may use the information provided by the Employer pursuant to subsection (B) and the information on file with the ASRS to determine an estimated unfunded liability amount in consultation with the ASRS actuary, which may result from the implementation of the Employer's Termination Incentive Program.
- D. If the ASRS determines an estimated unfunded liability amount pursuant to subsection (C), the ASRS may send a Notice of Estimated Liability to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the estimated unfunded liability amount the Employer may owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B). An Employer may owe the ASRS more or less than the estimated unfunded liability amount based on actual employee participation in the Employer's Termination Incentive Program pursuant to subsection (F).
- E. Within 30 days of termination of employment of each member who participated in a Termination Incentive Program identified under subsection (B), the Employer shall provide the following information to the ASRS through the Employer's secure ASRS account:
1. The member's full name;
 2. The member's date of birth;
 3. The member's Compensation at termination;
 4. The date the member terminated employment; and
 5. The amount and type of any additional pay the member received, or was entitled to receive, from the Employer as a result of participating in the Employer's Termination Incentive Program.
- F. Upon receipt of all the information identified in subsection (E) and in consultation with the ASRS actuary, the ASRS shall calculate the actual unfunded liability amount which resulted from the implementation of the Employer's Termination Incentive Program.
- G. If the ASRS calculates an unfunded liability of less than \$0.00 for any member who participated in the Employer's Termination Incentive Program, the amount will be applied against the aggregate unfunded liability of the Employer.
- H. Upon calculating the unfunded liability pursuant to subsections (F) and (G), the ASRS shall send the Employer a Termination Incentive Program Liability Invoice through the Employer's secure ASRS account.
- I. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- J. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).

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- K. The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).

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). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).

R2-8-125. Termination Incentive Program by 30% Salary Increase; Unfunded Liability Calculations

- A. The following definitions apply to this Section unless otherwise specified:
1. "Average monthly compensation" means the same as in A.R.S. § 38-711(5).
 2. "Baseline salary" means a member's Average Monthly Compensation during the 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit. The Baseline Salary shall include only Compensation from the Same Employer that paid the Compensation used in the calculation of a member's retirement benefit. If the member has less than 12 consecutive months in which the member received Compensation immediately preceding the first month of Compensation used to calculate the member's retirement benefit, then the ASRS will calculate the member's Baseline Salary as the total of the 12 months of Compensation the member received:
 - a. Starting with the first month of Compensation the member received in the 12 months immediately preceding the member's Average Monthly Compensation, or within the Average Monthly Compensation; and
 - b. Ending with the 12th month of Compensation the member received after the first month of Compensation used in subsection (A)(2)(a).
 3. "Compensation" means the same as in A.R.S. § 38-711(7).
 4. "Job reclassification" means a change in the classification of an employment position made by the Employer when it finds the duties and responsibilities of the position have changed significantly, materially, and permanently from when the position was last classified.
 5. "Promotion" means, excluding a Salary Regrade or Job Reclassification, the act of advancing an employee to a higher salary or higher rank within the organization, which is characterized by:
 - a. A change in the employee's primary job responsibilities; and
 - b. A pay increase that is supported by a standard salary administration practice that is documented by the Employer; and
 - c. A competitive selection process or a noncompetitive selection process supported by a standard hiring practice that is documented by the Employer.
 6. "Salary regrade" means a change in the salary scale of an employment position made by the Employer in order to align the position's salary scale with market factors and/or the Employer's current salary practices.
 7. "Same employer" means the Employer has the same ownership as another Employer, except that for purposes

of this Section, each agency, board, commission, and department of the State of Arizona shall be considered a separate Employer.

8. "Termination Incentive Program" means the same as in A.R.S. § 38-749(D)(1).
- B. Upon a member's retirement on or after January 1, 2018, the ASRS shall compare the member's Baseline Salary to the Average Monthly Compensation for each consecutive 12 months of Compensation used to calculate the member's retirement benefit in order to determine whether an Employer utilized a Termination Incentive Program as defined in A.R.S. § 38-749(D)(1). This subsection only applies to members who earned the Compensation used to calculate the member's Baseline Salary, on or after July 1, 2005.
- C. Upon determining that a Termination Incentive Program exists under subsection (B), the ASRS shall send a Request for Documentation to the Employer through the Employer's secure ASRS account, in order to notify the Employer that the ASRS has identified a Termination Incentive Program for a particular member and the Employer may be required to pay the ASRS for the unfunded liability resulting from the Termination Incentive Program, unless the Employer can prove the increase in the member's salary was the result of a Promotion.
- D. Within 90 days of the date on the Request for Documentation, the Employer shall respond to the Request for Documentation by:
 1. Submitting documentation through the Employer's secure ASRS account that shows the member's increase in Compensation was the result of a Promotion; or
 2. Acknowledging in writing that the increase in the member's salary was not the result of a Promotion.
- E. Pursuant to subsection (D), the Employer bears the burden of producing evidence that a Promotion has occurred as defined in subsection (A)(5).
- F. The ASRS shall use any evidence the Employer submits to the ASRS pursuant to subsection (D) to determine whether a Promotion occurred.
- G. If the Employer does not respond to the Request for Documentation within 90 days of the date on the Request for Documentation, the ASRS shall determine that the increase in the member's salary was not the result of a Promotion.
- H. If the ASRS determines that the increase in the member's salary was not the result of a Promotion pursuant to subsections (F) or (G), the ASRS shall calculate the unfunded liability amount pursuant to subsection (I).
- I. In consultation with the ASRS actuary, the ASRS shall use a determination under subsection (B) to calculate the unfunded liability resulting from the implementation of the Employer's Termination Incentive Program.
- J. Upon calculating an unfunded liability amount pursuant to subsection (I), the ASRS shall send a Termination Incentive Program Liability Invoice to the Employer through the Employer's secure ASRS account, in order to notify the Employer of the unfunded liability amount the Employer shall owe to the ASRS as a result of implementing the Termination Incentive Program identified under subsection (B).
- K. An Employer that owes an unfunded liability amount to the ASRS pursuant to A.R.S. § 38-749, shall remit full payment of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice.
- L. Pursuant to A.R.S. § 38-735(C), if the ASRS does not receive full payment from the Employer of the unfunded liability amount by the due date specified in the Termination Incentive Program Liability Invoice, the unpaid portion of the unfunded liability amount shall accrue interest at the assumed actuarial investment earnings rate listed in R2-8-118(A).

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- M.** The ASRS may collect any unfunded liability amount pursuant to A.R.S. §§ 38-723 and 38-735(C).
- 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). New Section made by final rulemaking at 23 A.A.R. 2743, effective January 1, 2018 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 1861, effective June 11, 2018 (Supp. 18-2).
- R2-8-126. Retirement Application**
- A.** For the purposes of this Section, the following definitions apply, unless stated otherwise:
1. "Acceptable documentation" means any written request containing all the accurate, required information, dates, and signatures necessary to process the request.
 2. "Acceptable form" means any ASRS form request containing all the accurate, required information, dates, and signatures necessary to process the form request.
 3. "Applicable retirement date" means the later of:
 - a. The date a member retires from the ASRS for the first time; or
 - b. The date a member re-retires from the ASRS after returning to active membership.
 4. "Conservator" means the same as in A.R.S. § 14-7651.
 5. "DRO" means the same as in R2-8-115.
 6. "Joint and survivor retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(1).
 7. "Legal documentation" means:
 - a. One document issued from a United States government entity; or
 - b. Two documents issued from one or more federal, state, local, sovereign, medical, or religious institution.
 8. "LTD" means the same as in R2-8-301.
 9. "Irrevocable PDA" means the same as in R2-8-501.
 10. "On file" means the same as in R2-8-115.
 11. "Original retirement date" means the later of:
 - a. The date a member retires from the ASRS for the first time; or
 - b. The date a member re-retires from the ASRS after returning to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C).
 11. "Period certain and life annuity retirement benefit option" means an optional form of retirement benefits described in A.R.S. § 38-760(B)(2).
 12. "Spouse" means the individual to whom a member is married under Arizona law.
 13. "Straight life annuity" means the same as monthly life annuity according to A.R.S. § 38-757.
- B.** A member may retire from the ASRS by submitting a Retirement Application to the ASRS that contains the following information:
1. The member's full name;
 2. The member's Social Security number or U.S. Tax Identification number;
 3. The member's marital status, if not On File with ASRS;
 4. The member's current mailing address; if not On File with ASRS;
 5. The member's date of birth, if not On File with ASRS;
 6. A retirement date according to A.R.S. § 38-764(A);
 7. The retirement option the member is electing;
8. If the member is electing to roll over a lump sum distribution amount to another retirement account, then:
 - a. The type of account and account number, if applicable, to which the member is electing to roll over the lump sum distribution; and
 - b. The name and address of the financial institution of the account to which the member is electing to roll over the lump sum distribution;
 9. The following information for each primary beneficiary, unless the member is receiving a mandatory lump sum distribution under subsection (M):
 - a. The beneficiary's full name;
 - b. The beneficiary's Social Security number, if the beneficiary is a U.S. citizen;
 - c. The beneficiary's date of birth;
 - d. The beneficiary's relationship to the member; and
 - e. The percent of benefit the beneficiary may receive upon death of the member, if the member is designating more than one beneficiary.
 10. Whether the member is electing the Optional Health Insurance Premium Benefit;
 11. The following spousal consent information, if the member is married and is electing a retirement option other than a Joint and Survivor Retirement Benefit Option with at least 50% of the retirement benefit designated to the member's spouse:
 - a. Whether the member's spouse consents to the member making a beneficiary election that provides the member's spouse with less than 50% of the member's account balance;
 - b. Whether the member's spouse consents to the member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
 - c. The member's spouse's full name; and
 - d. The member's spouse's notarized signature;
 12. Whether the member is electing to receive a partial lump sum distribution according to A.R.S. § 38-760 and if so:
 - a. How many months of annuity, up to 36 months, the member is electing to receive as a partial lump sum;
 - b. Whether the member is electing to directly receive the partial lump sum distribution reduced by applicable tax withholding amounts;
 - c. Whether the member is electing to roll over all or a portion of the partial lump sum distribution amount to one other retirement account; and
 - d. Whether the member is electing to use the partial lump sum distribution to purchase service credit with ASRS based on a service purchase request dated before January 6, 2013;
 13. Acknowledgement of the following statements of understanding:
 - a. The member is aware of the member's LTD stop-payment date and any disability benefits the member is receiving shall cease upon the retirement date the member elects according to subsection (B)(6);
 - b. The member understands that if an overpayment exists, ASRS shall collect the remaining overpayment amount according to 2 A.A.C. 8, Article 8 and all repayment plans previously established with ASRS LTD claims administrator shall cease;
 - c. The member understands that if the member is submitting written notice of a changed retirement date, benefit option, or partial lump sum increment selection, ASRS shall distribute the member's benefit as of the later of:

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- i. The date ASRS receives the most recent Acceptable Documentation; or
 - ii. The retirement date contained in the most recent Acceptable Documentation.
 - d. The member has received the Special Tax Notice Regarding Plan Payments;
 - e. The member has received the Return to Work information and will comply with the laws and rules governing the member's return to work;
 - f. The member authorizes ASRS and the banking institution identified in subsection (W) to debit the member's account for the purposes of correcting errors and returning any payments inadvertently made after the member's death;
 - g. The member understands that the member may have a one-time option to rescind a Joint and Survivor Retirement Benefit Option or a Period Certain and Life Annuity Retirement Benefit Option according to R2-8-130;
 - h. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
 - i. The member acknowledges that the member has complied with A.R.S. §§ 38-755 and 38-776 regarding spousal consent; and
14. The member's notarized signature.
- C.** If a Retirement Application is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(14).
- D.** If the retirement date the member elects according to subsection (B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.
- E.** A member who elects to roll over all or a portion of the partial lump sum distribution amount according to subsection (B)(12)(c), shall submit the following written information to the ASRS:
- 1. The type of account and account number to which the member is electing to roll over;
 - 2. The name and address of the financial institution of the account to which the member is electing to roll over; and
 - 3. If the member is electing to roll over a portion of the partial lump sum distribution, then the amount the member is electing to roll over.
- F.** If the member elects to roll over all or a portion of their lump sum or partial lump sum distribution, the ASRS shall only roll over the distribution to one retirement account.
- G.** Any portion of the partial lump sum distribution that is not rolled over to another retirement account according to subsection (B) shall be distributed directly to the member.
- H.** If the member elects to use the partial lump sum distribution to purchase service credit according to subsection (B)(12)(d) the member shall submit the following written information to the ASRS:
- 1. The number of the service purchase invoice;
 - 2. Whether the member is electing to apply the partial lump sum distribution to all eligible service on that invoice;
 - 3. If the member is not electing to apply the partial lump sum distribution to all eligible service on that invoice, then:
 - a. The amount of the partial lump sum distribution to be applied to that invoice; or
 - b. The number of years on that invoice the member is electing to purchase with the partial lump sum distribution;
 - 4. If the member is electing to make a payment on that service purchase invoice with after-tax payments, a rollover, or termination pay according to A.R.S. § 38-747;
 - 5. Whether the member is electing to authorize the ASRS to increase the number of months of annuity, not to exceed 36 months, to purchase the eligible service on that service purchase invoice, if the member elected an insufficient number of months of annuity to receive as a partial lump sum according to subsection (G) to complete the service purchase invoice;
 - 6. If the member does not have eligible service to purchase on that invoice, whether the member is electing to cancel the member's election to receive a partial lump sum distribution.
- I.** A member who elects to receive a partial lump sum distribution shall receive an actuarially reduced annuity retirement benefit according to A.R.S. § 38-760.
- J.** ASRS shall disburse any partial lump sum amount that is not applied to a service purchase invoice according to subsection (G) directly to the member after withholding applicable taxes.
- K.** After submitting a Retirement Application according to subsection (B), a member may make changes to the member's Retirement Application by submitting written notice to the ASRS of the specific changes according to A.R.S. § 38-764(H).
- L.** If ASRS has received contributions for the member within the three years immediately preceding the member's retirement date, the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer. If ASRS has received contributions for the member within the six months immediately preceding the member's retirement date and the member shall receive a one-time lump sum payment according to subsection (P), the ASRS shall send a New Retirement Ending Payroll Verification form to the Employer.
- M.** If the member has reached the age for minimum required distribution according to A.R.S. § 38-775(H)(4), the ASRS shall send a New Retirement Ending Payroll Verification form to the member's most recent Employer.
- N.** The Employer shall submit the completed New Retirement Ending Payroll Verification form to ASRS with the following information:
- 1. The member's Termination date or last day of ASRS membership with that Employer, if applicable;
 - 2. The member's total salary paid during their last fiscal year;
 - 3. The member's compensation for the last pay period;
 - 4. The name and title of the authorized Employer representative;
 - 5. Certification by the authorized Employer representative that:
 - a. Any person who knowingly makes any false statement or who falsifies any record of the retirement plan with an intent to defraud the plan, is guilty of a Class 6 felony according to A.R.S. § 38-793; and
 - b. The authorized Employer representative certifies that they are the Employer user named on the New Retirement Ending Payroll Verification form and their title and contact information is current and correct.
- O.** The ASRS shall cancel a member's Retirement Application if ASRS does not receive all forms and information required under this Section within six months immediately after the member's retirement date.
- P.** As authorized under A.R.S. § 38-764(F), if a member's Straight Life Annuity, after any applicable early retirement reduction factor, is less than a monthly amount of \$100, the

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ASRS shall not pay the annuity. Instead, the ASRS shall make a one-time mandatory lump sum payment in the amount determined by using appropriate actuarial assumptions.

- Q. For purposes of calculating a member's retirement benefit according to A.R.S. §§ 38-758 and 38-759, ASRS shall calculate age to the nearest day as of the member's retirement date.
- R. Based on the retirement option the member elects according to A.R.S. § 38-760, the ASRS shall calculate a member's actuarially reduced benefits, based on the attained age of the member, and if necessary, the attained age of the contingent annuitant as of the date of the member's retirement as follows:
 1. For a partial lump sum retirement benefit option, ASRS shall calculate age to the nearest day as of the member's retirement date;
 2. For a Joint and Survivor Retirement Benefit Option, ASRS shall calculate age to the nearest day as of the member's retirement date; and
 3. For a mandatory lump sum payment according to subsection (O) or a Period Certain and Life Annuity Retirement Benefit Option, ASRS shall calculate age to the nearest full month in addition to calculating age according to subsection (P) as necessary.
- S. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.
- T. If a member does not retire by the date minimum distribution payments are required according to A.R.S. §§ 38-759 and 38-775, the required minimum distribution payments will accrue interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) and in effect on the date the required minimum distribution payments should have begun.
- U. The ASRS shall distribute any required minimum distribution payments with interest according to subsection (T) with the member's first finalized benefits payment.
- V. If a member submits a retirement application after the member's minimum required distribution date, the ASRS shall determine that the member's Applicable Retirement Date is the date the required minimum distribution payments should have begun.
- W. Notwithstanding any other Section, an inactive member who does not have contributions related to compensation is not eligible for retirement.
- X. The ASRS shall issue a debit benefit card, if the annuitant does not provide the following direct deposit information through the annuitant's secure ASRS account or by a notarized Direct Deposit form:
 1. The member's full name;
 2. The member's bank account routing number;
 3. The member's bank account number; and
 4. The type of the account.
- Y. The ASRS shall disburse benefits payments according to subsection (R), only retroactive to the later date specified in A.R.S. § 38-759(B).
- Z. ASRS shall not issue additional estimate checks to a member whose retirement is canceled.

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). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 22 A.A.R. 79, effective March 6, 2016 (Supp. 16-1). Amended by final rulemaking at 22 A.A.R. 3081, effective December 3, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-127. Re-Retirement Application

- A. The definitions in R2-8-126 apply to this Section.
- B. If a member has previously retired from ASRS, the member may re-retire from ASRS by submitting a Re-Retirement Application to the ASRS that contains:
 1. The information identified in R2-8-126(B)(1) through (B)(8);
 2. The retirement option the member is electing, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
 3. The information identified in R2-8-126(B)(11);
 4. Whether the member is electing the Optional Health Insurance Premium Benefit, if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
 5. The information identified in R2-8-126(B)(13), if the member suspended the member's annuity from the member's previous retirement from ASRS and returned to work for 60 consecutive months or more according to A.R.S. § 38-766(C);
 6. Acknowledgement of the following statements of understanding:
 - a. The member's signature confirms the member's intent to re-retire and applies to all the sections included in the Re-Retirement Application.
 - b. The member understands that as a re-retiree, the member must keep the same retirement option and beneficiary the member elected when the member previously retired from ASRS, unless the member returned to active membership for 60 consecutive months or more according to A.R.S. § 38-766(C);
 - c. The member may change the member's beneficiary after re-retiring and changing the beneficiary may change the member's monthly annuity;
 - d. The member has complied with A.R.S. §§ 38-755 and 38-766 regarding spousal consent;
 - e. The member certifies that the member has read and understands the instructions and Special Tax Notice Regarding Plan Payments;
 - f. The member authorizes ASRS and the banking institution the member listed for direct deposit to debit the member's account for the purpose of correcting errors and returning any payments inadvertently paid after the member's death;

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- g. The member understands that any person who knowingly makes any false statement with the intent to defraud ASRS is guilty of a Class 6 felony in accordance with A.R.S. § 38-793; and
 - h. The member understands that if an overpayment exists, the ASRS shall collect the remaining overpayment amount according to 2 A.A.C. 8, Article 8 and all repayment plans previously established with the ASRS LTD claims administrator shall cease.
7. The member's notarized signature.
- C. If the retirement date the member elects according to R2-8-126(B)(6) is not allowed, the ASRS shall change the retirement date to the earliest eligible date according to A.R.S. 38-764(A), unless the member is not eligible to retire.
- C. An individual who is 93 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with ten years certain or 15 years certain.
 - D. An individual who is 85 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option with 15 years certain.
 - E. The ASRS shall calculate the period certain term as beginning on the first day of the first full calendar month following the member's Applicable Retirement Date.
 - F. Notwithstanding subsection (E), the ASRS shall calculate the period certain term as beginning on the member's Applicable Retirement Date if the member's Applicable Retirement Date is the first day of the month.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-128. Joint and Survivor Retirement Benefit Options

- A. The definitions in R2-8-126 apply to this Section.
- B. A member who is ten years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 100% Joint and Survivor Retirement Benefit Option.
- C. A member who is 24 years and one day, or more, older than the member's non-spouse contingent annuitant is not eligible to elect a 66 2/3% Joint and Survivor Retirement Benefit Option.
- D. For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (B), a member who is ten years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 100% Joint and Survivor Retirement Benefit Option, if:
 1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
 2. The member submits an original or certified copy of a DRO to ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.
- E. For members whose Original Retirement Date is on or after March 6, 2016, notwithstanding subsection (C), a member who is 24 years and one day, or more, older than the member's ex-spouse contingent annuitant is eligible to participate in a 66 2/3% Joint and Survivor Retirement Benefit Option, if:
 1. The member elected the ex-spouse as the contingent annuitant prior to divorce from the ex-spouse; and
 2. The member submits an original or certified copy of a DRO to the ASRS which requires the ex-spouse to remain as the contingent annuitant on the member's account.
- F. Notwithstanding any other Section, for purposes of determining whether a member is eligible to participate in a Joint and Survivor Retirement Benefit Option, the ASRS shall calculate the difference in a member's age and the contingent annuitant's age based on the birthdates of the member and the contingent annuitant. For purposes of this Section, a contingent annuitant must be a living person.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-129. Period Certain and Life Annuity Retirement Options

- A. The definitions in R2-8-126 apply to this Section.
- B. An individual who is 104 years of age or older at the time of retirement is not eligible to elect a Period Certain and Life Annuity Retirement Benefit Option.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-130. Rescind or Revert Retirement Election; Change of Contingent Annuitant

- A. The definitions in R2-8-126 apply to this Section.
- B. According to A.R.S. § 38-760(B)(2), for a member whose Original Retirement Date is after August 9, 2001, upon the expiration of a member's period certain term the ASRS shall rescind the member's election and the ASRS shall provide the member a Straight Life Annuity retirement benefit subject to any retirement reductions applicable at the member's Original Retirement Date.
- C. According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is after August 9, 2001 and before July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term.
- D. According to A.R.S. § 38-760(B)(1), a member whose Original Retirement Date is before July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the member's death.
- E. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Period Certain and Life Annuity Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the expiration of the member's period certain term if the member provides proof to ASRS of the death of the primary beneficiary or an original or certified copy of a DRO showing that the primary beneficiary has ceased to be a primary beneficiary.
- F. A member whose Original Retirement Date is on or after July 1, 2008 and who elected a Joint and Survivor Retirement Benefit Option may exercise a one-time election to rescind the election and elect to receive a Straight Life Annuity retirement benefit prior to the death of the member if the member provides proof to ASRS of the death of the contingent annuitant or an original or certified copy of a DRO showing that the contingent annuitant has ceased to be a contingent annuitant.
- G. A member who elected to rescind a Period Certain and Life Annuity Retirement Benefit Option according to subsection (C) may elect to revert to the Period Certain and Life Annuity Retirement Benefit Option by submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).
- H. A member who elected to rescind a Joint and Survivor Retirement Benefit Option according to subsection (D) may elect to revert to the Joint and Survivor Retirement Benefit Option by

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submitting an Application to Rescind, Revert or Change Contingent Annuitant as specified in subsection (M).

- I. A member may only revert to the same Period Certain and Life Annuity Retirement Benefit Option the member rescinded according to subsection (C) prior to the expiration of the period certain term the member elected at the member's most recent retirement.
- J. A member who rescinds their election according to subsections (E) or (F) is not eligible to revert to a Period Certain and Life Annuity Retirement Benefit Option or a Joint and Survivor Retirement Benefit Option.
- K. Notwithstanding any other provision, the time period of a Period Certain and Life Annuity Retirement Benefit Option shall be continuous from the member's retirement date until the term expires regardless of whether the member rescinds or reverts to another retirement option.
- L. A member who wants to rescind or revert a retirement election according to subsections (C) through (H) shall ensure ASRS receives an Application to Rescind, Revert or Change Contingent Annuitant at least one day prior to the member's death.
- M. In order to rescind, revert, or change a contingent annuitant, the member shall submit an Application to Rescind, Revert or Change Contingent Annuitant with the following information:
 - 1. The member's full name;
 - 2. The member's Social Security number or U.S. Tax Identification number;
 - 3. The member's marital status, if not On File with ASRS;
 - 4. Whether the member is electing to rescind, revert, or change a contingent annuitant;
 - 5. The member's notarized signature acknowledging the following statements of understanding:
 - a. For rescinding a retirement election:
 - i. By this action, and the member's signature, the member is aware that the member's designated beneficiary or contingent annuitant will not continue with monthly benefits after the member's death;
 - ii. The member is aware that a certified copy of the member's designated beneficiary's or contingent annuitant's death certificate or an original or certified copy of a DRO is required if the member retired or re-retired on or after July 1, 2008;
 - iii. At the time of the member's death, if the ASRS has not disbursed the total employee contributions on the member's account, plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, the balance will be payable in a lump sum to the beneficiary named on the member's most recent Acceptable Form.
 - b. For changing a contingent annuitant or beneficiary:
 - i. For a Joint and Survivor Retirement Benefit Option, by this action, and the member's signature, the contingent annuitant named on the member's most recent Acceptable Form will receive the previously elected percentage amount of the member's monthly benefit for their lifetime following the member's death;
 - ii. For a Joint and Survivor Retirement Benefit Option, the member is aware that a copy of the contingent annuitant's Legal Documentation is required and the member's benefit will be recalculated based on the member's age and the age of the member's new contingent annuitant as of the effective date of the member's request according to this Section;
 - iii. For a Joint and Survivor Retirement Benefit Option, the member is in compliance with the age difference limitations in R2-8-128; and
 - iv. For a Period Certain and Life Annuity Retirement Benefit Option, by this action, and the member's signature, the beneficiary named on the member's most recent Acceptable Form will receive the remaining term of monthly payments.
 - 6. If the member is electing to change a contingent annuitant, the following information for the new contingent annuitant:
 - a. Full name;
 - b. Social Security number, if the contingent annuitant is a U.S. citizen;
 - c. Date of birth; and
 - d. Legal relationship to the member.
 - 7. If the member is married, whether the member's spouse consents to the following with the spouse's notarized signature:
 - a. The member making a beneficiary designation that provides the member's spouse with less than 50% of the member's account balance;
 - b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option; or
 - c. The member changing or ending the spouse's contingent annuitant status.
 - 8. Whether the spouse's consent is not required because:
 - a. The spouse predeceased the member and if so, provide a copy of the spouse's death certificate; or
 - b. The member is divorced and if so, provide an original or certified copy of a DRO.
- N. If the ASRS is unable to verify the age of the member or a contingent annuitant, the member or contingent annuitant shall provide Legal Documentation showing the member's or contingent annuitant's age.

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- O.** The effective date of the member's request according to this Section is the date on which ASRS receives the Application to Rescind, Revert or Change Contingent Annuitant.
- P.** According to A.R.S. § 38-760(B)(2), a member whose Original Retirement Date is on or after July 1, 2008 and who elects a Period Certain and Life Annuity Retirement Benefit Option, may rescind the election according to subsection (E) and elect to receive a Straight Life Annuity prior to the expiration of the member's period certain term if one or more of the member's primary beneficiaries dies or ceases to be a beneficiary according to the terms of an original or certified copy of a DRO.
- Q.** The ASRS shall cancel a member's Application to Rescind, Revert, or Change Contingent Annuitant if ASRS does not receive all forms and information required under this Section within six months immediately after the ASRS receives the application.
- Historical Note**
New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).
- R2-8-131. Designating a Beneficiary; Spousal Consent to Beneficiary Designation**
- A.** The definitions in R2-8-126 apply to this Section.
- B.** In order to designate a beneficiary, a member shall submit an Acceptable Form containing the following information:
1. The Member's full name and one or more of the following information:
 - a. The Member's Social Security number or U.S. Tax Identification number; or
 - b. The Member's address; or
 - c. The Member's date of birth;
 2. The following information for the beneficiary:
 - a. The full name of the person or entity the member is designating as beneficiary;
 - b. Whether the beneficiary is being designated as primary or secondary beneficiary;
 - c. The percentage of the benefit the member is allocating to the beneficiary; and
 3. The member's notarized signature.
- C.** If a change in a designated beneficiary is completed through the member's secure ASRS account, the member's notarized signature is not required under subsection (B)(3).
- D.** If a member submits an Acceptable Form designating a beneficiary without indicating the percentage of the benefit the member is allocating to the beneficiary, the ASRS shall determine that each beneficiary is designated to receive an equal amount of the benefit.
- E.** 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% 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;
 2. Who retires shall choose a Joint and Survivor Retirement Benefit Option and name the member's current spouse as contingent annuitant unless:
 - a. Naming or maintaining the current spouse as contingent annuitant violates another law, existing contract, or court order; or
 - b. The spouse consents to an alternate contingent annuitant; or
 - c. The spouse consents to an alternate annuity option under A.R.S. §§ 38-757 or 38-760.
- F.** 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 (E).
- G.** Subsection (E) does not apply to a member who is receiving a mandatory lump sum distribution according to A.R.S. § 38-764.
- H.** Subsection (E) does not apply to a member who submits a Spousal Consent Exception form that contains the member's notarized signature to the ASRS affirming under penalty of perjury that the member's spouse's consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).
- I.** In order to change a beneficiary designation, a member shall submit the information contained in subsection (B) and:
1. A married member who changes a beneficiary designation on or after July 1, 2013, shall ensure the new beneficiary designation is consistent with subsection (E); or
 2. A married member who retired before July 1, 2013, and who wishes to change the contingent annuitant or beneficiary, shall ensure that the new designation is consistent with subsection (E).
- J.** A married member who re-retires according to A.R.S. § 38-766:
1. Within less than 60 consecutive months of active membership from the member's previous retirement date, is not eligible to elect a different annuity option or different beneficiary than the member elected at the time of the previous retirement; or
 2. At least 60 consecutive months of active membership after the member's previous retirement date, may elect a different annuity option and different beneficiary than the member elected at the time of the previous retirement, and the election shall comply with subsection (E).
- K.** If a married member submits a retirement application that fails to comply with subsection (E), the member shall submit a new retirement application or written notice of new retirement elections that comply with subsection (E) within six months of the member's Original Retirement Date. The member's new Original Retirement Date is the date ASRS receives the new application or written notice unless the member elects a later date according to A.R.S. § 38-764.
- L.** If a married member made a beneficiary designation on or after July 1, 2013 that is not consistent with the requirements specified in subsection (E), the ASRS shall, at the time of the member's death:
1. Notify both the spouse and designated beneficiary and:
 - a. Provide the spouse with an opportunity to waive the right under subsection (E); and
 - b. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse's right under subsection (E); and
 2. Designate 50% of the member's retirement benefit to the spouse if neither the spouse nor designated beneficiary respond to notification according to subsection (L)(1) within 30 days after notification.
- M.** If a married member designated a beneficiary before July 1, 2013 that does not comply with subsection (E), upon the death of the member, the member's spouse may submit written notice to the ASRS prior to disbursement of the member's account with the following information:
1. The member's full name;
 2. The member's Social Security number or U.S. Tax Identification number;
 3. The spouse's assertion to the spouse's right to community property;
 4. An original or copy of the marriage certificate; and

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5. An original or certified copy of the member's death certificate.
- N. If a spouse submits written notice according to subsection (M), the ASRS shall designate the spouse as beneficiary of a percentage of the member's account according to A.R.S. §§25-211 and 25-214 and notify the member's designated beneficiary of the spouse's assertion.
- O. The ASRS shall determine a spouse's percentage of the member's account according to subsection (L) based on the amount of service credit the member acquired during the marriage divided by the total amount of service credit the member acquired, multiplied by 50%.
- P. If a beneficiary is notified of a spouse's assertion according to subsection (N), then before ASRS disburses a survivor benefit, the beneficiary may notify ASRS of the beneficiary's intent to appeal the spouse's right to a survivor benefit.
- Q. Within 30 days, a beneficiary who has notified ASRS of the beneficiary's intent to appeal a survivor benefit disbursement according to subsection (P), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- R. An original or certified copy of a DRO may supersede the requirements in subsection (B).
- S. To consent to an alternative retirement benefit option or beneficiary designation, a member's spouse shall complete and have notarized a Spousal Consent form containing the following information:
 1. Member's full name;
 2. Member's Social Security number or U.S. Tax Identification number;
 3. Whether the member's spouse is consenting to one or more of the following:
 - a. The member making a beneficiary designation that provides the spouse with less than 50% of the member's account balance;
 - b. The member electing a retirement option other than a Joint and Survivor Retirement Benefit Option;
 - c. The member naming a contingent annuitant other than the spouse; and
 - d. The spouse's notarized signature.
- T. A member's spouse may revoke the spouse's consent to an alternative retirement benefit option or beneficiary designation by sending written notice to ASRS with the following information:
 1. The member's full name
 2. The member's Social Security number or U.S. Tax Identification number;
 3. The spouse's full name;
 4. The spouse's dated signature indicating the spouse is revoking all previous Spousal Consent forms.
- U. A spouse who is revoking a Spousal Consent form shall ensure 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.
- ASRS shall calculate the benefits effective date as of the day after the member's death and the ASRS shall pay interest up to the benefits effective date.
- D. According to A.R.S. § 38-763, if the member elected a Period Certain and Life Annuity Retirement Benefit Option and deceases prior to the expiration of the period certain term, the member's beneficiary may elect to complete the remaining period certain term or the beneficiary may elect to receive a lump sum distribution which is the greater of:
 1. The present value of the benefits based on the remaining period certain term; or
 2. The member's ASRS account balance plus interest at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member.
- E. Notwithstanding subsection (D), a beneficiary is not eligible to elect to complete the remaining period certain term if the period certain term has expired.
- F. If the beneficiary elects to complete the remaining period certain term or elects to receive a lump sum that is the present value of the benefits based on the remaining period certain term according to subsection (D), the ASRS shall not pay interest.
- G. If a member's beneficiary or contingent annuitant does not want to receive a survivor benefit according to 26 U.S.C. § 2518, within nine months after the member's death, the beneficiary or contingent annuitant may submit a written request to the ASRS with the following information for the beneficiary or contingent annuitant:
 1. Full name;
 2. Social Security number if the beneficiary or contingent annuitant is a U.S. citizen;
 3. Address; and
 4. Notarized signature acknowledging the following statements:
 - a. The beneficiary or contingent annuitant is aware that, as a beneficiary or contingent annuitant of the member, the beneficiary or contingent annuitant is entitled to a survivor benefit in the amount specified by the ASRS;
 - b. The beneficiary is renouncing a portion or all of the beneficiary's rights to the member's benefit;
 - c. The contingent annuitant is renouncing all of the contingent annuitant's rights to the member's benefit;
 - d. The beneficiary understands that by renouncing rights to the member's benefit, the portion that the beneficiary is renouncing will be paid to any other survivor on the member's account, or if there is no other designated survivor, the benefit will be paid to the member's estate; and
 - e. The contingent annuitant understands that by renouncing rights to the member's benefit, the ASRS shall pay the member's ASRS account balance plus interest at the Assumed Actuarial Interest and Investment Return Rate specified in R2-8-118(A) through the month prior to the member's retirement date, reduced by all retirement benefits due to the member, to any other survivor on the member's account, or if there is no other designated survivor, to the member's estate.
- H. According to 26 U.S.C. § 2518, a minor beneficiary's or contingent annuitant's survivor benefit cannot be renounced.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-132. Survivor Benefit Options

- A. The definitions in R2-8-126 apply to this Section.
- B. If the beneficiary is eligible to elect the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the ASRS shall calculate the benefits based on the attained age of the beneficiary, calculated to the nearest full month, as of the date of the member's death.
- C. If the beneficiary elects to receive the survivor benefit as monthly income for life according to A.R.S. § 38-762(C), the

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Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

R2-8-133. Survivor Benefit Applications

- A.** The definitions in R2-8-126 apply to this Section.
- B.** The ASRS shall not distribute a survivor benefit until a claimant notifies the ASRS of a member's death by telephone or submission of a death certificate, unless the member elected a Joint and Survivor Benefit Option upon retirement.
- C.** Upon notification of the death of a member, the ASRS shall distribute the survivor benefits according to the most recent, Acceptable Form that is On File with the ASRS that was received at least one day prior to the date of the member's death, unless otherwise provided by law.
- D.** The designated beneficiary or other person specified in A.R.S. § 38-762(E) shall provide the following:
1. An original certified death certificate or a certified copy of a court order that establishes the member's death;
 2. If the claimant is not a designated beneficiary, but is a person specified in A.R.S. § 38-762(E), a copy of a document issued from a federal, state, local, sovereign, or medical institution showing the claimant's relationship to the deceased member;
 3. A certified copy of the court order of appointment as administrator, if applicable; and
 4. 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 or U.S. Tax Identification number,
 - c. The benefit the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing;
 - d. If the designated beneficiary or other person specified in A.R.S. § 38-762(E) is electing to roll over a benefit, the following information:
 - i. The claimant's full name;
 - ii. The name of the institution to which the claimant is electing to roll over;
 - iii. The address of the institution to which the claimant is electing to roll over;
 - iv. The full name of the authorized representative of the institution to which the claimant is electing to roll over;
 - v. The signature of the authorized representative of the institution to which the claimant is electing to roll over;
 - e. If the beneficiary is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
 - i. Whether the bank account is a checking or savings account;
 - ii. The name of the banking institution to which the benefit is being sent;
 - iii. The routing number;
 - iv. The account number; and
 - f. The following information for the designated beneficiary or other person specified in A.R.S. § 38-762(E):
 - i. Full name;
 - ii. Mailing address, if not On File with ASRS;
 - iii. Date of birth, if applicable; and
 - iv. Social Security number or U.S. Tax Identification number, if not On File with ASRS.
 - g. The following statements of understanding:
 - i. The designated beneficiary or other person specified in A.R.S. § 38-762(E) has read and understands the Special Tax Notice Regarding Plan Payments they received with this application;
 - ii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit;
 - iii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death;
 - iv. Under penalties of perjury, the designated beneficiary or other person specified in A.R.S. § 38-762(E) certifies that:
 - (1) The Social Security number or U.S. Tax Identification number shown on this application is correct;
 - (2) They are not subject to backup withholding because:
 - (a) They are exempt from backup withholding, or
 - (b) They have not been notified by the Internal Revenue Service that they are subject to backup withholding as a result of a failure to report all interest or dividends, or
 - (c) The Internal Revenue Service has notified them that they are no longer subject to backup withholding; and
 - (3) They are a legal resident of the United States, unless they are an estate or trust.
 - v. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands their right to a 30-day notice period to consider a rollover or a cash distribution and they elect to waive the notice period by their election for payment on this application;
 - vi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to another eligible retirement plan, it is their responsibility to verify that the receiving plan will accept the rollover and, if applicable, agree to separately account for the taxable and nontaxable amounts rolled over and the related subsequent earnings on such amounts;
 - vii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over all or any portion of their distribution to an IRA plan, it is their responsibility to verify that the receiving IRA institution will accept the rollover and, if applicable, it is their responsibility to separately account for taxable and nontaxable amounts;
 - viii. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to another eligible retirement plan, any portion of the distribution not

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- designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding;
- ix. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, any portion of the distribution not designated for a rollover will be paid directly to them and any taxable amounts will be subject to federal and state income tax withholding.
 - xi. The designated beneficiary or other person specified in A.R.S. § 38-762(E) understands if they elect to roll over to an inherited IRA plan, they may be required to receive a minimum distribution and they certify that the date of birth shown on this form is correct.
5. For a member who elected a Joint and Survivor Retirement Benefit Option, a contingent annuitant shall submit a Joint and Survivor Certification form containing:
 - a. The following information for the member:
 - i. Full name;
 - ii. Social Security number or U.S. Tax Identification number;
 - iii. Date of death; and
 - b. The following information for the beneficiary:
 - i. Legal relationship to the member;
 - ii. Full name;
 - iii. Social Security number or United States Tax Identification number, if not On File with ASRS;
 - iv. Mailing address, if not On File with ASRS;
 - v. Date of birth, if not On File with ASRS;
 - vi. If the contingent annuitant is electing to have any of the survivor benefits directly deposited into a bank account, the following information:
 - (1) Whether the bank account is a checking or savings account;
 - (2) The name of the banking institution to which the benefit is being sent;
 - (3) The routing number;
 - (4) The account number; and
 - c. The following statements of understanding:
 - i. The contingent annuitant has read and understands the Special Tax Notice Regarding Plan Payments they received with the Joint and Survivor Certification form;
 - ii. The contingent annuitant authorizes the ASRS to make payments as indicated above and agree on behalf of themselves and their heirs that such payments shall be a complete discharge of the claim and shall constitute a release of the ASRS from any further obligation on account of the benefit; and
 - iii. The contingent annuitant authorizes the ASRS and the Banking Institution listed above to debit their account for the purposes of correcting errors and returning any payments inadvertently made after their death.
 - d. The contingent annuitant's notarized signature.
 - E. Notwithstanding R2-8-132(H), if the beneficiary or contingent annuitant is a minor as of the date of the member's death, the beneficiary or contingent annuitant may submit a written request with the information contained in R2-8-132(G)(1) through (4) within nine months after the minor attains 18 years of age.
 - F. For a member who deceases prior to the member's retirement date, if there is no designation of beneficiary or if the designated beneficiary predeceases the member, the ASRS shall pay a survivor benefit as specified in A.R.S. § 38-762(E).
 - G. The ASRS shall begin disbursing a survivor benefit to a contingent annuitant according to A.R.S. § 38-760(B)(1) upon notification and verification of the member's death by a third party.
 - H. The ASRS shall suspend a survivor benefit for a contingent annuitant unless the contingent annuitant provides the information in subsection (D) within two months of the ASRS disbursing a survivor benefit.
 - I. If the member is domiciled in Arizona, according to A.R.S. § 14-3971, and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits an Affidavit for Collection of Personal Property to ASRS with the following:
 1. The claimant's name;
 2. The claimant's Social Security number or U.S. Tax Identification number;
 3. The claimant's mailing address;
 4. The member's name;
 5. The member's Social Security number or U.S. Tax Identification number;
 6. The date of the member's death;
 7. The state and county where the member died;
 8. Statements indicating:
 - a. According to A.R.S. § 14-3971(B)(2)(a), no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date of the member's death;
 - b. According to A.R.S. § 14-3971(B)(2)(b), the personal representative has been discharged, or more than a year has elapsed since a closing statement has been filed and the value of the member's entire estate, less liens and encumbrances, does not exceed the amount in A.R.S. § 14-3971 as valued as of the date the ASRS receives the Affidavit for Collection of Personal Property;
 - c. The claimant is the successor of the member and is entitled to the member's personal property because:
 - i. The claimant is named in the member's will; or
 - ii. The member did not have a will and the claimant is entitled to the member's personal property by right of intestate succession according to A.R.S. § 14-2103;
 - d. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(i), then a copy of the member's will;
 - e. If the claimant is entitled to the member's personal property according to subsection (I)(8)(c)(ii), then the relationship between the member and the claimant and whether there are other surviving heirs;
 - f. If there are other surviving heirs, then the name and relationship of each surviving heir;
 - g. A statement indicating the claimant is making the Affidavit for Collection of Personal Property according to A.R.S. § 14-3971 for the purpose of making a claim to the member's ASRS account; and
 - h. The claimant's notarized signature.
 - J. If the member is not domiciled in Arizona and there is no designated beneficiary, the ASRS shall distribute the balance of a member's account to a claimant if the claimant submits legal

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documentation to claim the member's ASRS account that complies with the statutory requirements of the state in which the member was domiciled at the time of the member's death.

- K.** Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is less than \$10,000 per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's legal guardian submits the following written information:
1. The member's full name;
 2. The member's Social Security number or U.S. Tax Identification number;
 3. The minor beneficiary's full name;
 4. The minor beneficiary's Social Security number or U.S. Tax Identification number;
 5. The full name of the minor beneficiary's legal guardian;
 6. The minor beneficiary's legal guardian's address, if not On File with ASRS; and
 7. The minor beneficiary's legal guardian's signature certifying the minor beneficiary's legal guardian has care and custody of the minor beneficiary.
- L.** Notwithstanding any other provision, if the amount of the survivor benefit as valued at the date of disbursement is \$10,000 or more per annum, the ASRS shall not distribute a survivor benefit to a minor beneficiary unless the minor beneficiary's conservator submits proof of court-appointed fiduciary responsibility for the minor beneficiary.
- M.** The ASRS shall remit payment to the minor beneficiary according to subsection (K) by sending the minor beneficiary's conservator a check, if the document providing proof of the court-appointed fiduciary responsibility requires payment to be made to a restricted or secure account.
- N.** If a person claims that a beneficiary or claimant is not entitled to a survivor benefit, then before ASRS disburses a survivor benefit, the person may notify ASRS of the person's intent to appeal the beneficiary's or claimant's right to a survivor benefit.
- O.** Within 30 days, a person who has notified ASRS of the person's intent to appeal a survivor benefit disbursement according to subsection (N), shall submit an appeal to ASRS according to 2 A.A.C. 8, Article 4.
- P.** If the ASRS receives documentation from, or confirmed by, a law enforcement agency, that a beneficiary or claimant may be guilty of the felonious and intentional killing of the member, the ASRS shall not distribute any benefits to the beneficiary or claimant that may be guilty of the felonious and intentional killing of the member until the matter has been adjudicated.
- Q.** If the member's estate has an appointed personal representative, the member's estate shall submit a court document identifying the personal representative for the member's estate before ASRS may distribute a survivor benefit.
- R.** If the member's estate is closed, the person claiming a right to the member's ASRS account shall provide a court document proving the estate is closed.
- S.** If the survivor receives a monthly annuity and does not provide the direct deposit information according to subsection (D)(4)(e) or (D)(5)(b)(vi), ASRS shall issue a debit benefit card.

Historical Note

New Section made by final rulemaking at 26 A.A.R. 2036, effective November 8, 2020 (Supp. 20-3).

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

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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

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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. HEALTH INSURANCE PREMIUM BENEFIT**R2-8-201. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Coverage" means a medical and/or dental insurance plan a retired member, Disabled member, or contingent annuitant obtains through the ASRS or an Employer.
2. "Contingent annuitant" means the same as in A.R.S. § 38-711(8) and the person is eligible for Coverage.
3. "Disabled" means the member has a disability and is receiving long-term disability benefits pursuant to A.R.S. § 38-797 et seq.
4. "Family calculation" means the family Coverage premium described in A.R.S. § 38-783(B).
5. "Joint & survivor" means the annuity option described in A.R.S. § 38-760(B)(1).
6. "Net premium" means the amount of the Coverage premium reduced by the amount of the Premium Benefit provided by the ASRS.
7. "Original retirement date" means the same as in R2-8-126.
8. "Optional premium benefit" means the election, upon retirement, to have the Premium Benefit paid on behalf of the member's Contingent Annuitant upon death of the member pursuant to A.R.S. § 38-783.
9. "Period-certain" means the annuity option described in A.R.S. § 38-760(B)(2).
10. "Premium benefit" means the amount the ASRS provides on behalf of a retired member or Disabled member in order to offset the Coverage premium of the retired or Disabled member pursuant to A.R.S. § 38-783.
11. "Single calculation" means the single Coverage premium calculation described in A.R.S. § 38-783(A).
12. "Subsidized" means the same as in A.R.S. § 38-783(M)(4).

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(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

R2-8-202. Premium Benefit Eligibility and Benefit Determination

- A.** A retired member or Disabled member who has five or more years of service and who elects to maintain Coverage is eligible for a Premium Benefit as follows:
1. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member only, is eligible for a Single Calculation of the Premium Benefit as described in R2-8-204(A);
 2. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled

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- member and a dependent who is not a retired member or Disabled member is eligible for a Family Calculation of the Premium Benefit as described in R2-8-204(B).
3. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is a retired member or Disabled member is eligible for the greater of:
 - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
 - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
 4. A retired member or Disabled member who is enrolled as a dependent on an active member's insurance plan is eligible for a Single Calculation of the Premium Benefit described in R2-8-204(A) if:
 - a. The retired member has an Original Retirement Date prior to August 2, 2012; or
 - b. The Disabled member became Disabled prior to August 2, 2012;
 5. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and multiple dependents, some of whom are retired members or Disabled members, is eligible for the greater of:
 - a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or
 - b. One Family Calculation of the Premium Benefit described in R2-8-204(B).
- B.** Pursuant to A.R.S. § 38-783(E), a retired member who returns to work as an active member with an Employer and elects to maintain Coverage is eligible to receive a Premium Benefit if the member has an Original Retirement Date prior to August 2, 2012.
- C.** Pursuant to A.R.S. § 38-783(E), a Disabled member who elects to maintain Coverage is eligible to receive a Premium Benefit if the Disabled member became Disabled prior to August 2, 2012.
- D.** A member who receives a lump sum distribution from the ASRS upon retirement is eligible to receive a Premium Benefit pursuant to this Article.
- E.** Notwithstanding any other Section, a retired member who has an Original Retirement Date on or after August 2, 2012, or a Disabled member who became Disabled on or after August 2, 2012 is eligible to receive a Premium Benefit pursuant to this Article, only if Coverage is not Subsidized.
- 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). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).
- R2-8-203. Payment of Premium Benefit**
- A.** Every month, the ASRS shall provide a Premium Benefit to the Employer on behalf of a retired member, Disabled member, or Contingent Annuitant who maintains Coverage and is eligible to receive a Premium Benefit pursuant to R2-8-202.
 - B.** Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration or the ASRS, the ASRS shall reduce the retired member's pension amount by the amount of the retired member's Net Premium for Coverage pursuant to this Article, unless the Net Premium exceeds the pension amount.
 - C.** Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the ASRS and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the retired member's insurance company and the ASRS shall:
 1. Not reduce the retired member's pension amount; and
 2. Remit payment of the Premium Benefit to the retired member's insurance company.
 - D.** Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the Arizona Department of Administration and the ASRS shall:
 1. Not reduce the retired member's pension amount; and
 2. Remit payment of the Premium Benefit to the Arizona Department of Administration.
 - E.** If a Disabled member who is eligible to receive a Premium benefit pursuant to R2-8-202 maintains Coverage with the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the Arizona Department of Administration, unless the Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.
 - F.** If a Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with the ASRS, the ASRS shall remit the Premium Benefit to the Disabled member's insurance company and the Disabled member shall be responsible for remitting the Net Premium to the Disabled member's insurance company.
 - G.** If a retired member or Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with an Employer other than the ASRS or the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the retired member's or Disabled member's Employer, unless the retired member or Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.
 - H.** If a retired member or Disabled member is eligible to receive a Premium Benefit pursuant to R2-8-202, the ASRS shall provide the lesser of the following for any one retired member or Disabled member:
 1. The actual cost of the Coverage premium; or
 2. The greatest Premium Benefit calculation for which the retired member or Disabled member is eligible pursuant to R2-8-202.
 - I.** If a retired member is eligible to receive a Premium Benefit pursuant to R2-8-202 and the member retires from the ASRS in addition to retiring from another State retirement system or plan described in A.R.S. § 38-921, each month, the ASRS shall remit any Premium Benefit for which the retired member is eligible under this Article to the other State retirement system or plan from which the member retired.
- 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). New Section made

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by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

R2-8-204. Premium Benefit Calculation

- A. A Single Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or non-Medicare status.
- B. A Family Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or Non-Medicare status, and the Medicare or Non-Medicare status of any dependents for which the retired member or disabled member has obtained Coverage.
- C. A Contingent Annuitant who is eligible to receive an Optional Premium Benefit pursuant to R2-8-207 shall receive an Optional Premium Benefit amount based on:
 1. The retired member's years of service and optional retirement benefit election pursuant to A.R.S. § 38-760; and
 2. The Contingent Annuitant's Coverage and Medicare or non-Medicare status.
- D. Notwithstanding R2-8-203(H), if a Contingent Annuitant is a retired member, the Contingent Annuitant may be entitled to receive more than one Premium Benefit.

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). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

R2-8-205. Premium Benefit Documentation

- A. Every year, prior to the effective date of Coverage, an Employer shall report to the ASRS all the Coverage plans and premium rates the Employer offers to its retired or Disabled employees.
- B. An Employer shall inform the ASRS of any changes to the retired member's, Disabled member's, or Contingent Annuitant's Coverage, including enrollment in Coverage, maintained through the Employer within 30 days of the changes taking effect.
- C. Using the Employer's secure ASRS website account, or another ASRS approved method, an Employer shall submit the following health insurance enrollment, change, and/or deletion information pursuant to subsection (B):
 1. The retired member's, Disabled member's, or Contingent Annuitant's social security number;
 2. The retired member's, Disabled member's, or Contingent Annuitant's full name;
 3. The retired member's, Disabled member's, or Contingent Annuitant's residential mailing address and telephone number;
 4. The retired member's, Disabled member's, or Contingent Annuitant's date of birth;
 5. The Coverage in which the retired member, Disabled member, or Contingent Annuitant is enrolling;
 6. The type of change that is being made to the Coverage;
 7. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
 - a. First and last name;
 - b. Social security number;
 - c. Date of birth; and
 - d. Medicare number, if applicable.
 8. The old and new premium amounts for Coverage;
 9. The effective date of the change, deletion, and/or enrollment;
 10. The Employer's name and telephone number;

11. A certification by the Employer representative's dated signature that the information is current and correct.

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). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

R2-8-206. Six-Month Reimbursement Program

- A. For a retired member or Disabled member who is eligible for a Premium Benefit pursuant to R2-8-202(A)(4) or (B), the ASRS shall remit the Premium Benefit to the retired member or Disabled member pursuant to subsection (B).
- B. Pursuant to subsection (A), the ASRS shall remit the Premium Benefit to the retired member or Disabled member every six months, payable in July and January. For purposes of this Section, the Premium Benefit shall be the aggregate amounts of the Premium Benefit the retired member or Disabled member is entitled to receive during the previous six months.
- C. In order to receive a Premium Benefit payment pursuant to subsection (B), a retired member or Disabled member shall submit to the ASRS the Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form after the last day of the last month for which the retired member or Disabled member is seeking reimbursement.
- D. The Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form that a retired member or Disabled member submits pursuant to subsection (C) shall include the following information:
 1. The retired member's or Disabled member's social security number;
 2. The retired member's or Disabled member's full name;
 3. The retired member's or Disabled member's mailing address and phone number;
 4. The retired member's or Disabled member's date of birth;
 5. The retired member's or Disabled member's status with the ASRS
 6. The retired member's or Disabled member's status with the retired member's or Disabled member's Employer.
 7. The following Coverage information for the Coverage policy holder:
 - a. First and last names;
 - b. Social security number;
 - c. Date of birth;
 - d. Effective date of Coverage;
 8. The following information for each dependent enrolled in, or to be enrolled in, Coverage:
 - a. First and last name;
 - b. Social security number;
 - c. Date of birth;
 - d. Effective date of Coverage;
 9. Six-month reimbursement totals identified by:
 - a. The month and year the premium is due for Coverage;
 - b. The total medical plan premium per month;
 - c. The total dental plan premium per month;
 - d. The employee's out-of-pocket payroll deduction for a medical premium per month;
 - e. The employee's out-of-pocket payroll deduction for a dental premium per month;
 - f. The employee's total out-of-pocket payroll deduction for medical and dental premiums per month;
 10. The Employer's name;
 11. The Employer's phone number;

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12. The Employer's email address;
13. The name of the Employer's representative; and
14. The dated signature of the Employer's representative.

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). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

R2-8-207. Optional Premium Benefit

- A. A member who retires on or after January 1, 2004 is eligible to elect the Optional Premium Benefit to be effective on the date of the retired member's retirement and may designate a Contingent Annuitant to receive the Optional Premium Benefit upon the death of the retired member if:
 1. The retired member elects a retirement option under A.R.S. § 38-760; and
 2. The retired member elects to maintain Coverage.
- B. A retired member who returns to active membership for 60 consecutive months or more before retiring again, may elect or re-elect the Optional Premium Benefit pursuant to subsection (A).
- C. A retired member who does not return to active membership for 60 consecutive months or more before retiring again is not eligible to elect the Optional Premium Benefit pursuant to subsection (A) unless the retired member elected the Optional Premium Benefit to be effective on the date of the retired member's Original Retirement Date.
- D. In order to elect, re-elect, or terminate the Optional Premium Benefit pursuant to subsection (A), the retired member shall submit to the ASRS the Optional Premium Benefit Program Election or Termination form containing the following information:
 1. The retired member's Social Security Number;
 2. The retired member's full name and gender;
 3. The retired member's current mailing address;
 4. The retired member's date of birth;
 5. The retired member's email address;
 6. The retired member's phone number;
 7. Whether the retired member is electing, declining, or terminating the Optional Premium Benefit;
 8. The following information for the Contingent Annuitant if the retired member is electing or re-electing the Optional Premium Benefit:
 - a. The Social Security Number;
 - b. The full name;
 - c. The mailing address;
 - d. The phone number;
 - e. The date of birth; and
 - f. The gender and relationship to the retired member; and
 9. Certification of understanding by the retired member's dated signature of the following statements:
 - a. I have a one-time election at the time of retirement for this benefit, and have a retirement date on or after January 1, 2004;
 - b. I must elect a Joint & Survivor or Period-Certain annuity option;
 - c. If I elect to participate, my Contingent Annuitant must either be participating or eligible to participate in my retiree health care plan at the time of my death;
 - d. I must provide a Social Security Number and proof of birth date for my Contingent Annuitant;

- e. The Premium Benefit will be actuarially reduced for the remainder of my benefit and my Contingent Annuitant's benefit as long as the Optional Premium Benefit is elected; and
- f. I may rescind the election at any time and be eligible for the unreduced Premium Benefit payable as provided by law.

- E. In order to elect or re-elect the Optional Premium Benefit, a member shall submit the Optional Premium Benefit Program Election or Termination form to the ASRS prior to the member's retirement date.
- F. A Contingent Annuitant the retired member designates to receive the Optional Premium Benefit upon the retired member's death is eligible to receive a Premium Benefit if:
 1. The retired member designates the Contingent Annuitant as the primary beneficiary on the member's retirement account;
 2. The Contingent Annuitant is enrolled in a Coverage plan at the time of the member's death or the Contingent Annuitant enrolls in a Coverage plan within six months of the retired member's death pursuant to A.R.S. § 38-782(A); and
 3. The Contingent Annuitant is eligible to receive at least one monthly payment.
- G. Upon the death of a retired member who elected the Optional Premium Benefit pursuant to subsection (A), the ASRS shall provide the Optional Premium Benefit on behalf of the retired member's Contingent Annuitant who is eligible to receive the Optional Premium Benefit pursuant to subsection (F).
- H. Notwithstanding subsection (G), the amount of the Optional Premium Benefit the ASRS provides on behalf of a Contingent Annuitant shall not exceed the actual amount of the Coverage premium.
- I. Unless otherwise indicated by law, the Optional Premium Benefit shall not terminate upon the death of the retired member if a Contingent Annuitant is eligible for the Optional Premium Benefit pursuant to subsection (F).

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(J) at 23 A.A.R. 34, effective May 31, 2015 (Supp. 16-4). New Section made by final rulemaking at 23 A.A.R. 1414, effective July 3, 2017 (Supp. 17-2).

ARTICLE 3. LONG-TERM DISABILITY**R2-8-301. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Attending Physician" means a provider:
 - a. Who is a qualified medical provider or other legally qualified practitioner of a healing art that the claims administrator recognizes or is required by law to recognize;
 - b. Whose medical training and clinical experience are qualified to treat the member's disabling condition;
 - c. Whose diagnosis and treatment is consistent with the diagnosis of the disabling condition, according to guidelines established by medical, research, and rehabilitative organizations;
 - d. Who is licensed to practice in the jurisdiction where care is being given;
 - e. Who is practicing within the scope of the license; and
 - f. Who is not related to the member by blood or marriage.

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2. "Direct Care" means the member is actively receiving treatment from a provider for the member's disability at least once per calendar year.
2. "Estimated Social Security disability income amount" means the same as in R2-8-801(2).
3. "Legal proceeding" means an appeal of an appealable agency decision at the Office of Administrative Hearings pursuant to A.R.S. § 41-1092 et seq. or an appeal of a Social Security determination at the Social Security Administration, or any other review by a formal body, which determines the rights and responsibilities of the member or survivor.
4. "LTD" means the Long-Term Disability program described in A.R.S. § 38-797 et seq.
5. "LTD benefit" means the amount of funds the member receives from the ASRS or the ASRS contracted LTD claims administrator, for the period of time a member has an eligible disability as described in A.R.S. § 38-797.07(A)(11).
6. "LTD contribution" means the amount of funds the member remits to the ASRS from the member's compensation as payment for the LTD program.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).
Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

R2-8-302. Application for Long-Term Disability Benefit

- A. In order to claim an LTD benefit, a disabled member shall submit to the disabled member's Employer all the completed forms prescribed by the ASRS contracted LTD claims administrator within 12 months of the date the disabled member became disabled.
- B. Pursuant to A.R.S. § 38-797.07(D), in order to continue receiving an LTD benefit, a disabled member shall submit documentation regarding the disabled member's ongoing disability and occupation as required by the ASRS contracted LTD claims administrator to determine the disabled member's continuing eligibility for an LTD benefit.
- C. Pursuant to A.R.S. § 38-797.07(11), in order to submit an application for an LTD benefit, a member must provide objective medical evidence from an Attending Physician.
- D. Pursuant to A.R.S. § 38-797.07(7)(b)(i), in order to continue receiving an LTD benefit, the disabled member must be under the Direct Care of a doctor.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).
Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

R2-8-303. Long-Term Disability Calculation

- A. The ASRS contracted LTD claims administrator shall calculate an LTD benefit for a member using the member's monthly compensation as described in A.R.S. § 38-797(11).
- B. For a member whose monthly compensation is \$0 as of the date of disability, the ASRS shall pay a monthly benefit of \$50 unless the benefit is reduced pursuant to R2-8-807 or required to be reduced pursuant to A.R.S. § 38-797.07(A)(2).
- C. The ASRS shall reduce a member's LTD benefit in accordance with A.R.S. § 38-797.07(A).

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

R2-8-304. Payment of Long-Term Disability Benefit

- A. The ASRS contracted LTD claims administrator shall begin providing an LTD benefit to an eligible disabled member no sooner than six months after the date the disabled member became disabled.
- B. Notwithstanding subsection (A), the ASRS contracted LTD claims administrator may begin providing an LTD benefit to an eligible disabled member sooner than six months if the disability is related to the member's disability that occurred within six months immediately preceding the disability.
- C. The ASRS contracted LTD claims administrator may provide an eligible disabled member's LTD benefit to a third party pursuant to A.R.S. § 38-797.09.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).
Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

R2-8-305. Social Security Disability Appeal

- A. Upon request by the ASRS contracted LTD claims administrator, a member who claims an LTD benefit pursuant to R2-8-302(A) shall submit a Social Security disability income application as prescribed by the ASRS contracted LTD claims administrator.
- B. In order to continue receiving an LTD benefit, a member whose application for Social Security disability income has been denied or terminated must appeal the most recent determination of denial or termination through a hearing before an administrative law judge pursuant to A.R.S. § 38-797.07(A)(10)(a) until the ASRS contracted LTD claims administrator or the Social Security Claims Administrator determines the member is not eligible for a Social Security benefit.
- C. Within 10 days after a member receives notice of the status of the member's Social Security disability income application, the member shall notify:
 1. The ASRS of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS, if the member is not receiving an LTD benefit; or
 2. The ASRS contracted LTD claims administrator of the member's application status by submitting a copy of the notice identifying the status of the member's Social Security disability income application to the ASRS contracted LTD claims administrator, if the member is not receiving an LTD benefit.
- D. A member who disagrees with an LTD determination by the ASRS contracted LTD claims administrator may submit an appeal pursuant to 2 A.A.C. 8, Article 4.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

R2-8-306. Approval of Social Security Disability

- Upon receipt of a Social Security disability income benefit, a member shall immediately remit to:
1. The ASRS the amount of the Social Security disability income benefit necessary to offset the LTD benefit; or
 2. The ASRS contracted LTD claims administrator the amount of the Social Security disability income benefit necessary to offset the LTD benefit.

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Historical Note

New Section made by final rulemaking at 23 A.A.R. 2746, effective November 13, 2017 (Supp. 17-3).

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" means, if established, a Committee designated by the Board to take action on appeals as described in A.R.S. § 38-714(E)(1) or, if a Committee is not established, the same as in A.R.S. § 38-711(6).
3. "Final administrative action" has the same meaning as in A.R.S. § 41-1092 and is rendered by the Board.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1). Amended by final rulemaking at 23 A.A.R. 2749, effective November 13, 2017 (Supp. 17-3).

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. Letters of Appeal; Request for a Hearing of an Appealable Agency Action

- A. After receipt of an agency decision, a person who is not satisfied with the agency decision, may submit a letter of appeal:
 1. To the ASRS's vendor for long-term disability benefits, if the appeal relates to a long-term disability decision; or
 2. To the ASRS Member Services Division Assistant Director, or such director's designee, if the appeal relates to an agency decision other than a long-term disability decision.
- B. Upon receipt of a letter of appeal, the long-term disability vendor, or the Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal notifying the person of:
 1. The decision the agency is making in response to the letter of appeal; and
 2. The person's right to appeal the agency response by submitting a letter of appeal to the ASRS Director or such director's designee.
- C. A person who is not satisfied with the agency response pursuant to subsection (B) may submit a letter of appeal to the ASRS Director or such director's designee within 60 days of the date on the agency response letter.
- D. Within 30 days of the date the ASRS receives a letter of appeal pursuant to subsection (C), the ASRS director or such director's designee shall send a response letter by certified mail to the person requesting the appeal that includes:
 1. The agency action the ASRS is taking in response to the letter of appeal; and

2. Notice of Appealable Agency Action, as required pursuant to A.R.S. § 41-1092.03 informing the person requesting the appeal, that the person has a right to appeal the agency action by submitting a Request for Hearing pursuant to subsections (E) and (F).
- E. For an appealable agency action, a person who is not satisfied with an agency action pursuant to subsection (D) may file a Request for a Hearing, in writing, with the ASRS. The date the Request is filed is established by the ASRS date stamp on the face of the first page of the Request. 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.
 - F. The person requesting a hearing shall file the Request for a Hearing with the ASRS within 30 days after receiving a response letter including a Notice of an Appealable Agency Action, pursuant to subsection (E).
 - G. 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(B).
 - H. Pursuant to subsection (B):
 1. The long-term disability vendor shall send a response letter to the person requesting the appeal within 120 days of the date the long-term disability vendor receives the letter of appeal; and
 2. The Member Services Division Assistant Director, or such director's designee, shall send a response letter to the person requesting the appeal within 30 days of the date the ASRS receives the letter of appeal.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1).

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. Motion for Rehearing Before the Board; Motion for Review of a Final Decision

- A. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party in an appealable agency action may file with the Board a Motion for Rehearing Before the Board, in writing, specifying the particular grounds for rehearing before the Board.
- B. Except as provided in subsection (H), within 30 days after service of the final administrative decision, any aggrieved party of an appealable agency action may file with the Board a Motion for Review of a Final Decision, in writing, specifying

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the particular grounds for reviewing the Board's final administrative decision.

- C. A party may amend a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision at any time before the Board rules on the motion. A party may file a response within 15 days after the motion or the amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion or the amended motion, and may provide for oral argument.
- D. The Board may grant a Motion for Rehearing Before the Board or a Motion for Review of a Final Decision for any of the following causes that materially affects 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 during the process of the action; or
 7. That the decision, or findings of fact, is not justified by the evidence or is contrary to law.
- E. The Board may affirm or modify the final administrative decision or grant a rehearing before the Board or review of final administrative decision 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.
- F. Not later than 10 days after the final administrative decision, the Board may, after giving each party notice and an opportunity to be heard, order a rehearing or review of its final administrative 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.
- G. 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.
- H. 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.
- I. 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). Amended by final rulemaking at 23 A.A.R. 487, effective April 8, 2017 (Supp. 17-1).

ARTICLE 5. PURCHASING SERVICE CREDIT**R2-8-501. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Active duty" means full-time duty in a branch of the United States uniformed service, other than Active Reserve Duty.
2. "Active reserve duty" means participating in required meetings and annual training in a Reserve or National Guard branch of the United States uniformed service.
3. "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. Eligible Member's Current Years of Credited Service;
 - b. Eligible Member's age as of the date the Eligible Member submits to the ASRS a request to purchase service pursuant to this Article;
 - c. Amount of Service Credit the member wishes to purchase; and
 - d. Member's current annual compensation.
4. "Authorized representative" means an individual who has been delegated the authority to act on behalf of a Custodian, Trustee, Plan Administrator, or a member, if the member's IRA or 403(b) is not maintained by the member's Employer.
5. "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 PDA 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.
6. "Custodian" means a financial institution that holds financial assets for guaranteed safekeeping.
7. "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).
8. "Eligible funds" means payments listed in A.R.S. § 38-747(H)(2) and (H)(3).
9. "Eligible member" means a member who is eligible to purchase service pursuant to A.R.S. §§ 38-742, 38-743, 38-744, or 38-745.
10. "Forfeited service" means credited service for which the ASRS has returned retirement contributions to the member under A.R.S. § 38-740.
11. "IRC" means the same as "Internal Revenue Code" in A.R.S. § 38-711(18).
12. "Irrevocable PDA" means an irrevocable "Payroll Deduction Authorization" contract between an Eligible Member, an Employer, and the ASRS that requires the Employer to withhold payments from an Eligible Member's pay for a specified amount and for a specified number of payments, as provided in A.R.S. § 38-747.
13. "Leave of absence service" means an approved leave of absence without pay as specified in A.R.S. § 38-744.
14. "LTD" means the same as in R2-8-301.

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15. "Military Call-up service" means a member is called to Active Duty in a branch of the United States Uniformed Services.
16. "Military service" means Active Duty or Active Reserve Duty with any branch of the United States Uniformed Services or the Commissioned Corps of the National Oceanic and Atmospheric Administration.
17. "Military service record" means a United States Uniformed Services or National Oceanic and Atmospheric Administration document 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; and
 - d. Active Duty dates, if applicable; or
 - e. Active Reserve Duty dates, if applicable; and
 - f. Point history for Active Reserve Duty dates, if applicable.
18. "Other public service" means previous employment listed in A.R.S. § 38-743(A).
19. "PDA pay-off invoice" means written correspondence from the ASRS to an Eligible Member that specifies the amount necessary to be paid by the Eligible Member to complete an Irrevocable PDA to receive the total credited service specified in the Irrevocable PDA.
20. "Plan administrator" means the person authorized to represent a specific eligible plan as addressed in IRC § 414(g).
21. "Service credit" means Forfeited Service, Leave of Absence Service, Military Service and Military Call-up Service under A.R.S. § 38-745, and Other Public Service that an Eligible Member may purchase.
22. "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.
23. "Termination pay" means an Employer's payment to the ASRS of an Eligible Member's pay received as a result of terminating employment to purchase Service Credit as specified in A.R.S. § 38-747(B)(2).
24. "Three full calendar months" means the first day of the first full month through the last day of the third consecutive full month.
25. "Transfer employment" means to terminate employment with one Employer with which an Eligible Member has an Irrevocable PDA:
 - a. After accepting an offer to work for a new Employer;
 - b. While working as an active member for a different Employer; or
 - c. Before returning to work with any Employer within 120 days of terminating employment.
26. "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 from which, at the time of the transfer, a member is not eligible to receive a distribution.
27. "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 Reserve, and the Commissioned Corps of the Public Health Service.
28. "Window credit" means overpayments made on previously purchased Service Credit by 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). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

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

- A. An Eligible Member may request to purchase Service Credit electronically. The Eligible Member shall verify at the time of request, the following information for the Eligible Member:
 1. Name;
 2. Mailing address;
 3. Date of birth;
 4. Marital status;
 5. Gender;
 6. Primary email address;
 7. Primary phone number; and
 8. Which category of Service Credit the Eligible Member is requesting to purchase.
- B. An Eligible Member who requests to purchase Service Credit pursuant to subsection (A) shall acknowledge the following statements of understanding:
 1. 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; and
 2. This transaction is subject to audit. If any errors or misrepresentations are discovered as a result of an audit, the Eligible Member's total credited service with the ASRS will be adjusted as necessary and if the Eligible Member is retired, the Eligible Member's retirement benefit will also be adjusted. Any overpayment(s) will be refunded. However, if a payment made with a rollover or pre-tax dollars is returned to the Eligible Member, there may be tax consequences as a result of this refund.
- C. 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;
 2. Instructions for electing method of payment; and
 3. The date payment election is due.
- D. An Eligible Member who requests to purchase Service Credit pursuant to this Section shall elect one or more methods of payment and submit the election to the ASRS by the date payment election is due.
- E. An Eligible Member who elects to purchase Service Credit using after-tax payments shall acknowledge the following information:
 1. After-tax payments must be from the Eligible Member and remitted to the ASRS by the Eligible Member;
 2. After-tax payments cannot be used to purchase political subdivision employment with a United States territory, commonwealth, overseas possession, or insular area; and
 3. If the Eligible Member joined the ASRS on or after July 1, 1999, §§ 415(b) and 415(c) of the IRC limit the after-

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tax money the Eligible Member can use to purchase Service Credit.

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 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

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 PDA, Direct Rollover, Trustee-to-Trustee Transfer, or Termination Pay as specified in this Article, by the due date specified by the method of payment the Eligible Member elected.
- 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:
 1. Either the number of years or partial years of Service Credit the Eligible Member wishes to purchase; or
 2. The cost for the number of years or partial years of Service Credit the Eligible Member wishes to purchase, not exceeding the years or partial years and cost specified on the SP Invoice.
- C. The 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 Service;
 2. Military Service;
 3. Forfeited Service; and
 4. Other Public Service.
- D. An Eligible Member may cancel an active request by notifying the ASRS in writing.
- E. 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 date payment election is due as specified on the SP Invoice and include the following information:
 1. The amount the Eligible Member wants to apply, and
 2. The Eligible Member's dated signature.
- F. On or before the due date specified on the SP Invoice, an Eligible Member may request an extension of a due date for purchasing Service Credit.

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 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

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

- A. 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.
- B. Pursuant to A.R.S. 38-739(B), an Eligible Member who purchases Service Credit shall receive a proportionate amount of

credited service based on the length of the Eligible Member's service year.

- C. Notwithstanding any other provision, an Eligible Member whose membership date is on or after July 20, 2011, cannot purchase more than five years of Service Credit for each of the following based on the length of the Eligible Member's service year:
 1. Leave of Absence Service;
 2. Military Service; and
 3. Other Public 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 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

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

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.

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 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

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

- A. For Service Credit for Leave of Absence Service, Military Service, and Other Public Service, 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 Eligible 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 Eligible Member without the Service Credit that the Eligible Member requests to purchase.
- B. The cost for purchasing the Service Credit that the Eligible 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). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

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 the ASRS:
 1. The name of an Employer, if known, for which the Eligible Member is requesting to purchase Service Credit for Forfeited Service; and
 2. The year and month the Eligible Member believes the ASRS returned retirement contributions.
- B. Upon receipt of payment as specified in subsection (D), the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.
- C. Notwithstanding subsection (B), if an Eligible Member has more than one return of contributions pursuant to A.R.S. § 38-

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740, the Eligible Member may elect to purchase Forfeited Service for any of the return of contributions and the ASRS shall apply the Service Credit to the Eligible Member's account based on the most recent Forfeited Service available for purchase.

- D. 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, plus interest on that amount from the date on the return of retirement contributions check to the date of redeposit at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).

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 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

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

- A. An Eligible Member who requests to purchase Service Credit for Leave of Absence Service under A.R.S. § 38-744 shall provide to the ASRS an Approved Leave of Absence form that includes:
1. The following information completed by the Eligible Member:
 - a. The start date and end date of the approved leave of absence;
 - b. The date the Eligible Member returned to work or a statement of why employment was not resumed;
 - c. The name of the Employer;
 - d. Whether the Eligible Member participated in another public retirement system during this leave of absence; and
 - e. If the Eligible Member participated in another public retirement system during the leave of absence, whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the other public retirement system; and
 2. Acknowledgement of the following statements of understanding:
 - a. The Eligible Member understands that up to one year of 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;
 - b. The Eligible Member authorizes the Employer to provide any necessary personal information to ASRS in order to process this request; and
 - c. The Eligible Member certifies that if the Eligible Member participated in another public retirement system during the approved leave of absence, the Eligible Member is not receiving, and is not eligible to receive, a benefit from the other public retirement system for the time during the approved leave of absence; and
 3. The Eligible Member's dated signature.
- B. Pursuant to A.R.S. § 38-744, a member who participated in another public retirement system during the leave of absence, and is receiving a benefit or is eligible to receive a benefit from the other public retirement system, is not an Eligible Member for purposes of this Section.
- C. If the information provided by the Eligible Member pursuant to subsection (A) is correct, the Employer shall validate the

information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the Eligible Member pursuant to subsection (A) is incorrect, the Employer shall correct the information and submit the information to the ASRS through the Employer's secure ASRS account.

- D. Upon submitting the information specified in subsection (B), the Employer shall acknowledge the following statements of understanding:
1. The Employer has verified all the dates for the approved leave of absence period are correct; and
 2. The contact individual has the legal power to bind the Employer in transactions with the ASRS.
- E. The amount the Eligible Member shall pay to purchase Service Credit for an approved 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). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

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

- A. An Eligible Member who requests to purchase Service Credit for Military Service under A.R.S. § 38-745(A) and (B) shall provide to the ASRS:
1. A copy of the Eligible Member's Military Service Record within 30 days of the Eligible Member's request to purchase Service Credit; and
 2. A Military Service form that contains:
 - a. Whether the Eligible Member is receiving a benefit or is eligible to receive a benefit, from the military.
 - b. The branch of the Uniformed Services the Eligible Member was in;
 - c. Whether the Eligible Member was on Active Duty or Active Reserve Duty;
 - d. The start date and end date of the Eligible Member's Military Service for which the Eligible Member is requesting to purchase Service Credit;
 - e. Acknowledgement that the Eligible Member will submit to the ASRS:
 - i. Proof of honorable separation for each type of Military Service listed on the form; and
 - ii. The Eligible Member's Military Service Record that supports all of the service listed on the form;
 - f. Acknowledgement of the following statements of understanding:
 - i. The Eligible Member understands that the service listed on this form does not include time that the Eligible Member either volunteered or was ordered into Active Duty service as part of a military call-up while employed by an Employer. This service is purchased under Military Call-up Service and requires a Military Call-up form to be completed by the Eligible Member's Employer; and
 - ii. The Eligible Member understands that any time the Eligible Member has listed on this form for Reserve or National Guard time reflects the months that the Eligible Member attended at least one drill or assembly for each month listed.

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- B. The amount the Eligible Member pays to purchase Service Credit for Military Service is determined as provided in R2-8-506.
- C. The 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 Military Service form, if the service listed is supported by the information contained in the Eligible Member's Military Service Record.
- D. If the ASRS has not received complete and correct documents pursuant to this Section within 30 days of the request to purchase Service Credit, the ASRS shall cancel the Eligible Member's request to purchase Service Credit.
- gible Member returning to employment, receipt of a declaration of disability, or receipt of a death certificate. These contributions are based on the salary the Eligible Member would have earned if the Eligible Member had not volunteered or been ordered into Active Duty;
- d. The Eligible Member may receive a maximum of 60 months of Service Credit for Military Call-up Service pursuant to A.R.S. § 38-745; and
- e. The contact individual has the legal power to bind the Employer in transactions with the ASRS.

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 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

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

- A. An Eligible Member who meets the requirements under A.R.S. § 38-745(D) shall receive up to 60 months of Service Credit, not to exceed 5 years of Service Credit for Military Call-up Service under A.R.S. § 38-745(D) through (K). In order to determine the amount of contributions the Employer owes to purchase Service Credit for Military Call-up Service, the Eligible Member's 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 Eligible Member's full name;
 2. The Eligible Member's Social Security number;
 3. The start date of Military Call-up Service;
 4. The end date of Military Call-up Service;
 5. The date the Eligible Member returned to work for the Employer;
 6. The salary for each pay period in each fiscal year while the Eligible Member was on military call-up, including any salary increases the Eligible Member would have received had the Eligible Member not left work due to military call-up;
 7. The name of a contact individual for the Employer, and that individual's business telephone number;
 8. The contact individual's dated signature;
 9. If applicable, the dates that the Eligible Member was hospitalized and released from the hospital as a result of participating in a military call-up.
 10. If applicable, the date the Eligible Member became disabled during or as a result of participating in a military call-up;
 11. If applicable, the date of the Eligible Member's death during or as a result of participating in a military call-up; and
 12. Acknowledgement of the following statements of understanding:
 - a. All the dates and payroll information for the Military Call-up Service are correct;
 - b. The Eligible Member:
 - i. Was honorably separated from Active Duty and returned to the same Employer within 90 days of either discharge from Active Duty or release from service-related hospitalization; or
 - ii. Was disabled and unable to return to work; or
 - iii. Died during or as a result of Active Duty.
 - c. The Employer must pay both the employee and Employer contributions in a lump sum upon the Eligible Member returning to employment, receipt of a declaration of disability, or receipt of a death certificate. These contributions are based on the salary the Eligible Member would have earned if the Eligible Member had not volunteered or been ordered into Active Duty;
- B. An Employer shall make the request to purchase Service Credit for Military Call-up Service within 30 days after the earlier of the dates listed in A.R.S. § 38-745(E).
- C. The ASRS calculates the amount the Employer pays to purchase Military Call-up Service pursuant to A.R.S. § 38-745(G) by multiplying the Eligible Member's salary per pay period at the time Active Duty commences, by the contribution rate in effect for the period of Active Duty. Included in the calculation are any salary increases the Eligible Member would have received if the Eligible Member had not left work to participate in a military call-up.
- D. The ASRS shall send the Employer a statement of cost for purchase of the Service Credit for Military Call-up Service based on the calculation in subsection (C). Within 90 days from the date on the ASRS statement of cost, the Employer shall pay to the ASRS the amount on the statement. If the Employer fails to make full payment within 90 days, interest shall accrue on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect on the date of the statement of cost as specified in R2-8-118(A). The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).
- E. If an Employer remits retirement or long-term disability contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, the Employer shall reverse the contributions after the ASRS receives the information in subsection (A).
- F. If an Employer remits retirement contributions on behalf of an Eligible Member while the Eligible Member is on military call-up, and the Eligible Member does not return to the Employer after separation from active Military Service, the ASRS shall apply the retirement contributions to the Eligible 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). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

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

- A. An Eligible Member who requests to purchase Service Credit for Other Public Service under A.R.S. § 38-743 shall provide to the ASRS a completed Other Public Service form, signed and dated by the Eligible Member, that includes the following:
1. The name and mailing address of the Other Public Service employer;
 2. The position the Eligible Member held while working for the Other Public Service employer;
 3. The start date and end date of the Eligible Member's employment with the Other Public Service employer;
 4. The actual months and years the Eligible Member was employed with the Other Public Service employer;
 5. A statement of whether the Eligible Member participated in the Other Public Service employer's retirement plan;

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6. If the Eligible Member participated in the Other Public Service employer's retirement plan, the name of the retirement plan, identifying whichever one of the following applies:
 - a. The approximate date the Eligible Member took a return of retirement contributions;
 - b. The plan is non-contributory and the Eligible Member is not eligible for benefits from the plan; or
 - c. That, if not using all of the retirement contributions as a rollover, the Eligible 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 Eligible Member has forfeited all rights to benefits from the plan no later than the due date specified on the SP Invoice; and
 7. Acknowledgement that if an audit determines that the Eligible Member is eligible for a benefit from the Other Public Service employer's retirement plan, the Eligible 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 Eligible Member shall pay to purchase Service Credit for Other Public Service is determined as provided in R2-8-506.
- C.** Notwithstanding R2-8-512, the ASRS shall not accept after-tax monies for the purchase of Service Credit for Other Public Service with a territory, commonwealth, overseas possession or insular area pursuant to A.R.S. § 38-743.
- 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 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).
- R2-8-512. Purchasing Service Credit by Check, Cashier's Check, or Money Order**
- A.** An Eligible Member may purchase Service Credit by personal check in the Eligible Member's name, cashier's check, or money order remitted by the Eligible Member.
- B.** By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives a check, cashier's check, or money order made payable to the ASRS in the amount to purchase the requested Service Credit.
- 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 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).
- R2-8-513. Purchasing Service Credit by Irrevocable PDA**
- A.** An Eligible Member may purchase Service Credit by Irrevocable PDA.
- B.** If the Eligible Member elects to pay for Service Credit by Irrevocable PDA, the Eligible Member shall elect the terms of the Irrevocable PDA and submit the Irrevocable PDA to the ASRS and the Employer with the following:
 1. Acknowledgements:
 - a. This Irrevocable PDA is binding and irrevocable;
 - b. This Irrevocable PDA shall remain in effect until the earlier of:
 - i. The authorized payroll deductions are completed; or
 - ii. The Eligible Member terminates employment.
 - c. The ASRS cannot terminate the Irrevocable PDA due to financial hardship;
 - d. The amount of Irrevocable PDA payments the Eligible Member makes is subject to federal laws;
 - e. The cost to purchase Service Credit by Irrevocable PDA includes an administrative interest charge at the Assumed Actuarial Investment Earnings Rate in effect at the time of the authorization as specified in R2-8-118(A);
 - f. Payments specified in this Irrevocable PDA are in addition to the regular contributions required pursuant to A.R.S. §§ 38-736 and 38-797.05;
 - g. The ASRS shall apply credited service to the Eligible Member's account upon receipt of payments authorized by the Eligible Member under this Irrevocable PDA; and
 - h. The ASRS shall not transfer, refund, or disburse the administrative interest that the ASRS charges pursuant to subsection (B)(1)(e); and
- 2. Statements of Understanding:**
- a.** It is the Eligible Member's responsibility to ensure the Eligible Member's Employer properly deducts payments and submits contributions as provided by the terms of the Irrevocable PDA;
- b.** Payments specified by the terms of this Irrevocable PDA shall be made directly to the ASRS from the Eligible Member's Employer and the Eligible Member does not have the option of receiving such payments directly from the Employer;
- c.** The Eligible Member's Employer shall make payments pursuant to this Irrevocable PDA after other mandatory deductions are made;
- d.** The Eligible Member's Employer cannot accept an election to change this Irrevocable PDA;
- e.** The Eligible Member has up to 14 days to request the ASRS calculate the remaining balance of this Irrevocable PDA after the earlier of:
 - i. Terminating employment;
 - ii. Terminating LTD without returning to work with an Employer; or
 - iii. The effective ASRS retirement date;
- f.** The Eligible Member must complete a purchase of the remaining balance on this Irrevocable PDA by the due date specified on the PDA Pay-off Invoice;
- g.** It is the Eligible Member's responsibility to notify the ASRS of any changes in the Eligible Member's employment that may affect the status of this Irrevocable PDA;
- h.** If the Eligible Member terminates employment and returns to work with an Employer within 120 days of terminating employment, this Irrevocable PDA must continue with the new Employer pursuant to R2-8-513.01; and
- i.** If the Eligible member terminates employment and does not return to work with an Employer within 120 days of terminating employment, the ASRS shall terminate this Irrevocable PDA pursuant to R2-8-513.01.
- C.** By submitting the Irrevocable PDA to the ASRS, the Irrevocable PDA is deemed to be signed by the Eligible Member.

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- D.** At the time the Eligible Member elects the Irrevocable PDA, the Eligible Member may elect to use Termination Pay towards the balance of the Irrevocable PDA if the Eligible Member terminates employment. If the Eligible Member elects to use Termination Pay, the Eligible Member shall submit the Irrevocable PDA to the ASRS with the following information:
1. A statement that the Eligible Member:
 - a. Understands and agrees that the Eligible 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 Pay exceeds the balance owed on the Irrevocable PDA, the overage will be returned to the Employer to be distributed to the Eligible Member;
 - c. Understands that the election to use Termination Pay is binding and irrevocable;
 - d. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
 - e. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;
 - f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay;
 - g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
 - h. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
 2. Whether the Eligible Member is electing either all Termination Pay or a specified amount of Termination Pay to be applied to the balance of the Irrevocable PDA.
- E.** The ASRS shall:
1. Charge interest on the unpaid balance at the Assumed Actuarial Investment Earnings Rate in effect at the time the Eligible Member submitted the request to purchase service as specified in R2-8-118(A);
 2. Limit the payroll deduction time period to a maximum of 520 payments; and
 3. Require a minimum payment of \$10.00 per payroll period, or payment in an amount to purchase at least .001 years of Service Credit per payroll period, whichever is greater.
- F.** The Employer shall implement the payroll deduction on the first pay period after receiving the Irrevocable PDA.
- G.** If a deduction is not made under an Irrevocable PDA within six months after the Eligible Member submits the authorization, the authorization lapses and the Eligible 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, LTD, or military call-up shall not cancel the Irrevocable PDA. The Employer shall resume deductions immediately upon the Eligible Member's return to that Employer. The period during which the Eligible Member is on leave of absence, on LTD, or leaves work because of a military call-up is not included in the payment time limitation under subsection (D)(2). If the Eligible Member does not return to active working status, whether due to termination of employment or retirement, the Eligible Member may elect to purchase the balance of unpaid service under the Irrevocable PDA at the time of termination or retirement as specified in this Section.
- I.** Deductions made pursuant to an Irrevocable PDA continue until the:
1. Irrevocable PDA is completed;
 2. Eligible Member retires, whether or not the Eligible Member continues employment as allowed in A.R.S. §§ 38-766.01 and 38-764(I);
 3. Eligible Member terminates all ASRS employment without transferring employment; or
 4. Date of the Eligible Member's death.
- J.** If an Eligible Member retires or terminates employment from all Employers without transferring employment as stated in R2-8-513.01 before all deductions are made as authorized by the Irrevocable PDA, the ASRS shall cancel the Eligible Member's Irrevocable PDA unless the Eligible Member notifies the ASRS of the Eligible Member's intent to purchase the remaining amount within 14 days after the earlier of either termination or retirement.
- K.** When the Eligible Member notifies the ASRS of retirement or termination from all ASRS employment and requests to pay off the Irrevocable PDA, the ASRS shall send the Eligible Member a PDA Pay-off Invoice through the Eligible Member's secure ASRS account. The ASRS shall calculate the amount owed by the Eligible Member.
- L.** By the date payment election is due, the Eligible Member shall ensure that the ASRS receives the information specified in R2-8-502(C).
- M.** The Eligible Member may purchase the remaining Service Credit by one or more of the following methods by the due date specified on the PDA Pay-off Invoice:
1. By any method specified in 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 by the due date specified on the PDA Pay-off Invoice; or
 3. By Termination Pay under R2-8-519, if the Eligible Member authorized this option at the time the Eligible Member signed the Irrevocable PDA.

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 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-513.01. Irrevocable PDA and Transfer of Employment to a Different Employer

- A.** If an Eligible Member Transfers Employment, the Eligible Member's new Employer shall continue to make deductions pursuant to an Irrevocable PDA.
- B.** If an Eligible Member terminates employment without having accepted an offer to work with an Employer, the ASRS shall terminate an Irrevocable PDA.
- C.** Notwithstanding subsection (B), if a retirement contribution is due from a new Employer within 120 days from the Eligible Member's termination date with the previous Employer, the ASRS shall determine that the Eligible Member Transferred Employment, unless the Eligible Member notified the ASRS of the termination of employment.
- D.** If an Eligible Member who has elected Termination Pay pursuant to R2-8-513(D) Transfers Employment, the ASRS shall

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not accept any Termination Pay that the ASRS receives from the Eligible Member's previous Employer.

Historical Note

New Section made by final rulemaking at 12 A.A.R.

4667, effective December 5, 2006 (Supp. 06-4).

Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-513.02. Termination Date

For the purpose of an Irrevocable PDA, the date an Eligible Member is considered terminated from an Employer is:

1. For an Eligible Member terminating employment, the Eligible Member's last pay period end date with that Employer;
2. For an Eligible Member on military call-up who does not return to the same Employer:
 - a. 90 days from the date of separation from military call-up;
 - b. 90 days from the date released from the hospital, if injured while on military call-up; or
 - c. The date the Eligible Member has been hospitalized for two years for injuries sustained as a result of participating in a military call-up.
3. For an Eligible Member on leave of absence without pay who does not return to the same Employer, the date the Employer required the Eligible Member to return to work;
4. For an Eligible Member who is unable to work because of a disability, the later of:
 - a. The date the Eligible Member's request for long-term disability benefits are denied;
 - b. The date the Eligible Member no longer has leave with pay available; or
 - c. For an Eligible Member on long-term disability who does not return to the same 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).

Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-514. Purchasing Service Credit by Direct Rollover or Trustee-to-Trustee Transfer

- A. An Eligible Member may purchase Service Credit by Direct Rollover or Trustee-to-Trustee Transfer pursuant to this Article.
 - B. By the due date specified by the method of payment the Eligible Member elected, the Eligible Member shall ensure that the ASRS receives the payment for the service purchase and a completed Direct Rollover/Transfer Certification to Purchase Service Credit form.
 - C. An Eligible Member who chooses to purchase Service Credit shall provide the following to the ASRS:
 1. The name of the financial institution or plan;
 2. Whether the Eligible Member is choosing to rollover/transfer the entire balance of their account and if not, the amount of the rollover/transfer;
 3. Acknowledgement of the following information:
 - a. After-tax funds are only acceptable from 401(a) and 403(b) plans and must be listed separately from the portion that is pre-tax on the payment as after-tax amounts. This information must be provided to the ASRS with the payment.
 - b. The only fund types that the ASRS accepts are:
 - i. 401(a);
 - ii. 401(k) pre-tax only;
 - iii. 403(b);
 - iv. Governmental 457 pre-tax only;
 - v. 403(a) pre-tax only;
 - vi. 408 Traditional IRA pre-tax only;
 - vii. 408(k) SEP IRA pre-tax only;
 - viii. 408(p) Simple IRA pre-tax only and only if the Eligible Member participated for at least 2 years in this plan;
 - D. An Eligible Member who chooses to purchase Service Credit pursuant to this Section shall submit a Direct Rollover/Transfer Certification to Purchase Service Credit form that includes:
 1. The Eligible Member's full name;
 2. The last 4 digits of the Eligible Member's Social Security number;
- c. The ASRS shall not accept the following fund types:
 - i. Roth funds;
 - ii. Funds already distributed to the Eligible Member from a retirement plan listed in subsection (C)(3)(b);
 - iii. Inherited IRA;
 - iv. Coverdale Education Savings Account funds;
 - v. Hardship distributions;
 - vi. Funds not includable in gross income;
 - vii. Funds required under § 401(a)(9) of the IRC because the Eligible Member have attained age 70 1/2;
 - viii. One of a series of substantially equal periodic payments made at least annually for the Eligible Member's life;
 - ix. One of a series of substantially equal periodic payments made for 10 years or more;
 - x. After-tax contributions from any plan other than a 401(a) or 403(b) qualified plan;
 - d. The funds must be sent as a Direct Rollover from a plan listed in subsection (C)(3)(b) and issued to the ASRS for the benefit of the Eligible Member. If the payment is issued to anyone other than the ASRS, including the Eligible Member, then within 60 days of the plan issuing the payment, the Eligible Member must place the payment into a plan specified in subsection (C)(3)(b) to be reissued directly to the ASRS.
 - e. It is the Eligible Member's responsibility to contact the administrator of the plan from which the Direct Rollover will be made and have it initiated. The Eligible Member must also ensure all rollovers are completed by the due date. If the ASRS does not receive payment by the due date, the invoice will expire and the payment will be returned to the Eligible Member.
 - f. If the ASRS accepts a rollover and later determines that it was not eligible, the ASRS will distribute the invalid payment directly to the Eligible Member. Any taxes, penalties, and interest that the IRS, any taxing authority, or financial institution may assess against the Eligible Member due to an invalid payment are solely the Eligible Member's responsibility.
 - g. The plan from which the Eligible Member is rolling over funds must be solely in the Eligible Member's name. The Eligible Member may be a spousal beneficiary of a deceased person or an alternate payee on the plan from which the Eligible Member is rolling over funds.

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3. The Eligible Member's signature certifying that the Eligible 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;
4. The Authorized Representative's name and title;
5. The Authorized Representative's telephone number; and
6. Certification by the Authorized Representative's dated signature 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 IRC;
 - 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 IRC; and
 - d. The funds will be sent to the ASRS as a direct plan rollover, IRA rollover, or a Trustee-to-Trustee Transfer.
- E. The Eligible Member shall contact the Plan Administrator to have the funds distributed and transferred to the ASRS. Unless the ASRS receives a check for the correct amount from the plan and all documents required by this Article by the due date specified by the method of payment the Eligible Member elected, the ASRS shall cancel the request to purchase Service Credit.
- F. The Eligible 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.
- G. If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the Eligible 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). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1). Citations to subsection (C)(3)(b) corrected in subsections (C)(3)(c)(ii) and (C)(3)(d) (Supp. 20-1).

R2-8-515. 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 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-516. Expired**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). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

R2-8-517. Expired**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). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3195, effective October 11, 2016 (Supp. 16-3).

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

- A. To purchase Service Credit using Termination Pay, an Eligible Member shall elect to use Termination Pay by the date payment election is due.
- B. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with the Eligible Member's anticipated termination date which cannot be more than six months from the date the ASRS issues the SP Invoice and must be at least Three Full Calendar Months after the date the Eligible Member elects and submits Termination Pay as a method of payment.
- C. An Eligible Member who elects to use Termination Pay pursuant to this Section, shall provide the ASRS with a Termination Pay Authorization for the Purchase of Service Credit form with the following information:
 1. The name of the Employer that will be submitting the Termination Pay to the ASRS;
 2. Whether the Eligible Member elects to use all Termination Pay or a specific amount of Termination Pay;
 3. Signature of the Eligible Member, certifying that the Eligible Member understands that:
 - a. The Eligible Member is required to continue working at least Three Full Calendar Months after the date the Eligible 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 Eligible Member terminates employment more than six months after the date on the SP Invoice, the Eligible Member may purchase the Service Credit at a newly calculated rate and possibly at a higher cost;
 - c. The terms elected in the Termination Pay Authorization for the Purchase of Service Credit form are binding and irrevocable;
 - d. The Eligible Member's Employer is required to make payment directly to the ASRS after mandatory deductions are made, and the Eligible Member does not have the option of receiving the funds directly from the Employer;

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- e. The Eligible Member's Termination Pay must be received and processed before the ASRS will accept any other form of payment;
 - f. It is the Eligible Member's responsibility to ensure that the Eligible Member's Employer properly deducts Termination Pay, as provided in the Termination Pay Authorization for the Purchase of Service Credit form; and
 - g. The amount of Termination Pay the Eligible Member elects is irrevocable pursuant to § 414(h)(2) of the IRC;
 - h. If the Termination Pay exceeds the balance due on the SP Invoice, the ASRS will return the difference to the Eligible Member's Employer to be distributed to the Eligible Member;
 - i. If the Eligible Member terminates employment and immediately retires, the Eligible Member's retirement processing may be delayed; and
 - j. The ASRS will send a notification to the Eligible Member's Employer two weeks prior to the Eligible Member's termination date, as indicated on the Termination Pay Authorization form, to notify the Employer that the Eligible Member's Termination Pay must be sent directly to the ASRS.
- D.** The ASRS shall not apply Termination Pay to an SP Invoice covered by an Irrevocable PDA in effect at the time of termination, unless the Eligible Member elected the Termination Pay pursuant to R2-8-513(D) at the time the member authorized the Irrevocable PDA.
- E.** If an Eligible Member elects to use Termination Pay to purchase Service Credit, the ASRS shall not apply any other form of payment to the Service Credit purchase until the ASRS receives the Termination Pay.
- F.** Notwithstanding any other Section, if an Eligible Member dies prior to terminating employment, the ASRS shall not accept Termination Pay.
- G.** If an Eligible Member Transfers Employment, the ASRS shall not accept Termination Pay from the Eligible Member's previous Employer.

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 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

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

- A.** If an Eligible Member terminates employment without transferring employment as specified in R2-8-513.01 while purchasing Service Credit by an Irrevocable PDA and requests return of retirement contributions pursuant to A.R.S. § 38-740, the ASRS shall return any principal payments made for the purchase of Service Credit including interest earned on those principal payments at the interest rate specified in R2-8-118(A), column 3.
- B.** If an Eligible Member dies while purchasing Service Credit, the ASRS shall credit the Eligible Member's account with:
1. The Service Credit for which the ASRS received payment pursuant to a PDA before the Eligible Member's death;
 2. The principal payments made by the Eligible Member; and
 3. Interest earned on payment through the date of distribution at the Assumed Actuarial Investment Earnings Rate specified in R2-8-118(A).

- C.** If an Eligible Member dies while purchasing Service Credit, the ASRS shall not permit the survivor or an estate to purchase the remaining balance.
- D.** The ASRS shall not transfer, disburse, or refund the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.
- E.** The ASRS shall not credit a member's account with the administrative interest the ASRS charged as part of an Irrevocable PDA as specified in R2-8-513.

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 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

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 to the member's account and return ineligible payments, if any.
- B.** 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). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING**R2-8-601. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Rulemaking record" means a file the ASRS maintains as specified in A.R.S. § 41-1029.
2. "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.
3. "Presiding officer" means an individual selected by the ASRS Director to oversee oral proceedings.
4. "Substantive policy statement" means the same as in A.R.S. § 41-1001(22).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4).

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

Except on a state holiday, a person 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). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

R2-8-603. Petition for Rulemaking

- A.** A person 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:

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1. The name and current address of the person 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 person submitting the petition; and
 6. The date the person signs the petition.
- B.** The ASRS shall send a written notice of the ASRS's decision regarding the Petition for Rulemaking to the person within 60 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). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

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

- A.** A person 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 person alleges constitutes a rule shall include the following in the petition:
1. The name and current address of the person submitting the petition,
 2. The reason the person alleges that the agency practice or substantive policy statement constitutes a rule,
 3. The signature of the person submitting the petition, and
 4. The date the person signs the petition.
- B.** The person 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 person within 60 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). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

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

- A.** A person 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 person 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; or

- c. Reflects that the ASRS 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.

4. The signature of the person submitting the objection; and
5. The date the person 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). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

R2-8-606. Oral Proceedings

- A.** A person 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 person 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 person 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 a person who attends the oral proceeding to voluntarily note the person's attendance;
 2. Provide a Request to Present Oral Comment form that includes space for:
 - a. The name of the person submitting the Request to Present Oral Comment form,
 - b. The entity the person represents, if applicable, and
 - c. The rule on which the person wishes to comment or about which the person has a question;
 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). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

R2-8-607. Petition for Delayed Effective Date

- A.** A person 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

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the proposed rule's close of record date. The petition shall contain the:

1. Name and current address of the person 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 person submitting the petition; and
 6. Date the person signs the petition.
- B. The ASRS shall send a written notice of the ASRS's decision to the person 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). Section amended by final rulemaking at 22 A.A.R. 3323, effective January 1, 2017 (Supp. 16-4).

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. "Documentation" means a pay stub, completed W-2 form, completed Verification of Contributions Not Withheld form, Employer letter or spreadsheet, completed State Personnel Action Request Form, Social Security Earnings Report, employment contract, payroll record, timesheet, or other Employer-provided form that includes:
 - a. Whether the employee was covered under the Employer's 218 Agreement prior to July 24, 2014,
 - b. The number of hours the member worked for the Employer per pay period, and
 - c. The amount and type of compensation earned by the member within each pay period.
3. "Eligible service" means employment with an 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 was Engaged to Work for an Employer.
4. "Engaged to Work" means the same as in R2-8-1001.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 2515, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-702. General Information

- A. The Employer shall pay the Employer's portion of the contributions the ASRS determines is owed under R2-8-706 whether

or not the member pays the member's portion of the contributions.

- B. The person who initiates the claim that contributions were not withheld for Eligible Service has the burden to prove a contribution error was made.
- C. The ASRS shall not waive payment of contributions or interest owed under this Article.
- D. If a member is not able to establish eligibility for purchasing service credit pursuant to this Article, the member may be eligible to purchase service pursuant to 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). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

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

If an Employer determines that any amount of contributions have not been withheld for a member for a period of Eligible Service, the Employer shall notify the ASRS by submitting through the Employer's secure ASRS account a Verification of Contributions Not Withheld form with the following information:

1. The member's full name;
2. The member's Social Security number;
3. The range of dates that any contribution was not withheld;
4. The member's position title during the date range listed in subsection (3);
5. The amount and type of compensation the member was entitled to receive, and the number of hours the member worked for the Employer per pay period for each fiscal year;
6. The member's hire date;
7. Whether the member was Engaged to Work for the Employer;
8. Whether the position was covered under the Employer's 218 Agreement for periods prior to July 24, 2014; and
9. The dated signature of the Employer's authorized agent certifying:
 - a. All the dates and salary information is correct;
 - b. The person submitting this form has the legal power to enter into binding transactions with the ASRS;
 - c. Acknowledgement the Employer will receive an invoice for the contributions owed for Eligible Service only, as well as the accumulated interest on the contributions that were not withheld for both the member and Employer contributions; and
 - d. Acknowledgement the member will receive an invoice for their contributions owed.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

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

- A. If a member believes that an Employer has not withheld contributions for the member for a period of Eligible Service, the member shall:
1. Notify the member's Employer that the Employer has not withheld contributions correctly by contacting the Employer directly; or
 2. Submit to the ASRS a Contributions Not Withheld Request form through the member's secure ASRS account with the following:

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- a. The name of the Employer that should have remitted contributions;
 - b. The range of dates that any contribution was not withheld;
 - c. The member's position title during the date range listed in subsection (b);
 - d. Whether the member was Engaged to Work for the Employer; and
 - e. Dated signature of the member certifying the member understands:
 - i. The ASRS will be providing the member's Social Security number to the Employer for verification; and
 - ii. If the member's Employer cannot verify this request, it is the member's responsibility to provide Documentation of Eligible Service.
- B.** If the information provided by the eligible member pursuant to subsection (A) is correct, the Employer shall validate the information and submit the information to the ASRS through the Employer's secure ASRS account. If the information provided by the eligible member pursuant to subsection (A) is incorrect, the Employer shall correct the information and submit the information to the ASRS through the Employer's secure ASRS account, along with the information identified in R2-8-703.
- C.** If the Employer refuses to fill out the Verification of Contributions Not Withheld form, or if the member disputes the information the Employer completes on the form, the member shall provide the ASRS with the Documentation the member believes supports the allegation that 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). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-705. ASRS' Discovery of Error

If the ASRS determines, as specified in A.R.S. § 38-738(B)(7), that all contributions have not been withheld for a member for a period of Eligible Service, the ASRS shall notify the Employer in writing and shall request the Employer submit through the Employer's secure ASRS account a Verification of Contributions Not Withheld form pursuant to R2-8-703.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

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 Employer, the length of time those contributions should have been withheld, and the amount of contributions that should have been withheld.
- B.** Except for a member who met the requirements to be an active member while simultaneously contributing to another retirement plan listed in subsection (B)(2), for purposes of this Article, the ASRS shall determine that contributions should not have been withheld for the period of service in question if:
1. An Employer remits an accurate ACR amount pursuant to R2-8-116; or

2. The employee participates in:
 - a. Another Arizona retirement plan listed in A.R.S. Title 38, Chapter 5, Articles 3, 4, or 6; or
 - b. In an optional retirement plan listed in A.R.S. Title 15, Chapter 12, Article 3 or A.R.S. Title 15, Chapter 13, Article 2.
- C.** Except for returning to work under A.R.S. § 38-766.01, the presence of a contract between a member and the Employer does not alter the contribution requirements of A.R.S. §§ 38-736 and 38-737.
- D.** If there is any discrepancy between the Documentation provided by the 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.
- E.** The ASRS shall provide to each, the Employer and the member, an invoice with the following:
1. The amount of Eligible Service for which contributions were not withheld,
 2. The dollar amount of the contributions to be paid to the ASRS by the Employer,
 3. The interest on the Employer contributions and member contributions to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-738,
 4. The amount of the delinquent interest late charge to be paid to the ASRS by the Employer pursuant to A.R.S. § 38-735, and
 5. The dollar amount of contributions to be paid to the ASRS by the member.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section amended by final rulemaking at 22 A.A.R. 3326, effective January 1, 2017 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-707. Submission of Payment

- A.** Within 90 days from the date on the statement identified in R2-8-706(E), the Employer shall pay to the ASRS the amount due to be paid by the Employer. An 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 Employer's amount due within 90 days after the ASRS notifies the Employer of the amount due, the full amount due will accrue interest as provided in A.R.S. § 38-738. The ASRS may collect the unpaid balance plus interest pursuant to A.R.S. § 38-735(C).
- B.** The member shall make payment to the ASRS pursuant to A.R.S. § 38-738 by the due date specified on the member's invoice identified in R2-8-706(E).
- C.** If the ASRS does not receive full payment of the member's amount due by the due date specified on the member's invoice identified in R2-8-706(E), the full amount due will accrue interest, as provided in A.R.S. § 38-738.
- D.** A member does not receive service credit or credit for salary until both the Employer and member portions of the contributions and all interest has been paid pursuant to A.R.S. § 38-738.

Historical Note

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

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Amended by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-708. Expired**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2982, effective September 15, 2016 (Supp. 16-3).

R2-8-709. Repealed**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

ARTICLE 8. RECOVERY OF OVERPAYMENTS**R2-8-801. Definitions**

For purposes of this article, the following definitions apply, unless specified otherwise:

1. "DRO" means the same as in R2-8-120.
2. "Estimated Social Security disability income amount" and "Revised Social Security disability income amount" mean the amount of funds the ASRS is entitled to collect pursuant to R2-8-802.
3. "LTD" means long-term disability program as described in A.R.S. § 38-797 et seq.
4. "LTD benefit" means the same as in R2-8-301
5. "Overpayment" means:
 - a. Any funds the ASRS distributes in excess of the amount to which the recipient is legally entitled; and
 - b. Any estimated social security disability income amount or revised social security disability income amount the ASRS is entitled to collect pursuant to A.R.S. § 38-765.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-802. Estimated Social Security Disability Income Amount and Revised Social Security Disability Income Amount

- A. The ASRS contracted LTD claims administrator shall determine a member's estimated Social Security disability income amount as follows:
 1. Prior to the death, retirement, or forfeiture of a member, the estimated Social Security disability income amount shall be equal to the member's full monthly LTD benefit reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9); and
 2. Upon the member's death, retirement, or forfeiture, the estimated Social Security disability income amount shall be equal to the total amount of the member's LTD benefit, reduced by \$50 per month pursuant to A.R.S. § 38-797.07(A)(9).
- B. A member or survivor who disputes the estimated Social Security disability income amount based on the conclusions of a legal proceeding may request a revised Social Security disability income amount by submitting supporting documentation from the legal proceeding to the ASRS contracted LTD claims administrator within 30 days of the date of conclusion of the legal proceeding.

- C. Pursuant to subsection (B), the ASRS or the ASRS contracted LTD claims administrator shall determine whether the estimated Social Security disability income amount needs to be revised based on the conclusions of the legal proceeding.
- D. If the ASRS or the ASRS contracted LTD claims administrator determines the estimated Social Security disability income amount was inaccurate, the ASRS or the ASRS contracted LTD claims administrator shall calculate a revised Social Security disability income amount based on the supporting documentation provided by the member or survivor pursuant to subsection (B).
- E. Pursuant to subsection (B), if the revised Social Security disability amount is less than the amount of the estimated Social Security disability benefit, the ASRS or the ASRS contracted LTD claims administrator shall:
 1. Refund a portion of the amount of the estimated Social Security disability benefit that the ASRS retained upon forfeiture of the member in order to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount, or
 2. Adjust the member's retirement benefits or the survivor's benefits to offset the difference between the estimated Social Security disability income amount and the revised Social Security disability income amount.
- F. If a member or survivor is not satisfied with the determination on the request for a revised Social Security disability income amount, the member or survivor may appeal the determination pursuant to 2 A.A.C. 8, Article 4.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-803. Reimbursement of Overpayments

- A. Upon the ASRS discovering that it has made an overpayment to a member, survivor, or alternate payee, the ASRS shall send a letter to notify the necessary person that an overpayment was provided and the person shall reimburse the ASRS in the amount of the overpayment.
- B. A person who reimburses the ASRS for an overpayment shall do so by remitting a check, made payable to the ASRS, by the due date specified in the letter providing notice of the overpayment.
- C. If the ASRS is unable to collect the amount of an overpayment by reducing future payments to members, survivors, or alternate payees as provided in this Article, the ASRS shall allow the appropriate person to reimburse the ASRS for the amount of the overpayment by making payments over the course of as many months as the number of months in which an overpayment was made by the ASRS, not to exceed 36 months.
- D. A person may request to reimburse the amount of the overpayment to the ASRS sooner than provided in this Article.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-804. Collection of Overpayments from Forfeiture

- A. Unless a member cancels a forfeiture request by submitting written notice to the ASRS within 30 days of the request to forfeit, the ASRS shall reduce a member's refund amount in order to offset the member's overpayment amount pursuant to subsection (B).
- B. The ASRS shall reduce the member's refund amount by the amount of any overpayment and the ASRS shall:
 1. Pursue collection of any remaining overpayment amount pursuant to this Article; and

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2. Distribute the remaining refund amount to the member pursuant to R2-8-115.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-805. Collection of Overpayments from Retirement Benefit

- A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
- B. Upon retirement, the ASRS shall reduce the amount of a member's retirement benefit by the amount of any overpayments that have not been reimbursed to the ASRS, pursuant to R2-8-803 as follows:
1. If the member elects to receive a lump sum or partial lump sum benefit, the amount of the lump sum or partial lump sum shall be reduced by the amount of the overpayment to no less than \$5.00 and the ASRS shall pursue overpayment collections for any remaining overpayment amount pursuant to this Article;
 2. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment is equal to or less than the amount of the member's first annuity disbursement minus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of any overpayment to no less than \$5.00;
 3. If the member elects to receive retirement benefits as a monthly annuity and the amount of the overpayment exceeds the amount of the member's first annuity disbursement plus \$5.00, the ASRS shall reduce the amount of the first annuity disbursement by the amount of the overpayment to no less than \$5.00 and pursue collection pursuant to subsection (C).
- C. The ASRS shall reduce a member's or alternate payee's monthly annuity as follows in order to offset any overpayments which have not been reimbursed or collected pursuant to this Article:
1. The ASRS shall reduce the member's monthly annuity by up to 10% for 36 months, if the amount of the overpayment can be collected by the ASRS within that time.
 2. If the amount of the overpayment cannot be collected pursuant to subsection (C)(1), the ASRS will notify the member that the member must make payment arrangements within 60 days of the date on the notice. If the member does not make payment arrangements within 60 days of the date on the notice, the ASRS shall actuarially reduce the amount of the member's monthly annuity.
- D. Notwithstanding subsection (B), the ASRS shall not reduce a member's or alternate payee's monthly annuity by an estimated Social Security disability income amount while the member is pursuing a Social Security disability income determination pursuant to R2-8-305, if the member submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-806. Collection of Overpayments from Survivor Benefit

- A. Notwithstanding A.R.S. § 38-768, the ASRS may reduce a person's benefit pursuant to this Section.
- B. If a member, survivor, or alternate payee does not repay the amount of an overpayment pursuant to this Article, the ASRS

shall reduce the necessary person's amount of benefits pursuant to subsection (C).

- C. The ASRS shall collect the amount of any remaining overpayment by reducing the necessary person's monthly annuity over the same number of months in which the overpayment was made, up to 3 months for each month an overpayment was made by the ASRS.
- D. If the ASRS is unable to collect the amount of any overpayment pursuant to subsection (C), the ASRS shall pursue collection of any remaining overpayment amount pursuant to this Article.
- E. Notwithstanding subsection (C), the ASRS shall not reduce a survivor's monthly annuity by an estimated Social Security disability income amount while the survivor is pursuing a Social Security disability income determination on behalf of the member pursuant to R2-8-305, if the survivor submits documentation to the ASRS every six months informing the ASRS of the status of the member's Social Security disability income request until a determination is made regarding the amount of Social Security disability income to which the member was entitled.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-807. Collection of Overpayments from LTD Benefit

Upon disability of the member, the ASRS shall reduce the amount of the disabled member's LTD benefit by the amount of any overpayment the member received from the ASRS and has not reimbursed pursuant to this Section.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).
Amended by final rulemaking at 25 A.A.R. 2471, effective November 3, 2019 (Supp. 19-3).

R2-8-808. Collection of Overpayments by the Attorney General

If a member does not reimburse the ASRS for an overpayment pursuant to R2-8-802, the ASRS may submit the overpayment amount for collection by the Arizona Attorney General's Office.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-809. Collection of Overpayments by the Arizona Department of Revenue

If a member does not reimburse the ASRS for an overpayment pursuant to R2-8-802, the ASRS may submit the overpayment amount for collection by the Arizona Department of Revenue.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

R2-8-810. Collection of Overpayments by Garnishment or Levy

Pursuant to A.R.S. § 38-723, the ASRS may collect the amount of any overpayment that has not been reimbursed or collected pursuant to this article by garnishing wages and/or placing a levy on the appropriate person's bank account.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 2750, effective November 13, 2017 (Supp. 17-3).

ARTICLE 9. EXPIRED**R2-8-901. Expired**

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Historical Note

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

R2-8-902. Expired**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

R2-8-903. Expired**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

R2-8-904. Expired**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

R2-8-905. Expired**Historical Note**

New Section made by final rulemaking at 23 A.A.R. 2754, effective January 1, 2018 (Supp. 17-3). Section expired under A.R.S. § 41-1056(J) at 24 A.A.R. 1872, effective June 12, 2018 (Supp. 18-2).

ARTICLE 10. MEMBERSHIP**R2-8-1001. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "218 Agreement" means the same as in R2-8-701.
2. "218 Resolution" means written authorization for a potential Employer to provide Social Security and Medicare or Medicare-only coverage to employees under the provisions of § 218 of the Social Security Act.
3. "Acceptable Documentation" means the same as in R2-8-115.
4. "Designated Employer Administrator" means an individual designated by the Employer and who has authorized access to the Employer's secure ASRS account in order to fulfill the Employer's responsibilities.
5. "Engaged To Work" means the earlier of:
 - a. The date the employee begins rendering services for the Employer and the Employer intends the employee to work for at least 20 hours a week for at least 20 weeks in a fiscal year or;
 - b. The week an employer renders services to an Employer for at least 20 hours a week for at least 20 weeks in a fiscal year.
6. "Leasing An Employee From A Third Party" means the same as "Leased from a third party" in R2-8-116.
7. "State Social Security Administrator" means the ASRS staff designated by the Board to approve 218 Agreements.
8. "Week" means 12:00 a.m. on Sunday through 11:59 p.m. on the following Saturday.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1002. Employee Membership

- A. For purposes of active member eligibility, an employee of an Employer becomes a member of the ASRS pursuant to A.R.S. § 38-711(23) when the employee is Engaged To Work for the Employer.
- B. If the Employer does not provide an accurate date for which an employee was Engaged To Work pursuant to subsection (A), the ASRS shall determine that an employee's membership effective date will be the member's hire date, if provided by the Employer and within 30 days of the first pay period end date after the hire date, for which the Employer was required to submit contributions.
- C. If the Employer does not provide a hire date pursuant to subsection (B), the effective date is the first pay period end date of contributions received for that member.
- D. Unless a member terminates employment or retires from the ASRS, for purposes of determining active member eligibility, a member will continue to be an active member for the remainder of a fiscal year in which the employee met the requirements to be an active member in the ASRS with that Employer pursuant to A.R.S. § 38-711.
- E. Within 30 days of employment, an employee who is eligible for ASRS membership pursuant to A.R.S. § 38-711(23) shall create a secure ASRS account and submit to the ASRS through the employee's secure ASRS account the following information:
 1. The Employee's full name;
 2. The Employee's Social Security number;
 3. The Employee's date of birth;
 4. The Employee's gender;
 5. The Employee's marital status;
 6. The Employee's primary phone number;
 7. The Employee's personal email address;
 8. The Employee's current mailing address; and
 9. The Employee's designated beneficiary.
- F. Within 30 days of a change in the member's name, the member shall submit to the ASRS through the member's secure ASRS account a Change of Name form that contains:
 1. The member's full name that is on file with the ASRS;
 2. The member's Social Security number;
 3. The member's current mailing address;
 4. The member's date of birth;
 5. The member's personal email address;
 6. The member's primary phone number;
 7. The member's gender;
 8. The member's marital status;
 9. The member's retired, active, inactive, or LTD status with the ASRS;
 10. The member's new full name;
 11. The type of legal document establishing the member's new name;
 12. A copy of the legal document establishing the member's new name; and
 13. The member's dated signature.
- G. Within 30 days of a change in the member's contact information, the member shall notify the ASRS of the change.
- H. If an employee of an Employer meets the requirements of A.R.S. § 38-727(A)(8), the employee may elect to not participate in the ASRS.
- I. Within 30 days after employment, an Employer whose employee is 65 years of age or older as of the date of employment and who has elected not to participate in the ASRS pursuant to subsection (H), shall submit to the ASRS through the

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Employer's secure ASRS account a 65+ Membership Waiver form that contains:

1. The employee's full name;
2. The employee's Social Security number;
3. The employee's current mailing address;
4. The employee's date of birth;
5. The employee's dated signature acknowledging the following statements:
 - a. The employee is electing to waive any rights to ASRS membership and the employee will not be eligible for any retirement, disability, or health insurance benefits offered by the ASRS;
 - b. The employee is not a member of the ASRS as of the date of employment; and
 - c. The employee understands that this election is irrevocable for the remainder of the employee's employment with that Employer and the time the employee works under this election is not eligible for purchase in the ASRS;
6. The Employer's name;
7. The date employee's employment began; and
8. The name and dated signature of the Employer's representative.

- J.** A corrected and completed 65+ Membership Waiver form must be resubmitted to the ASRS pursuant to subsection (I) within 14 days of the date the ASRS notifies the employee that the 65+ Membership Waiver form is incorrect or incomplete.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1003. Charter School Employer Membership

- A.** Pursuant to A.R.S. § 15-187(C), a charter school in Arizona is considered a political subdivision that is eligible to participate in the ASRS if the charter school is sponsored by:

1. A state university;
2. A community college district;
3. A group of community college districts;
4. The state board of education; or
5. The state board for charter schools.

- B.** In order to participate as an Employer in the ASRS, a charter school shall notify the ASRS in writing of the charter school's intent to join the ASRS and provide:

1. A copy of the current and active Charter Contract, including any amendments, which is approved by the entity sponsoring the charter school pursuant to subsection (A);
2. Documentation showing the name and location of all schools authorized by the Charter Contract identified in subsection (B)(1); and
3. Documentation showing the charter school board's approval to pursue ASRS membership and complete ASRS requirements for membership.

- C.** Upon receipt of the information contained in subsection (B), the ASRS shall determine if the charter school is eligible to participate in the ASRS. If the charter school is not eligible to participate in the ASRS, the ASRS shall send the charter school a notice of ineligibility. If the charter school is eligible to participate, the ASRS shall provide the charter school a Potential New Employer Letter.

- D.** In order to participate as an Employer in the ASRS, an eligible charter school shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:

1. The current retirement plan or a statement signed by the designated authorized agent for the charter school acknowledging there is no current retirement plan.

2. Two ASRS Agreements showing:
 - a. The legal name and current mailing address of the charter school as sponsored pursuant to subsection (A);
 - b. What amount of prior service the charter school shall purchase for employees pursuant to R2-8-1006;
 - c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
 - d. The name, title, email address, and telephone number of the designated authorized agent for the charter school;
 - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
 - f. The ASRS Agreement is binding and irrevocable;
 - g. The effective date of the ASRS Agreement;
 - h. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
 - i. The dated signature of the designated authorized agent for the charter school.

3. Two ASRS Resolutions showing:
 - a. The legal name of the charter school as sponsored pursuant to subsection (A);
 - b. The charter school is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
 - c. The charter school agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
 - d. The designated authorized agent for the charter school;
 - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
 - f. The dated and notarized signature of the designated authorized agent.

4. Two 218 Agreements either electing or declining coverage. If the charter school is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.

5. Two 218 Resolutions, if the charter school is electing coverage pursuant to subsection (D)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.

- E.** Upon receipt of Acceptable Documentation identified in subsection (D), the ASRS may approve the charter school's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (D) to the charter school.

- F.** Any charter school that is established under the charter contract of a participating charter school shall participate in the ASRS.

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Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1004. Other Political Subdivision and Political Subdivision Entity Employer Membership

- A.** A political subdivision or political subdivision entity, other than a charter school, may be eligible to participate in the ASRS pursuant to A.R.S. §§ 38-711 and 38-729 if it notifies the ASRS in writing of the political subdivision's or political subdivision entity's intent to join the ASRS and provides to the ASRS:
1. A copy of the current legal authority establishing the political subdivision or political subdivision entity;
 2. Documentation showing the name and location of the political subdivision or political subdivision entity; and
 3. Documentation showing the political subdivision or political subdivision entity has taken the necessary legal action to be eligible to participate pursuant to A.R.S. § 38-729.
- B.** Upon receipt of the information contained in subsection (C), the ASRS shall determine if the political subdivision or political subdivision entity is eligible to participate in the ASRS. If the political subdivision or political subdivision entity is not eligible to participate in the ASRS, the ASRS shall send the political subdivision or political subdivision entity a notice of ineligibility. If the political subdivision or political subdivision entity is eligible to participate, the ASRS shall provide the political subdivision or political subdivision entity a Potential New Employer Letter.
- C.** In order to participate as an Employer in the ASRS, an eligible political subdivision or political subdivision entity shall submit to the ASRS the following original documents by the due date listed on the Potential New Employer Letter:
1. The current retirement plan or a statement signed by the designated authorized agent for the political subdivision or political subdivision entity acknowledging there is no current retirement plan.
 2. Two ASRS Agreements showing:
 - a. The legal name and current mailing address of the political subdivision or political subdivision entity;
 - b. What amount of prior service the political subdivision or political subdivision entity shall purchase for employees pursuant to R2-8-1006;
 - c. The approximate number of employees that will become members upon the effective date of the ASRS Agreement;
 - d. The name, title, email address, and telephone number of the designated authorized agent for the political subdivision or political subdivision entity;
 - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
 - f. The ASRS Agreement is binding and irrevocable;
 - g. The effective date of the ASRS Agreement;
 - h. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law; and
 - i. The dated signature of the designated authorized agent for the political subdivision or political subdivision entity.
 3. Two ASRS Resolutions showing:

- a. The legal name of the political subdivision or political subdivision entity;
 - b. The political subdivision or political subdivision entity is adopting a supplemental ASRS retirement plan pursuant to A.R.S. § 38-729;
 - c. The political subdivision or political subdivision entity agrees to be bound by the provisions of A.R.S. Title 38, Chapter 5, Article 2 and Article 2.1 unless otherwise indicated by law;
 - d. The designated authorized agent for the political subdivision or political subdivision entity;
 - e. The designated authorized agent is authorized and directed to conduct all negotiations, conclude all arrangements, and sign all documents necessary to administer the supplemental ASRS retirement plan pursuant to A.R.S. Title 38, Chapter 5, Articles 2 and 2.1; and
 - f. The dated and notarized signature of the designated authorized agent.
4. Two 218 Agreements either electing or declining coverage. If the political subdivision or political subdivision entity is electing coverage pursuant to a 218 Agreement, the 218 Agreement must be completed and approved by the Social Security Administration prior to joining the ASRS.
 5. Two 218 Resolutions, if the political subdivision or political subdivision entity is electing coverage pursuant to subsection (C)(4). The 218 Resolutions must be completed and approved by the Social Security Administration prior to joining the ASRS.
- D.** Upon receipt of Acceptable Documentation identified in subsection (B), the ASRS may approve the political subdivision's or political subdivision entity's request for membership pursuant to A.R.S. § 38-729. If the request to join the ASRS is approved, the state Social Security administrator shall sign the 218 Agreements and the ASRS Director shall sign the ASRS Agreements before the ASRS shall send one of each of the original documents identified in subsection (B) to the political subdivision or political subdivision entity.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1005. Employer Reporting

- A.** An Employer shall submit contribution information and contribution payments pursuant to A.R.S. § 38-735, through the Employer's secure ASRS account.
- B.** Within 14 days of receiving the information contained in subsection R2-8-1002(E)(1) through (E)(3), the Employer shall:
1. Verify the information the employee provided;
 2. Confirm the employee meets membership requirements pursuant to A.R.S. § 38-711; and
 3. Submit the verified information to the ASRS through the Employer's secure ASRS account.
- C.** For an Employer whose employee elects to participate in an Optional Retirement Plan in lieu of the ASRS pursuant to A.R.S. §15-1628, within 30 days of electing to participate in an Optional Retirement Plan, the Employer shall submit to the ASRS through the Employer's secure ASRS account the:
1. Employee's full name;
 2. Employee's Social Security number;
 3. Date of the employee's employment; and
 4. Date of the employee's Optional Retirement Plan election.
- D.** For an Employer who has submitted information pursuant to subsection (C), within 30 days of that employee terminating

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employment with that Employer, the Employer shall notify the ASRS through the Employer's secure ASRS account of the employee's termination date.

- E. Within 14 days before the effective date of joining the ASRS, an Employer shall submit an initial online authorization and designation form in writing to the ASRS with the following information:
1. The Employer's name;
 2. The following information for the person authorized by the Employer to approve the Employer's Designated Employer Administrator:
 - a. The person's full name;
 - b. The person's title;
 - c. The person's phone number;
 - d. The person's email address;
 - e. The person's dated signature affirming that person has the authority to approve the Employer's Designated Employer Administrator;
 3. The full name of the individual the Employer is designating as the Employer's Designated Employer Administrator;
 4. The title of the individual the Employer is designating as the Employer's Designated Employer Administrator;
 5. The phone number of the individual the Employer is designating as the Employer's Designated Employer Administrator;
 6. The email address of the individual the Employer is designating as the Employer's Designated Employer Administrator;
 7. The dated signature of the individual the Employer is designating as the Employer's Designated Employer Administrator.
- F. An Employer's Designated Employer Administrator shall establish a new Employer's Designated Employer Administrator as needed through the Employer's secure ASRS account.
- G. Within 30 days of an Employer no longer having an Employer's Designated Employer Administrator, the Employer shall submit in writing an initial online authorization and designation form pursuant to subsection (E).
- H. Within 30 days of change in the Employer's address, the Employer shall notify the ASRS of the change through the Employer's secure ASRS account.
- I. Within 10 days of any change in the name or ownership of the Employer, the Employer shall provide written notice of the change to the ASRS through the Employer's secure ASRS account by providing the Employer's previous account information and the changes to that information.
- J. Within 30 days of any change in the character of an Employer's organizational structure, the Employer shall send to the ASRS through the Employer's secure ASRS account, written notice of the previous organizational structure and the effective changes to the Employer's organizational structure.
- K. Within 30 days of Leasing An Employee From A Third Party, an Employer shall submit the following information:
1. The employee's full name;
 2. The number of hours per week the employee works for the Employer;
 3. The title of the employee's position;
 4. A copy of the agreement showing the Employer Leasing An Employee From A Third Party; and
 5. Whether the employee is retired from the ASRS.
- A. Pursuant to A.R.S. § 38-729, upon the effective date of joining the ASRS, an Employer may elect to purchase service credit for a period of employment prior to the effective date of joining the ASRS for employees Engaged To Work for the Employer on the effective date of joining the ASRS who are members of the ASRS as of the effective date of joining the ASRS.
- B. The ASRS may provide to a potential Employer an estimated cost to purchase service credit pursuant to this Section. In order for the ASRS to estimate the cost to purchase service credit pursuant to this Section, a potential Employer shall provide the following information to the ASRS for each employee of the potential Employer who is Engaged To Work for the potential Employer and for whom the potential Employer intends to purchase service credit pursuant to this Section:
1. The employee's full name;
 2. The employee's date of birth;
 3. The employee's Social Security number;
 4. The employee's current salary; and
 5. The date the employee began employment with the potential Employer.
- C. An Employer who elects to purchase service credit pursuant to this Section shall submit the following information for each member for which the Employer is purchasing service credit:
1. Member's full name;
 2. Member's date of birth;
 3. Member's Social Security number;
 4. Member's date of employment;
 5. Documentation showing the Member is Engaged To Work for the Employer as of the effective date of joining the ASRS;
 6. Member's current salary as of the effective date of joining the ASRS; and
 7. The number of years the Employer is electing to purchase for the member pursuant to this Section or the dollar amount the Employer is electing to pay to purchase service for the member pursuant to this Section.
- D. The cost to purchase service credit pursuant to this Section shall be determined using an actuarial present value calculation.
- E. An Employer who elects to purchase service credit pursuant to this Section shall submit payment for the full cost of the service purchase to the ASRS within 90 days of the date of notification by the ASRS.
- F. If an Employer who elects to purchase service credit pursuant to this Section does not submit payment for the full cost of the service purchase within 90 days of the date of notification, the Employer is not eligible to purchase service credit pursuant to this Section.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

ARTICLE 11. TRANSFER OF SERVICE CREDIT**R2-8-1101. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "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;
 - b. Member's age as of the date the Member submits to the ASRS a request to transfer service credit pursuant to this Article; and
 - c. Member's most recent annual compensation.
2. "Current years of credited service" means:

Historical Note

New Section made by final rulemaking at 24 A.A.R. 3407, effective February 4, 2019 (Supp. 18-4).

R2-8-1006. Prior Service Purchase Cost for New Employers

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- a. For Transfer In Service, the amount of credited service a member has earned or purchased, and the amount of service credit for which an Irrevocable PDA 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; and
- b. For transferring service credit to the Other Retirement Plan, the amount of credited service a member has earned or purchased, but does not include service credit for which the member has not yet paid.
3. "Irrevocable PDA" means the same as in R2-8-501.
4. "Funded Actuarial Present Value" means the Actuarial Present Value reduced to the extent funded on market value basis as of the most recent actuarial evaluation of the ASRS.
5. "Member's accumulated contribution account balance" means the sum of all the member's retirement contributions and any principal payments made for:
 - a. The purchase of service credit;
 - b. Contributions not withheld; and
 - c. Previous transfers of service credit.
6. "Other retirement plan" means the state retirement plans specified in A.R.S. § 38-921, other than the ASRS, or a retirement plan of a charter city as specified in A.R.S. § 38-730.
7. "Other Retirement Plan's cost" means the amount determined by the ASRS pursuant to R2-8-1102(D).
8. "Other public service" means the same as in R2-8-501.
9. "Transfer in service" means credited service with the Other Retirement Plan that a member is eligible to transfer to the ASRS pursuant to A.R.S. §§ 38-730 and 38-921.
2. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
3. The amount of service credit the member has accumulated in the Other Retirement Plan; and
4. The start date and end date for the member's participation in the Other Retirement Plan.
- C. Upon receipt of the information specified in subsection (B), the ASRS shall calculate the Actuarial Present Value as specified in R2-8-506 necessary to transfer full service credit to the ASRS.
- D. The ASRS shall calculate the Other Retirement Plan's Cost as follows:
 1. If the ASRS Actuarial Present Value is greater than the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
 - a. The Other Retirement Plan's Funded Actuarial Present Value; or
 - b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan;
 2. If the ASRS Actuarial Present Value is less than or equal to the Other Retirement Plan's Funded Actuarial Present Value, then the Other Retirement Plan's Cost is the greater of:
 - a. The ASRS Actuarial Present Value; or
 - b. The Member's Accumulated Contribution Account Balance in the Other Retirement Plan.
- E. The ASRS shall compare the Other Retirement Plan's Cost to the ASRS Actuarial Present Value calculated pursuant to subsection (C) and:
 1. If the Other Retirement Plan's Cost is less than the ASRS Actuarial Present Value, then the member may elect to transfer service credit to the ASRS and:
 - a. Pay the difference between the Other Retirement Plan's Cost and the ASRS Actuarial Present Value; or
 - b. Accept a proportionately reduced amount of service credit;
 2. If the Other Retirement Plan's Cost is greater than or equal to the ASRS Actuarial Present Value, then the member may elect to transfer the service to the ASRS pursuant to subsection (F).
- F. Upon completion of the comparison specified in subsections (D) and (E), the ASRS shall send the member a transfer in invoice notifying the member of the member's options to complete the transfer of service credit through the member's secure ASRS account.
- G. The member may elect to complete a transfer of service credit pursuant to this Section by submitting the member's election by the election due date specified on the transfer in invoice.
- H. Upon receipt of the member's election to complete a transfer of service credit, the ASRS shall send the transfer in invoice to the Other Retirement Plan and the Other Retirement Plan shall make payment to the ASRS by submitting a check made payable to the ASRS for the Other Retirement Plan's Cost specified on the transfer in invoice by the payment due date specified on the transfer in invoice.
- I. If a member elects to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E), the member shall elect the method of payment by the payment due date specified on the transfer in invoice.
- J. A member may elect to pay the total difference between the ASRS Actuarial Present Value and the Other Retirement Plan's Cost pursuant to R2-8-1102(E) by any one or more methods specified in R2-8-512, R2-8-513, R2-8-514, or R2-8-519.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

R2-8-1102. Required Documentation and Calculations for Transfer In Service Credit

- A. A member who is eligible to Transfer In Service credit, may request to transfer service credit by providing a Transfer In form to the ASRS with the following:
 1. The name of the Other Retirement Plan;
 2. The date the member either terminated employment with an employer of the Other Retirement Plan or ceased to participate in the Other Retirement Plan;
 3. The date the member began employment with the employer through which the member was participating in the Other Retirement Plan;
 4. The number of years the member participated in the Other Retirement Plan;
 5. Acknowledgement the member agrees 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; and
 - b. The Transfer In Service credit transaction is subject to audit and if any errors are discovered, the ASRS shall adjust a member's account, or if the member is already retired, adjustments to the member's account may affect the member's retirement benefit.
- B. Upon receipt of the information specified in subsection (A), the ASRS shall submit the information to the Other Retirement Plan and request:
 1. The Other Retirement Plan's Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922;

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- K.** For a member who elects to accept a proportionately reduced amount of service pursuant to subsection (E)(1)(b), the ASRS shall calculate the proportionately reduced amount of service credit based on the member's service credits in the Other Retirement Plan multiplied by the ratio of the Other Retirement Plan's Cost to the ASRS Actuarial Present Value.
- L.** The member shall submit payment to transfer service credit pursuant to this Section by the payment due date specified on the transfer in invoice.
- M.** If the member does not submit payment for the total difference in the calculations pursuant to R2-8-1102(E) by the payment due date specified on the transfer in invoice, the member may be eligible to purchase the remaining service credit as Other Public Service, and the member is not eligible to purchase the remaining service credit based on the cost specified in the transfer in invoice.
- Historical Note**
New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).
- R2-8-1103. Transferring Service to Other Retirement Plans**
- A.** Upon receipt of a request to transfer a member's service credit from the ASRS to the Other Retirement Plan, the ASRS shall calculate:
1. The ASRS Funded Actuarial Present Value pursuant to A.R.S. §§ 38-730 and 38-922; and
 2. The Member's Accumulated Contribution Account Balance in the ASRS.
- B.** Upon completing the calculations specified in subsection (A), the ASRS shall submit the calculations and member information to the Other Retirement Plan with a due date for the Other Retirement Plan to submit a fund request to the ASRS pursuant to subsection (C).
- C.** If a member elects to transfer service credit to the Other Retirement Plan, the member shall ensure that the Other Retirement Plan submits a fund request on the Other Retirement Plan's letterhead by the due date specified in subsection (B) to the ASRS with the following information:
1. The member's full name;
 2. The last four digits of the member's Social Security number;
 3. The name of the Other Retirement Plan; and
4. The Actuarial Present Value necessary to transfer full service credit to the Other Retirement Plan.
- D.** Upon receipt of the information specified in subsection (C), the ASRS shall compare the calculations specified in subsection (A) to the Other Retirement Plan's Actuarial Present Value specified in subsection (C) and transfer funds as follows:
1. If the Other Retirement Plan's Actuarial Present Value specified in subsection (C) is greater than the ASRS Funded Actuarial Present Value specified in subsection (A), then the ASRS shall transfer the greater of:
 - a. The ASRS Funded Actuarial Present Value specified in subsection (A); or
 - b. The Member's Accumulated Contribution Account Balance in the ASRS.
 2. If the Other Retirement Plan's Actuarial Present Value specified in subsection (C) is less than or equal to the ASRS Funded Actuarial Present Value, then the ASRS shall transfer the greater of:
 - a. The Other Retirement Plan's Actuarial Present Value specified in subsection (C); or
 - b. The Member's Accumulated Contribution Account Balance in the ASRS.
- E.** Transferring service credit to the Other Retirement Plan pursuant to this Section constitutes a withdrawal from ASRS membership and results in a forfeiture of all other benefits under ASRS.
- F.** Notwithstanding subsection (E), pursuant to A.R.S. § 38-750, a transferred employee who continues an Irrevocable PDA after transferring service credit to the Other Retirement Plan may be eligible to:
1. Transfer service credit associated with the remaining balance of the Irrevocable PDA for which the transferred employee paid for the purchase of service credit plus interest at the Assumed Actuarial Investment Earnings Rate pursuant to A.R.S. § 38-922, not including any administrative interest charge the transferred employee paid pursuant to an Irrevocable PDA; or
 2. Receive a return of contributions plus interest as specified in R2-8-118(A), column 3, pursuant to A.R.S. § 38-740.
- Historical Note**
New Section made by final rulemaking at 25 A.A.R. 303, effective March 18, 2019 (Supp. 19-1).

41-1021. Public rule making docket; notice

A. Each agency shall establish and maintain a current, public rule making docket for each pending rule making proceeding. A rule making proceeding is pending from the time the agency begins to consider proposing the rule under section 41-1022 until any one of the following occurs:

1. The time the rule making proceeding is terminated by the agency indicating in the rule making docket that the agency is no longer actively considering proposing the rule.
2. One year after the notice of rule making docket opening is published in the register if the agency has not filed a notice of the proposed rule making with the secretary of state pursuant to section 41-1022.
3. The rule becomes effective.
4. One year after the notice of the proposed rule making is published in the register if the agency has not submitted the rule to the council for review and approval.
5. Publication of a notice of termination.

B. For each rule making proceeding, the docket shall indicate all of the following:

1. The subject matter of the proposed rule.
2. A citation to all published notices relating to the proceeding.
3. The name and address of agency personnel with whom persons may communicate regarding the rule.
4. Where written submissions on the proposed rule may be inspected.
5. The time during which written submissions may be made and the time and place where oral comments may be made.
6. Where a copy of the economic, small business and consumer impact statement and the minutes of the pertinent council meeting may be inspected.
7. The current status of the proposed rule.
8. Any known timetable for agency decisions or other action in the proceeding.
9. The date the rule was sent to the council.
10. The date of the rule's filing and publication.
11. The date the rule was approved by the council.
12. When the rule will become effective.

C. The agency shall provide public notice of the establishment of a rule making docket by causing a notice of docket opening to be published in the register, including the information set forth in subsection B, paragraphs 1, 2, 3, 5 and 8 of this section.

D. An agency may appoint formal advisory committees to comment, before publication of a notice of proposed rule making under section 41-1022, on the subject matter of a possible rule making under active consideration within the agency. The membership of these committees shall be published at the time of formation and annually thereafter in the register. Members of these committees are not eligible to receive compensation except as otherwise provided by law.

41-1021.01. Permissive examples

An agency may include a diagram, example, table, chart or formula in a rule, preamble, economic impact, small business and consumer impact statement or concise explanatory statement to the extent that it assists in making the document understandable by the persons affected by the rule.

41-1021.02. State agencies; annual regulatory agenda

A. On or before December 1 of each year, each agency, except for a self-supporting regulatory board as defined in section 41-1092, shall prepare and make available to the public the regulatory agenda that the agency expects to follow during the next calendar year.

B. The regulatory agenda shall include all of the following:

1. A notice of docket openings.
2. A notice of any proposed rule making, including potential sources of federal funding for each proposed rule making.
3. A review of existing rules.
4. A notice of a final rule making.

C. The regulatory agenda shall also provide for the following information:

1. Any rule making terminated during the current calendar year.
2. Any privatization option and nontraditional regulatory approach being considered by the agency.

D. This section does not prohibit an agency from undertaking any rule making action even if that action has not been included in the agency's annual regulatory agenda.

41-1022. Notice of proposed rule making, amendment or repeal; contents of notice

A. Before rule making, amendment or repeal, the agency shall file a notice of the proposed action with the secretary of state. The notice shall include:

1. The preamble.
2. The exact wording of the rule.

B. The secretary of state shall include in the next edition of the register the information in the notice under subsection A of this section.

C. At the same time the agency files a notice of the proposed rule making with the secretary of state, the agency shall notify by regular mail, telefacsimile or electronic mail each person who has made a timely request to the agency for notification of the proposed rule making and to each person who has requested notification of all proposed rule makings. An agency may provide the notification prescribed in this subsection in a periodic agency newsletter. An agency may purge its list of persons requesting notification of proposed rule makings once each year.

D. Before commencing any proceedings for rule making, amendment or repeal, an agency shall allow at least thirty days to elapse after the publication date of the register in which the notice of the proposed rule making, amendment or repeal is contained.

E. If, as a result of public comments or internal review, an agency determines that a proposed rule requires substantial change pursuant to section 41-1025, the agency shall issue a supplemental notice containing the changes in the proposed rule. The agency shall provide for additional public comment pursuant to section 41-1023.

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.

41-1024. Time and manner of rule making

A. An agency may not submit a rule to the council until the rule making record is closed.

B. Within one hundred twenty days after the close of the record on the proposed rule making, an agency shall take one of the following actions:

1. Submit the rule to the council or, if the rule is exempt pursuant to section 41-1057, to the attorney general.

2. Terminate the proceeding by publication of a notice to that effect in the register.

C. Before submitting a rule to the council or the attorney general, an agency shall consider the written submissions, the oral submissions or any memorandum summarizing oral submissions and the economic, small business and consumer impact statement regarding the rule or information in the preamble.

D. Within the scope of its delegated authority, an agency may use its own experience, technical competence, specialized knowledge and judgment in the making of a rule.

E. Unless exempted by section 41-1005 or 41-1057 or unless the rule is an emergency rule made pursuant to section 41-1026, if the agency chooses to make the rule, the agency shall submit a rule package to the council and to the committee. The rule package shall include:

1. The preamble.

2. The exact words of the rule, including existing language and any deletions.
3. The economic, small business and consumer impact statement.
- F. If the rule is exempt pursuant to section 41-1005, the agency shall file it as a final rule with the secretary of state.
- G. If the rule is exempt from council approval, pursuant to section 41-1057, the agency shall submit the rule package set forth in subsection E of this section to the attorney general for approval pursuant to section 41-1044.
- H. An agency shall not file a final rule with the secretary of state without prior approval from the council, unless the final rule is exempted pursuant to section 41-1005 or 41-1057 or the rule is an emergency rule made pursuant to section 41-1026 or an expedited rule made pursuant to section 41-1027.

41-1025. Variance between rule and published notice of proposed rule

- A. An agency may not submit a rule to the council that is substantially different from the proposed rule contained in the notice of proposed rule making or a supplemental notice filed with the secretary of state pursuant to section 41-1022. However, an agency may terminate a rule making proceeding and commence a new rule making proceeding for the purpose of making a substantially different rule.
- B. In determining whether a rule is substantially different from the published proposed rule on which it is required to be based, all of the following must be considered:
 1. The extent to which all persons affected by the rule should have understood that the published proposed rule would affect their interests.
 2. The extent to which the subject matter of the rule or the issues determined by that rule are different from the subject matter or issues involved in the published proposed rule.
 3. The extent to which the effects of the rule differ from the effects of the published proposed rule if it had been made instead.

41-1026. Emergency rule making, amendment or repeal

- A. If an agency makes a finding that a rule is necessary as an emergency measure, the rule may be made, amended or repealed as an emergency measure, without the notice prescribed by sections 41-1021 and 41-1022 and prior review by the council, if the rule is first approved by the attorney general and filed with the secretary of state. The attorney general may not approve the making, amendment or repeal of a rule as an emergency measure if the emergency situation is created due to the agency's delay or inaction and the emergency situation could have been averted by timely compliance with the notice and public participation provisions of this chapter, unless the agency submits substantial evidence that the rule is necessary as an emergency measure to do any of the following:
 1. Protect the public health, safety or welfare.
 2. Comply with deadlines in amendments to an agency's governing law or federal programs.
 3. Avoid violation of federal law or regulation or other state law.
 4. Avoid an imminent budget reduction.

5. Avoid serious prejudice to the public interest or the interest of the parties concerned.

B. Within sixty days of receipt, the attorney general shall review the demonstration of emergency and the rule in accordance with the standards prescribed in section 41-1044.

C. After the rule is filed with the secretary of state, the secretary of state shall publish the rule in the register as provided in section 41-1013.

D. A rule made, amended or repealed pursuant to this section is valid for one hundred eighty days after the filing of the rule with the secretary of state and may be renewed for one more one hundred eighty day period if all of the following occur:

1. The agency determines that the emergency situation still exists.

2. The agency follows the procedures prescribed in this section.

3. The rule is approved by the attorney general pursuant to this section.

4. The agency has issued the rule as a proposed rule or has issued an alternative proposed rule pursuant to section 41-1022.

5. The agency seeks approval of the renewal from the attorney general before the expiration of the preceding one hundred eighty day period.

6. The agency files notice of the renewal and any required attorney general approval with the secretary of state and notice is published in the register.

E. A rule that is made pursuant to this chapter and that replaces a rule made, amended or repealed pursuant to this section shall expressly repeal the rule replaced if it has not expired.

41-1026.01. Emergency adoption, amendment or termination of delegation agreements; definition

A. If a delegating agency makes a written finding that a delegation agreement is necessary as an emergency measure, the delegation agreement may be adopted, amended or terminated as an emergency measure, without complying with the public notice and participation provisions of this article. An agency may not adopt, amend or terminate a delegation agreement as an emergency measure if the emergency situation is created due to the agency's delay or inaction and the emergency situation could have been averted by timely compliance with the public notice and participation provisions of this article, unless the agency can present substantial evidence that failure to adopt, amend or terminate the delegation agreement as an emergency measure will result in imminent substantial peril to the public health, safety or welfare.

B. The agency shall file with the secretary of state a summary of the emergency delegation agreement. The summary shall provide the name of the person to contact in the agency with questions or comments. The secretary of state shall publish the summary in the next register.

C. The delegation agreement adopted, amended or terminated pursuant to this section is valid for one hundred eighty days after the filing of the agreement with the secretary of state and may be renewed for one or two more one hundred eighty day periods if all of the following occur:

1. The agency determines that the emergency situation still exists for each renewal.

2. The agency follows the procedures prescribed by this section for each renewal.

3. The agency has begun the public comment and participation process required by this section.

4. The agency makes a finding for an extension of time before the expiration of the preceding one hundred and eighty day period.

5. The agency files notice of the renewal with the secretary of state and notice is published in the register.

D. For purposes of this section, "emergency" means a situation which warrants the adoption of a delegation agreement without compliance with the public notice and participation provisions prescribed in this article because the adoption, amendment or termination of the delegation agreement is necessary for immediate preservation of the public health, safety or welfare, and the public notice and participation requirements of this article are impracticable.

41-1027. Expedited rulemaking

A. An agency may conduct expedited rulemaking pursuant to this section if the rulemaking does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated and does one or more of the following:

1. Amends or repeals rules made obsolete by repeal or supersession of an agency's statutory authority.

2. Amends or repeals rules for which the statute on which the rule is authorized has been declared unconstitutional by a court with jurisdiction, there is a final judgment and no statute has been enacted to replace the unconstitutional statute.

3. Makes, amends or repeals rules that repeat verbatim existing statutory authority granted to the agency.

4. Makes, amends or repeals rules relating only to internal governmental operations that are not subject to violation by a person.

5. Corrects typographical errors, makes address or name changes or clarifies language of a rule without changing its effect.

6. Adopts or incorporates by reference without material change federal statutes or regulations pursuant to section 41-1028, statutes of this state or rules of other agencies of this state.

7. Reduces or consolidates steps, procedures or processes in the rules.

8. Amends or repeals rules that are outdated, redundant or otherwise no longer necessary for the operation of state government.

B. If the proposed expedited rulemaking is solely for a purpose prescribed in subsection A, paragraph 1, 3, 5 or 8 of this section, an agency shall notify the governor, the president of the senate, the speaker of the house of representatives and the council of the proposed expedited rulemaking. The notice shall contain the name, address and telephone number of the agency contact person and the exact wording of the proposed expedited rulemaking and indicate how the proposed expedited rulemaking achieves the purpose prescribed in subsection A, paragraph 1, 3, 5 or 8 of this section.

C. If the proposed expedited rulemaking is for a purpose prescribed in subsection A, paragraph 2, 4, 6 or 7 of this section, an agency shall file a request for proposed expedited rulemaking with the governor and notify the president of the senate, the speaker of the house of representatives and the council of the request. The request

shall contain the name, address and telephone number of the agency contact person and the exact wording of the proposed expedited rulemaking and an explanation of how the proposed expedited rulemaking meets the criteria in subsection A of this section.

D. The governor may approve the request for expedited rulemaking if the request complies with subsection A of this section.

E. On delivery of the notice required in subsection B of this section or on approval by the governor of a request for proposed expedited rulemaking the agency shall file a notice of the proposed expedited rulemaking with the secretary of state for publication in the next state administrative register containing the information and provisions of the proposed rulemaking filed with the governor pursuant to subsection B or C of this section and allow any person to provide written comment to the agency for at least thirty days after publication in the register, including objections to the rulemaking because it does not meet the criteria pursuant to subsection A of this section. The agency shall adequately respond in writing to the comments on the proposed expedited rulemaking.

F. An agency may not submit an expedited rule to the council that is substantially different from the proposed rule contained in the notice of proposed expedited rulemaking. However, an agency may terminate an expedited rulemaking proceeding pursuant to subsection K of this section and commence a new rulemaking proceeding for the purpose of making a substantially different rule. An agency shall use the criteria prescribed in section 41-1025, subsection B for determining whether an expedited rule is substantially different from the published proposed expedited rule.

G. After adequately addressing, in writing, any written objections, an agency shall file a request for approval with the council. The request shall contain the notice of proposed expedited rulemaking filed with the secretary of state pursuant to this section and the agency's responses to any written comments. The council may require a representative of an agency whose proposed expedited rulemaking is under examination to attend a council meeting and answer questions. The council may communicate to the agency its comments on the proposed expedited rule making within the scope of subsection A of this section and require the agency to respond to its comments or testimony in writing. A person may submit written comments to the council that are within the scope of subsection A of this section.

H. Before an agency files a notice of final expedited rulemaking with the secretary of state, the council shall approve any proposed expedited rulemaking. The council shall not approve the rule unless:

1. The rule satisfies the criteria for expedited rulemaking pursuant to subsection A of this section.
2. The rule is clear, concise and understandable.
3. The rule is not illegal, inconsistent with legislative intent or beyond the agency's statutory authority.
4. The agency, in writing, adequately addressed the comments on the proposed rule and any supplementary proposal.
5. If applicable, the permitting requirements comply with section 41-1037.
6. The rule is not a substantial change, considered as a whole, from the proposed rule and any supplementary proposal.
7. The rule imposes the least burden and costs to persons regulated by the rule.

I. On receipt of council approval, the agency shall file a notice of final expedited rulemaking with the secretary of state that contains the information and provisions required in subsection B or C of this section and that the agency did receive approval from the council pursuant to this section.

J. The expedited rulemaking becomes effective thirty days following publication of the notice of final expedited rulemaking.

K. An agency may terminate an expedited rulemaking proceeding on approval of the governor and written notice to the president of the senate, the speaker of the house of representatives and the council.

41-1028. Incorporation by reference

A. An agency 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 of an agency of the United States or of this state or a nationally recognized organization or association, if incorporation of its text in agency rules would be unduly cumbersome, expensive or otherwise inexpedient.

B. The reference in the agency rules shall fully identify the incorporated matter by location, date and otherwise and shall state that the rule does not include any later amendments or editions of the incorporated matter.

C. An agency may incorporate by reference such matter in its rules only if the agency, organization or association originally issuing that matter makes copies of it readily available to the public for inspection and reproduction.

D. The rules shall state where copies of the incorporated matter are available from the agency issuing the rule and from the agency of the United States or this state or the organization or association originally issuing the matter.

E. An agency may incorporate later amendments or editions of the incorporated matter only after compliance with the rule making requirements of this chapter.

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.

41-1030. Invalidity of rules not made according to this chapter; prohibited agency action; prohibited acts by state employees; enforcement; notice

- A. A rule is invalid unless it is made and approved in substantial compliance with sections 41-1021 through 41-1029 and articles 4, 4.1 and 5 of this chapter, unless otherwise provided by law.
- B. An agency shall not base a licensing decision in whole or in part on a licensing requirement or condition that is not specifically authorized by statute, rule or state tribal gaming compact. A general grant of authority in statute does not constitute a basis for imposing a licensing requirement or condition unless a rule is made pursuant to that general grant of authority that specifically authorizes the requirement or condition.
- C. An agency shall not:
1. Make a rule under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute authorizing the rule.
 2. Make a rule under a general grant of rulemaking authority to supplement a more specific grant of rulemaking authority.
- D. This section may be enforced in a private civil action and relief may be awarded against the state. The court may award reasonable attorney fees, damages and all fees associated with the license application to a party that prevails in an action against the state for a violation of this section.
- E. A state employee may not intentionally or knowingly violate this section. A violation of this section is cause for disciplinary action or dismissal pursuant to the agency's adopted personnel policy.
- F. This section does not abrogate the immunity provided by section 12-820.01 or 12-820.02.
- G. An agency shall prominently print the provisions of subsections B, D, E and F of this section on all license applications, except license applications processed by the corporation commission.
- H. The licensing application may be in either print or electronic format.

41-1031. Filing rules and preamble with secretary of state; permanent record

- A. Following the filing of a rule made pursuant to an exemption to this chapter or following approval and filing of a rule and preamble and an economic, small

business and consumer impact statement by the council as provided in article 5 of this chapter or by the attorney general as provided in article 4 of this chapter, the secretary of state shall affix to each rule document, preamble and economic, small business and consumer impact statement the time and date of filing. A rule is not final until the secretary of state affixes the time and date of filing to the rule document as provided in this section.

B. The secretary of state shall keep a permanent record of rules, preambles and economic, small business and consumer impact statements filed with the office.

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.

41-1034. Declaratory judgment

A. Any person who is or may be affected by a rule may obtain a judicial declaration of the validity of the rule by filing an action for declaratory relief in the superior court in Maricopa county in accordance with title 12, chapter 10, article 2.

B. Any person who is or may be affected by an existing agency practice or substantive policy statement that the person alleges to constitute a rule may obtain a judicial declaration on whether the practice or substantive policy statement constitutes a rule by filing an action for declaratory relief in the superior court in Maricopa county in accordance with title 12, chapter 10, article 2.

41-1035. Rules affecting small businesses; reduction of rule impact

If an agency proposes a new rule or an amendment to an existing rule which may have an impact on small businesses, the agency shall consider each of the methods described in this section for reducing the impact of the rule making on small businesses. The agency shall reduce the impact by using one or more of the following methods, if it finds that the methods are legal and feasible in meeting the statutory objectives which are the basis of the proposed rule making:

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
4. Establish performance standards for small businesses to replace design or operational standards in the rule.
5. Exempt small businesses from any or all requirements of the rule.

41-1036. Preamble; justifications for rule making

Only the reasons contained in the preamble may be used by any party as justifications for the making of the rule in any proceeding in which its validity is at issue.

41-1037. General permits; issuance of traditional permit

A. If an agency proposes a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license or agency authorization, the agency shall use a general permit if the facilities, activities or practices in the class are substantially similar in nature unless any of the following applies:

1. A general permit is prohibited by federal law.
2. The issuance of an alternative type of permit, license or authorization is specifically authorized by state statute.
3. The issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements.
4. The issuance of a general permit would result in additional regulatory requirements or costs being placed on the permit applicant.
5. The permit, license or authorization is issued pursuant to section 8-126, 8-503, 8-505, 23-504, 36-592, 36-594.01, 36-595, 36-596, 36-596.54, 41-1967.01 or 46-807.
6. The permit, license or authorization is issued pursuant to title V of the clean air act.

B. The agency retains the authority to revoke an applicant's ability to operate under a general permit and to require the applicant to obtain a traditional permit if the applicant is in substantial noncompliance with the applicable requirements for the general permit.

41-1038. Rules; restrictions; affirmative defense; exceptions; definition

A. Notwithstanding any other law, an agency may not adopt any new rule that would increase existing regulatory restraints or burdens on the free exercise of property rights or the freedom to engage in an otherwise lawful business or occupation unless the rule is either of the following:

1. A component of a comprehensive effort to reduce regulatory restraints or burdens.
2. Necessary to implement statutes or required by a final court order or decision.

B. Any person who is subject to a civil or criminal proceeding arising from the enforcement of a rule in violation of subsection A of this section has an affirmative defense to the enforcement action. Any court or administrative body considering or reviewing the defense shall rule on its merits without deference to any legislative, administrative or executive finding concerning the rule. The court or administrative body may award the prevailing party, other than the agency, attorney fees and costs.

C. This section does not apply to rules that either:

1. Govern public employees.
2. Are necessary to protect public health and safety.
3. Are necessary to avoid sanctions that would result from a failure to take rulemaking action pursuant to a court order or federal law.

D. For the purposes of this section, agency does not include any board, commission, department, officer or other administrative unit of this state established under the authority of the constitution of Arizona.

E. For the purposes of this section, "to protect public health and safety" means the immediate need to address or prevent an outbreak of an infectious disease, a disaster or any other catastrophic event.

41-1051. Governor's regulatory review council; membership; terms; compensation; powers

A. The governor's regulatory review council is established consisting of six members who are appointed by the governor pursuant to section 38-211 and who are subject to sections 38-291 and 38-295 and the director of the department of administration or the assistant director of the department of administration who is responsible for administering the council. The director or assistant director is an ex officio member and chairperson of the council. The council shall elect a vice-chairperson to serve as chairperson in the chairperson's absence. The governor shall appoint at least one member who represents the public interest, at least one member who represents the business community, at least one member who is a small business owner, one member from a list of three persons who are not legislators submitted by the president of the senate and one member from a list of three persons who are not legislators submitted by the speaker of the house of representatives. At least one member of the council shall be an attorney licensed to practice law in this state. The governor shall appoint the members of the council for staggered terms of three years. A vacancy occurring during the term of office of any member shall be filled by appointment by the governor for the unexpired portion of the term in the same manner as provided in this section.

B. The council shall meet at least once a month at a time and place set by the chairperson and at other times and places as the chairperson deems necessary.

C. Members of the council are eligible to receive compensation in an amount of two hundred dollars for each day on which the council meets and reimbursement of expenses pursuant to title 38, chapter 4, article 2.

D. The chairperson, subject to chapter 4, article 4 and, as applicable, articles 5 and 6 of this title, shall employ, determine the conditions of employment of and specify the duties of administrative, secretarial and clerical employees as the chairperson deems necessary.

E. The council may make rules pursuant to this chapter to carry out the purposes of this chapter.

F. The council shall make a list of agency rules approved or returned pursuant to sections 41-1027 and 41-1052 and section 41-1056, subsection C for the previous twelve-month period available to the public on request and on the council's website.

41-1052. Council review and approval

A. Before filing a final rule subject to this section with the secretary of state, an agency shall prepare, transmit to the council and the committee and obtain the council's approval of the rule and its preamble and economic, small business and consumer impact statement that meets the requirements of section 41-1055. The office of economic opportunity shall prepare the economic, small business and consumer impact statement.

B. The council shall accept an early review petition of a proposed rule, in whole or in part, if the proposed rule is alleged to violate any of the criteria prescribed in subsection D of this section and if the early petition is filed by a person who would be adversely impacted by the proposed rule. The council may determine whether the proposed rule, in whole or in part, violates any of the criteria prescribed in subsection D of this section.

C. Within one hundred twenty days after receipt of the rule, preamble and economic, small business and consumer impact statement, the council shall review and approve or return, in whole or in part, the rule, preamble or economic, small business and consumer impact statement. An agency may resubmit a rule, preamble or economic, small business and consumer impact statement if the council returns the rule, economic, small business and consumer impact statement or preamble, in whole or in part, to the agency.

D. The council shall not approve the rule unless:

1. The economic, small business and consumer impact statement contains information from the state, data and analysis prescribed by this article.
2. The economic, small business and consumer impact statement is generally accurate.
3. The probable benefits of the rule outweigh within this state the probable costs of the rule and the agency has demonstrated that it has selected 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.
4. The rule is written in a manner that is clear, concise and understandable to the general public.
5. The rule is not illegal, inconsistent with legislative intent or beyond the agency's statutory authority.
6. The agency adequately addressed, in writing, the comments on the proposed rule and any supplemental proposals.
7. The rule is not a substantial change, considered as a whole, from the proposed rule and any supplemental notices.
8. The preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.

9. The rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

10. If a rule requires a permit, the permitting requirement complies with section 41-1037.

E. The council shall verify that a rule with new fees does not violate section 41-1008. The council shall not approve a rule that contains a fee increase unless two-thirds of the voting quorum present vote to approve the rule.

F. The council shall verify that a rule with an immediate effective date complies with section 41-1032. The council shall not approve a rule with an immediate effective date unless two-thirds of the voting quorum present vote to approve the rule.

G. If the rule relies on scientific principles or methods, including a study disclosed pursuant to subsection D, paragraph 8 of this section, and a person submits an analysis to the council questioning whether the rule is based on valid scientific or reliable principles or methods, the council shall not approve the rule unless the council determines that the rule is based on valid scientific or reliable principles or methods that are specific and not of a general nature. In making a determination of reliability or validity, the council shall consider the following factors as applicable to the rule:

1. The authors of the study, principle or method have subject matter knowledge, skill, experience, training and expertise.

2. The study, principle or method is based on sufficient facts or data.

3. The study is the product of reliable principles and methods.

4. The study and its conclusions, principles or methods have been tested or subjected to peer reviewed publications.

5. The known or potential error rate of the study, principle or method has been identified along with its basis.

6. The methodology and approach of the study, principle or method are generally accepted in the scientific community.

H. The council may require a representative of an agency whose rule is under examination to attend a council meeting and answer questions. The council may also communicate to the agency its comments on any rule, preamble or economic, small business and consumer impact statement and require the agency to respond to its comments in writing.

I. At any time during the thirty days immediately following receipt of the rule, a person may submit written comments to the council that are within the scope of subsection D, E, F or G of this section. The council may permit testimony at a council meeting within the scope of subsection D, E, F or G of this section.

J. If the agency makes a good faith effort to comply with the requirements prescribed in this article and has explained in writing the methodology used to produce the economic, small business and consumer impact statement, the rule may not be invalidated after it is finalized on the ground that the contents of the economic, small business and consumer impact statement are insufficient or inaccurate or on the ground that the council erroneously approved the rule, except as provided by section 41-1056.01.

K. The absence of comments pursuant to subsection D, E, F or G of this section or article 4.1 of this chapter does not prevent the council from acting pursuant to this section.

L. The council shall review and approve or reject a notice of proposed expedited rule making pursuant to section 41-1027.

41-1053. Council review of expedited rules

A. After receipt of the expedited rule package from the agency, the council shall place the expedited rule on its consent agenda for approval unless a member of the council or the committee requests a hearing.

B. If a hearing is requested, the council shall act on the expedited rule pursuant to section 41-1052 or shall remand the expedited rule to the agency for initiation of a rule making pursuant to sections 41-1022, 41-1023 and 41-1024.

C. The council, at any time a proposed expedited rule is pending, may disapprove the expedited rule making and order initiation of a regular rule making pursuant to sections 41-1022, 41-1023 and 41-1024.

41-1055. Economic, small business and consumer impact statement

A. The economic, small business and consumer impact summary in the preamble shall include:

1. An identification of the proposed rule making, including all of the following:
(a) The conduct and its frequency of occurrence that the rule is designed to change.
(b) The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed.

(c) The estimated change in frequency of the targeted conduct expected from the rule change.

2. A brief summary of the information included in the economic, small business and consumer impact statement.

3. If the economic, small business and consumer impact summary accompanies a proposed rule or a proposed expedited rule, the name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement.

B. The economic, small business and consumer impact statement shall include:

1. An identification of the proposed rule making.

2. An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rule making.

3. A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rule making. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule.

The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.

(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rule making.

(c) The probable costs and benefits to businesses directly affected by the proposed rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rule making.

4. A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rule making.

5. A statement of the probable impact of the proposed rule making on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rule making.

(b) The administrative and other costs required for compliance with the proposed rule making.

(c) A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rule making.

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 rule making, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

8. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

C. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement.

D. An agency is not required to prepare an economic, small business and consumer impact statement pursuant to this chapter and is not required to file a petition pursuant to subsection E of this section for the following rule makings:

1. Initial making, but not renewal, of an emergency rule pursuant to section 41-1026.

2. Proposed expedited rule making or final expedited rule making.

E. Before filing a proposed rule with the secretary of state, an agency may petition the council for a determination that the agency is not required to file an economic, small business and consumer impact statement. The petition shall demonstrate both of the following:

1. The rule making decreases monitoring, record keeping, costs or reporting burdens on agencies, political subdivisions, businesses or persons.

2. The rule making does not increase monitoring, record keeping, costs or reporting burdens on persons subject to the proposed rule making.

F. The council shall place a petition under subsection E of this section on the agenda of its next meeting if at least four council members make such a request of the council chairperson within two weeks after the filing of the petition.

G. The preamble for a rule making that is exempt pursuant to subsection D or E of this section shall state that the rule making is exempt from the requirements to prepare and file an economic, small business and consumer impact statement.

H. The cost-benefit analysis required by subsection B of this section shall calculate only the costs and benefits that occur in this state.

I. If a person submits an analysis to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states, the agency shall consider the analysis.

41-1056. [Review by agency](#)

A. At 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. The agency shall prepare and obtain council approval of a written report summarizing its findings, its supporting reasons and any proposed course of action. The report shall contain a certification that the agency is in compliance with section 41-1091. For each rule, the report shall include a concise analysis of all of the following:

1. The rule's effectiveness in achieving its objectives, including a summary of any available data supporting the conclusions reached.
2. Written criticisms of the rule received during the previous five years, including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.
3. Authorization of the rule by existing statutes.
4. Whether the rule is consistent with statutes or other rules made by the agency and current agency enforcement policy.
5. The clarity, conciseness and understandability of the rule.
6. The estimated economic, small business and consumer impact of the rules as compared to the economic, small business and consumer impact statement prepared on the last making of the rules.
7. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.
8. If applicable, that the agency completed the previous five-year review process.
9. 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.
10. A determination that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.
11. 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.

B. An agency may also include as part of the report the text of a proposed expedited rule pursuant to section 41-1027.

C. The council shall schedule the periodic review of each agency's rules and shall approve or return, in whole or in part, the agency's report on its review. The council may grant an agency an extension from filing an agency's report. If the council returns an agency's report, in whole or in part, the council shall inform the agency of the manner in which its report is inadequate and, in consultation with the agency, shall schedule submission of a revised report. The council shall not approve a report unless the report complies with subsection A of this section.

D. The council may review rules outside of the five-year review process if requested by at least four council members.

E. The council may require the agency to propose an amendment or repeal of the rule by a date no earlier than six months after the date of the meeting at which the council considers the agency's report on its rule if the council determines the agency's analysis under subsection A of this section demonstrates that the rule is materially flawed, including that the rule:

1. Is not authorized by statute.
2. Is inconsistent with other statutes, rules or agency enforcement policies and the inconsistency results in a significant burden on the regulated public.
3. Imposes probable costs, including costs to the regulated person, that significantly exceed the probable benefits of the rule within this state.
4. Is more stringent than a corresponding federal law and there is no statutory authority to exceed the requirements of federal law.
5. Is not clear, concise and understandable.
6. Does not use general permits if required under section 41-1037.
7. Does not impose the least burden to persons regulated by the rule as necessary to achieve the underlying regulatory objective of the rule.
8. Does not rely on valid scientific or reliable principles and methods, including a study, if the rule relies on scientific principles or methods, and a person has submitted an analysis under subsection A of this section questioning whether the rule is based on valid scientific or reliable principles or methods. In making a determination of validity or reliability, the council shall consider the factors listed in section 41-1052, subsection G.

F. An agency may request an extension of no longer than one year from the date specified by the council pursuant to subsection E of this section by sending a written request to the council that:

1. Identifies the reason for the extension request.
2. Demonstrates good cause for the extension.

G. The agency shall notify the council of an amendment or repeal of a rule for which the council has set an expiration date under subsection E of this section. If the agency does not amend or repeal the rule by the date specified by the council under subsection E of this section or the extended date under subsection F of this section, the rule automatically expires. The council shall file a notice of rule expiration with the secretary of state and notify the agency of the expiration of the rule.

H. The council may reschedule a report or portion of a report for any rule that is scheduled for review and that was initially made or substantially revised within two years before the due date of the report as scheduled by the council.

- I. If an agency finds that it cannot provide the written report to the council by the date it is due, the agency may file an extension with the council before the due date indicating the reason for the extension. The timely filing for an extension permits the agency to submit its report on or before the date prescribed by the council.
- J. If an agency fails to submit its report, including a revised report, pursuant to subsection A or C of this section, or file an extension before the due date of the report or if it files an extension and does not submit its report within the extension period, the rules scheduled for review expire and the council shall:
1. Cause a notice to be published in the next register that states the rules have expired and are no longer enforceable.
 2. Notify the secretary of state that the rules have expired and that the rules are to be removed from the code.
 3. Notify the agency that the rules have expired and are no longer enforceable.
- K. If a rule expires as provided in subsection J of this section and the agency wishes to reestablish the rule, the agency shall comply with the requirements of this chapter.
- L. Not less than ninety days before the due date of a report, the council shall send a written notice to the head of the agency whose report is due. The notice shall list the rules to be reviewed and the date the report is due.
- M. A person who is regulated or could be regulated by an obsolete rule may petition the council to require an agency that has the obsolete rule to consider including the rule in the five-year report with a recommendation for repeal of the rule.
- N. A person who is required to obtain or could be required to obtain a license may petition the council to require an agency to consider including a recommendation for reducing a licensing time frame in the five-year report.

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.

41-1057. Exemptions

A. In addition to the exemptions stated in section 41-1005, this article does not apply to:

1. An agency which is a unit of state government headed by a single elected official.
2. The corporation commission, which shall adopt substantially similar rule review procedures, including the preparation of an economic impact statement and a statement of the effect of the rule on small business.
3. The industrial commission of Arizona when incorporating by reference the federal occupational safety and health standards as published in 29 Code of Federal Regulations parts 1904, 1910, 1926 and 1928.
4. The Arizona state lottery if making rules that relate only to the design, operation or prize structure of a lottery game.

B. An agency exempt under subsection A of this section may elect to follow the requirements of this article instead of section 41-1044 for a particular rule making. The agency shall include with a final rule making filed with council a statement that the agency has elected to follow the requirements of this article.

38-711. Definitions

In this article, unless the context otherwise requires:

1. "Active member" means a member as defined in paragraph 23, subdivision (b) of this section who satisfies the eligibility criteria prescribed in section 38-727 and who is currently making member contributions as prescribed in section 38-736.
2. "Actuarial equivalent" means equality in value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest rate assumptions approved from time to time by the board.
3. "ASRS" means the Arizona state retirement system established by this article.
4. "Assets" means the resources of ASRS including all cash, investments or securities.
5. "Average monthly compensation" means:
 - (a) For a member whose membership in ASRS commenced before January 1, 1984 and who left the member's contributions on deposit or reinstated forfeited credited service pursuant to section 38-742 for a period of employment that commenced before January 1, 1984, the higher of either:
 - (i) The monthly average of compensation that is calculated pursuant to subdivision (b) of this paragraph.
 - (ii) The monthly average of compensation on which contributions were remitted during a period of sixty consecutive months during which the member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation is based on the total consecutive months worked. Payments for accumulated vacation or annual leave, sick leave, compensatory time or other forms of termination pay that, before August 12, 2005, constitute compensation for members whose membership in ASRS commenced before January 1, 1984, do not cease to be included as compensation if paid in the form of nonelective employer contributions under a 26 United States Code section 403(b) plan if all payments of employer and employee contributions are made at the time of termination. Contributions shall be made to ASRS on these amounts pursuant to sections 38-735, 38-736 and 38-737.
 - (b) For a member whose membership in ASRS commenced on or after January 1, 1984 but before July 1, 2011, the monthly average of compensation on which contributions were remitted during a period of thirty-six consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The thirty-six consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than thirty-six consecutive months, the average monthly compensation shall be based on the total consecutive months worked.
 - (c) For a member whose membership in ASRS commenced on or after July 1, 2011, the monthly average of compensation on which contributions were remitted during

a period of sixty consecutive months during which a member receives the highest compensation within the last one hundred twenty months of credited service. Any month for which no contributions are reported to ASRS or that falls within a period of nonpaid or partially paid leave of absence or sabbatical leave shall be excluded from the computation. The sixty consecutive months may entirely precede, may be both before and after or may be completely after any excluded months. If the member was employed for less than sixty consecutive months, the average monthly compensation shall be based on the total consecutive months worked.

6. "Board" means the ASRS board established in section 38-713.

7. "Compensation" means the gross amount paid to a member by an employer as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes, but does not include amounts paid in excess of compensation limits established in section 38-746. Compensation includes amounts paid as salary or wages to a member by a second employer if the member meets the requirements prescribed in paragraph 23, subdivision (b) of this section with that second employer.

Compensation, as provided in paragraph 5, subdivision (b) or (c) of this section, does not include:

(a) Lump sum payments, on termination of employment, for accumulated vacation or annual leave, sick leave, compensatory time or any other form of termination pay whether the payments are made in one payment or by installments over a period of time.

(b) Damages, costs, attorney fees, interest or other penalties paid pursuant to a court order or a compromise settlement or agreement to satisfy a grievance or claim even though the amount of the payment is based in whole or in part on previous salary or wage levels, except that, if the court order or compromise settlement or agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time. If the amount directed to be paid is less than the actual salary or wages that would have been paid for the period if service had been performed, the contributions for the period shall be based on the amount of compensation that would have been paid if the service had been performed.

(c) Payment, at the member's option, in lieu of fringe benefits that are normally paid for or provided by the employer.

(d) Merit awards pursuant to section 38-613 and performance bonuses paid to assistant attorneys general pursuant to section 41-192.

(e) Amounts that are paid as salary or wages to a member for which employer contributions have not been paid.

8. "Contingent annuitant" means the person named by a member to receive retirement income payable following a member's death after retirement as provided in section 38-760.

9. "Credited service" means, subject to section 38-739, the number of years standing to the member's credit on the books of ASRS during which the member made the required contributions.

10. "Current annual compensation" means the greater of:

- (a) Annualized compensation of the typical pay period amount immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount shall be determined by taking the five pay periods immediately before the date of a request, disregarding the highest and lowest compensation amount pay periods and averaging the three remaining pay periods.
- (b) Annualized compensation of the partial year, disregarding the first compensation amount pay period, if the member has less than twelve months total compensation on the date of a request to purchase credited service pursuant to section 38-743, 38-744 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, 38-744 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, 38-744 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.
11. "Early retirement" means retirement before a member's normal retirement date after five years of total credited service and attainment of age fifty.
12. "Effective date" means July 1, 1970, except with respect to employers and members whose contributions to ASRS commence thereafter, the effective date of their membership in ASRS is as specified in the applicable joinder agreement.
13. "Employer" means:
- (a) This state.
 - (b) Participating political subdivisions.
 - (c) Participating political subdivision entities.
14. "Employer contributions" means all amounts paid into ASRS by an employer on behalf of a member.
15. "Fiscal year" means the period from July 1 of any year to June 30 of the following year.
16. "Inactive member" means a member who previously made contributions to ASRS and who satisfies each of the following:
- (a) Has not retired.
 - (b) Is not eligible for active membership in ASRS.
 - (c) Is not currently making contributions to ASRS.
 - (d) Has not withdrawn contributions from ASRS.
17. "Interest" means the assumed actuarial investment earnings rate approved by the board.
18. "Internal revenue code" means the United States internal revenue code of 1986, as amended.
19. "Investment manager" means the persons, companies, banks, insurance company investment funds, mutual fund companies, management or any combinations of those entities that are appointed by ASRS and that have responsibility and authority for investment of the monies of ASRS.
20. "Late retirement" means retirement after normal retirement.

21. "Leave of absence" means any unpaid leave authorized by the employer, including leaves authorized for sickness or disability or to pursue education or training.

22. "Life annuity" means equal monthly installments payable during the member's lifetime after retirement.

23. "Member":

(a) Means any employee of an employer on the effective date.

(b) Means all employees of an employer who are eligible for membership pursuant to section 38-727 and who are engaged to work at least twenty weeks in each fiscal year and at least twenty hours each week.

(c) Means any person receiving a benefit under ASRS.

(d) Means any person who is a former active member of ASRS and who has not withdrawn contributions from ASRS pursuant to section 38-740.

(e) Does not include any employee of an employer who is otherwise eligible pursuant to this article and who begins service in a limited appointment for not more than eighteen months on or after July 1, 1979. If the employment exceeds eighteen months, the employee shall be covered by ASRS as of the beginning of the nineteenth month of employment. In order to be excluded under this subdivision, classifications of employees designated by employers as limited appointments must be approved by the director.

(f) Does not include any leased employee. For the purposes of section 414(n) of the internal revenue code, "leased employee" means an individual who:

(i) Is not otherwise an employee of an employer.

(ii) Pursuant to a leasing agreement between the employer and another person, performs services for the employer on a substantially full-time basis for at least one year.

(iii) Performs services under the primary direction or control of the employer.

24. "Member contributions" means all amounts paid to ASRS by a member.

25. "Normal costs" means the sum of the individual normal costs for all active members for each fiscal year. The normal cost for an individual active member is the cost that is assigned to the fiscal year, through June 29, 2016, using the projected unit credit method and, beginning June 30, 2016, using the actuarial cost method determined by the board pursuant to section 38-714.

26. "Normal retirement age" means the age at which a member reaches the member's normal retirement date.

27. "Normal retirement date" means the earliest of the following:

(a) For a member whose membership commenced before July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) The first day that the sum of a member's age and years of total credited service equals eighty.

(b) For a member whose membership commenced on or after July 1, 2011:

(i) A member's sixty-fifth birthday.

(ii) A member's sixty-second birthday and completion of at least ten years of credited service.

(iii) A member's sixtieth birthday and completion of at least twenty-five years of credited service.

(iv) A member's fifty-fifth birthday and completion of at least thirty years of credited service.

28. "Political subdivision" means any political subdivision of this state and includes a political subdivision entity.

29. "Political subdivision entity" means an entity:

(a) That is located in this state.

(b) That is created in whole or in part by political subdivisions, including instrumentalities of political subdivisions.

(c) Where a majority of the membership of the entity is composed of political subdivisions.

(d) Whose primary purpose is the performance of a government related service.

30. "Retired member" means a member who is receiving retirement benefits pursuant to this article.

31. "Service year" means fiscal year, except that:

(a) If the normal work year required of a member is less than the full fiscal year but is for a period of at least nine months, the service year is the normal work year.

(b) For a salaried member employed on a contract basis under one contract, or two or more consecutive contracts, for a total period of at least nine months, the service year is the total period of the contract or consecutive contracts.

(c) In determining average monthly compensation pursuant to paragraph 5 of this section, the service year is considered to be twelve months of compensation.

32. "State" means this state, including any department, office, board, commission, agency, institution or other instrumentality of this state.

33. "Vested" means that a member is eligible to receive a future retirement benefit.

38-714. [Powers and duties of ASRS and board](#)

A. ASRS shall have the powers and privileges of a corporation, shall have an official seal and shall transact all business in the name "Arizona state retirement system", and in that name may sue and be sued.

B. The board is responsible for supervising the administration of this article by the director of ASRS.

C. The board is responsible for the performance of fiduciary duties and other responsibilities required to preserve and protect the retirement trust fund established by section 38-712.

D. The board shall not advocate for or against legislation providing for benefit modifications, except that the board shall provide technical and administrative information regarding the impact of benefit modification legislation.

E. The board may:

1. Determine the rights, benefits or obligations of any person under this article and afford any person dissatisfied with a determination a hearing on the determination. The board may delegate the duty and authority to act on the board's behalf to a committee of the board for the purposes of this paragraph and title 41, chapter 6, article 10 relating to any decision made under this paragraph by that committee of the board.

2. Determine the amount, manner and time of payment of any benefits under this article.

3. Recommend amendments to this article and articles 2.1 and 7 of this chapter that are required for efficient and effective administration.

4. Adopt, amend or repeal rules for the administration of the plan, this article and articles 2.1 and 7 of this chapter.

F. Beginning June 30, 2016, the board shall determine which of the generally accepted actuarial cost methods shall be used in the annual actuarial valuation of the plan.

G. The board and ASRS are not subject to title 41, chapter 6, except title 41, chapter 6, article 10, for actuarial assumptions and calculations, investment strategy and decisions and accounting methodology.

H. The board shall submit to the governor and legislature for each fiscal year no later than eight months after the close of the fiscal year a report of its operations and the operations of ASRS. The report shall follow generally accepted accounting principles and generally accepted financial reporting standards and shall include:

1. A report on an actuarial valuation of ASRS assets and liabilities.

2. Any other statistical and financial data that may be necessary for the proper understanding of the financial condition of ASRS and the results of board operations.

3. On request of the governor or the legislature, a list of investments owned. This list shall be provided in an electronic format.

4. An estimate of the aggregate fees paid for private equity investments, including management fees and performance fees.

I. The board shall:

1. Prepare and publish a synopsis of the annual report for the information of ASRS members.

2. Contract for a study of the mortality, disability, service and other experiences of the members and employers participating in ASRS. The study shall be conducted for fiscal year 1990-1991 and for at least every fifth fiscal year thereafter. A report of the study shall be completed within eight months after the close of the applicable fiscal year and shall be submitted to the governor and the legislature.

3. Conduct an annual actuarial valuation of ASRS assets and liabilities.

J. The auditor general may make an annual audit of ASRS and transmit the results to the governor and the legislature.

38-738. [Adjustment and refund](#)

A. If more than the correct amount of employer or member contributions is paid into ASRS by an employer through a mistake of fact, ASRS shall return those contributions to the employer if the employer requests return of the contributions within one year after the date of overpayment. ASRS shall not pay an employer earnings attributable to excess contributions but shall reduce the amount returned to an employer pursuant to this section by the amount of losses attributable to the excess contributions.

B. If less than the correct amount of employer or member contributions is paid into ASRS by an employer, the following apply:

1. The member shall pay an amount that is equal to the amount that would have been paid in member contributions for the period in question. The member's payments shall be made as provided in section 38-747. If the member does not

make the payment within ninety days of being notified by ASRS that the employer has paid all amounts due from the employer, the unpaid amount accrues interest until the amount is paid in full. The member is responsible for payment of the unpaid amount and interest. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

2. If the member contributions to ASRS made pursuant to this subsection exceed the limits prescribed in section 38-747, subsection E when taking into account other annual additions of the member for the limitation year, the amount to be paid by the member shall be adjusted as provided in section 38-747. For the purposes of this subsection, "limitation year" has the same meaning prescribed in section 38-769.

3. The employer shall pay to ASRS an amount equal to the amount that would have been paid in employer contributions for the period in question together with accumulated interest that would have accrued on both the employer and member contributions due. If the employer does not remit full payment of all employer contributions and all interest due within ninety days of being notified by ASRS of the amount due, the unpaid amount accrues interest until the amount is paid in full. The interest rate is the interest rate assumption that is approved by the board for actuarial equivalency for the period in question to the date payment is received.

4. On satisfaction of the requirements of this subsection, the member's salary history on the records of ASRS shall be adjusted and any additional service credits acquired by the member shall be reinstated.

5. If the member retires before all contributions are made pursuant to this subsection, the member's benefits shall be calculated only based on the contributions actually made.

6. Annual additions shall be determined as provided in section 38-747, subsection O.

7. The initiator of the request for correction of salary history and service credits on records of ASRS is responsible for providing credible evidence of past employment and compensation to ASRS in a form or forms that would lead a reasonable person to conclude that a period of employment occurred under circumstances that made the employee eligible for membership in ASRS during that period. A determination of eligibility by ASRS may be appealed to the ASRS board in a manner prescribed by the board.

C. Subsection B of this section applies to eligible verified service that occurred less than or equal to fifteen years before the date the initiator of the request for correction of salary history and service credits on the records of ASRS provides ASRS with credible evidence in writing that less than the correct amount of contributions were paid into ASRS or ASRS otherwise determines that less than the correct amount of contributions were made.

D. Eligible verified service that is more than fifteen years before the date the initiator of the request for correction of salary history and service credits on the records of ASRS provides ASRS with credible evidence in writing that less than the correct amount of contributions were paid into ASRS or ASRS otherwise determines that less than the correct amount of contributions were made is considered public service credit. The member may purchase this service pursuant to section 38-743.

38-783. Retired members; dependents; health insurance; premium payment; separate account; definitions

A. Subject to subsections G, H and I of this section, the board shall pay from ASRS assets part of the single coverage premium of any health and accident insurance for each retired member, contingent annuitant or member with a disability of ASRS if the member elects to participate in the coverage provided by ASRS or section 38-651.01 or elects to participate in a health and accident insurance program provided or administered by an employer or paid for, in whole or in part, by an employer to an insurer. A contingent annuitant must be receiving a monthly retirement benefit from ASRS in order to obtain any premium payment provided by this section. The board shall pay:

1. Up to one hundred fifty dollars per month for a member of ASRS who is not eligible for medicare if the retired member or member with a disability has ten or more years of credited service.
2. Up to one hundred dollars per month for each member of ASRS who is eligible for medicare if the retired member or member with a disability has ten or more years of credited service.

B. Subject to subsections G, H and I of this section, the board shall pay from ASRS assets part of the family coverage premium of any health and accident insurance for a retired member, contingent annuitant or member with a disability of ASRS who elects family coverage and who otherwise qualifies for payment pursuant to subsection A of this section. If a member of ASRS and the member's spouse are both either retired or have disabilities under ASRS and apply for family coverage, the member who elects family coverage is entitled to receive the payments under this section as if they were both applying under a single coverage premium unless the payment under this section for family coverage is greater. Payment under this subsection is in the following amounts:

1. Up to two hundred sixty dollars per month if the member of ASRS and one or more dependents are not eligible for medicare.
2. Up to one hundred seventy dollars per month if the member of ASRS and one or more dependents are eligible for medicare.
3. Up to two hundred fifteen dollars per month if either:
 - (a) The member of ASRS is not eligible for medicare and one or more dependents are eligible for medicare.
 - (b) The member of ASRS is eligible for medicare and one or more dependents are not eligible for medicare.

C. In addition each retired member, contingent annuitant or member with a disability of ASRS with less than ten years of credited service and a dependent of such a retired member, contingent annuitant or member with a disability who elects to participate in the coverage provided by ASRS or section 38-651.01 or who elects to participate in a health and accident insurance program provided or administered by an employer or paid for, in whole or in part, by an employer to an insurer is entitled to receive a proportion of the full benefit prescribed by subsection A or B of this section according to the following schedule:

1. 9.0 to 9.9 years of credited service, ninety percent.
2. 8.0 to 8.9 years of credited service, eighty percent.
3. 7.0 to 7.9 years of credited service, seventy percent.
4. 6.0 to 6.9 years of credited service, sixty percent.

5. 5.0 to 5.9 years of credited service, fifty percent.

6. Those with less than five years of credited service do not qualify for the benefit.

D. The board shall not pay more than the amount prescribed in this section for a member of ASRS.

E. Notwithstanding subsections A, B and C of this section, for a member who retires on or after August 2, 2012, the board shall not make a payment under this section to a retired member, contingent annuitant or member with a disability who is enrolled in an employer's active employee group health and accident insurance program either as the insured or as a dependent, except that if the retired member, contingent annuitant or member with a disability is enrolled as a dependent and the premium paid to the employer's active employee group health and accident insurance program is not subsidized by the employer, the retired member, contingent annuitant or member with a disability is entitled to receive the amount provided in subsection A of this section.

F. The board shall establish a separate account that consists of the benefits provided by this section. The board shall not use or divert any part of the corpus or income of the account for any purpose other than the provision of benefits under this section unless the liabilities of ASRS to provide the benefits are satisfied. If the liabilities of ASRS to provide the benefits described in this section are satisfied, the board shall return any amount remaining in the account to the employer.

G. Payment of the benefits provided by this section is subject to the following conditions:

1. The payment of the benefits is subordinate to the payment of retirement benefits payable by ASRS.

2. The total of contributions for the benefits and actual contributions for life insurance protection, if any, shall not exceed twenty-five percent of the total actual employer and employee contributions to ASRS, less contributions to fund past service credits, after the day the account is established.

3. The board shall deposit the benefits provided by this section in the account.

4. The contributions by the employer to the account shall be reasonable and ascertainable.

H. A member who elects to receive a retirement benefit pursuant to section 38-760, subsection B, paragraph 1 may elect at the time of retirement an optional form of health and accident insurance premium benefit payment pursuant to this subsection as follows:

1. The optional premium benefit payment shall be an amount prescribed by subsection A, B or C of this section that is actuarially reduced to the retiring member for life. The amount of the optional premium benefit payment shall be the actuarial equivalent of the premium benefit payment to which the retired member would otherwise be entitled. The election in a manner prescribed by the board shall name the contingent annuitant and may be revoked at any time before the retiring member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board as follows:

(a) If the retired member names a different contingent annuitant, the optional premium benefit payment shall be adjusted to the actuarial equivalent of the original premium benefit payment based on the age of the new contingent annuitant. The adjustment shall include all postretirement increases or decreases in

amounts prescribed by subsection A, B or C of this section that are authorized by law after the retired member's date of retirement. Payment of this adjusted premium benefit payment shall continue under the provisions of the optional premium benefit payment previously elected by the retired member. A retired member cannot name a different contingent annuitant if the retired member has at any time rescinded the optional form of health and accident insurance premium benefit payment.

(b) If the retired member rescinds the election, the retired member shall thereafter receive the premium benefit payment that the retired member would otherwise be entitled to receive if the retired member had not elected the optional premium benefit payment, including all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the member's date of retirement. The increased benefit payment shall continue during the remainder of the retired member's lifetime. The decision to rescind shall be irrevocable.

2. If, at the time of the retired member's death:

(a) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection B or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A or C of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

I. A member who elects to receive a retirement benefit pursuant to section 38-760, subsection B, paragraph 2 may elect at the time of retirement an optional form of health and accident insurance premium benefit payment pursuant to this subsection as follows:

1. The optional premium benefit payment shall be an amount prescribed by subsection A, B or C of this section that is actuarially reduced with payments for five, ten or fifteen years that are not dependent on the continued lifetime of the retired member but whose payments continue for the retired member's lifetime

beyond the five, ten or fifteen year period. The election in a manner prescribed by the board shall name the contingent annuitant and may be revoked at any time before the retiring member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board. If the retired member rescinds the election, the retired member shall thereafter receive the premium benefit payment that the retired member would otherwise be entitled to receive if the retired member had not elected the optional premium benefit payment, including all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the member's date of retirement. The increased benefit payment shall continue during the remainder of the retired member's lifetime. The decision to rescind shall be irrevocable.

2. If, at the time of the retired member's death:

(a) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection B or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A or C of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

J. If, at the time of retirement, a retiring member does not elect to receive a reduced premium benefit payment pursuant to subsection H or I of this section, the retired member's contingent annuitant is not eligible at any time for the optional premium benefit payment.

K. If a member who is eligible for benefits pursuant to this section forfeits the member's interest in the account before the termination of ASRS, an amount equal to the amount of the forfeiture shall be applied as soon as possible to reduce employer contributions to fund the benefits provided by this section.

L. A contingent annuitant is not eligible for any premium benefit payment if the contingent annuitant was not enrolled in an eligible health and accident insurance plan at the time of the retired member's death or if the contingent annuitant is not the dependent beneficiary or insured surviving dependent as provided in section 38-782.

M. For the purposes of this section:

1. "Account" means the separate account established pursuant to subsection F of this section.
2. "Credited service" includes prior service.
3. "Prior service" means service for this state or a political subdivision of this state before membership in the defined contribution program administered by ASRS.
4. "Subsidized" means a portion of the total premium is paid by the employer, but does not necessarily mean a plan in which the employer uses blended rates to determine the total premium.

DEPARTMENT OF WATER RESOURCES
Title 12, Chapter 15, Department of Water Resources



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: May 4, 2021

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

FROM: Council Staff

DATE: April 5, 2021

SUBJECT: DEPARTMENT OF WATER RESOURCES (F21-0507)
Title 12, Chapter 15, All Articles, Department of Water Resources

Summary:

This Five Year Review Report (5YRR) from the Department of Water Resources (Department) relates to rules in Title 12, Chapter 15, regarding the Department. The rules address the following:

- Article 1: Fees;
- Article 2: Procedural Rules;
- Article 3: Stockpond and Other Surface Water Rules;
- Article 4: Licensing Time-Frames;
- Article 7: Assured and Adequate Water Supply;
- Article 8: Well Construction and Licensing of Well Drillers;
- Article 9: Water Measurement;
- Article 10: Reporting Requirements for Annual Reports, Annual Accounts, Operating Flexibility Accounts, and Conveyances of Groundwater Rights;
- Article 11: Inspections and Audits;
- Article 12: Dam Safety Procedures; and
- Article 13: Well Spacing Requirements; Replacement Wells in Approximately the Same Location.

The Council approved the last 5YRR for these rules in May 2016. In this 5YRR, the Department conducted the analysis required under A.R.S. § 41-1056 separately for each article under review. Therefore, the Department indicates whether it completed the prior course of action proposed for that article in section 10 of each analysis. The following Articles did not have a prior proposed course of action:

- Article 2;
- Article 3;
- Article 9;
- Article 10;
- Article 11; and
- Article 13.

Proposed Action

- Article 1: Fees: **No proposed course of action.**
- Article 2: Procedural Rules: **No proposed course of action.**
- Article 3: Stockpond and Other Surface Water Rules: **No proposed course of action.**
- Article 4: Licensing Time-Frames: **No proposed course of action, however there are incorrect statutory citations in Table A of R12-15-401 as described in the report.**
- Article 7: Assured and Adequate Water Supply: **The Department identifies issues with these rules, but states that as long as the rulemaking moratorium remains in effect, it does not intend to proceed with a rule package unless it receives permission to do so.**
- Article 8: Well Construction and Licensing of Well Drillers: **The Department identifies issues with these rules, but states that as long as the rulemaking moratorium remains in effect, it does not intend to proceed with a rule package unless it receives permission to do so.**
- Article 9: Water Measurement: **No proposed course of action.**
- Article 10: Reporting Requirements for Annual Reports, Annual Accounts, Operating Flexibility Accounts, and Conveyances of Groundwater Rights: **No proposed course of action.**
- Article 11: Inspections and Audits: **No proposed course of action.**
- Article 12: Dam Safety Procedures: **The Department identifies issues with these rules, but states that as long as the rulemaking moratorium remains in effect, it does not intend to proceed with a rule package unless it receives permission to do so.**
- Article 13: Well Spacing Requirements; Replacement Wells in Approximately the Same Location: **No proposed course of action.**

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

Yes. The Department cites both general and specific statutory authority for the rules under review.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

After reviewing the economic, small business and consumer impact statements ("EIS") submitted when the rules were adopted, and examining the impact the rules have on the public, the Department states that the actual effect has been approximately the same as predicted in the EIS.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department states that the probable benefits of the fee rules outweigh within this state the probable costs of the rules and that the rules impose the least burden and costs on regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

- Article 1: Fees: **No**
- Article 2: Procedural Rules: **No**
- Article 3: Stockpond and Other Surface Water Rules: **No**
- Article 4: Licensing Time-Frames: **No**
- Article 7: Assured and Adequate Water Supply: **No**
- Article 8: Well Construction and Licensing of Well Drillers: **No**
- Article 9: Water Measurement: **No**
- Article 10: Reporting Requirements for Annual Reports, Annual Accounts, Operating Flexibility Accounts, and Conveyances of Groundwater Rights: **No**
- Article 11: Inspections and Audits: **No**
- Article 12: Dam Safety Procedures: **No**
- Article 13: Well Spacing Requirements; Replacement Wells in Approximately the Same Location: **No**

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

- Article 1: Fees: **Clear, concise, and understandable**
- Article 2: Procedural Rules: **Clear, concise, and understandable**
- Article 3: Stockpond and Other Surface Water Rules: **Clear, concise, and understandable**
- Article 4: Licensing Time-Frames: **Clear, concise, and understandable**

- Article 7: Assured and Adequate Water Supply: **Clear, concise, and understandable**
- Article 8: Well Construction and Licensing of Well Drillers: **Clear, concise, and understandable, but certain rules require stylistic changes to update language**
- Article 9: Water Measurement: **Clear, concise, and understandable**
- Article 10: Reporting Requirements for Annual Reports, Annual Accounts, Operating Flexibility Accounts, and Conveyances of Groundwater Rights: **Clear, concise, and understandable**
- Article 11: Inspections and Audits: **Clear, concise, and understandable**
- Article 12: Dam Safety Procedures: **Clear, concise, and understandable**
- Article 13: Well Spacing Requirements; Replacement Wells in Approximately the Same Location: **Clear, concise, and understandable**

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

- Article 1: Fees: **Consistent with other rules and statutes**
- Article 2: Procedural Rules: **Consistent with other rules and statutes**
- Article 3: Stockpond and Other Surface Water Rules: **Consistent with other rules and statutes**
- Article 4: Licensing Time-Frames: **Consistent with other rules and statutes**
- Article 7: Assured and Adequate Water Supply: **Consistent with other rules and statutes, except for three identified areas as described in the 5YRR**
- Article 8: Well Construction and Licensing of Well Drillers: **Consistent with other rules and statutes**
- Article 9: Water Measurement: **Consistent with other rules and statutes**
- Article 10: Reporting Requirements for Annual Reports, Annual Accounts, Operating Flexibility Accounts, and Conveyances of Groundwater Rights: **Consistent with other rules and statutes**
- Article 11: Inspections and Audits: **Consistent with other rules and statutes**
- Article 12: Dam Safety Procedures: **Consistent with other rules and statutes**
- Article 13: Well Spacing Requirements; Replacement Wells in Approximately the Same Location: **Consistent with other rules and statutes**

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

- Article 1: Fees: **Effective in achieving objectives**
- Article 2: Procedural Rules: **Effective in achieving objectives**
- Article 3: Stockpond and Other Surface Water Rules: **Effective in achieving objectives**
- Article 4: Licensing Time-Frames: **Effective in achieving objectives**
- Article 7: Assured and Adequate Water Supply: **Effective in achieving objectives**
- Article 8: Well Construction and Licensing of Well Drillers: **Effective in achieving objectives**
- Article 9: Water Measurement: **Effective in achieving objectives**

- Article 10: Reporting Requirements for Annual Reports, Annual Accounts, Operating Flexibility Accounts, and Conveyances of Groundwater Rights: **Effective in achieving objectives**
- Article 11: Inspections and Audits: **Effective in achieving objectives**
- Article 12: Dam Safety Procedures: **Effective in achieving objectives**
- Article 13: Well Spacing Requirements; Replacement Wells in Approximately the Same Location: **Effective in achieving objectives**

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

- Article 1: Fees: **Enforced without issue**
- Article 2: Procedural Rules: **Enforced without issue**
- Article 3: Stockpond and Other Surface Water Rules: **Enforced without issue**
- Article 4: Licensing Time-Frames: **Enforced without issue**
- Article 7: Assured and Adequate Water Supply: **Enforced without issue**
- Article 8: Well Construction and Licensing of Well Drillers: **Enforced without issue**
- Article 9: Water Measurement: **Enforced without issue**
- Article 10: Reporting Requirements for Annual Reports, Annual Accounts, Operating Flexibility Accounts, and Conveyances of Groundwater Rights: **Enforced without issue**
- Article 11: Inspections and Audits: **Enforced without issue**
- Article 12: Dam Safety Procedures: **Enforced without issue**
- Article 13: Well Spacing Requirements; Replacement Wells in Approximately the Same Location: **Enforced without issue**

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

- Article 1: Fees: **No corresponding federal law**
- Article 2: Procedural Rules: **No corresponding federal law**
- Article 3: Stockpond and Other Surface Water Rules: **No corresponding federal law**
- Article 4: Licensing Time-Frames: **No corresponding federal law**
- Article 7: Assured and Adequate Water Supply: **No corresponding federal law**
- Article 8: Well Construction and Licensing of Well Drillers: **No corresponding federal law**
- Article 9: Water Measurement: **No corresponding federal law**
- Article 10: Reporting Requirements for Annual Reports, Annual Accounts, Operating Flexibility Accounts, and Conveyances of Groundwater Rights: **No corresponding federal law**
- Article 11: Inspections and Audits: **No corresponding federal law**
- Article 12: Dam Safety Procedures: **No corresponding federal law**
- Article 13: Well Spacing Requirements; Replacement Wells in Approximately the Same Location: **No corresponding federal law**

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

- Article 1: Fees: **Rules do not require a permit or license**
- Article 2: Procedural Rules: **Rules were not adopted or amended after July 29, 2010**
- Article 3: Stockpond and Other Surface Water Rules: **Rule was not adopted or amended after July 29, 2010**
- Article 4: Licensing Time-Frames: **Rule does not require a permit or license**
- Article 7: Assured and Adequate Water Supply: **Rules do not require a permit or license**
- Article 8: Well Construction and Licensing of Well Drillers: **Except for R12-15-806 (amended to conform to fee rules in 2011), the rules were not adopted or amended after July, 29, 2010**
- Article 9: Water Measurement: **Rules were not adopted or amended after July 29, 2010**
- Article 10: Reporting Requirements for Annual Reports, Annual Accounts, Operating Flexibility Accounts, and Conveyances of Groundwater Rights: **Rules were not adopted or amended after July 29, 2010**
- Article 11: Inspections and Audits: **Rules were not adopted or amended after July 29, 2010**
- Article 12: Dam Safety Procedures: **Rules were not adopted or amended after July 29, 2010, except to conform to fee rules in 2011**
- Article 13: Well Spacing Requirements; Replacement Wells in Approximately the Same Location: **Rules were not adopted or amended after July 29, 2010**

11. **Conclusion**

Council staff finds that the Department submitted a report that meets the requirements of A.R.S. § 41-1056. Council staff notes that while the Department identifies issues with certain rules, it does not propose to take any action in some instances, and in others, does not specify a timeframe. Therefore, while Council staff recommends approval of this report, Council staff recommends that the Council discuss with the Department a specific timeframe within which it can make the changes the Department identifies in the 5YRR.

DOUGLAS A. DUCEY
Governor



THOMAS BUSCHATZKE
Director

ARIZONA DEPARTMENT of WATER RESOURCES

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February 26, 2021

Submitted Electronically to grrc@azdoa.gov

Nicole Sornsins, Chairperson
Governor's Regulatory Review Council
100 N. 15th Ave., Suite 402
Phoenix, AZ 85007

RE: Arizona Department of Water Resources' Five-Year Rule Review Report

Dear Ms. Sornsins:

Submitted with this cover letter is the Department of Water Resources' Five-Year Rule Review Report for its rules in the Arizona Administrative Code, Title 12, Chapter 15, as well as the attachments required by Arizona Administrative Code Rule R1-6-301. The Department reviewed all existing rules and does not intend any rule to expire under A.R.S. § 41-1056(J). Additionally, the Department of Water Resources is in compliance with the substantive policy statement requirements set forth in A.R.S. § 41-1091, as well as additional analysis related to federal law and general permits.

Thank you for your assistance in this matter. If you have any questions, or need additional information, please contact Kelly Brown, ADWR Deputy Counsel, at kbrown@azwater.gov or 602-771-8472.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Buschatzke", is written over a light blue circular stamp.

Thomas Buschatzke
Director

Encls.: as stated

State of Arizona

DEPARTMENT OF
WATER RESOURCES



Five-Year Rule Review
Report and Appendix
Title 12, Chapter 15
2021

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**ARIZONA DEPARTMENT OF
WATER RESOURCES**

5 YEAR REVIEW REPORT

Title 12, Chapter 15

2021

Introduction

In this report, each rule of the Department of Water Resources (“Department”) is examined according to those factors listed in the Governor’s Regulatory Review Council’s (“GRRC”) Rule R1-6-301(A). The rules are grouped by Article so that, in accordance with R1-6-301(B), identical information regarding the rules will only be discussed once.

ARTICLE 1. FEE RULES – R12-15-101 THROUGH R12-15-107

1. Authorization of the rule by existing statutes:

R12-15-101 through R12-15-106 are authorized by A.R.S. § 45-113(A), which broadly allows the director to collect fees “to cover the costs of administrative services and expenses.” A.R.S. § 45-113(B) further authorizes the director to collect fees for “applications, certificates, licenses and permits relating to surface water, groundwater, water exchanges, wells, grandfathered rights, substitution of acres, adequate and assured water supply, groundwater oversupply and lakes and for inspections relating to dam safety.” There is also specific fee authority in the following sections in Title 45, Arizona Revised Statutes:

Authorizing Section	Description
45-133(C)	Application fee for permit for interim water use; bodies of water
45-183(C)	Filing fee for statement of claim
45-273(E)	Fee to file claim of water right in stockpond
45-292(B)	Application fee to transport water out of state
45-467(Q)	Fee for conveyance of flexibility account credit balance
45-476.01(B)	Fee for late applications for certificates of grandfathered rights
45-595(C)	Fee for licenses for well drillers
45-596(L)	Fee for filing of notice of intention to drill
45-599(J)	Fee for application for permit to drill a new well or replacement well in a new location
45-871.01(A)	Permit fees for underground storage facilities, groundwater savings facilities, water storage permits and recovery well permits
45-1041(E)	Fee for water exchange permit
45-1204(B)	Application fee for the construction or enlargement of a dam
45-1603(A)	Weather control and cloud modification license
45-1605(A)	License to sell, lease, offering to sell, licensing, or offering to license equipment and supplies for weather control and cloud modification

Copies of the statutes listed above are located at tab C1 of the Appendix.

2. The objective of each rule:

Rule	Objective
R12-15-101	This rule defines terms that are used in Article 1 to make the rules understandable to the reader, achieve clarity in the rules without needless repetition, and afford consistent interpretation.
R12-15-102	This rule provides that an application filed on or after the effective date of the rule is subject to the applicable fees in R12-15-103 and R12-15-104 and applications pending prior to the effective date of the rule are subject to the fees and costs in effect when the application was filed.
R12-15-103	This rule identifies those types of applications subject to an hourly fee, establishes an initial and maximum fee for applications subject to an hourly fee and establishes billing and payment procedures.
R12-15-104	This rule identifies those types of applications subject to a fixed fee, establishes the fixed fees for those types of applications and requires the applicant to pay any mileage expenses and mailing or publishing costs.
R12-15-105	This rule establishes the fees for dam safety inspections and for the filing of dam safety inspection reports.
R12-15-106	This rule establishes the fee for the capping of an open well by the Department.

3. Are the rules effective in achieving their objectives? Yes X No ___

The Department believes the fee rules are generally effective in achieving the objective of enabling the Department to cover the Department’s expenses in performing the services for which the fees are charged, while allowing individuals, businesses, political subdivisions and other governmental entities to obtain permits, licenses and inspections from the Department at a reasonable cost.

In accordance with Executive Order 2015-01, paragraph 5, the Department evaluated its rules in 2015 to determine whether any of the rules could be amended or repealed to reduce the regulatory burden, administrative delay and legal uncertainty associated with government regulation, while continuing to allow the Department to meet its mission of securing long-term dependable water supplies for Arizona citizens. In the report submitted to the Governor’s Office with the results of the evaluation (2015 Report to the Governor’s Office), the Department recommended the following amendments to its fee rules:

- Lowering the fees charged to the owners of low and very low potential hazard dams for dam safety inspections and for submitting dam safety inspection reports to increase compliance with the dam safety inspection and reporting requirements. It was recommended that the rule establishing those fees, R12-15-105, be amended to lower the fee for a dam safety inspection conducted by the Department from \$1,000.000 to \$250.00 and to lower the fee for submitting a dam safety inspection report from \$750.00 to \$250.00. Rule R12-15-105 was amended to effectuate those fee reductions by final rulemaking at 23 A.A.R. 2375, effective October 10, 2017 (Supp. 17-3).
- Repealing R12-15-107, the municipality fee rule, because the statute authorizing the fee, A.R.S. § 45-118, was repealed in 2012. This rule expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3475, effective November 5, 2016 (Supp. 16-4).
- Changing the fees for four applications from an hourly billable rate of \$118 per hour to a fixed fee of \$500. The Department subsequently determined that the fees for those applications should remain an hourly

billable rate of \$118 per hour. For that reason, the Department did not change those fees.

4. **Are the rules consistent with other rules and statutes?** Yes X No

R12-15-101 through R12-15-106 are consistent with statutes or other rules made by the Department and current Department enforcement policy. No comparable federal law applies. As explained in section 3(b) above, R12-15-107 expired in 2016 because the statute authorizing the fee was repealed in 2012.

5. **Are the rules enforced as written?** Yes X No

R12-15-101 through R12-15-106 are being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes X No

R12-15-101 through R12-15-106 are clear, concise and understandable. The rules provide detailed definitions of terms and all citations and cross-references are correct.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No X

The Department has not received written criticisms of R12-15-101 through R12-15-106 within the past five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

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

Please refer to tab D1 of the Appendix for the economic, small business and consumer impact statements (“EIS”) submitted with R12-15-101 through R12-15-106 in 2011 when the rules were adopted. After reviewing each EIS and examining the impact that R12-15-101 through R12-15-106 actually has had on the public, the Department has concluded that the actual effect has been approximately the same as predicted in the EIS. Please refer to tab D2 of the Appendix for the EIS submitted with the 2017 rule package lowering the fees charged to the owners of low and very low potential hazard dams for dam safety inspections and for submitting dam safety inspection reports. The Department has concluded that the actual effect has been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No X

The Department has not received any analysis from another party that compares the impact of R12-15-101 through R12-15-106 on this state’s business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

In its previous Five-Year Rule Review Report submitted in 2016, the Department described the amendments to its fee rules that it recommended making in its 2015 Report to the Governor’s Office (see section 3 above). The Department stated that it would not make the amendments unless it received permission from the Governor’s Office to do so. The Department received permission from the Governor’s Office to make the rule amendments on February 20, 2017, and the Department then proceeded to make the rule amendments by final rulemaking at 23 A.A.R. 2375,

effective October 10, 2017 (Supp. 17-3). However, the Department did not change the fees for four applications from an hourly billable rate of \$118 per hour to a fixed fee of \$500 as it had recommended in its 2015 Report to the Governor’s Office because the Department subsequently determined that the fees for those applications should remain an hourly billable rate of \$118 per hour.

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 regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The Department has determined that the probable benefits of the fee rules outweigh within this state the probable costs of the rules and that the rules impose the least burden and costs on regulated persons, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

12. Are the rules more stringent than corresponding federal laws? Yes No

There is no corresponding federal law.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

All of the Department’s fee rules were adopted by final rulemaking after July 29, 2010, and amendments were made in 2017. However, the rules do not require the issuance of a regulatory permit, license or agency authorization. For that reason, none of the rules are subject to A.R.S. § 41-1037.

14. Proposed course of action:

None.

ARTICLE 2. PROCEDURAL RULES

1. Authorization of the rule by existing statutes:

R12-15-207 and R12-15-224 are authorized by A.R.S. § 45-105(B)(1). A copy of this statute is attached at tab C2 of the Appendix.

2. The objective of each rule:

Rule	Objective
R12-15-207	This rule allows the director, upon motion or upon the initiative of the director, to correct clerical mistakes in declarations, orders, rulings, and other parts of the Department’s record, as well as errors in the record resulting from oversight or omission.
R12-15-224	This rule prohibits most <i>ex parte</i> communications between parties and the director, other Department employees or consultants, and authorizes the director to impose sanctions on a party who violates the prohibition.

3. **Are the rules effective in achieving their objectives?** Yes X No

The Department believes that R12-15-207 and R12-15-224 are effective and meet their intended objective of establishing administrative procedures for hearings in two areas not covered by statute or Office of Administrative Hearings (“OAH”) rules.

4. **Are the rules consistent with other rules and statutes?** Yes X No

R12-15-207 and R12-15-224 are consistent with statutes or other rules made by the Department and current Department enforcement policy. No comparable federal law applies. R12-15-207 and R12-15-224 do not conflict with the statutes related to hearings before the OAH or with the rules adopted by OAH because those statutes and rules do not govern corrections of clerical mistakes by the agency, or *ex parte* communications between parties and agency personnel.

Both rules were amended through a rulemaking in 2007 that made technical corrections to a number of the Department’s rules (13 A.A.R. 3022). R12-15-207 and R12-15-224 were amended to remove the references to hearing officers and to make several other non-substantive changes, including updating language, improving grammar and correcting a typographical error. No additional changes have been made to date.

5. **Are the rules enforced as written?** Yes X No

R12-15-207 and R12-15-224 are being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes X No

R12-15-207 and R12-15-224 are clear, concise and understandable. R12-15-224 provides detailed definitions of technical terms and all citations and cross-references are correct.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No X

The Department has not received written criticisms of R12-15-207 and R12-15-224 within the past five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

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

Please refer to tab D3 of the Appendix for the EIS submitted with R12-15-207 and R12-15-224 and tab D15 of the Appendix for the EIS submitted with the technical amendments in 2007. After reviewing the EIS and examining the impact that R12-15-207 and R12-15-224 have actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No X

The Department has not received any analysis from another party that compares the impact of R12-15-207 and R12-15-224 on this state's business competitiveness to the competitiveness of businesses in other states.

10. Has the agency completed the course of action indicated in the agency’s previous five-year-review report?

The Department’s previous five-year review did not recommend any changes to R12-15-207 and R12-15-224.

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 regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The Department has determined that the probable benefits of R12-15-207 and R12-15-224 within the state outweigh the probable costs of the rules and that the rules impose the least burden and costs on regulated persons.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No X

There is no federal corresponding law.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

A.R.S. § 41-1037 does not apply to these rules because the rules were not adopted or amended after July 29, 2010.

14. Proposed course of action:

None.

ARTICLE 3. STOCKPOND AND OTHER SURFACE WATER RULES

1. Authorization of the rule by existing statutes:

R12-15-303 is authorized by A.R.S. § 45-105(B)(1). A copy of this statute is attached at tab C3 of the Appendix.

2. The objective of each rule:

Rule	Objective
R12-15-303	R12-15-303 clarifies the manner in which the Department handles multiple applications filed by the same applicant for water rights to the same water.

3. Are the rules effective in achieving their objectives? Yes X No ___

The Department believes that R12-15-303 is effective and meets its intended objective of avoiding duplicative water rights.

4. Are the rules consistent with other rules and statutes? Yes X No ___

R12-15-303 is consistent with existing statutes or other rules made by the Department and current Department enforcement policy.

5. Are the rules enforced as written? Yes X No ___

R12-15-303 is being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes No

R12-15-303 is clear, concise and understandable. The rule provides detailed definitions of technical terms and all citations and cross-references are correct.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

The Department has not received written criticisms of R12-15-303 within the past five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

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

Please refer to tab D4 of the Appendix for the EIS submitted with R12-15-303. After reviewing the EIS and examining the impact that R12-15-303 has actually had on the public, the Department has concluded that the actual effect has been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

The Department has not received any analysis from another party that compares the impact of R12-15-303 on this state's business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The Department's previous five-year review did not recommend any changes to R12-15-303.

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 regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the probable benefits of R12-15-303 outweigh within this state the probable costs of the rule and that the rule imposes the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes No

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

A.R.S. § 41-1037 does not apply to R12-15-303 because the rule was not adopted or amended after July 29, 2010.

14. **Proposed course of action**

None.

ARTICLE 4. LICENSING TIME-FRAMES

1. Authorization of the rule by existing statutes:

R12-15-401, including Table A, are required by A.R.S. § 41-1073. A copy of this statute is attached at tab C4 of the Appendix.

2. The objective of each rule:

Rule	Objective
R12-15-401 and Table A	R12-15-401 establishes timeframes during which the agency will either grant or deny each type of license that it issues. Various types of licenses and their timeframes are listed in an accompanying Table A.

3. Are the rules effective in achieving their objectives? Yes X No ___

The Department believes that R12-15-401 is generally effective in achieving the intended objective of providing the public with a defined time within which the Department will complete licensing tasks.

In its 2015 Report to the Governor’s Office, the Department identified eight LTFs that it believed could be reduced without substantially impacting the mission and goals of the Department’s water resources management. The Department recommended amending Table A of R12-15-401 to reduce those LTFs, to correct citations to the statutory authorities for the permits and licenses described in several LTFs and to remove two LTFs from the table. The Department made those amendments by final rulemaking at 23 A.A.R. 2375, effective October 10, 2017 (Supp. 17-3). However, the Department has discovered that a statutory authority cited for the license described in R12-15-401, Table A, No. 5 (Permit to appropriate water for an instream flow) and the statutory authority cited for the license described in Table A, No. 20 (Reversal of substitution of acres irrigated with Central Arizona Project water) remain incorrect. The incorrect statutory citations do not affect the implementation of the LTFs for the two licenses as intended.

Although the Department believes that R12-15-401 is generally effective in achieving its intended objective, as stated in the Department’s previous Five-Year Rules Report submitted in 2016, Table A of R12-15-401 does not include LTFs for several applications and filings for which the Department issues a license. See section 10 below for a list of those applications and filings.

4. Are the rules consistent with other rules and statutes? Yes X No ___

R12-15-401 is consistent with existing statutes or other rules made by the Department and current Department enforcement policy. However, as stated in the Department’s previous Five-Year Rules Report submitted in 2016, Table A of R12-15-401 does not include LTFs for several applications and filings for which the Department issues a license. See section 10 below for a list of those applications and filings.

5. Are the rules enforced as written? Yes X No ___

R12-15-401 is being enforced without issue by the Department.

6. Are the rules clear, concise, and understandable? Yes X No ___

R12-15-401 is clear, concise and understandable. The rule provides a definition of “license,” and explains how the licensing time-frames will be applied.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes _____ No X

The Department has not received written criticisms of R12-15-401 within the past five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

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

Please refer to tab D5 of the Appendix for the EIS submitted with R12-15-401. No refunds were issued in fiscal years 2016, 2017 and 2018 for non-compliance with licensing timeframes. The Department issued refunds of \$3,000 and \$10,020 in fiscal years 2019 and 2020, respectively. After reviewing the EIS and examining the impact that R12-15-401 has actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes _____ No X

The Department has not received any analysis from another party that compares the impact of R12-15-401 on this state’s business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

In its previous Five-Year Rule Review Report submitted in 2016, the Department stated that it would proceed with making the amendments to Table A of R12-15-401 that it recommended in its 2015 Report to the Governor’s Office (see section 3 above) only if it received permission from the Governor’s Office to do so. The Department received permission from the Governor’s Office to make the rule amendments on February 20, 2017, and the Department then proceeded to make the rule amendments by final rulemaking at 23 A.A.R. 2375, effective October 10, 2017 (Supp. 17-3).

In its 2016 Five-Year Rule Review Report, the Department explained that Table A of R12-15-401 does not include LTFs for the following applications and filings for which the Department issues a license, either because the LTFs were inadvertently excluded from the table when R12-15-401 was adopted or because the applications and filings did not exist when the rule was adopted:

- Notice of intent to establish new service area right by a city, town or private water company.
- Final petition to establish new service area right by a city, town or private water company.
- Application for permit to transport groundwater away from the Yuma groundwater basin pursuant to A.R.S. § 45-547.
- Application for substitution of acres to allow irrigation with Central Arizona Project water in an active management area.
- Application for a physical availability determination.
- Application for assignment of Type A certificate of assured water supply.
- Application for assignment of Type B certificate of assured water supply.
- Application for classification of Type A certificate of assured water supply pursuant to R12-15-707.
- Application for review of revised plat to determine whether changes are material.

- Application for new certificate of assured water supply pursuant to R12-15-704(G).
- Application for letter stating that owner is not required to obtain a certificate of assured water supply pursuant to R12-15-704(M).
- Application for re-issuance of drill card.
- Application for approval of development plan to retire irrigation grandfathered right for a Type 1 non-irrigation grandfathered right.
- Application for assignment of long-term storage credits.
- Application for extinguishment of grandfathered right for extinguishment credits.
- Application for conveyance of extinguishment credits.
- Application for equipment license for weather control or cloud modification.

The Department stated in its 2016 Five-Year Rule Review Report that because the rulemaking moratorium remained in effect, it did not intend to amend Table A of R12-15-401 to add LTFs for the 17 applications and filings unless it received permission from the Governor's Office to do so. In October 2016, the Department met with the Governor's office to discuss requesting permission to conduct a rulemaking to make the rule amendments recommended in its 2016 Five-Year Rule Review Report, including adding LTFs for the 17 applications and filings. The Department received permission to proceed with the rule amendments recommended in the Department's 2015 Report to the Governor's Office, but it did not receive permission to make the other rule amendments recommended in its 2016 Five-Year Rule Review Report. For that reason, the Department did not amend Table A of R12-15-401 to add LTFs for the 17 applications and filings mentioned above.

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 regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the probable benefits of R12-15-401 outweigh within this state the probable costs of the rule, and that the rule imposes the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Although amendments were made to R12-15-401 in 2017, the rules do not require the issuance of a regulatory permit, license or agency authorization. For that reason, A.R.S. § 41-1037 does not apply to R12-15-401.

14. **Proposed course of action:**

As explained in section 10 above, Table A of R12-15-401 does not include LTFs for 17 applications and filings for which the Department issues a license, either because the LTFs were inadvertently excluded from the table when R12-15-401 was adopted or because the applications and filings did not exist when the rule was adopted. In October

2016, the Department met with the Governor’s Office to discuss requesting permission to make the rule amendments recommended by the Department in its 2016 Five-Year Rule Review Report, including adding LTFs for the 17 applications and filings. Although the Department received permission to proceed with the rule amendments that were recommended by the Department in its 2015 Report to the Governor’s Office, it did not receive permission to amend Table A of R12-15-401 to add LTFs for the 17 applications and filings. Because the rulemaking moratorium remains in effect, the Department does not intend to proceed with a rule package to add LTFs for the 17 applications and licenses unless it receives permission from the Governor’s Office to do so.

The Department has discovered that the statutory authorities cited for two licenses in Table A of R12-15-401 are incorrect (see section 3 above). These incorrect statutory citations do not affect the implementation of the LTFs for the two licenses as intended. For that reason, the Department does not intend to correct these statutory citations until it amends Table A of R12-15-401 for other reasons.

ARTICLE 5. RESERVED

ARTICLE 6. RESERVED

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

1. Authorization of the rule by existing statutes:

R12-15-701 through R12-15-729 are authorized by A.R.S. §§ 45-105(B)(1) and 45-576(H). Copies of these statutes are attached at tab C5 of the Appendix.

2. The objective of each rule:

Rule	Objective
R12-15-701	This rule defines terms used in Article 7.
R12-15-702	This rule sets forth the process for filing an application for a physical availability determination with the Department and establishes the criteria under which the director will issue a physical availability determination to an applicant.
R12-15-703	This rule sets forth the requirements needed to apply for and receive an analysis of assured water supply.
R12-15-704	This rule sets forth the requirements for applying and for receiving a certificate of assured water supply (“certificate”). Among these requirements, the rule sets forth the information the applicant must submit to prove ownership of the land. The rule also identifies conditions under which a new owner is not required to obtain a new certificate.
R12-15-705	This rule provides for the assignment of a Type A certificate of assured water supply to a new owner of a subdivision.
R12-15-706	This rule provides for the assignment of a Type B certificate of assured water supply to a new owner of a subdivision. This rule also allows the applicants for an assignment of a Type B certificate to request that the certificate be re-classified as a Type A certificate, provided that the certificate meets the requirements of R12-15-704(H)(1).
R12-15-707	This rule provides a process allowing for the holder of a Type B certificate or a certificate that was issued prior to September 12, 2006, to reclassify that certificate as a Type A certificate of assured water supply.

R12-15-708	This rule provides that if material changes are made to the plat originally submitted with a certificate or water report application, the Department’s determination of an assured or adequate water supply will not apply to the revised plat. The rule establishes criteria for determining whether changes to a plat are material and whether the owner must seek a new determination of assured or adequate water supply.
R12-15-709	This rule establishes the procedure by which the director may revoke a certificate if an assured water supply does not exist.
R12-15-710	This rule sets forth the requirements for applying for and receiving a designation of assured water supply.
R12-15-711	This rule sets forth the annual reporting requirements for providers designated as having an assured water supply; requires the director to review a designation at least every 15 years; allows the director to modify a designation for good cause; and establishes the procedures by which the director may revoke a designation of assured water supply.
R12-15-712	This rule sets forth the requirements for applying for and receiving an analysis of adequate water supply. This rule is substantially similar to R12-15-703, but does not include requirements related to consistency with the management plan and consistency with the management goal, which are specific to AMAs and do not apply to determinations of adequate water supply.
R12-15-713	This rule sets forth the requirements for applying for and receiving a water report.
R12-15-714	This rule sets forth the requirements for applying for and receiving a designation of adequate water supply. This rule is substantially similar to R12-15-710, but does not include requirements related to consistency with the management plan and consistency with the management goal, which are specific to AMAs and do not apply to determinations of adequate water supply.
R12-15-715	This rule sets forth annual reporting requirements for providers designated as having an adequate water supply; requires the director to review a designation every 15 years; allows the director to modify a designation for good cause; and establishes the procedures by which the director may revoke a designation of adequate water supply.
R12-15-716	This rule sets forth the criteria for demonstrating that a water supply is physically available for at least 100 years.
R12-15-717	This rule sets forth the criteria for demonstrating that a water supply is continuously available for at least 100 years.
R12-15-718	This rule sets forth the criteria for demonstrating that a water supply is legally available for at least 100 years.
R12-15-719	This rule sets forth the criteria for demonstrating that the water supply will be of adequate quality.
R12-15-720	This rule sets forth the criteria for demonstrating that the applicant has the financial capability to construct adequate delivery, storage and treatment works.
R12-15-721	This rule sets forth the criteria for demonstrating that groundwater use associated with a certificate or designation of assured water supply is consistent with the management plan of the AMA in which the development or service area is located.
R12-15-722	This rule sets forth the criteria for demonstrating that groundwater use associated with a certificate or designation of assured water supply is consistent with the management goal of the AMA in which the development or service area is located. This rule was amended by a formal rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4) to limit, for certificates, the volume of groundwater use that can be made consistent with the management goal with the use of extinguishment credits created on or after January 1, 2019. This rule was published incorrectly in the Administrative Register after the rule amendment became effective and was subsequently corrected in 13 A.A.R. 1394 (Supp. 19-2).
R12-15-723	This rule sets forth the procedure by which the owner of a grandfathered right may extinguish that right in exchange for extinguishment credits that can be used by an applicant for a certificate or

	designation of assured water supply to make a volume of groundwater pumping consistent with the management goal. The rule also sets forth the procedure by which the credits may be pledged to a certificate or designation of assured water supply or conveyed to another person. In 2011, the rule was amended to add a provision allowing an irrigation grandfathered right (“IGFR”) that was extinguished in 2005, 2006 or 2007 to be restored if certain conditions were met, including that an application to restore the IGFR was filed by December 31, 2015. Because the deadline for filing an application to restore an extinguished IGFR has expired, this provision is no longer being enforced. This rule was amended to allow extinguishment credits to be created in the Pinal AMA in any subsequent year. by a final rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4).
R12-15-724	This rule sets forth the method for calculating the groundwater allowance for a certificate or designation of assured water supply in the Phoenix AMA and for calculating extinguishment credits in that AMA.
R12-15-725	This rule sets forth the method for calculating the groundwater allowance for a certificate or designation of assured water supply in the Pinal AMA. Prior December 3, 2013, this rule also contained criteria for calculating the amount of extinguishment credits a person would receive for extinguishing a grandfathered right in the Pinal AMA, including a table of annual allocation factors to be used to calculate the amount of the extinguishment credits. Under this rule, the first reduction in the allocation factor was to occur in 2010. Through a rulemaking that became effective on December 3, 2013, the rule was amended to remove the criteria for calculating extinguishment credits and two new rules were adopted containing the criteria – R12-15-725.01, which would be effective until September 15, 2014, and R12-15-725.02, which would be effective beginning September 15, 2014 (19 A.A.R. 4174). Under R12-15-725.01, the first reduction in the allocation factor for calculating extinguishment credits was delayed until 2019, while under R12-15-725.02, the first reduction would occur on September 15, 2014. In a rulemaking that became effective on September 12, 2014, R12-15-725.01 became permanent and R12-15-725.02 was repealed (20 A.A.R. 2673). This rule was amended in 2019 to eliminate the groundwater allowance for certificate applications filed in the Pinal AMA on or after January 1, 2019 and to create a new method for calculating groundwater allowance for designation applications filed on or after January 1, 2019. by a final rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4)
R12-15-726	This rule sets forth the method for calculating extinguishment credits and groundwater allowance for a certificate or designation of assured water supply in the Prescott AMA.
R12-15-727	This rule sets forth the method for calculating extinguishment credits and groundwater allowance for a certificate or designation of assured water supply in the Tucson AMA.
R12-15-728	Reserved
R12-15-729	This rule codifies Ariz. Sess. Laws 1997, Ch. 287 § 52, as amended by Laws 1999, Ch. 295, § 50. Specifically, this rule provides that the use of remedial groundwater by a municipal provider in an AMA before January 1, 2025 is consistent with the AMA’s management goal if certain conditions are met.

3. Are the rules effective in achieving their objectives? Yes X No

The Department believes that R12-15-701 through R12-15-729 are generally effective and meet their objectives of establishing the rules by which the Department’s Assured and Adequate Water Supply (“AAWS”) program operates. The objectives of the rules are to provide detailed regulations to implement the assured water supply program established by A.R.S. § 45-576 for active management areas (“AMA”) and the adequate water supply program established by A.R.S. § 45-108 for areas outside of AMAs. A.R.S. § 45-576 is designed to help ensure that new subdivisions in AMAs have a 100-year stable water supply consistent with the AMA’s management plan and management goal. A.R.S. § 45-108 is designed to ensure that in areas outside of AMAs, new subdivisions have a

100-year stable water supply within jurisdictions that have adopted a mandatory water adequacy requirement and that the Department determine and report the adequacy of the water supplies for new subdivisions in all other areas.

Additionally, the rulemaking that became effective on January 1, 2019 modified the method for calculating the extinguishment credits in the Pinal Active Management Area (AMA), limited the amount of groundwater that may be made consistent with the Pinal AMA management goal with the use of extinguishment credits for new certificates of assured water supply in the AMA, and eliminated the groundwater allowance for new certificates of AWS in the AMA.

4. **Are the rules consistent with other rules and statutes?** Yes X No

Significant efforts were made in drafting these rules to ensure that the rules are consistent with rules and policies administered by the Arizona Corporation Commission, the Arizona Department of Environmental Quality, the Arizona Department of Real Estate, the State Land Department, and the various platting entities in the state (*see references in these rules to A.R.S. §§ 9-463.01(C)(8), 11-823(B), 32-2101 and 40-281; Title 48, Chapters 22, 27 and 28; and Title 49, Chapter 2*). The rules are also consistent with federal statutes and rules, to the extent such provisions are applicable (*see reference in these rules to 42 U.S.C. § 9601 et seq.*). In addition, the rules are generally consistent with the state statutes or other rules made by the Department governing the AAWS program and current Department enforcement policy.

The only areas where the Department has not adopted rules contemplated by state statutes are the following:

- The definition of “assured water supply” in A.R.S. § 45-576(J) requires, among other things, that any groundwater use be consistent with the management goal of the AMA. The Santa Cruz AMA was established as an AMA in 1994. The AAWS rules currently do not include criteria for demonstrating that groundwater use in the Santa Cruz AMA is consistent with the AMA’s management goal. Although the Department worked with stakeholders on drafting rules to establish the criteria in 2007, the Department put that rule package on hold to comply with the rulemaking moratorium. The Department does not intend to proceed with this rulemaking package unless it receives permission from the Governor’s Office to do so.
- In 2006, A.R.S. § 45-576(H) was amended to provide that on or before January 1, 2008, the AAWS rules shall provide for a reduction in water demand for an application for a designation of assured water supply or a certificate of assured water supply if a gray water reuse system is to be installed. In 2007, the Department began working on a rule package that included an amendment of the AAWS rules to provide for a reduction in water demand if a gray water system will be used in a subdivision. The Department put that rule package on hold to comply with the rulemaking moratorium. The Department does not intend to proceed with this rulemaking unless it receives permission from the Governor’s Office to do so. However, in practice, the Department does allow any application for a designation or certificate of assured water supply to reduce demand if a gray water system will be used.
- In 2007 the Arizona Legislature enacted SB 1575 (Laws 2007, Ch. 240) in response to recommendations from the Statewide Water Advisory Group (“SWAG”). SB 1575 authorizes cities, towns and counties outside of AMAs to adopt regulations requiring developers of new subdivisions within their jurisdiction to demonstrate a 100-year adequate water supply in order to receive plat approval and a public report. Section 10(B) of SB 1575 provides that the director shall amend the AAWS rules to include criteria for making determinations pursuant to A.R.S. § 45-108.03, which allows the director to grant an exemption from the adequate water supply requirements under certain circumstances, and criteria for demonstrating a physically available 100-

year supply of groundwater in specific aquifer systems and basins outside of AMAs. The Department published a Notice of Proposed Rulemaking for those amendments on December 19, 2008 and held an oral proceeding. However, prior to submitting the rules to GRRC, the Department put the rule package on hold to comply with the rulemaking moratorium. The Department does not intend to proceed with these amendments unless it receives permission from the Governor's Office to do so.

In October 2016, the Department met with the Governor's office to discuss requesting permission to conduct a rulemaking to make the rule amendments recommended in its 2016 Five-Year Rule Review Report, including the amendments to its AAWS rules that are contemplated by state statutes as described above. Although the Department received permission to proceed with some of the rule amendments recommended in its 2016 Five-Year Rule Review Report, it did not receive permission to proceed with the amendments to its AAWS rules. If the Department were to receive permission from the Governor's Office to proceed with the rule amendments, and if the rule amendments were made, the AAWS rules would be consistent with state statutes.

5. **Are the rules enforced as written?** Yes No

R12-15-701 through R12-15-729 are being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes No

R12-15-701 through R12-15-729 are among the Department's most technical regulations and are therefore longer and more complex than most of its other rules. The AAWS program requires an applicant to demonstrate the physical, continuous and legal availability of water for 100 years. These requirements involve potentially complex legal elements for each type of water right as well as technical hydrological elements. Furthermore, the assured water supply requirement that groundwater use be consistent with the management goal of the AMA involves separate requirements for each AMA, depending on the management goal and the water resources in each AMA. Thus, the rules for the AAWS programs are inevitably detailed, long and complex. Despite this complexity, the Department believes that the rules are clear, concise, and understandable given their subject matter.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

The Department has not received written criticisms of the rules within the last five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

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

Please refer to tab D6 of the Appendix for the EIS submitted in 2006 when the AAWS rules were substantially amended. After reviewing the EIS and examining the impact that R12-15-701 through R12-15-729 have actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

Also refer to tab D7 of the Appendix for the EIS submitted with the 2014 rulemaking that made R12-15-725.01 permanent and repealed R12-15-725.02. As explained in section 2 above, this rulemaking delayed the first reduction in the allocation factor used to calculate extinguishment credits in the Pinal AMA from 2014 to 2019. The

Department has concluded that the actual effects of this rulemaking have been approximately the same as predicated in the EIS.

Also refer to tab D8 of the Appendix for the EIS submitted with the rulemaking that became effective on January 1, 2019. The Department has concluded that the actual effects of this rulemaking have been approximately the same as predicated in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes _____ No X _____

The Department has not received any analysis from another party that compares the impact of R12-15-701 through R12-15-729 on this state's business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The Department's 2016 Five-Year Rule Review Report identified the three areas where the Department has not adopted rules contemplated by state statutes. Those three areas are the following: (1) rules establishing criteria for demonstrating that groundwater use by an applicant for an assured water supply determination in the Santa Cruz AMA is consistent with the AMA's management goal; (2) rules providing for a reduction in demand for an application for a certificate or designation of assured water supply if a gray water reuse system will be installed; and (3) rules establishing criteria for determining whether to grant an exemption from the adequate water supply requirements under A.R.S. § 45-108.03 and criteria for demonstrating a physically available supply of groundwater in specific aquifer systems and basins outside of AMAs.

In its 2016 Five-Year Rule Review Report, the Department stated that because of the rulemaking moratorium, it would not proceed with amending its AAWS rules as contemplated by the state statutes unless it received permission from the Governor's Office to do so. In October 2016, the Department met with the Governor's office to discuss requesting permission to conduct a rulemaking to make the rule amendments recommended in its 2016 Five-Year Rule Review Report, including the amendments to its AAWS rules that are contemplated by state statutes. Although the Department received permission to proceed with some of the rule amendments recommended in its 2016 Five-Year Rule Review Report, it did not receive permission to proceed with the amendments to its AAWS rules. For that reason, the Department did not proceed with the amendments.

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 regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that, with the changes proposed in this report, the probable benefits of R12-15-701 through R12-15-729 outweigh within this state the probable costs of the rules, and that the rules will impose the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes _____ No X _____

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency**

authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

In 2011 the Department amended R12-15-723 to add a provision allowing certain extinguished irrigation grandfathered rights to be restored. The deadline for applying for the restoration has expired and therefore the provision does not currently require the issuance of a regulatory permit, license, or agency authorization.

Also in 2011, the Department made amendments to conform several of the rules in article 7 to the Department's new fee rules. These amendments do not require the issuance of a regulatory permit, license, or agency authorization.

In 2019, the Department made amendments to R12-15-722, R12-15-723, and R12-15-725. R12-15-722 was amended to limit the volume of groundwater that can be made consistent with the management goal using extinguishment credits created after January 1, 2019 in the Pinal Active Management Area. R12-15-725 was amended to include a new methodology for calculating extinguishment credits in the Pinal Active Management Area. R12-15-723 was amended to make a conforming change to be consistent with the new extinguishment credit calculation contained in R12-15-725. None of these amendments require the issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action:

As mentioned in section 10 above, the Department has not adopted AAWS rules contemplated by state statutes in the following three areas: (1) rules establishing criteria for demonstrating that groundwater use by an applicant for an assured water supply determination in the Santa Cruz AMA is consistent with the AMA's management goal; (2) rules providing for a reduction in demand for an application for a certificate or designation of assured water supply if a gray water reuse system will be installed; and (3) rules establishing criteria for determining whether to grant an exemption from the adequate water supply requirements under A.R.S. § 45-108.03 and criteria for demonstrating a physically available supply of groundwater in specific aquifer systems and basins outside of AMAs.

In October 2016, the Department met with the Governor's Office to discuss requesting permission to make the rule amendments recommended by the Department in its 2016 Five-Year Rule Review Report, including the amendments to its AAWS rules that are contemplated by state statutes. Although the Department received permission to proceed with some of the rule amendments recommended in its 2016 Five-Year Rule Review Report, it did not receive permission to proceed with the amendments to the AAWS rules. Because the rulemaking moratorium remains in effect, the Department does not intend to proceed with a rule package to amend the AAWS rules unless it receives permission to do so.

ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS – R12-15-801 THROUGH R12-15-852

1. Authorization of the rule by existing statutes:

R12-15-801 through R12-15-852 are authorized generally by A.R.S. § 45-105(B)(1), which authorizes the director to adopt rules as necessary to carry out the purposes of title 45, Arizona Revised Statutes. In addition, A.R.S. § 45-594(A) provides the director "shall adopt rules establishing construction standards for new wells and replacement wells, the deepening and abandonment of existing wells and the capping of open wells." A.R.S. § 45-591.01 provides the director may by rule or regulation "exempt exploration wells from any requirement of this article that the director determines is not necessary for the protection of groundwater."

A.R.S § 45-605(E) requires the director to adopt rules requiring review of notices and applications regarding new or replacement wells to identify whether a well will be located where existing or anticipated future groundwater contamination presents a risk of vertical cross-contamination by the well. The rules must require that a new or replacement well in such a location be designed and constructed in a manner to prevent vertical cross-contamination within an aquifer.

Finally, A.R.S. § 45-595(C) requires the director to establish by rule qualifications and a reasonable fee of not more than fifty dollars for licenses for well drillers and to establish procedures for the evaluation and licensing of all applicants. Copies of these statutes are attached at tab C6 of the Appendix.

2. The objective of each rule:

Rule	Objective
R12-15-801	This rule defines terms used in Article 8.
R12-15-802	This rule defines the scope of Article 8 by describing the man-made openings in the earth that are subject to this Article.
R12-15-803	This rule requires persons other than single well licensees or well drilling contractor employees to obtain a drilling license from the Department before engaging in well drilling or abandonment and requires that persons comply with the well drilling standards in Article 8 when drilling or abandoning a well.
R12-15-804	This rule prescribes the contents of well drilling license applications and prescribes character, reputation and experience requirements for a license.
R12-15-805	This rule requires the director to offer an examination for a well drilling license at least six times per year to test applicant's general and specific knowledge of well drilling, and sets forth examination standards.
R12-15-806	This rule prescribes the fee for a well driller's license, and the expiration date, renewal conditions, display conditions, and license attributes of a well driller's license.
R12-15-807	This rule sets forth the information to be submitted by a single well license applicant; requires the director to offer an examination for single well licenses at least six times yearly; and sets forth the examination standards and license attributes.
R12-15-808	This rule allows the director to revoke or suspend any well driller's license, or place on probationary status any well drilling or single well drilling license holder, for good cause, including violation of any applicable well construction statute or rule.
R12-15-809	This rule requires that a notice of intention to drill a well be signed by the owner or lessee of the property upon which the well will be drilled.
R12-15-810	This rule requires as a pre-condition of drilling a well that a well drilling contractor or licensee have possession of a drilling card issued by the director or follow the emergency authorization procedures defined in the rule.
R12-15-811	This rule sets forth minimum construction standards for wells, including requirements for installing a well casing, surface seal and access port in most wells. The rule also sets forth requirements for gravel packed wells; requirements for vents; a requirement to protect the aquifer from contamination by drilling materials; requirements for monitor wells; and requirements for wells constructed below the land surface.
R12-15-812	This rule prescribes additional construction standards for artesian wells and wells located in areas with mineralized or polluted water
R12-15-813	This rule requires that wells left unattended during drilling be covered to prevent contamination.
R12-15-814	This rule requires that wells to be used for human consumption or culinary purposes be

	disinfected according to Arizona Department of Health Services standards before the drill rig is removed.
R12-15-815	This rule prohibits removal of a drill rig from the well site unless the well is properly abandoned or constructed in conformance with Article 8 and either sealed with a cap or equipped with a pump.
R12-15-816	This rule requires that the Department receive notice before and after a well is abandoned, prohibits a well drilling contractor or single well license from abandoning a well without an abandonment authorization card from the director, except for the abandonment of a well in the course of drilling the well, and prescribes abandonment construction standards.
R12-15-817	This rule requires notification to the Department prior to exploration well drilling, prescribes construction and abandonment standards for exploration wells, and requires a completion report for exploration wells.
R12-15-818	This rule is designed to prevent contamination of wells by prohibiting the drilling of wells, except monitor wells and piezometer wells, within 100 feet of any septic tank system, sewage disposal area, landfill, hazardous waste facility, hazardous materials storage area or petroleum storage area unless authorized in writing by the director.
R12-15-819	This rule prohibits, except as authorized by the Arizona Department of Environmental Quality, the use of wells for storage or disposal of sewage, toxic industrial waste, or other materials that may pollute groundwater.
R12-15-820	This rule allows the director to grant variances from Article 8 provisions and sets forth the conditions for granting a variance.
R12-15-821	This rule allows the director to set more stringent well construction requirements than those set forth in Article 8 if it is determined that the standards in Article 8 would not adequately protect the aquifer or other water users.
R12-15-822	This rule requires that the owner of an open well either install a cap on the well or abandon the well and prescribes the standards and reporting requirements for well capping.
R12-15-823	Reserved
R12-15-824	Reserved
R12-15-825	Reserved
R12-15-826	Reserved
R12-15-827	Reserved
R12-15-828	Reserved
R12-15-829	Reserved
R12-15-830	Reserved
R12-15-831	Reserved
R12-15-832	Reserved
R12-15-833	Reserved
R12-15-834	Reserved
R12-15-835	Reserved
R12-15-836	Reserved

R12-15-837	Reserved
R12-15-838	Reserved
R12-15-839	Reserved
R12-15-840	Reserved
R12-15-841	Reserved
R12-15-842	Reserved
R12-15-843	Reserved
R12-15-844	Reserved
R12-15-845	Reserved
R12-15-846	Reserved
R12-15-847	Reserved
R12-15-848	Reserved
R12-15-849	Reserved
R12-15-850	This rule: (1) requires the Department to determine whether a proposed well will be located in a groundwater basin or sub-basin in which there is a Water Quality Assurance Revolving Fund (“WQARF”) site, and if so, requires the Department to notify the person proposing to drill the well of the location of the site and of the requirement to notify the Department in advance of the date the well will be drilled; and (2) requires the Department to determine whether a proposed well will be located in an area where existing or anticipated future groundwater contamination presents a risk of vertical cross-contamination of groundwater and, if so, authorizes the director to establish site-specific construction requirements.
R12-15-851	This rule requires a well owner to give the Department notice when drilling will commence if the well will be drilled in a groundwater basin or sub-basin in which there is a WQARF site.
R12-15-852	This rule requires the director to give well owners within community involvement areas or other areas selected for inspection at least 30 days’ notice and an opportunity to comment before an inspection for vertical cross-contamination of groundwater.

3. **Are the rules effective in achieving their objectives?** Yes X No

The Department believes that R12-15-801 through R12-15-852 are effective and meet the objectives for which they are designed. The well construction and licensing rules in R12-15-801 through R12-15-822 have allowed the Department to monitor and control the construction, deepening, modification and abandonment of wells so as to preserve more and better-quality groundwater than otherwise might have been preserved. The well capping requirement has protected groundwater from contamination and protected the public from the dangers of open wells. The vertical cross contamination rules, R12-15-850 through R12-15-852, have been effective in the determination of potential vertical cross-contamination of wells, and in the notification of applicants and well owners.

R12-15-801 through R12-15-852 allow the Department to monitor and control the construction and abandonment of wells in Arizona, and to do so in a manner that protects the public’s interests, including health and safety. The rules create standards for the location, construction and abandonment of wells and standards for the licensing of well drillers. These rules require the capping or abandonment of open wells and provide standards for well capping. The

rules also establish a procedure so that the Department can determine whether a proposed well will be drilled within a groundwater basin or sub-basin where a Water Quality Assurance Revolving Fund (“WQARF”) site is located and if so, notify the applicant of that fact.

4. **Are the rules consistent with other rules and statutes?** Yes No

R12-15-801 through R12-15-852 are consistent with existing statutes or other rules made by the Department and the current Department enforcement policy.

5. **Are the rules enforced as written?** Yes No

R12-15-801 through R12-15-852 are being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes No

R12-15-801 through R12-15-852 are generally clear, concise and understandable. The rules provide detailed definitions of technical terms and most citations and cross-references are correct. However, the Department recognizes that these rules are older (originally adopted in 1984), and several rules require stylistic changes to update the rule language. Those changes will be incorporated on a rule by rule basis as substantive changes to each rule are made.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

The Department has not received written criticisms of R12-15-801 through R12-15-852 within the past five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

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

Please refer to tab D9 of the Appendix for the EIS submitted with R12-15-801 through R12-15-822 and the EIS for R12-15-850, R12-15-851 and R12-15-852 and tab D15 for the EIS submitted with technical amendments adopted in 2007.

In fiscal year 2016, the Department received 3 applications for well drilling licenses, 195 applications for reissuance or renewal of well drilling licenses and 1 application for single well licenses. In fiscal year 2017, the Department received 4 applications for well drilling licenses, 249 applications for reissuance or renewal of well drilling licenses and 0 applications for single well licenses. In fiscal year 2018, the Department received 2 applications for well drilling licenses, 206 applications for reissuance or renewal of well drilling licenses and 0 applications for single well licenses. In fiscal year 2019, the Department received 3 applications for well drilling licenses, 250 applications for reissuance or renewal of well drilling licenses and 0 applications for single well licenses. After reviewing each EIS and examining the impact that R12-15-801 through R12-15-852 have actually had on the public, the Department has concluded that the actual effect has been approximately the same as predicted in each EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

The Department has not received any analysis from another party that compares the impact of R12-15-801 through

R12-15-852 on this state's business competitiveness to the competitiveness of businesses in other states.

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

In its 2016 Five-Year Rule Review Report, the Department stated that if it were to receive permission from the Governor's Office to proceed with a rule package of technical rule corrections, it would include in the rule package the following technical corrections to two of the Department's well construction rules: (1) revisions to R12-15-811(A)(3) and (4) to update the references to the American Society for Testing and Materials standard specifications; and (2) revisions to R12-15-814 to update the references to Arizona Department of Health Services engineering bulletins. In October 2016, the Department met with the Governor's office to discuss requesting permission to conduct a rulemaking to make the rule amendments recommended in its 2016 Five-Year Rule Review Report, including a rule package of technical rule corrections. Although the Department received permission to proceed with some of the rule amendments recommended its 2016 Five-Year Rule Review Report, it did not receive permission to proceed with a rule package of technical rule corrections. For that reason, the Department did not proceed with the technical corrections to the two well construction rules described above.

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 regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The Department has determined that the probable benefits of R12-15-801 through R12-15-852 outweigh within this state the probable costs of the rules, and that the rules impose the least burden and costs on regulated persons.

12. Are the rules more stringent than corresponding federal laws? Yes _____ No X _____

There is no federal corresponding law.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Except for amendments in 2011 to conform R12-15-806 to the 2011 Fee Rules, none of the rules were adopted or amended after July 29, 2010. Therefore, A.R.S. § 41-1037 does not apply to these rules.

14. Proposed course of action:

As mentioned in section 10 above, the Department stated in its 2016 Five-Year Rule Review Report that if it received permission from the Governor's Office to proceed with a rule package of technical rule corrections, it would include in the package technical corrections to two of the Department's well construction rules. In October 2016, the Department met with the Governor's office to discuss requesting permission to conduct a rulemaking to make the rule amendments recommended in its 2016 Five-Year Rule Review Report, including a rule package of technical rule corrections. Although the Department received permission to proceed with some of the rule amendments recommended its 2016 Five-Year Rule Review Report, it did not receive permission to proceed with a rule package of technical rule corrections. Because the rule moratorium remains in effect, the Department will not proceed with making the technical corrections to the two well construction rules described in section 10 above unless it receives

permission from the Governor’s Office to proceed with a package of technical rule corrections.

ARTICLE 9. WATER MEASUREMENT – R12-15-901 THROUGH R12-15-909

1. Authorization of the rule by existing statutes:

R12-15-901 through R-12-15-909 are authorized by A.R.S. § 45-105(B)(1) and 45-604(E). Copies of these statutes are attached at tab C7 of the Appendix.

2. The objective of each rule:

Rule	Objective
R12-15-901	This rule defines terms used in Article 9.
R12-15-902	This rule requires persons responsible for using water measuring devices to use only those devices that are approved by the director. This rule also sets forth standards for the number of measuring devices that must be used and the locations where the devices must be installed.
R12-15-903	This rule sets forth the standards for an approved measuring device, requires that approved measuring devices be used with measuring methods approved by the director, and lists those measuring methods that are approved.
R12-15-904	This rule requires persons responsible for using water measuring devices to file an annual report with the director and lists information that must be included in that report to allow the Department to verify whether the requirements of Article 9 have been met.
R12-15-905	This rule requires that a measuring device be installed, maintained and used in a manner that: (1) ensures that its measurement error is not greater than 10% of the actual flow rate; and (2) allows the Department to readily check the accuracy of the device.
R12-15-906	This rule requires that a person responsible for using a water measuring device take the following action if the device fails to perform its designated function for more than 72 hours: (1) notify the director within seven days after discovery of the failure; (2) correct the malfunction; and (3) estimate the flow during the period of malfunction.
R12-15-907	This rule requires irrigation grandfathered rightholders to estimate and report to the Department the amount of water used from a common distribution system if water is measured at the point of delivery to the common distribution system, but not at a point of delivery to each rightholder. This rule lists two methods for estimating the amount of water used by each rightholder.
R12-15-908	This rule provides that the person responsible for using a water measuring device is liable for any fines, penalties or other sanctions resulting from the installation, monitoring, use or accuracy of the measuring device, method or recordkeeping even though the installation, monitoring, use or recordkeeping was done by an agent of the person.
R12-15-909	This rule: (1) allows the use of alternative water measuring devices or methods if approved in advance by the director; (2) allows persons to substitute equivalent information for the information required to be included in an annual report if approved in advance by the director; (3) exempts municipal providers from the reporting and notification requirements with respect to metered service connections; and (4) allows municipal providers and irrigation districts to notify the director of measuring device malfunctions at the time of

	filing their annual report if they have a schedule for regularly maintaining measuring devices and obtain approval from the director.
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3. **Are the rules effective in achieving their objectives?** Yes No

The Department believes that R12-15-901 through R12-15-909 are effective and meet their objective of standardizing approved water measuring devices and methods. These rules prescribe the criteria for approved water measuring devices and methods, and outline the reporting requirements for persons using measuring devices.

4. **Are the rules consistent with other rules and statutes?** Yes No

R12-15-901 through R12-15-909 are consistent with existing statutes or other rules made by the Department and current Department enforcement policy.

5. **Are the rules enforced as written?** Yes No

6. **Are the rules clear, concise, and understandable?** Yes No

R12-15-901 through R12-15-909 are clear, concise and understandable. The rules provide detailed definitions of technical terms and all citations and cross-references are correct.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

The Department has not received written criticisms of R12-15-901 through R12-15-909 within the past five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

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

Please refer to tab D10 of the Appendix for the EIS submitted with R12-15-901 through R12-15-909. After reviewing the EIS and examining the impact that R12-15-901 through R12-15-909 have actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

The Department has not received any analysis from another party that compares the impact of R12-15-901 through R12-15-909 on this state's business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The Department's previous five-year review did not recommend any changes to R12-15-901 through R12-15-909.

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 regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the probable benefits of R12-15-901 through R12-15-909 outweigh within this state the probable costs of the rules, and that the rules impose the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

A.R.S. § 41-1037 does not apply to these rules because they were not adopted or amended after July 29, 2010.

14. **Proposed course of action:**

None.

ARTICLE 10. REPORTING REQUIREMENTS FOR ANNUAL REPORTS, ANNUAL ACCOUNTS, OPERATING FLEXIBILITY ACCOUNTS, AND CONVEYANCES OF GROUNDWATER RIGHTS – R12-15-1001 THROUGH R12-15-1017

1. **Authorization of the rule by existing statutes:**

R12-15-1001 through R12-15-1017 are authorized by A.R.S. §§ 45-105(B)(1), 45-467(B), and 45-632(M). Copies of these statutes are attached to this report at tab C8 of the Appendix.

2. **The objective of each rule:**

Rule	Objective
R12-15-1001	This rule defines terms used in Article 10.
R12-15-1002	This rule requires that annual reports and annual accounts be submitted on forms approved by the director and allows annual reports and annual accounts to be filed in the same report.
R12-15-1003	This rule establishes accuracy requirements for annual reports.
R12-15-1004	This rule provides that a person responsible for filing an annual report is liable for any fines, penalties, or other sanctions resulting from the filing or contents of the annual report, even if the report is filed by another person. The rule also creates a rebuttable presumption that a report filed on behalf of a responsible party was filed with the responsible party's knowledge, consent, and authorization if the responsible party did not file an annual report for the year.
R12-15-1005	This rule requires responsible parties to include in their annual reports any monitoring and reporting information required by a management plan.
R12-15-1006	This rule requires a person recovering water pursuant to a recovery well permit to provide additional information with his or her annual report regarding the persons to whom the recovered water was delivered, the quantity of recovered water delivered to each person, the uses to which the recovered water was put, and the quantity of each type of water delivered to each person.

R12-15-1007	This rule requires persons filing annual accounts to report the quantity of water provided to specific classes of users.
R12-15-1008	This rule sets forth the information that must be included in an annual report filed by a person who withdraws, receives or uses groundwater pursuant to an irrigation grandfathered right so that the Department has the information necessary to maintain the person's flexibility account under A.R.S. § 45-467. The rule also sets forth the information that must be included in an annual account filed by a water deliverer.
R12-15-1009	This rule implements A.R.S. § 45-467(D)(2) by establishing a formula for calculating credits to a farm's flexibility account in a manner that will allow the farm to receive a credit only for the amount of water not used which would have been groundwater.
R12-15-1010	This rule encourages the use of tailwater on farms by: (1) excluding from a farm's operating flexibility account calculation the amount of measured and recorded tailwater deliveries to another farm or an irrigation district; and (2) excluding tailwater use from the recipient farm's operating flexibility account calculation to the extent that it would cause a debit to be registered to the account if the tailwater was not measured and recorded by the originating farm pursuant to a plan approved by the director. The rule also provides how tailwater must be accounted for by persons delivering or receiving tailwater.
R12-15-1011	This rule requires the Department to annually provide and amend, if necessary, a statement of the status of an operating flexibility account to the owner or user of the irrigation grandfathered right.
R12-15-1012	This rule notifies the public that the accounting provisions of Article 10 shall not be construed to determine the legality of any water use.
R12-15-1013	This rule requires that the person responsible for filing an annual report or annual account maintain all records necessary to verify those documents for three years.
R12-15-1014	This rule sets forth the dates when the Department shall consider reports filed and fees paid; allows persons filing incomplete annual accounts and annual reports 30 days after receiving notice of the inadequacy to provide the missing information; and provides for extensions of time to file annual reports and pay fees.
R12-15-1015	This rule establishes reporting and accounting requirements for conveyances of grandfathered rights and sets forth information that must be included in a request to convey a groundwater withdrawal permit.
R12-15-1016	This rule requires water providers that deliver spillwater to include in their annual report for the year: (1) the quantity of spillwater delivered for non-irrigation use; (2) the quantity of spillwater delivered for irrigation use; and (3) such other information as the director may reasonably require to determine whether the water qualifies as spillwater.
R12-15-1017	This rule provides that a community water system required to file an annual report under A.R.S. § 45-343 must maintain the report on a calendar year basis and file the report with the Department no later than June 1 of each year for the preceding calendar year.

3. **Are the rules effective in achieving their objectives?** Yes No

The Department believes that R12-15-1001 through R12-15-1017 are effective and meet their objective of allowing the Department to receive an accurate report of water use by persons required to file an annual report or annual account.

These rules implement the statutes in Title 45 of the Arizona Revised Statutes that require certain water users and water providers to submit annual reports of their water use or service. This information is critical to manage the State's water supplies. The rules inform water users and water providers of the information to be recorded and reported; specify who is liable for any fines and penalties resulting from the filing of an annual report when the report

is filed on behalf of the responsible party by another person; set forth criteria for registering credits to a farm's flexibility account; specify the length of time that records for an annual account or annual report must be retained; and provide requirements for filing annual reports and accounts and community water system reports.

4. **Are the rules consistent with other rules and statutes?** Yes No

R12-15-1001 through R12-15-1017 are consistent with existing statutes or other rules made by the Department and current Department enforcement policy. In addition to the authorizing statutes, the rules are consistent with A.R.S. §§ 45-467, 45-468, 45-482, 45-614 and 45-632.

5. **Are the rules enforced as written?** Yes No

R12-15-1001 through R12-15-1017 are being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes No

R12-15-1001 through R12-15-1017 are clear, concise and understandable. The rules provided detailed definitions of technical terms and all citations and cross-references are correct.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

The Department has not received written criticisms of R12-15-1001 through R12-15-1017 within the past five years.

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

Please refer to tab D11 of the Appendix for the EIS submitted with R12-15-1001 through R12-15-1017. In fiscal year 2015-2016, the Department anticipates receiving 6,030 annual reports from groundwater users in the five AMAs, including water providers, type 1 non-irrigation right-holders, type 2 non-irrigation right-holders, irrigation grandfathered right-holders, and persons holding groundwater withdrawal permits, recharge permits and assured and adequate water supply designations as well as from groundwater users in the three Irrigation Non-Expansion Areas and community water systems. After reviewing the EIS and examining the impact that R12-15-1001 through R12-15-1017 have actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

The Department has not received any analysis from another party that compares the impact of R12-15-1001 through R12-15-1017 on this state's business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The Department's previous five-year review did not recommend any changes to R12-15-1001 through R12-15-1017.

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 regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the probable benefits of R12-15-1001 through R12-15-1017 outweigh within

this state the probable costs of the rules, and that the rules impose the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

A.R.S. § 41-1037 does not apply to these rules because they were not adopted or amended after July 29, 2010.

14. **Proposed course of action:**

None.

ARTICLE 11. INSPECTIONS AND AUDITS – R12-15-1101 AND R12-15-1102

1. **Authorization of the rule by existing statutes:**

Authority for R12-15-1101 and R12-15-1102 is located in A.R.S. §§ 45-105(B)(1), 45-135(B), 45-633(B), 45-880.01(B) and 45-1061(B). Copies of these statutes are attached to this report at tab C9 of the Appendix.

2. **The objective of each rule:**

Rule	Objective
R12-15-1101	This rule: (1) sets forth procedures that must be followed by the Department in conducting authorized inspections on private or public property to ensure that adequate notice is given prior to the inspection, except in cases where notice would frustrate the enforcement of Title 45 or when entry is sought solely for the purpose of inspecting a water measuring device; and (2) requires the Department to provide a post-inspection report to a person whose records or property are inspected.
R12-15-1102	This rule sets forth procedures that the Department must follow in conducting authorized audits of records and other information to ensure that adequate notice of an audit is given to the person subject to the audit. This rule also requires the Department to provide a post-audit report to the person subject to the audit.

3. **Are the rules effective in achieving their objectives?** Yes X No ___

These rules set forth the procedures for conducting inspections and audits authorized or required by Title 45. The Department believes that R12-15-1101 and R12-15-1102 are effective and meet their intended objective of establishing the procedures necessary for inspections and audits.

4. **Are the rules consistent with other rules and statutes?** Yes X No ___

R12-15-1101 and R12-15-1102 are consistent with existing statutes or other rules made by the Department and current Department enforcement policy.

5. **Are the rules enforced as written?** Yes X No ___

R12-15-1101 and R12-15-1102 are being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes No

R12-15-1101 and R12-15-1102 are clear, concise and understandable. The rules provide detailed definitions of technical terms and all citations and cross-references are correct.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

The Department has not received any criticisms of R12-15-1101 and R12-15-1102 within the past five years, including any written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

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

Please refer to tab D12 of the Appendix for the EIS submitted with R12-15-1101 and R12-15-1102. After reviewing the EIS and examining the impact that R12-15-1101 and R12-15-1102 have actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

The Department has not received any analysis from another party that compares the impact of R12-15-1101 and R12-15-1102 on this state's business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The Department's previous five-year review report did not recommend any changes to R12-15-1101 and R12-15-1102.

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 regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the benefits of R12-15-1101 and R12-15-1102 outweigh within this state the probable costs of the rules, and that the rules impose the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes No

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

A.R.S. § 41-1037 does not apply to these rules because they were not adopted or amended after July 29, 2010.

14. Proposed course of action

None.

ARTICLE 12. DAM SAFETY PROCEDURES – R12-15-1201 THROUGH R12-15-1226

1. Authorization of the rule by existing statutes:

R12-15-1201 through R12-15-1226 are authorized by A.R.S. §§ 45-105(B)(1) and 45-1202(C). Copies of these statutes are attached to this report as tab C10 of the Appendix.

2. The objective of each rule:

Rule	Objective
R12-15-1201	This rule sets forth the scope of Article 12.
R12-15-1202	This rule defines terms used in Article 12.
R12-15-1203	This rule exempts certain structures based on size and storage capacity; exempts dams owned or operated by agencies or instrumentalities of the federal government regardless of size if covered by a dam safety program at least as stringent as the program described in Article 12; and exempts other structures not typically considered to be dams.
R12-15-1204	This rule requires dam owners to obtain, in advance, the director’s approval of dam design criteria; recommends that dam owners and engineers consult design guidelines published by federal agencies for the design of certain types of dams; and provides that the director may require that other criteria be used or revise any of the specific criteria for the purpose of dam safety.
R12-15-1205	This rule provides that a dam owner is responsible for the safe design, operation, maintenance, and inspection of the dam; requires dam owners to develop and maintain emergency action plans for dams; requires dam owners to operate, maintain, repair, inspect and monitor their dams; and requires notification to the Department if ownership of a dam changes.
R12-15-1206	This rule establishes size and hazard potential classifications of dams; requires applicants to demonstrate the hazard potential of a dam before filing an application to construct; and authorizes the Department to revise the hazard potential classification of a dam in accordance with current conditions.
R12-15-1207	This rule requires prior written approval from the director to construct, reconstruct, repair, enlarge, remove, alter or breach a dam; provides that such approval is valid for one year unless extended by the director; waives application requirements in emergency situations for routine maintenance or ordinary repairs and for breach, removal, or reduction of very low hazard dams; authorizes the director to relieve a dam owner from a requirement in Article 12 if the requirement is unduly burdensome or expensive and is not necessary to protect human life or property; requires pre-application meetings with the Department; and defines Department application review procedures.
R12-15-1208	This rule sets forth application requirements for an application to construct, reconstruct, repair, enlarge, or alter a high or significant hazard potential dam.
R12-15-1209	This rule sets further application requirements for an application to breach or remove a high or significant hazard potential dam; prescribes the procedures that must be followed in breaching a high or significant hazard potential dam; and allows the director to approve by letter the reduction of a high or significant downstream hazard potential dam to non-

	jurisdictional size under certain circumstances.
R12-15-1210	This rule sets forth application requirements for an application to construct, reconstruct, repair, enlarge, alter, breach or remove a low hazard potential dam; requires written notice to the director prior to reducing a low hazard potential dam to non-jurisdictional size; establishes the time in which the Department must take action on an application for construction, reconstruction, repair, enlargement, alteration, breach or removal of a dam; requires post-construction information to be submitted to the Department; and requires the owner of a low hazard potential dam to immediately commence any repairs necessary to safeguard human life and property and prevent failure and improper operation of the dam.
R12-15-1211	This rule sets forth application requirements for an application to construct, reconstruct, repair, enlarge, or alter a very low hazard potential dam; establishes the time in which the Department must take action on such an application; requires written notice to the director prior to breaching, removing or reducing to non-jurisdictional size a very low hazard potential dam; requires post construction information to be submitted to the Department; allows inspections by the Department after construction; and requires the owner of a very low hazard potential dam to immediately commence repairs necessary to safeguard human life and property and prevent failure and improper operation of the dam.
R12-15-1212	This rule prescribes procedures for the construction of a high, significant or low hazard potential dam, including a pre-construction conference and periodic inspections and supervision by an engineer; requires approval of any construction changes; and requires post-inspection by the Department.
R12-15-1213	This rule requires the owner of a significant or high hazard potential dam to file completion documents after construction or removal of the dam, including construction drawings and records and, if applicable, a schedule for filling the reservoir and an operating manual for the dam.
R12-15-1214	This rule prohibits the owner of a significant or high hazard dam from using the dam or reservoir until the director issues a license for the dam, requires the director to issue a license for the dam if the dam is safe and was completed in accordance with approved plans and specifications, and lists circumstances requiring the issuance of a new license.
R12-15-1215	This rule imposes upon the owner and engineer of a dam the responsibility for completion and adequate design of a dam, including providing in the application all aspects of the design relating to the safety of the dam. The rule also sets forth the requirements for construction drawings, construction specifications and engineering design reports for high, significant and low hazard potential dams.
R12-15-1216	This rule sets forth general design requirements for high, significant and low hazard dams, including emergency spillway requirements, inflow design flood requirements, outlet works requirements, dam site and reservoir area requirements, geotechnical requirements, seismic requirements and embankment dam requirements. This rule also sets forth miscellaneous design requirements.
R12-15-1217	This rule requires dam owners to perform general maintenance and ordinary repairs that do not impair the safety of the dam; requires prior approval of the director before performing repairs or maintenance that may impair or adversely affect safety or before taking emergency actions impairing the safety of the dam; requires notice to the director of any emergency situation; and requires emergency actions during emergency situations.
R12-15-1218	This rule allows the director to determine the safe storage level of the reservoir created by a dam and prohibits the dam owner from storing water in excess of that level.
R12-15-1219	This rule establishes safety inspection schedules, requirements and procedures; provides a

	process for the Department to follow when it receives a complaint that a dam is endangering people or property; and authorizes the director to enter private or public property to inspect dams and determine compliance with dam safety statutes and rules.
R12-15-1220	This rule requires owners of existing dams to comply with the requirements of Article 12, except that: (1) a dam owner is not required to comply with the design requirements in R12-15-1216 if the director has determined that the dam is in a safe condition, unless the director determines that it is cost effective to upgrade the dam to comply with the requirements at the time a major alteration or major repair of the dam is planned; and (2) a dam owner is not required to comply with a requirement if the director finds that the requirement is unduly burdensome or expensive and is not necessary to protect human life or property.
R12-15-1221	This rule requires the owner of a high or significant hazard potential dam to prepare, maintain, review, update and exercise a written emergency action plan.
R12-15-1222	This rule makes the director’s decisions under Article 12 appealable agency actions pursuant to the Administrative Procedure Act, except for emergency measures and actions exempted from review by law. The rule also allows an applicant or owner to seek review of an engineering decision by a board of review.
R12-15-1223	This rule allows the Department to exercise discretion in taking actions necessary to prevent danger to human life or property and sets forth enforcement procedures the Department may take when the director has cause to believe that a dam is unsafe or a person is in violation or has violated a provision of Article 12 or a statute governing dam safety.
R12-15-1224	This rule requires a dam owner to notify the Department, emergency authorities and downstream communities of conditions that may threaten the safety of the dam; requires an owner in these situations to take listed emergency actions to protect human life and property; and requires the director to issue an emergency approval for repairs, alterations and removal of an existing dam to alleviate an immediate threat to human life or property.
R12-15-1225	This rule allows the director to use dam repair funds to employ remedial measures necessary to protect human life and property when the dam owner is unable or unwilling to take action and there is not sufficient time to issue and enforce an order. The rule also provides that the director shall hold a lien against all property of the owner for money expended under this rule, as provided in A.R.S. § 45-1212.
R12-15-1226	This rule authorizes the director to use the dam repair fund to defray the costs of repairs for a dam that represents a threat to human life or property, but is not in an emergency condition; authorizes the director to grant or loan monies in the dam repair fund only to dams classified as unsafe by the director; and establishes the procedures for granting and loaning dam repair funds.

3. **Are the rules effective in achieving their objectives?** Yes X No

The Department believes that R12-15-1201 through R12-15-1226 are effective and meet the objectives for which they are designed. The dam safety procedure rules effectively outline the duties of both the Department and dam owners to improve dam safety.

These rules enable the Department to monitor jurisdictional dams and require improvements consistent with accepted engineering practices to ensure the safety of life and property.

4. **Are the rules consistent with other rules and statutes?** Yes X No

R12-15-1201 through R12-15-1226 are consistent with existing statutes or other rules made by the Department and

current Department enforcement policy.

5. **Are the rules enforced as written?** Yes No

R12-15-1201 through R12-15-1226 are being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes No

R12-15-1201 through R12-15-1226 are clear, concise and understandable. The rules provide detailed definitions of technical terms and all citations and cross-references are correct.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

The Department has not received written criticisms of R12-15-1201 through R12-15-1226 within the past five years, including written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

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

Please refer to tab D13 of the Appendix for the EIS submitted with R12-15-1201 through R12-15-1226 and tab D13 of the Appendix for the EIS submitted with a 2007 technical amendments rule package that made technical amendments to R12-15-1210.

In fiscal year 2016, the Department performed 88 dam safety inspections for all hazard potential dams. In fiscal year 2017, the Department performed 127 dam safety inspections for all hazard potential dams. In fiscal year 2018, the Department performed 136 safety inspections for all hazard potential dams. Lastly, in fiscal year 2019, the Department performed 134 dam safety inspections for all hazard potential dams. After reviewing the EIS and examining the impact that R12-15-1201 through R12-15-1226 have actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

The Department has not received any analysis from another party that compares the impact of R12-15-1201 through R12-15-1226 on this state's business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

In its 2016 Five-Year Rule Review Report, the Department stated that if it were to receive permission from the Governor's Office to proceed with a rule package of technical rule corrections, it would include in the rule package an amendment to R12-15-1224(A)(2) to remove specific references to the Arizona Department of Public Safety's emergency phone numbers. In October 2016, the Department met with the Governor's office to discuss requesting permission to conduct a rulemaking to make the rule amendments recommended in its 2016 Five-Year Rule Review Report, including a rule package of technical rule corrections. Although the Department received permission to proceed with some of the rule amendments recommended its 2016 Five-Year Rule Review Report, it did not receive permission to proceed with a rule package of technical rule corrections. For that reason, the Department did not proceed with the amendment to R12-15-1225(A)(2) described above.

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 regulated persons by the rule, including paperwork**

and other compliance costs, necessary to achieve the underlying regulatory objective:

The Department has determined that the probable benefits of R12-15-1201 through R12-15-1226 outweigh within this state the probable costs of the rules, and that the rules impose the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Except for amendments in 2011 to conform several of the rules in Article 12 to amendments made to the Department’s fee rules in 2011, these rules were not adopted or amended after July 29, 2010. Therefore, A.R.S. § 41-1037 does not apply to these rules.

14. **Proposed course of action:**

As mentioned in section 10 above, the Department stated in its 2016 Five-Year Rule Review Report that if it received permission from the Governor’s Office to proceed with a rule package of technical rule corrections, it would include in the package an amendment to R12-15-1224(A)(2) to remove specific references to the Arizona Department of Public Safety’s emergency phone numbers. In October 2016, the Department met with the Governor’s office to discuss requesting permission to conduct a rulemaking to make the rule amendments recommended in its 2016 Five-Year Rule Review Report, including a rule package of technical rule corrections. Although the Department received permission to proceed with some of the rule amendments recommended its 2016 Five-Year Rule Review Report, it did not receive permission to proceed with a rule package of technical rule corrections. Because the rule moratorium remains in effect, the Department will not proceed with amending R12-15-1224(A)(2) to remove specific references to the Arizona Department of Public Safety’s emergency phone numbers unless it receives permission from the Governor’s Office to proceed with a package of technical rule corrections.

ARTICLE 13. WELL SPACING REQUIREMENTS; REPLACEMENT WELLS IN APPROXIMATELY THE SAME LOCATION – R12-15-1301 THROUGH R12-15-1308

1. **Authorization of the rule by existing statutes:**

R12-15-1301 through R12-15-1307 are authorized by A.R.S. §§ 45-105(B)(1), 45-598(A) and 45-834.01(B)(1).

R12-15-1308 is authorized by A.R.S. §§ 45-105(B)(1) and 45-597(A).

Copies of these statutes are attached to this report as tab C11 of the Appendix.

2. **The objective of each rule:**

Rule	Objective
R12-15-1301	This rule defines terms used in Article 13.
R12-15-1302	This rule contains well spacing criteria for applications for well permits when construction

	of a new well or a replacement well in a new location will occur within an AMA pursuant to a grandfathered groundwater right, a service area right or a general industrial use permit. The rule prescribes that the director shall deny an application for a well permit if the director determines that the proposed well will cause unreasonably increasing damage to surrounding land and other water users due to one of the following factors: (1) ten feet of additional drawdown of water levels at a well of record after the first five years of operation of the proposed well; (2) additional regional land subsidence; or (3) the migration of contaminated groundwater to a well of record. The director may not consider the impacts on a well of record if the owner of the well of record consents to the impact.
R12-15-1303	This rule contains well spacing criteria for applications for recovery well permits throughout the state. The well spacing criteria are identical to the well spacing criteria contained in R12-15-1302 with certain exceptions, including: (1) R12-15-1303(B)(1) requires that an applicant for a recovery well permit must submit a hydrological study delineating those areas surrounding the proposed well in which the projected impacts on water levels from recovery of the stored water will exceed 10 feet of additional drawdown after the first five years; and (2) R12-15-1303(C)(2) provides that if the proposed recovery well will be located within the area of impact of an underground storage facility and the applicant will account for all of the water recovered from the well as water stored at the facility, the director shall take into account the effects of water storage at the facility on the proposed recovery of stored water from the recovery well if the applicant submits a hydrologic study demonstrating those effects to the satisfaction of the director.
R12-15-1304	This rule contains well spacing criteria for wells drilled in the Little Colorado River plateau groundwater basin after January 1, 1991 for the purpose of withdrawing groundwater for transportation out of the basin. The well spacing criteria are identical to the well spacing criteria contained in R12-15-1302. Note that this rule does not apply to a replacement well in approximately the same location or a well drilled after January 1, 1991 if a notice of intent to drill had been filed on or before that date.
R12-15-1305	This rule contains well spacing criteria for applications to use a well-constructed after September 21, 1991 for the withdrawal of groundwater for transportation to an AMA. The well spacing criteria are identical to the well spacing criteria contained in R12-15-1302.
R12-15-1306	This rule contains well spacing criteria for applications for water exchange permits if there will be any new or increased pumping in an AMA by the applicant. The well spacing criteria are identical to the well spacing criteria contained in R12-15-1302. Note that this rule does not apply if the applicant for the water exchange permit is a city, town, private water company or irrigation district.
R12-15-1307	This rule contains well spacing criteria for notices of water exchange if there will be new or increased pumping in the AMA by a participant to the water exchange. The well spacing criteria are identical to the well spacing criteria contained in R12-15-1302.
R12-15-1308	This rule sets forth the criteria that a proposed well must meet in order to qualify as a replacement well in approximately the same location. These criteria fall into three basic categories: (1) the maximum distance the proposed replacement well may be from the original well; (2) the maximum annual volume of water the proposed replacement well may withdraw; and (3) the date by which a notice of intent to drill the replacement well must be filed if the well to be replaced has been abandoned.

3. **Are the rules effective in achieving their objectives?** Yes No

The Department believes that R12-15-1301 through R12-15-1308 are effective and meet their objective of preventing unreasonably increasing damage from new wells and replacement wells in new locations in certain areas of the state.

4. **Are the rules consistent with other rules and statutes?** Yes No

R12-15-1301 through R12-15-1308 are consistent with existing statutes or other rules made by the Department and current Department enforcement policy.

5. **Are the rules enforced as written?** Yes No

R12-15-1301 through R12-15-1308 are being enforced without issue by the Department.

6. **Are the rules clear, concise, and understandable?** Yes No

R12-15-1301 through R12-15-1308 are clear, concise and understandable. The rules provide detailed definitions of technical terms and all citations and cross-references are correct.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

The Department has not received written criticisms of R12-15-1301 through R12-15-1308 within the past five years, including written analyses questioning whether the rules are based on valid scientific or reliable principles or methods.

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

Please refer to tab D14 of the Appendix for the EIS submitted with R12-15-1301 through R12-15-1308. After reviewing the EIS and examining the impact that R12-15-1301 through R12-15-1308 have actually had on the public, the Department has concluded that the actual effects have been approximately the same as predicted in the EIS.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

The Department has not received any analysis from another party that compares the impact of R12-15-1301 through R12-15-1308 on this state's business competitiveness to the competitiveness of businesses in other states.

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The Department's previous five-year review did not recommend any changes to R12-15-1301 through R12-15-1308.

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 regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the probable benefits of R12-15-1301 through R12-15-1308 outweigh within this state the probable costs of the rules, and that the rules impose the least burden and costs on regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes No

There is no federal corresponding law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

A.R.S. § 41-1037 does not apply to these rules because they were not adopted or amended after July 29, 2010.

14. Proposed course of action:

None.

TAB B
Department Rules

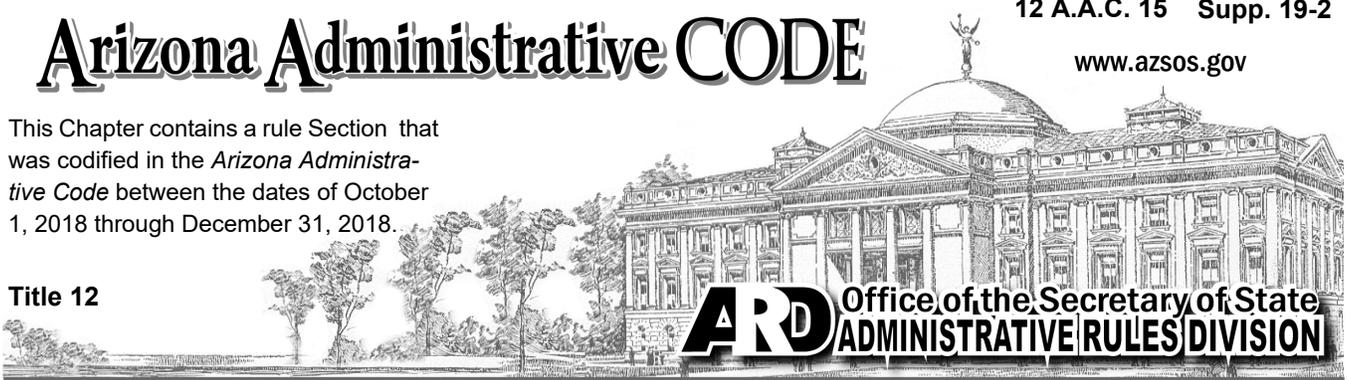
Arizona Administrative CODE

12 A.A.C. 15 Supp. 19-2

www.azsos.gov

This Chapter contains a rule Section that was codified in the *Arizona Administrative Code* between the dates of October 1, 2018 through December 31, 2018.

Title 12



TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Editor's Note: At the request of the Department R12-15-722(A)(2) through (5) were removed since they were not part of the amendments made to this Section in Supp. 18-4. Subsections R12-15-722(A)(2) through (3) as amended at 13 A.A.R. 1394 have been restored (Supp. 19-2).

[R12-15-722.](#) [Consistency with Management Goal 33](#)

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The release of this Chapter in Supp. 19-2 replaces Supp. 18-4, 1-83 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.



Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

(Authority: A.R.S. § 45-101 et seq.)

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ARTICLE 1. FEES

R12-15-101. Definitions

In addition to the definitions in A.R.S. §§ 45-101, 45-271, 45-402, 45-511, 45-561, 45-802.01, 45-1001, 45-1201 and R12-15-701, the following definitions apply to this Article:

1. "Application" means a written request submitted by an applicant to the Department for the purpose of obtaining a permit, license or other legal authorization issued by the Department.
2. "Fiscal year" means the year beginning July 1 and ending June 30.
3. "Mileage expenses" means the Department's mileage expenses for travelling to and from a site inspection calculated at the rate set by the Arizona Department of Administration for state travel by motor vehicle.
4. "Municipality" means an incorporated city or town.
5. "Pre-decision administrative hearing" means an administrative hearing held on an application before the Department makes any decision on the application.
6. "Population" means the population according to the most recent United States decennial census.
7. "Review hours" means the hours or portions of hours spent by Department employees in reviewing an application and making a decision thereon, including pre-application consultation time in excess of 60 minutes and site inspection time. Only time spent by the program staff members and technical review team members responsible for processing the application shall be included as review hours. Review hours do not include the first 60 minutes of pre-application consultation time, the time spent traveling to and from a site inspection, any time spent on a pre-decision administrative hearing and any time spent on the application after a party appeals the Director's decision on the application pursuant to A.R.S. § 41-1092.03(B).
8. "Site inspection" means an inspection conducted by the Department before issuing a decision on an application or before issuing a decision on whether water may be stored at an underground storage facility.
9. "Site inspection time" means time spent on a site inspection. Site inspection time includes the time spent conducting the inspection and the time spent preparing an inspection report following the inspection, but does not include the time spent traveling to and from the inspection.
10. "Water resources fund" means the water resources fund established by A.R.S. § 45-117.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 203, effective July 1, 2012 (Supp. 12-1).

R12-15-102. Fees for Applications and Filings

A. A person submitting an application or filing to the Department on or after the effective date of this Section shall pay an hourly application fee as provided in R12-15-103 or a fixed application or filing fee as provided in R12-15-104, whichever applies. Fees for applications and filings shall be paid in U.S. dollars by cash, check, cashier's check, money order, or any other method acceptable to the Department.

B. A person with an application or filing pending before the Department prior to the effective date of this Section shall pay the application or filing fees and costs in effect when the application or filing was submitted to the Department.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-103. Applications Subject to Hourly Fee; Amount of Fee; Initial Fee; Billing and Payment; Request for Reconsideration of Fee; Past Due Fee

- A. The Department shall calculate the fee for an application listed in subsection (B) of this Section by multiplying the number of review hours for the application by an hourly rate of \$118.00, plus any mileage expenses and the actual cost of mailing or publishing any legal notice of the application.
- B. A person submitting an application listed below shall pay an hourly fee for the application, not to exceed the maximum fee shown for the application:
 1. Wells:

Type of Application	Maximum Fee
Variance from well construction requirements that has not been pre-approved by the Department	\$10,000.00

2. Groundwater:

Type of Application	Maximum Fee
a.Issuance, renewal or modification of groundwater withdrawal permit	\$10,000.00
b.Issuance of notice of authority to irrigate in an irrigation non-expansion area	\$10,000.00
c.Approval of contract by a city, town or private water company to supply groundwater to another city, town or private water company pursuant to A.R.S. § 45-492(C)	\$10,000.00
d.Notice of intent to establish new service area right by a city, town or private water company	\$10,000.00
e.Final petition to establish new service area right by a city, town or private water company	\$10,000.00
f.Extension of the service area of a city, town or private water company to furnish disproportionately large amounts of water to an industrial or other large water user pursuant to A.R.S. § 45-493(A)(2)	\$10,000.00
g.Addition and exclusion of area by an irrigation district pursuant to A.R.S. § 45-494.01	\$10,000.00
h.Delivery of groundwater by an irrigation district to an industrial user with a general industrial use permit pursuant to A.R.S. § 45-497(B)	\$10,000.00

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i.Determination of historically irrigated acres or annual transportation allotment for lands in McMullen valley groundwater basin pursuant to A.R.S. § 45-552	\$10,000.00
j.Determination of volume of groundwater that can be transported from lands in Harquahala irrigation non-expansion area to an initial active management area pursuant to A.R.S. § 45-554	\$10,000.00
k.Determination of historically irrigated acres or annual transportation allotment for lands in the Big Chino sub-basin of the Verde River groundwater basin pursuant to A.R.S. § 45-555	\$10,000.00
l.Permit to transport groundwater away from the Yuma groundwater basin pursuant to A.R.S. § 45-547	\$10,000.00
m.Drought emergency groundwater transfer away from a groundwater basin outside of an active management area	\$10,000.00

3. Grandfathered Rights:

Type of Application	Maximum Fee
a.Type 1 non-irrigation grandfathered right for land retired from irrigation after date of designation of active management area pursuant to A.R.S. § 45-469 or 45-472	\$10,000.00
b.Restoration of retired irrigation grandfathered right pursuant to A.R.S. § 45-469(O)	\$10,000.00

4. Substitution of Acres:

Type of Application	Maximum Fee
a.Substitution of flood damaged acres in an active management area or an irrigation non-expansion area	\$10,000.00
b.Substitution of acres to eliminate limiting condition impeding efficient irrigation in an active management area or an irrigation non-expansion area	\$10,000.00
c.Substitution of acres to allow irrigation with Central Arizona Project water in an active management area	\$10,000.00

5. Lakes:

Type of Application	Maximum Fee
a.Permit to fill body of water with poor quality water pursuant to A.R.S. § 45-132(C)	\$10,000.00
b.Permit for interim water use in a body of water	\$10,000.00
c.Temporary emergency permit for use of surface water or groundwater in a body of water	\$10,000.00

6. Water Exchange:

Type of Application	Maximum Fee

a. Issuance, renewal or modification of water exchange permit	\$10,000.00
b. Notice of water exchange for which approval is required pursuant to A.R.S. § 45-1052(6)(b)	\$10,000.00

7. Water Exportation:

Type of Application	Maximum Fee
Permit to transport water from this state	\$25,000.00

8. Underground Water Storage, Savings and Replenishment:

Type of Application	Maximum Fee
a.Issuance, renewal or modification of an underground storage facility permit	\$25,000.00
b.Issuance, renewal or modification of a groundwater savings facility permit	\$10,000.00
c.Issuance, renewal or modification of a water storage permit	\$10,000.00
d.Recovery well permit, including an emergency temporary recovery well permit	\$10,000.00

9. Assured and Adequate Water Supply:

Type of Application	Maximum Fee
a.Physical availability determination	\$10,000.00
b.Analysis of assured or adequate water supply	\$10,000.00
c.Renewal of analysis of assured or adequate water supply	\$10,000.00
d.Certificate of assured water supply	\$10,000.00
e.Issuance or modification of designation of assured water supply	\$35,000.00
f.Issuance or modification of designation of adequate water supply	\$25,000.00
g.Water report (outside an AMA)	\$10,000.00
h.Assignment of Type A certificate of assured water supply	\$5,000.00
i.Assignment of Type B certificate of assured water supply	\$5,000.00
j.Classification of Type A certificate of assured water supply pursuant to R12-15-707	\$10,000.00
k.Review of revised plat to determine whether changes are material	\$10,000.00
l.New certificate of assured water supply pursuant to R12-15-704(G)	\$10,000.00
m.Letter stating that owner is not required to obtain a certificate of assured water supply pursuant to R12-15-704(M)	\$10,000.00

10. Surface Water:

Type of Application	Maximum Fee
a.Permit to appropriate public water	\$10,000.00
b.Certificate of water right	\$10,000.00

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c.Primary reservoir permit or secondary reservoir permit	\$10,000.00
d.Change in use of water	\$10,000.00
e.Severance and transfer of water right to land that is not within the same parcel or farm unit as the current use, or that includes a change in water source, use or ownership	\$25,000.00
f.Severance and transfer of water right to land that is within the same parcel or farm unit as the current use and that does not include a change in water source, use or ownership	\$2,500.00
g.Request for extension of time to complete construction	\$10,000.00

- C. A person filing an application that is subject to an hourly fee shall submit an initial fee at the time the application is submitted to the Department. The initial fee for applications described in subsections (B)(7), (B)(8)(a), (B)(9)(e), (f) and (B)(10)(e) of this Section shall be \$2,000.00. The initial fee for all other applications shall be \$1,000.00. If requested by the applicant, the Department may set a lower initial fee if the Department estimates that the total application fee will be less than the initial fee specified in this subsection. The Department shall not accept an application for which an initial fee is required under this subsection unless the initial fee is included with the application.
- D. The Department shall bill the applicant for processing the application no more than monthly, but at least quarterly. Each bill shall contain the following information for the billing period:
 1. The number of review hours accrued by activity and sub-activity code during the billing period, the date of each activity, a description of each activity and the effective hourly rate for all activities;
 2. A description and amount of any mileage expenses charged for the application;
 3. A description and amount of the cost of mailing or publishing any legal notice of the application or notice of a pre-decision administrative hearing on the application; and
 4. The total fees paid to date, the total fees due for the billing period, the date when the fees are payable, which shall be at least 60 days after the date of the bill, and the maximum fee for the application.
- E. A bill for hourly fees becomes past due if the applicant does not pay the bill in full by the due date specified in the bill, unless the applicant submits a timely request for reconsideration of the bill pursuant to subsection (G) of this Section. If the applicant submits a timely request for reconsideration of the bill, the bill becomes past due if the applicant does not pay the amount due under the Director's decision on the request by the date specified in the decision. If a bill for hourly fees becomes past due, the following shall apply:
 1. The applicable review time-frame shall be suspended from the date the bill became past due until the applicant pays the bill in full or the application is denied under subsection (E)(2) of this Section, whichever applies.
 2. The Department shall suspend its review of the application and send a written notice to the applicant that the bill is past due. If the applicant does not pay the outstanding bill by the date specified in the notice, which shall be at least 35 days from the date of the notice, the application shall be denied.

- F. After the Department makes a determination whether to grant or deny the application, or when an applicant withdraws the application, the Department shall prepare and send to the applicant a final itemized billing statement for the application fee.
 1. If the total fee exceeds the amount of the initial fee paid plus all other payments made to date, the applicant shall pay the balance, up to the maximum fee for the application, plus any mileage expenses and the actual cost of mailing or publishing any legal notice of the application or notice of a pre-decision administrative hearing on the application, by the date specified in the statement, unless the applicant submits a timely request for reconsideration of the bill pursuant to subsection (G) of this Section. The statement shall specify a date, at least 60 days from the date of the statement, by which the applicant must pay the bill. If the applicant submits a timely request for reconsideration of the bill, the applicant shall pay the amount due under the Director's decision on the request by the date specified in the decision. The Department shall not release the final permit or approval until the final bill is paid in full.
 2. If the total fee is less than the initial fee plus all other payments made to date, the Department shall refund the difference to the applicant within 35 days of the date of the statement.
- G. An applicant may seek reconsideration of a bill for hourly fees by filing a written request for reconsideration with the Director. The request shall specify, in detail, why the bill is in dispute and shall include any supporting documentation. The written request for reconsideration shall be delivered to the Director in person, by mail, or by facsimile on or before the payment due date. The Director shall make a final decision on the request for reconsideration of the bill and mail a final written decision to the person within 20 business days after the date the Director receives the written request. The decision shall specify a date, at least 35 days from the date of the decision, by which the applicant must pay the bill. The Director may reduce the amount of any fees billed under this Section if the Director determines that the number of review hours or mileage expenses billed to the applicant was incorrect or that time spent by the Department to review the application and make a decision thereon was not necessary or advisable.
- H. If a person receives a bill under this Section and the bill becomes past due under subsection (E) or (F) of this Section, the Department shall not accept for filing any other application by that person until the person pays the past due amount in full.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-104. Applications and Filings Subject to Fixed Fee; Fixed Fee Schedule; Mileage Expenses; Costs for Legal Notices

- A. The Department shall not accept or take action on the following applications and filings unless the fee shown for the application or filing is paid at the time the application or filing is submitted:
 1. Wells:

Type of Application or Filing	Fee
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a.Late registration of well	\$60.00
b.Well driller's license	\$50.00
c.Re-issuance, renewal, or amendment of well driller's license	\$50.00
d.Re-activation of expired well driller's license	\$50.00
e.Well assignment	\$30.00 per well
f.Notice of intention to abandon a well	\$150.00
g.Notice of intention to drill a well other than a well described in subsection (A)(1)(h) of this Section	\$150.00
h.Notice of intention to drill a well that will not be located in an active management area or irrigation non-expansion area, that will be used solely for domestic purposes and that will have a pump with a maximum capacity of not more than 35 gallons per minute	\$100.00
i.Re-issuance of drill card	\$120.00
j.Permit to drill non-exempt well in an active management area	\$150.00 application fee plus \$30.00 permit fee

2. Groundwater:

Type of Application or Filing	Fee
a.Conveyance of farm's flexibility account balance	\$250.00
b.Conveyance of notice of authority to irrigate in an irrigation non-expansion area	\$500.00
c.Conveyance of groundwater withdrawal permit	\$500.00

3. Grandfathered rights:

Type of Application	Fee
a.Late application for certificate of grandfathered right	\$100.00
b.Conveyance of certificate of grandfathered right	\$500.00
c.Issuance of revised certificate of grandfathered right following partial extinguishment of grandfathered right for assured water supply extinguishment credits	\$120.00
d.Revised certificate of Type 2 non-irrigation grandfathered right to reflect new or additional points of withdrawal or the deletion of a point of withdrawal	\$250.00
e.Approval of development plan to retire irrigation grandfathered right for a Type 1 non-irrigation grandfathered right	\$500.00
f.Re-issuance of certificate of grandfathered right to reflect a change in family circumstances or a transfer of the right from the rightholder to a trust in which the rightholder is a beneficiary or from a trust to a beneficiary of the trust	\$120.00

4. Underground water storage, savings and replenishment:

Type of Application or Filing	Fee
a.Conveyance of storage facility permit	\$500.00
b.Conveyance of water storage permit	\$500.00
c.Assignment of long-term storage credits	\$250.00

5. Assured water supply:

Type of Application or Filing	Fee
a.Extinguishment of grandfathered right for extinguishment credits	\$250.00
b.Conveyance of extinguishment credits	\$250.00

6. Surface water:

Type of Application or Filing	Fee
a.Re-issuance of a surface water permit or certificate (not associated with an assignment of the permit or certificate)	\$120.00
b.Claim of water right for a stockpond pursuant to A.R.S. § 45-273	\$10.00
c.Statement of claim for a water right pursuant to A.R.S. § 45-183	\$5.00
d.Assignment of application, permit, certificate or statement of claim	\$75.00
e.Certification of water right for a stockpond pursuant to A.R.S. § 45-275	\$120.00

7. Dams:

Type of Application	Fee
Approval of plans for construction, enlargement, repair, alteration or removal of dam	2 percent of the total project cost

8. Water Exchange:

Type of Filing	Fee
Notice of water exchange that does not require approval pursuant to A.R.S. § 45-1052(6)(b)	\$500.00

9. Weather modification:

Type of Application	Fee
a.License for weather control or cloud modification	\$100.00
b.Equipment license for weather control or cloud modification	\$10.00

B. In addition to the application or filing fee listed in subsection (A) of this Section, an applicant shall pay any mileage expenses and the actual cost of mailing or publishing any legal notice of the application.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-105. Fee for Dam Safety Inspection; Fee for Review of Dam Safety Inspection Report

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- A. The owner of a high or significant hazard potential dam shall pay a fee for the Department’s dam safety inspection pursuant to R12-15-1219(A). The fee shall be based on the total crest length of the dam plus appurtenant embankments and saddle dikes, as follows:

Length (feet)	Fee
0 up to and including 500	\$2,000.00
More than 500 up to and including 1,000	\$2,200.00
More than 1,000 up to and including 2,000	\$2,400.00
More than 2,000 up to and including 4,000	\$2,600.00
More than 4,000 up to and including 8,000	\$3,000.00
More than 8,000 up to and including 16,000	\$3,400.00
More than 16,000 up to and including 32,000	\$3,800.00
More than 32,000	\$4,200.00

- B. The owner of a low or very low hazard potential dam shall pay a fee for the Department’s dam safety inspection pursuant to R12-15-1219(A). The fee shall be \$250.00.
- C. After conducting a dam safety inspection pursuant to R12-15-1219(A), the Director shall send to the dam owner a bill for the fee required by subsection (A) or (B) of this Section. The dam owner shall pay the fee by the date specified in the bill, which shall be at least 35 days from the date of the bill. Failure by a dam owner to pay a fee required by subsection (A) or (B) of this Section shall be considered a violation of R12-15-1219.
- D. The owner of a dam who submits a dam safety inspection report pursuant to R12-15-1219(E) shall pay a fee of \$750.00 if the dam is a high or significant hazard potential dam or a fee of \$250 if the dam is a low or very low hazard potential dam. The Department shall not accept a dam safety inspection report unless the fee is submitted with the report.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2). Section amended by final rulemaking at 23 A.A.R. 2375, effective October 10, 2017 (Supp. 17-3).

R12-15-106. Fee for Well Capping

The owner of a well that is capped by the Department pursuant to A.R.S. § 45-594(C) shall pay to the Department a fee of \$300.00, plus actual expenses over \$300.00. After capping an open well, the Department shall send the owner of the well a bill for the fee under this Section. The owner of the well shall pay the fee by the date specified in the bill, which shall be at least 35 days after the date of the bill.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-107. Expired

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011 (Supp. 11-2). New Section made by exempt rulemaking at 17 A.A.R. 1769, effective August 10, 2011 with an automatic repeal date effective July 1, 2012 (Supp. 11-3). New Section made by final rulemaking at 18 A.A.R. 203, effective July 1, 2012 (Supp. 12-1). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 3475, effective November 5, 2016 (Supp. 16-4).

R12-15-108. Reserved

through

R12-15-150. Reserved

R12-15-151. Repealed

Historical Note

Adopted effective October 8, 1982 (Supp. 82-5). Amended effective June 29, 1994 (Supp. 94-2). Amended effective March 3, 1995 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3). Section repealed by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). New Section made by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Section repealed by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-152. Expired

Historical Note

Adopted effective October 8, 1982 (Supp. 82-5). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 1647, effective May 31, 2006 (Supp. 07-2).

ARTICLE 2. PROCEDURAL RULES

R12-15-201. Expired

Historical Note

Adopted effective June 13, 1984 (Supp. 84-3). The reference to R12-14-223 in subsection (C) corrected to read R12-15-223 (Supp. 93-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-202. Expired

Historical Note

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-203. Expired

Historical Note

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-204. Expired

Historical Note

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159,

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effective February 28, 2001 (Supp. 01-2).

R12-15-205. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-206. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-207. Correction of Clerical Mistakes

Upon a motion or on the initiative of the Director, the Director may correct clerical mistakes in decisions, orders, rulings, any process issued by the Department, or other parts of the record, and errors in the record arising from oversight or omission. The Director shall give all parties and the Chief Counsel notice of any corrections made pursuant to this Section.

Historical Note

Adopted effective June 13, 1984 (Supp. 84-3). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

R12-15-208. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-209. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-210. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-211. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-212. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-213. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-214. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section

expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-215. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section number corrected (Supp. 93-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-216. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-217. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-218. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-219. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-220. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-221. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-222. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-223. Expired**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

R12-15-224. Ex Parte Communications

A. During the course of a contested case or appealable agency action, a party shall not make an ex parte communication or knowingly cause an ex parte communication to be made to the Director or other Department employee or consultant who is or may reasonably be expected to be involved in the decision-making process of the contested case or appealable agency action.

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- B. During the course of a contested case or appealable agency action, the Department personnel listed in subsection (A) shall not make an ex parte communication or knowingly cause an ex parte communication to be made to a party or a person who will be materially and directly affected by the outcome of the contested case or appealable agency action.
- C. Any of the Department personnel listed in subsection (A) of this Section who receives a written communication prohibited by this Section shall file a copy of the communication in the public docket and serve a copy on the Director, the Chief Counsel, and all parties to the contested case or appealable agency action. Any of the Department personnel listed in subsection (A) of this Section who receives an oral communication prohibited by this Section shall file a summary, stating the substance of the communication, in the public docket and serve a copy on the Director, the Chief Counsel, and all parties to the contested case or appealable agency action.
- D. Upon receipt of an ex parte communication or a copy or summary of an ex parte communication made or knowingly caused to be made by a party in violation of this Section, the Director, to the extent consistent with the interests of justice and the policy of the underlying statutes and rules, may require the party to show cause why the party's claim or interest in the contested case or appealable agency action should not be dismissed, denied or disregarded because of the violation.
- E. For purposes of this Section, "ex parte communication" means any written or oral communication relating to the merits of a contested case or appealable agency action, except:
 1. Communications made in the course of official proceedings in the contested case or appealable agency action;
 2. Communications made in writing, if a copy of the communication is promptly served on the Director, the Chief Counsel, and all parties to the contested case or appealable agency action;
 3. Oral communications made after adequate notice, stating the substance of each communication, to all parties and the Chief Counsel;
 4. Communications relating solely to procedural matters; and
 5. As otherwise authorized by law.

Historical Note

Adopted effective June, 1984 (Supp. 84-3). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

ARTICLE 3. STOCKPOND AND OTHER SURFACE WATER RULES

R12-15-301. Expired

Historical Note

Adopted effective October 8, 1982 (Supp. 82-5). Amended effective April 3, 1987 (Supp. 87-2). Amended effective May 7, 1990 (Supp. 90-2). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2012, effective February 28, 2001 (Supp. 01-2).

R12-15-302. Expired

Historical Note

Adopted effective October 8, 1982 (Supp. 82-5). Amended effective May 7, 1990 (Supp. 90-2). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2012, effective February 28, 2001 (Supp. 01-2).

R12-15-303. Multiple Applications for Water Rights

- A. If two or more applications are filed with the Director pursuant to A.R.S. §§ 45-152 or 45-273 or both by or for the same applicant and for a right to use the same water, the Director

shall consolidate the applications. If the applicant is otherwise entitled to both a permit to appropriate and a certificate of stockpond water right, the Director shall issue to the applicant either the permit to appropriate or the certificate of stockpond water right, whichever would give the applicant the higher priority.

- B. If one or more applications are filed with the Director pursuant to A.R.S. §§ 45-152 or 45-273 or both by or for the same applicant and for a right to use the same water for which the applicant holds a permit to appropriate, a certificate of water right or a certificate of stockpond water right, the Director shall deny the application or applications unless the applicant relinquishes every permit to appropriate, certificate of water right and certificate of stockpond water right which the applicant holds for that same water. The applicant may relinquish every permit to appropriate, certificate of water right and certificate of stockpond water right on the condition that the Director issues a permit to appropriate or certificate of stockpond water right to the applicant for the same water. In that case, the relinquishment shall be effective when the Director issues the permit to appropriate or certificate of stockpond water right.
- C. For purposes of this rule, "same water" means the same quantity of water from the same source for use at the same place for the same purpose. Water for which a right is applied or held pursuant to an application or permit to appropriate, certificate of water right or certificate of stockpond water right may be the same water in whole or in part as water for which a right is applied or held pursuant to a separate application or permit to appropriate, certificate of water right or certificate of stockpond water right.

Historical Note

Adopted effective April 3, 1987 (Supp. 87-2). Section R12-15-310 renumbered to R12-15-303 and amended effective May 7, 1990 (Supp. 90-2).

R12-15-304. Reserved

R12-15-305. Reserved

R12-15-306. Reserved

R12-15-307. Reserved

R12-15-308. Reserved

R12-15-309. Reserved

R12-15-310. Renumbered

Historical Note

Adopted effective April 3, 1987 (Supp. 87-2). Section R12-15-310 renumbered to R12-15-303 effective May 7, 1990 (Supp. 90-2)

ARTICLE 4. LICENSING TIME-FRAMES

R12-15-401. Licensing Time-frames

The following time-frames apply to licenses issued by the Department. In this Article, "license" has the meaning prescribed in A.R.S. § 41-1001. The licensing time-frames consist of an administrative completeness review time-frame, a substantive review time-frame, and an overall time-frame.

1. Within the administrative completeness review time-frames set forth in subsection (7), the Department shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the notice shall specify what information or component is required to make the application complete.
2. An applicant with an incomplete application shall supply the missing information within 60 days from the date of

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the notice, or within such further time as the Director may specify, unless another time limit is specified by statute or applicable rule. If the applicant fails to complete the application within the specified time period, the Director may deny the application. Denial of an application under this provision does not preclude the applicant from filing a new application.

3. Within the overall time-frames set forth in subsection (7), unless extended by mutual agreement under A.R.S. § 41-1075, the Department shall notify the applicant in writing that the application is granted or denied. If the application is denied, the Department shall provide written justification for the denial and a written explanation of the applicant's right to a hearing or the applicant's right to appeal.
4. In computing any period of time prescribed by this rule, the day of the filing, notice or event from which the designated period of time begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When

the prescribed administrative completeness review time-frame or substantive review time-frame is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation. The overall time-frame is the sum of the administrative completeness review time-frame and the substantive review time-frame calculated as prescribed by this Section.

5. Except as otherwise noted, the licensing time-frames do not include time for hearings. Time-frames in cases where a hearing is held are increased by 120 days.
6. The licensing time-frame rules are effective after December 31, 1998, as prescribed by A.R.S. § 41-1073(A), and apply to all applications filed after that date.
7. The licensing time-frames are set forth in Table A.

Historical Note

Adopted effective December 31, 1998; filed with the Office of the Secretary of State July 28, 1998 (Supp. 98-3). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

Table A. Licensing Time-frames

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
1	Filling a body of water with poor quality water	A.R.S. § 45-132(C)	30	60	90
2	Interim water use in body of water	A.R.S. § 45-133	30	60	90
3	Temporary emergency permit for use of surface water or groundwater in body of water	A.R.S. § 45-134	10	20	30
4	Permit to appropriate water (non-instream flow)	A.R.S. §§ 45-151, 45-152 and 45-153	30	420	450
5	Permit to appropriate water (instream flow)	A.R.S. §§ 45-151, 45-151.01 and 45-153	50	530	580
6	Change in use of water	A.R.S. § 45-156(B)	30	375	405
7	Exception to limitation on time of completion of construction	A.R.S. § 45-160	5	15	20
8	Primary reservoir permit	A.R.S. § 45-161	30	420	450
9	Secondary reservoir permit	A.R.S. § 45-161	30	420	450
10	Certificate of water right (non-instream flow)	A.R.S. § 45-162	20	100	120
11	Certificate of water right (instream flow)	A.R.S. § 45-162	20	190	210
12	Reissuance of permit or certificate held by the United States or State of Arizona	A.R.S. § 45-164(C)	10	80	90
13	Severance and transfer	A.R.S. § 45-172 (excluding § 172(A)(6))	30	390	420
14	Stockpond certificate	A.R.S. § 45-273	30	190	220

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No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
15	Transporting water from this state **	A.R.S. § 45-292	120	300	420
16	Waiver of water conserving plumbing fixture requirement	A.R.S. § 45-315	10	3	13
17	Irrigated acreage in an irrigation non-expansion area	A.R.S. § 45-437	30	90	120
18	Substitution of acres in an irrigation non-expansion area/ flood damage	A.R.S. § 45-437.02	30	90	120
19	Substitution of acres in an irrigation non-expansion area/ impediments to efficient irrigation	A.R.S. § 45-437.03	30	90	120
20	Reversal of substitution of acres irrigated with Central Arizona Project water	A.R.S. § 45-452(G) and (F)	30	90	120
21	Type 1 non-irrigation grandfathered right associated with irrigation land retired 1965-1980	A.R.S. §§ 45-463, 45-476.01, and 45- 476	30	60	90
22	Type 2 non-irrigation grandfathered right	A.R.S. §§ 45-464, 45-476.01, and 45- 476	30	60	90
23	Irrigation grandfathered right	A.R.S. §§ 45-465, 45-476.01, and 45- 476	30	60	90
24	Substitution of acres in an active management area/flood damaged acres	A.R.S. § 45-465.01	30	90	120
25	Substitution of acres in an active management area/ impediments to efficient irrigation	A.R.S. § 45-465.02	30	90	120
26	Type 1 non-irrigation right retired after 6/12/80	A.R.S. § 45-469	30	90	120
27	Restoration of retired irrigation grandfathered right	A.R.S. § 45-469(O)	30	90	120
28	Revised certificate for new or additional points of withdrawal for a Type 2 right	A.R.S. § 45-471(C)	45	45	90
29	Conveyance of irrigation grandfathered right for electrical energy generation	A.R.S. § 45-472(B)(2)	30	90	120
30	Conveyance of irrigation grandfathered right for non-irrigation use within service area	A.R.S. § 45-472(C)	30	90	120
31	Contract to supply groundwater	A.R.S. § 45-492(C)	15	90	105

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No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
32	Extension of service area to provide disproportionately large amount of water to large user	A.R.S. § 45-493(A)(2)	15	90	105
33	Addition/exclusion of acres by irrigation district	A.R.S. § 45-494.01(A)	30	90	120
34	Delivery of groundwater from an irrigation district to a general industrial use permit holder	A.R.S. § 45-497(B)	15	60	75
35	Issuance/renewal/modification of dewatering permit	A.R.S. §§ 45-513 and 45-527	30	70	100
36	Issuance/renewal/modification of mineral extraction and metallurgical processing permit	A.R.S. §§ 45-514 and 45-527	30	70	100
37	Issuance/renewal/modification of general industrial use permit	A.R.S. §§ 45-515, 45-521, 45-522, 45-523, 45-524, and 45-527	30	70	100
38	Issuance/renewal/modification of poor quality groundwater withdrawal permit	A.R.S. §§ 45-516 and 45-527	30	70	100
39	Issuance/renewal/modification of temporary permit for electrical energy generation	A.R.S. §§ 45-517 and 45-527	30	70	100
40	Issuance/extension/ modification of temporary dewatering permit	A.R.S. §§ 45-518 and 45-527	30	70	100
41	Emergency temporary dewatering permit	A.R.S. § 45-518(D)	3	7	10
42	Issuance/renewal/modification of drainage water withdrawal permit	A.R.S. §§ 45-519 and 45-527	30	70	100
43	Issuance/renewal/modification of hydrologic testing permit	A.R.S. §§ 45-519.01, 45-521, 45-522, 45-524, and 45-527	30	15	45
44	Change of location of use	A.R.S. §§ 45-520(A), 45-521, and 45-527	30	30	60
45	Conveyance of a groundwater withdrawal permit	A.R.S. § 45-520(B)	30	30	60
46	Transportation of groundwater withdrawn in McMullen Valley Basin to an active management area	A.R.S. § 45-552(B)	45	105	150
47	Transportation of groundwater withdrawn in Harquahala irrigation non-expansion area to an initial active management area	A.R.S. § 45-554(B)	45	105	150

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No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
48	Transportation of groundwater withdrawn in Big Chino subbasin to an initial active management area	A.R.S. § 45-555(B)	45	105	150
49	Well spacing requirements for withdrawing groundwater for transportation to an active management area	A.R.S. § 45-559	45	105	150
50	Groundwater replenishment district's preliminary or long-term replenishment plan **	A.R.S. § 45-576.03	As prescribed by A.R.S. § 45-576.03(A)	As prescribed by A.R.S. § 45-576.03 (B), (C), (D), and (E)	As prescribed by A.R.S. § 45-576.03
51	Conservation district or water district long-term replenishment plan **	A.R.S. §§ 45-576.03, 45-576.02(C), and 45-576.02(E)	As prescribed by A.R.S. § 45-576.03(I)	As prescribed by A.R.S. § 45-576.03(J), (K), (L), and (M)	As prescribed by A.R.S. § 45-576.03
52	Notice of intent to abandon a well	A.R.S. § 45-594 and A.A.C. R12-15-816	15	15	30
53	Well construction request for variance	A.R.S. §§ 45-594, 45-596(D), and A.A.C. R12-15-820	15	30	45
54	Well driller license	A.R.S. § 45-595(C)	25	65	90
55	Single well license	A.R.S. § 45-595(D)	25	65	90
56	Renewal or reactivation of well drilling license	A.R.S. § 45-595(C) A.A.C. R12-15-806	25	15	40
57	Notice of intent to drill	A.R.S. § 45-596, and A.A.C. R12-15-810	15	0	15
58	Well construction permit	A.R.S. § 45-599	30	60	90
59	Alternative water measuring devices	A.R.S. § 45-604 and A.A.C. R12-15-909	15	60	75
60	Underground storage facility permit	A.R.S. §§ 45-811.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(D), (G), and (H)	As prescribed by A.R.S. § 45-871.01
61	Groundwater savings facility permit	A.R.S. §§ 45-812.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(D), (G), and (H)	As prescribed by A.R.S. § 45-871.01
62	Storage facility permit renewal/conveyance/ modification	A.R.S. §§ 45-814.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(D), (G), and (H)	As prescribed by A.R.S. § 45-871.01
63	Water storage permit modification/conveyance	A.R.S. §§ 45-831.01 and 45-871.01	As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01(B) and (E)	As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01(D), (E), (G), and (H)	As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01
64	Recovery well permit	A.R.S. §§ 45-834.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(F), (G), and (H)	As prescribed by A.R.S. § 45-871.01
65	Emergency temporary recovery well permit	A.R.S. § 45-834.01(D)	5	10	15

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No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
66	Issuance/renewal/modification of water exchange permit	A.R.S. §§ 45-1041, 45-1042, and 45- 1045	As prescribed by A.R.S. § 45-1042(A)	As prescribed by A.R.S. § 45-1042(B), (C), and (D)	As prescribed by A.R.S. § 45-1042
67	Modification of previously enrolled or permitted water exchange/non-Colorado River	A.R.S. § 45-1041(B)	60	90	150
68	Construction, enlargement, repair, alteration, or removal of a dam	A.R.S. §§ 45-1203, 45-1206, and 45- 1207	120	60	180
69	Weather modification license	A.R.S. § 45-1601	15	60	75
70	Certificate of Assured Water Supply (CAWS)	A.A.C. R12-15-704, A.R.S. §§ 45-576 and 45-578	150	60	210
71	Designation or Modification of Designation of Assured Water Supply (DAWS)	A.A.C. R12-15-710 and R12-15-714; A.R.S. § 45-576	150	60	210
72	Analysis of Assured Water Supply	A.A.C. R12-15-703, A.R.S. § 45-576(H)	150	30	180
73	Water Report	A.A.C. R12-15-713, A.R.S. § 45-108	60	60	120
74	Designation or Modification of Designation of Adequate Water Supply	A.A.C. R12-15-714, A.A.C. R12-15-715 A.R.S. § 45-108	150	60	210
75	Analysis of Adequate Water Supply	A.R.S. § 45-108 A.A.C. R12-15-712	60	60	120

* The computation of days is prescribed by subsection (4).

** Hearing is required.

Historical Note

Adopted effective December 31, 1998; filed with the Office of the Secretary of State July 28, 1998 (Supp. 98-3). Table A amended by final rulemaking at 23 A.A.R. 2375, effective October 10, 2107 (Supp. 17-3).

ARTICLE 5. RESERVED

ARTICLE 6. RESERVED

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

R12-15-701. Definitions - Assured and Adequate Water Supply Programs

In addition to any other definitions in A.R.S. Title 45 and the management plans in effect at the time of application, the following words and phrases in this Article shall have the following meanings, unless the context otherwise requires:

1. "Abandoned plat" means a plat for which a certificate or water report has been issued and that will not be developed because of one of the following:
 - a. The land has been developed for another use; or
 - b. Legal restrictions will preclude approval of the plat.
2. "ADEQ" means the Arizona Department of Environmental Quality.
3. "Adequate delivery, storage, and treatment works" means:

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- a. A water delivery system with sufficient capacity to deliver enough water to meet the needs of the proposed use;
 - b. Any necessary storage facilities with sufficient capacity to store enough water to meet the needs of the proposed use; and
 - c. Any necessary treatment facilities with sufficient capacity to treat enough water to meet the needs of the proposed use.
4. "Adequate storage facilities" means facilities that can store enough water to meet the needs of the proposed use.
 5. "Affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person specified.
 6. "AMA" means an active management area as defined in A.R.S. § 45-402.
 7. "Analysis" means an analysis of assured water supply or an analysis of adequate water supply.
 8. "Analysis holder" means a person to whom an analysis of assured water supply or an analysis of adequate water supply is issued and any current owner of land included in the analysis.
 9. "Analysis of adequate water supply" means a determination issued by the Director stating that one or more criteria required for a water report pursuant to R12-15-713 have been demonstrated for a development.
 10. "Analysis of assured water supply" means a determination issued by the Director stating that one or more criteria required for a certificate of assured water supply pursuant to R12-15-704 have been demonstrated for a development.
 11. "Annual authorized volume" means, for an approved remedial action project, the annual authorized volume specified in a consent decree or other document approved by ADEQ or the EPA, except that:
 - a. If no annual authorized amount is specified in a consent decree or other document approved by ADEQ or the EPA, the annual authorized volume is the largest volume of groundwater withdrawn pursuant to the approved remedial action project in any year prior to January 1, 1999.
 - b. If the Director increases the annual authorized volume pursuant to R12-15-729(C), the annual authorized volume is the amount approved by the Director.
 12. "Annual estimated water demand" means the estimated water demand divided by 100.
 13. "Approved remedial action project" means a remedial action project approved by ADEQ under A.R.S. Title 49, or by the EPA under CERCLA.
 14. "Authorized remedial groundwater use" means, for any year, the amount of remedial groundwater withdrawn pursuant to an approved remedial action project and used by a municipal provider during the year, not to exceed the annual authorized volume of the project.
 15. "Build-out" means a condition in which all water delivery mains are in place and active water service connections exist for all lots.
 16. "CAP water" means:
 - a. All water from the Colorado River or from the Central Arizona Project works authorized in P.L. 90-537, excluding enlarged Roosevelt reservoir, which is made available pursuant to a subcontract with a multi-county water conservation district.
 - b. Any additional water not included in subsection 16(a) of this Section that is delivered by the United States Secretary of the Interior pursuant to an Indian water rights settlement through the Central Arizona Project.
 17. "Central Arizona Groundwater Replenishment District" or "CAGRDR" means a multi-county water conservation district acting in its capacity as the entity established pursuant to A.R.S. § 48-3771, et seq., and responsible for replenishing excess groundwater.
 18. "Central distribution system" means a water system that qualifies as a public water system pursuant to A.R.S. § 49-352.
 19. "CERCLA" or "Comprehensive Environmental Response, Compensation, and Liability Act of 1980" has the same meaning as prescribed in A.R.S. § 49-201.
 20. "Certificate" means a certificate of assured water supply issued by the Director for a subdivision pursuant to A.R.S. § 45-576 et seq. and this Article.
 21. "Certificate holder" means any person included on a certificate, except the following:
 - a. Any person who no longer owns any portion of the property included in the certificate, and
 - b. Any potential purchaser for whom the purchase contract has been terminated or has expired.
 22. "Certificate of convenience and necessity" means a certificate required by the Arizona Corporation Commission, pursuant to A.R.S. § 40-281, which allows a private water company to serve water to customers within its certificated area.
 23. "Colorado River water" means water from the main stream of the Colorado River. For purposes of this Article, Colorado River water does not include CAP water.
 24. "Committed demand" means the 100-year water demand at build-out of all recorded lots that are not yet served water within the service area of a designation applicant or a designated provider.
 25. "County water augmentation authority" means an authority formed pursuant to A.R.S. Title 45, Chapter 11.
 26. "Current demand" means the 100-year water demand for existing uses within the service area of a designation applicant or designated provider, based on the annual report for the previous calendar year.
 27. "Depth-to-static water level" means the level at which water stands in a well when no water is withdrawn by pumping or by free flow.
 28. "Designated provider" means:
 - a. A municipal provider that has obtained a designation of assured or adequate water supply; or
 - b. A city or town that has obtained a designation of adequate water supply pursuant to A.R.S. § 45-108(D).
 29. "Designation" means a decision and order issued by the director designating a municipal provider as having an assured water supply or an adequate water supply.
 30. "Determination of adequate water supply" means a water report, a designation of adequate water supply, or an analysis of adequate water supply.
 31. "Determination of assured water supply" means a certificate, a designation of assured water supply, or an analysis of assured water supply.
 32. "Development" means either a subdivision or an unplatted development plan.
 33. "Diversion works" means a structure or well that allows or enhances diversion of surface water from its natural course for other uses.

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34. "Drought response plan" means a plan describing a variety of conservation and augmentation measures, especially the use of backup water supplies, that a municipal provider will utilize in operating its water supply system in times of a water supply shortage. The plan may include the following:
- An identification of priority water uses consistent with applicable public policies.
 - A description of sources of emergency water supplies.
 - An analysis of the potential use of water pressure reduction.
 - Plans for public education and voluntary water use reduction.
 - Plans for water use bans, restrictions, and rationing.
 - Plans for water pricing and penalties for excess water use.
 - Plans for coordination with other cities, towns, and private water companies.
35. "Drought volume" means 80% of the volume of a surface water supply, determined by the director under R12-15-716 to be physically available on an annual basis to a certificate holder or a designated provider.
36. "Dry lot development" means a development or subdivision without a central water distribution system.
37. "EPA" means the United States Environmental Protection Agency.
38. "Estimated water demand" means:
- For a certificate or water report, the Director's determination of the 100-year water demand for all uses included in the subdivision;
 - For a designation, the sum of the following:
 - The Director's determination of the current demand;
 - The Director's determination of the committed demand; and
 - The Director's determination of the projected demand during the term of the designation; or
 - For an analysis, the Director's determination of the water demand for all uses included in the development.
39. "Existing municipal provider" means a municipal provider that was in operation and serving water for non-irrigation use on or before January 1, 1990.
40. "Extinguish" means to cause a grandfathered right to cease to exist through a process established by the director pursuant to R12-15-723.
41. "Extinguishment credit" means a credit that is issued by the Director in exchange for the extinguishment of a grandfathered right and that may be used to make groundwater use consistent with the management goal of an AMA.
42. "Firm yield" means the minimum annual diversion for the period of record which may include runoff releases from storage reservoirs, and surface water withdrawn from a well.
43. "Management plan" means a water management plan adopted by the director pursuant to A.R.S. § 45-561 et seq.
44. "Master-planned community" has the same meaning as provided in A.R.S. § 32-2101.
45. "Median flow" means the flow which is represented by the middle value of a set of flow data that are ranked in order of magnitude.
46. "Member land" has the same meaning as provided in A.R.S. § 48-3701.
47. "Member service area" has the same meaning as provided in A.R.S. § 48-3701.
48. "Multi-county water conservation district" means a district established pursuant to A.R.S. Title 48, Chapter 22.
49. "Municipal provider" has the same meaning as provided in A.R.S. § 45-561.
50. "New municipal provider" means a municipal provider that began serving water for non-irrigation use after January 1, 1990.
51. "Owner" means:
- For an analysis, certificate, or water report applicant, a person who holds fee title to the land described in the application; or
 - For a designation applicant, the person who will be providing water service pursuant to the designation.
52. "Perennial" means a stream that flows continuously.
53. "Persons per household" means a measure obtained by dividing the number of persons residing in housing units by the number of housing units.
54. "Physical availability determination" means a letter issued by the Director stating that an applicant has demonstrated all of the criteria in R12-15-702(C).
55. "Plat" means a preliminary or final map of a subdivision in a format typically acceptable to a platting entity.
56. "Potential purchaser" means a person who has entered into a purchase agreement for land that is the subject of an application for a certificate or an assignment of a certificate.
57. "Projected demand" means the 100-year water demand at build-out, not including committed or current demand, of customers reasonably projected to be added and plats reasonably projected to be approved within the designated provider's service area and reasonably anticipated expansions of the designated provider's service area.
58. "Proposed municipal provider" means a municipal provider that has agreed to serve a proposed subdivision.
59. "Purchase agreement" means a contract to purchase or acquire an interest in real property, such as a contract for purchase and sale, an option agreement, a deed of trust, or a subdivision trust agreement.
60. "Remedial groundwater" means groundwater withdrawn pursuant to an approved remedial action project, but does not include groundwater withdrawn to provide an alternative water supply pursuant to A.R.S. § 49-282.03.
61. "Service area" means:
- For an application for an analysis of adequate water supply, a water report, or a designation of adequate water supply, the area of land actually being served water for a non-irrigation use by the municipal provider and additions to the area that contain the municipal provider's operating distribution system for the delivery of water for a non-irrigation use;
 - For an application for a designation of adequate water supply pursuant to A.R.S. § 45-108(D), the area of land actually being served water for a non-irrigation use by each municipal provider that serves water within the city or town, and additions to the area that contain each municipal provider's operating distribution system for the delivery of water for a non-irrigation use; or
 - For an application for a certificate or designation of assured water supply, "service area" has the same meaning as prescribed in A.R.S. § 45-402.
62. "Subdivision" has the same meaning as prescribed in A.R.S. § 32-2101.

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63. "Superfund site" means the site of a remedial action undertaken pursuant to CERCLA.
64. "Surface water" means any surface water as defined in A.R.S. § 45-101, including CAP water and Colorado River water.
65. "Water Quality Assurance Revolving Fund site" or "WQARF site" means a site of a remedial action undertaken pursuant to A.R.S. Title 49, Chapter 2, Article 5.
66. "Water report" means a letter issued to the Arizona Department of Real Estate by the Director for a subdivision stating whether an adequate water supply exists pursuant to A.R.S. § 45-108 and this Article.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1).
Amended by emergency rulemaking at 11 A.A.R. 2706, effective June 29, 2005 for 180 days (Supp. 05-2). Emergency renewed for 180 days at 12 A.A.R. 144, effective December 23, 2005 (Supp. 05-4). Emergency expired.
Amended by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-702. Physical Availability Determination

- A. A person may apply for a physical availability determination by submitting an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and providing the following information with the application:
 1. The proposed source of water for which the applicant is seeking a determination of physical availability,
 2. Evidence that the applicant has complied with subsection (C) of this Section, and
 3. Any other information that the Director reasonably deems necessary to determine whether water is physically available in the area that is the subject of the application.
- B. Each applicant shall sign an application for a physical availability determination. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the determination, the authorized representative may sign the application on the applicant's behalf.
- C. An applicant for a physical availability determination shall demonstrate the following:
 1. The volume of water that is physically available for 100 years in the area that is the subject of the application, according to the criteria in R12-15-716.
 2. That the proposed sources of water will be of adequate quality, according to the criteria in R12-15-719.
- D. After a complete application is submitted, the Director shall review the application and associated evidence to determine whether the applicant has demonstrated all of the criteria in subsection (C) of this Section. If the Director determines that the applicant has demonstrated all of the criteria in subsection (C) of this Section, the Director shall issue a physical availability determination.
- E. Any person applying for a determination of assured water supply or a determination of adequate water supply may use an existing physical availability determination for purposes of R12-15-716. The Director shall consider any changes in hydrologic conditions for purposes of R12-15-716.
- F. The issuance of a physical availability determination does not reserve any water for purposes of this Article.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).
Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-703. Analysis of Assured Water Supply

- A. A person proposing to develop land that will not be served by a designated provider may apply for an analysis of assured water supply before applying for a certificate. An applicant for an analysis must be the owner of the land that is the subject of the application or have the written consent of the owner. The commissioner of the Arizona State Land Department may apply for an analysis for land owned by the state of Arizona or may consent to the inclusion of such land in an application.
- B. An applicant for an analysis shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and attach the following:
 1. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted, demonstrating the ownership of the land that is the subject of the application;
 2. A description of the development, including:
 - a. A map of the land uses included in the development,
 - b. A list of water supplies proposed to be used by the development,
 - c. A summary of land use types included in the development, and
 - d. An estimate of the water demand for the land uses included in the development; and
 3. Evidence that the applicant has complied with subsection (E) of this Section.
- C. An applicant shall sign the application for an analysis. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the analysis, the authorized representative may sign the application on the applicant's behalf.
- D. After a complete application is submitted, the Director shall determine the estimated water demand of the development.
- E. The Director shall issue an analysis if an applicant demonstrates one or more of the following:
 1. Sufficient supplies of water are physically available to meet all or part of the estimated water demand of the development for 100 years, according to the criteria in R12-15-716.
 2. Sufficient supplies of water are continuously available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-717.
 3. Sufficient supplies of water are legally available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-718.
 4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719.
 5. Any proposed groundwater use is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721.

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6. Any proposed groundwater use is consistent with the management goal, according to the criteria in R12-15-722.
- F.** For 10 years after the Director issues an analysis, or a longer period allowed under subsections (H) or (I) of this Section:
1. If groundwater is a source of supply in the analysis and the applicant demonstrates that groundwater is physically available under subsection (E)(1) of this Section, the Director shall consider that supply of groundwater reserved for the use of the proposed development in subsequent determinations of physical availability pursuant to R12-15-716(B).
 2. If an analysis holder applies for a certificate for a subdivision located on land included in the analysis, the Director shall presume that a criterion demonstrated in the analysis remains satisfied with respect to the subdivision, unless the Director has received new evidence demonstrating that the criterion is not satisfied. If the Director issues the certificate, the Director shall reduce the volume of groundwater reserved pursuant to subsection (F)(1) of this Section by the amount of the estimated water demand for the certificate that will be met with groundwater.
- G.** The Director shall reduce the amount of groundwater considered reserved for use of the development upon request by the analysis holder. If the analysis holder requesting a reduction is not the person to whom the analysis was issued, the Director shall reduce the amount of reserved groundwater only if the person to whom the analysis was issued or that person's designee consents to the request for reduction. The person to whom the analysis was issued shall notify the Director in writing of the name of the person's designee for purposes of this subsection.
- H.** The analysis holder may apply to the Director for a five-year extension of the time period in subsection (F) of this Section by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the time period and no later than 30 days before the end of the time period. If an extension is granted, the analysis holder may apply to the Director for an additional five-year extension by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the extended time period and no later than 30 days before the end of the extended time period. The Director shall extend the time period for no more than two successive five-year periods under this subsection if the analysis holder demonstrates one of the following:
1. The analysis holder has made a substantial capital investment in developing the land included in the analysis.
 2. The analysis holder has made material progress in developing the land included in the analysis.
 3. Progress in developing the land included in the analysis has been delayed for reasons outside the control of the analysis holder.
- I.** After the Director grants two five-year extensions pursuant to subsection (H) of this Section, the Director may extend the time period for additional five-year periods if the analysis holder files a timely application pursuant to subsection (H) of this Section and demonstrates one of the criteria in subsections (H)(1), (2), or (3) of this Section.
- J.** The Director shall review an application for an analysis or an application for an extension pursuant to subsections (H) or (I) of this Section pursuant to the licensing time-frame provisions in R12-15-401.
- gency renewed for 180 days at 12 A.A.R. 144, effective December 23, 2005 (Supp. 05-4). Emergency expired. Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-703.01. Repealed**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 3038, effective June 18, 2001 (Supp. 01-2). Section repealed by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-704. Certificate of Assured Water Supply

- A.** An application for a certificate shall be filed by the current owner of the land that is the subject of the application. Potential purchasers and affiliates may also be included as applicants.
- B.** An applicant for a certificate shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and provide the following:
1. One of the following forms of proof of ownership for each applicant to be listed on the certificate:
 - a. For an applicant that is the current owner, one of the following:
 - i. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is filed, demonstrating that the applicant is the owner of the land that is the subject of the application; or
 - ii. Evidence that the CAGR has reviewed and approved evidence that the applicant is the owner of the land that is the subject of the application;
 - b. For an applicant that is a potential purchaser, evidence of a purchase agreement; or
 - c. For an applicant that is an affiliate of another applicant, a certification by the other applicant of the affiliate status;
 2. A plat of the subdivision;
 3. An estimate of the 100-year water demand for the subdivision;
 4. A list of all proposed sources of water that will be used by the subdivision;
 5. Evidence that the criteria in subsections (F) or (G) of this Section are met; and
 6. Any other information that the Director reasonably determines is necessary to decide whether an assured water supply exists for the subdivision.
- C.** Each applicant shall sign the application for a certificate. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the certificate, the authorized representative may sign the application on the applicant's behalf.
- D.** The Director shall give public notice of an application for a certificate as provided in A.R.S. § 45-578.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1).
Amended by emergency rulemaking at 11 A.A.R. 2706, effective June 29, 2005 for 180 days (Supp. 05-2). Emer-

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- E. After a complete application is submitted, the Director shall review the application and associated evidence to determine:
1. The estimated water demand of the subdivision;
 2. The amount of the groundwater allowance for the subdivision, as provided in R12-15-724 through R12-15-727; and
 3. Whether the applicant has demonstrated all of the requirements in subsection (F) or subsection (G) of this Section.
- F. Except as provided in subsection (G) of this Section, the Director shall issue a certificate if the applicant demonstrates all of the following:
1. Sufficient supplies of water are physically available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-716;
 2. Sufficient supplies of water are continuously available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-717;
 3. Sufficient supplies of water are legally available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-718;
 4. The sources of water are of adequate quality, according to the criteria in R12-15-719;
 5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision, according to the criteria in R12-15-720;
 6. The proposed use of groundwater withdrawn within an AMA is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721; and
 7. The proposed use of groundwater withdrawn within an AMA is consistent with the achievement of the management goal, according to the criteria in R12-15-722.
- G. If the Director previously issued a certificate for the subdivision, the Director shall issue a new certificate to the applicant if the applicant demonstrates that all of the requirements in subsection (F) are met or that all of the following apply:
1. Any changes to the plat for which the previous certificate was issued are not material, according to the criteria in R12-15-708;
 2. If groundwater is a proposed source of supply for the subdivision, the proposed groundwater withdrawals satisfied the physical availability requirements in effect at the time the complete and correct application for the previous certificate was submitted;
 3. Any proposed sources of water, other than groundwater, are physically available to satisfy the estimated water demand that will not be satisfied with groundwater, according to the criteria in R12-15-716;
 4. Any proposed sources of water other than groundwater are continuously available to satisfy the estimated water demand that will not be satisfied with groundwater, according to the criteria in R12-15-717;
 5. The proposed uses of groundwater withdrawn within an AMA were consistent with the achievement of the management goal according to the criteria in effect at the time the complete and correct application for the previous certificate was submitted; and
 6. The applicant demonstrates that the requirements in subsections (F)(3) through (6) of this Section are met.
- H. Before issuing a certificate, the Director shall classify the certificate for the purposes of R12-15-705 and R12-15-706 as follows:
1. **Type A certificate.** The Director shall classify the certificate as a Type A certificate if the applicant meets the criteria in R12-15-720(A)(1) and all of the subdivision's estimated water demand will be met with one or more of the following:
 - a. Groundwater served by a proposed municipal provider pursuant to an existing service area right;
 - b. Groundwater served by a proposed municipal provider pursuant to a pending service area right, if the proposed municipal provider currently holds or will hold the well permit;
 - c. CAP water served by a municipal provider pursuant to the proposed municipal provider's non-declining, long-term municipal and industrial subcontract;
 - d. Surface water served by a proposed municipal provider pursuant to the proposed municipal provider's surface water right or claim;
 - e. Effluent owned and served by a proposed municipal provider; or
 - f. A Type 1 grandfathered right appurtenant to the land on which the groundwater will be used and held by a proposed municipal provider.
 2. **Type B certificate.** The Director shall classify all certificates that do not meet the requirements of subsection (H)(1) of this Section as Type B certificates.
- I.** The Director shall review an application for a certificate pursuant to the licensing time-frame provisions in R12-15-401.
- J.** An owner of six or more lots is not required to obtain a certificate if all of the following apply:
1. The lots comprise a subset of a subdivision for which:
 - a. A plat was recorded before 1980; or
 - b. A certificate was issued before February 7, 1995;
 2. No changes were made to the plat since February 7, 1995; and
 3. Water service is currently available to each lot.
- K.** A new owner of all or a portion of a subdivision for which a plat has been recorded is not required to obtain a certificate if all of the following apply:
1. The Director previously issued a Type A certificate for the subdivision pursuant to subsection (H)(1) of this Section or R12-15-707;
 2. Water service is currently available to each lot; and
 3. There are no material changes to the plat for which the certificate was issued, according to the criteria in R12-15-708.
- L.** An owner of six or more lots in the Pinal AMA is not required to obtain a certificate if all of the following apply:
1. A plat for the subdivision was recorded before October 1, 2007;
 2. There have been no material changes to the plat according to the criteria in R12-15-708, since October 1, 2007;
 3. The proposed municipal provider was designated as having an assured water supply when the plat was recorded, but is no longer designated as having an assured water supply; and
 4. Water service is currently available to each lot.
- M.** A person may request a letter stating that the owner is not required to obtain a certificate pursuant to subsection (J), (K), or (L) of this Section by submitting an application on a form prescribed by the Director and attaching evidence that the criteria of subsection (J), (K), or (L) are met. Upon receiving an application pursuant to this subsection, the Director shall:
1. Review the application pursuant to the licensing time-frame provisions in R12-15-401.
 2. Determine whether the criteria of subsection (J), (K), or (L) of this Section are met.
 3. If the Director determines that the criteria of subsection (J) of this Section are met, issue a letter to the applicant

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and the Arizona Department of Real Estate stating that the current owner is not required to obtain a certificate.

4. If the Director determines that the criteria of subsection (K) or (L) of this Section are met, issue a letter to the applicant and the Arizona Department of Real Estate stating that the current owner and any future owners are not required to obtain a certificate.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-705. Assignment of Type A Certificate of Assured Water Supply

- A. The certificate holder of a Type A certificate and the assignee may apply for approval of an assignment of the Type A certificate within the time allowed by A.R.S. § 45-579(A). The assignee may file the application if there is no certificate holder. The application shall be submitted on a form prescribed by the Director with the initial fee required by R12-15-103(C), and the applicant shall provide the following:
 1. One of the following forms of proof of ownership for each assignee:
 - a. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted to the Director and demonstrating that the assignee is the owner of the land that is the subject of the proposed assignment; or
 - b. If the assignee is a potential purchaser, evidence of a purchase agreement;
 2. A current plat of the subdivision;
 3. An estimate of the 100-year water demand for the subdivision, based on the current plat;
 4. Certification by each applicant that:
 - a. The proposed municipal provider has not changed and has agreed to continue to serve the subdivision after the assignment; and
 - b. All water supplies listed on the current certificate are physically, continuously, and legally available to meet the estimated water demand of the subdivision after the assignment.
- B. Each applicant shall sign the application for an assignment of a Type A certificate. If an applicant is not a natural person, the entity's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land included in the certificate, the authorized representative may sign the application on behalf of the applicant.
- C. Upon receiving an application for an assignment of a Type A certificate, the Director shall post the notice required by A.R.S. § 45-579(E).
- D. If the Director determines that the application meets the criteria of A.R.S. § 45-579(A), the Director shall issue a Type A certificate to each applicant. A Type A certificate issued under

this subsection shall retain the issue date, the number of lots, and the estimated water demand shown on the original certificate, except as provided in subsection (E) of this Section. The Director shall determine that the application meets the criteria of A.R.S. § 45-579(A) if all of the following apply:

1. The application is submitted within the time allowed by A.R.S. § 45-579(A);
 2. The assignee is the owner or a potential purchaser of the portion of the subdivision that is the subject of the assignment;
 3. There have been no material changes to the plat for which the original certificate was issued, according to the criteria in R12-15-708;
 4. Neither the applicant nor a predecessor in interest has impaired the manner in which consistency with management goal requirements were satisfied when the original certificate was issued; and
 5. The applicant makes the certifications required in subsection (A)(4) of this Section.
- E. In the case of a partial assignment, the Director shall determine whether changes to the plat are material according to R12-15-708. The Director shall issue a Type A certificate to the assignee for the portion of the subdivision that is the subject of the assignment and for the number of lots and the estimated water demand of the current plat of the portion of the subdivision that is the subject of the assignment. The Director shall issue a Type A certificate to the certificate holder for the portion of the subdivision retained by the certificate holder and for the remainder of the number of lots and the remainder of the estimated water demand. The sum of the number of lots and the sum of the amount of the estimated water demand shown on each certificate shall equal the total number of lots and the total estimated water demand shown on the certificate being assigned.
 - F. The Director shall review an application for an assignment of a Type A certificate of assured water supply pursuant to the licensing time-frame provisions in R12-15-401.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 4390, effective November 22, 2002 (Supp. 02-3). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-706. Assignment of Type B Certificate of Assured Water Supply

- A. The certificate holder of a Type B certificate or a certificate issued before the effective date of this Section that has not been classified pursuant to R12-15-707 and the assignee may apply for approval of an assignment of the certificate to another person within the time allowed by A.R.S. § 45-579(A). The assignee may file the application if there is no certificate holder. The application shall be submitted on a form prescribed by the Director with the initial fee required by R12-15-103(C), and the applicant shall provide the following:
 1. One of the following forms of proof of ownership for each assignee:
 - a. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted to the Director and demonstrating that the assignee is the owner

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- of the land that is the subject of the proposed assignment; or
- b. If the assignee is a potential purchaser, evidence of a purchase agreement;
 2. A current plat of the subdivision;
 3. An estimate of the 100-year water demand for the subdivision, based on the current plat;
 4. Evidence that all necessary water rights, permits, licenses, contracts, and easements have been or will be assigned to the assignee of the certificate;
 5. Evidence that the assignee has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720;
 6. Evidence that all water supplies listed on the current certificate are physically, continuously, and legally available to meet the estimated water demand of the subdivision after the assignment;
 7. Evidence that the proposed municipal provider has not changed and has agreed to serve the subdivision after the assignment;
 8. If the applicant requests that the Director classify the certificate pursuant to subsection (E) of this Section, evidence that the requirements of R12-15-704(H)(1) are satisfied;
 9. Any other information that the Director reasonably deems necessary to determine whether the application meets the criteria of A.R.S. § 45-579.
- B.** Each applicant shall sign the application for an assignment of a certificate. If an applicant is not a natural person, the entity's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the certificate, the authorized representative may sign the application on the applicant's behalf.
- C.** Upon receiving an application for an assignment, the Director shall post the notice required by A.R.S. § 45-579(E).
- D.** Except as provided in subsection (E) of this Section, if the Director determines that the application meets the criteria of A.R.S. § 45-579(A), the Director shall issue a Type B certificate to each applicant. A Type B certificate issued under this subsection shall retain the issue date, the number of lots, and the estimated water demand shown on the original certificate, except as provided in subsection (F) of this Section. The Director shall determine that the application meets the criteria of A.R.S. § 45-579(A) if all of the following apply:
1. The application is submitted within the time allowed by A.R.S. § 45-579(A);
 2. The assignee is the owner or potential purchaser of the portion of the subdivision that is the subject of the assignment;
 3. There have been no material changes to the plat for which the original certificate was issued, according to the criteria in R12-15-708;
 4. The applicant demonstrates the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720;
 5. All necessary water rights, permits, licenses, contracts, and easements have been or will be assigned to the assignee of the certificate;
 6. All water supplies listed on the current certificate are physically, continuously, and legally available to meet the estimated water demand of the subdivision after the assignment;
 7. Neither the applicant nor a predecessor in interest has impaired the manner in which consistency with management goal requirements were satisfied when the original certificate was issued; and
 8. The proposed municipal provider has agreed to serve the subdivision after the assignment.
- E.** The applicant may include in the application a request to classify the certificate as a Type A certificate. If the Director determines that the request meets the requirements of R12-15-704(H)(1), the Director shall classify the certificate as a Type A certificate.
- F.** In the case of a partial assignment, the Director shall determine whether changes to the plat are material according to R12-15-708. The Director shall issue a Type B certificate to the assignee for the portion of the subdivision that is the subject of the assignment and for the number of lots and the estimated water demand of the current plat of the portion of the subdivision that is the subject of the assignment. The Director shall issue a Type B certificate to the certificate holder for the portion of the subdivision retained by the certificate holder and for the remainder of the number of lots and the remainder of the estimated water demand. The sum of the number of lots and the sum of the amount of the estimated water demand shown on each certificate shall equal the total number of lots and the total estimated water demand shown on the certificate that is being assigned.
- G.** The Director shall review an application for an assignment of a Type B certificate pursuant to the licensing time-frame provisions in R12-15-401.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-707. Application for Classification of a Type A Certificate

- A.** A holder of a Type B certificate or a certificate issued before the effective date of this Section may apply to the Director to classify the certificate as a Type A certificate by submitting an application on a form prescribed by the Director with the initial fee prescribed in R12-15-103(C), and attaching evidence that the certificate meets the requirements of R12-15-704(H)(1).
- B.** At least one certificate holder shall sign the application for classification of a certificate as a Type A certificate. If the applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the certificate, the authorized representative may sign the application on behalf of the applicant.
- C.** If the applicant demonstrates that the requirements of R12-15-704(H)(1) are met, the Director shall classify the certificate as

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a Type A certificate and issue a Type A certificate to each certificate holder.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-708. Material Plat Change; Application for Review

- A.** A certificate or a water report is applicable to the original plat for which the certificate or water report was issued and to a revised plat, unless the plat changes are material according to subsections (C) and (D) of this Section.
- B.** If a plat is revised after the Director issues a certificate or a water report and the changes to the plat are material according to subsection (C) or (D) of this Section, the holder may:
1. Apply for a new certificate or water report for the revised plat,
 2. Use the original plat for which the certificate or water report was issued, or
 3. Revise the plat so that any changes are not material according to subsections (C) and (D) of this Section.
- C.** Changes to the plat for which a certificate or a water report has been issued are material if any of the following apply:
1. The number of lots on the plat has increased by more than:
 - a. For subdivisions of six to 10 lots: one lot;
 - b. For subdivisions of 11 to 499 lots: 10%, rounding up to the nearest whole number; or
 - c. For subdivisions of 500 lots or more: 50 lots.
 2. The 100-year water demand for the revised plat exceeds the estimated water demand for the certificate, unless all of the following apply:
 - a. The 100-year water demand for the revised plat does not exceed the estimated water demand for the certificate by more than 10%, rounding to the nearest whole acre-foot, or by more than 25 acre-feet per year, whichever is less;
 - b. The 100-year water demand is not greater than the supply demonstrated to be physically, continuously, and legally available at the time of issuance of the certificate or water report, and that water supply remains physically, continuously, and legally available; and
 - c. For a certificate, one of the following applies:
 - i. The subdivision is enrolled as a member land in the CAGRDR;
 - ii. Groundwater is not included as a source of supply; or
 - iii. The subdivision is located in the Pinal AMA and the 100-year water demand for the revised plat will not exceed the sum of the amount of the groundwater allowance and the amount of any extinguishment credits pledged to the certificate, including extinguishment credits pledged after the certificate was issued.
 3. For a certificate, additional land is included in the plat, unless all of the following apply:
 - a. The land included in the original plat for which the certificate was issued is located in a master-planned community;

- b. The outer boundaries of the master-planned community have not expanded;
- c. If the land included in the original plat for which the certificate was issued is enrolled as a member land in the CAGRDR, the additional land has also been enrolled in the CAGRDR; and
- d. A certificate has been issued for the additional land.

- D.** Changes to a portion of a plat are not material if one of the following applies:
1. The changes to the portion of the plat being reviewed are not material according to subsection (C) of this Section when compared to the equivalent portion of the plat for which the certificate was issued;
 2. The changes to the entire revised plat are not material according to subsection (C) of this Section when compared to the entire plat for which the certificate was issued; or
 3. For a partial assignment pursuant to R12-15-705 or R12-15-706, the plat for the portion of the subdivision retained by the certificate holder could be configured so that changes to the total number of lots and the estimated water demand for the entire subdivision, including the portion under consideration, are not material according to subsection (C) of this Section. For purposes of this subsection, the Director may require the applicant to submit evidence demonstrating whether changes to the plat are material. However, the Director shall not require the applicant to submit a plat for the retained portion of a subdivision, unless the materiality of changes to the plat cannot be determined with any other evidence.
- E.** A person may apply for a review of a revised plat to determine whether any changes to the plat are material as follows:
1. The applicant shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and shall attach the revised plat.
 2. The Director shall review the revised plat and the plat for which the certificate or water report was originally issued to determine whether any changes are material according to the criteria in subsections (C) and (D) of this Section.
 3. The Director shall issue a letter to the applicant stating whether any changes to the plat are material and identifying which changes, if any, are material. If the Director determines that the changes to the plat are not material, the Director's letter shall state that the certificate or water report is applicable to the revised plat.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-709. Certificate of Assured Water Supply; Revocation

- A.** The Director may revoke a certificate if an assured water supply does not exist.
- B.** The Director shall not revoke a certificate if any of the residential lots within the plat have been sold.
- C.** If the Director determines that a certificate should be revoked, the Director shall provide for an administrative hearing, in accordance with A.R.S. Title 41, Chapter 6, Article 10. To determine whether a certificate should be revoked, the Director shall use the standards in place at the time the original application was submitted for the certificate.

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Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-710. Designation of Assured Water Supply

- A.** A municipal provider applying for a designation of assured water supply shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and provide the following:
1. The applicant's current demand;
 2. The applicant's committed demand;
 3. The applicant's projected demand for the proposed term of the designation;
 4. The proposed term of the designation, which shall not be less than two years;
 5. Evidence that the criteria in subsection (E) of this Section are met; and
 6. Any other information that the Director determines is necessary to decide whether an assured water supply exists for the municipal provider.
- B.** An application for a designation shall be signed by:
1. If the applicant is a city or town, the city or town manager or a person employed in an equivalent position. The application shall also include a resolution of the governing body of the city or town, authorizing that person to sign the application; or
 2. If the applicant is a private water company, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant.
- C.** The Director shall give public notice of an application for designation in the same manner as provided for certificates in A.R.S. § 45-578.
- D.** After a complete application is submitted, the Director shall review the application and associated evidence to determine:
1. The annual volume of water physically, continuously, and legally available for at least 100 years;
 2. The term of the designation, which shall not be less than two years;
 3. The applicant's estimated water demand;
 4. The applicant's groundwater allowance; and
 5. Whether the applicant has demonstrated compliance with all requirements in subsection (E) of this Section.
- E.** The Director shall designate the applicant as having an assured water supply if the applicant demonstrates all of the following:
1. Sufficient supplies of water are physically available to meet the applicant's estimated water demand, according to the criteria in R12-15-716;
 2. Sufficient supplies of water are continuously available to meet the applicant's estimated water demand, according to the criteria in R12-15-717;
 3. Sufficient supplies of water are legally available to meet the applicant's estimated water demand, according to the criteria in R12-15-718;
 4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719;
 5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works in a timely manner according to the criteria in R12-15-720;
 6. Any proposed groundwater use is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721; and
 7. Any proposed use of groundwater withdrawn within an AMA is consistent with the management goal, according to the criteria in R12-15-722.

- F.** The Director shall review an application for a designation of assured water supply pursuant to the licensing time-frame provisions in R12-15-401.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-711. Designation of Assured Water Supply; Annual Report Requirements, Review, Modification, Revocation

- A.** A designated provider shall include in the annual report required by A.R.S. § 45-632 the following information for the preceding calendar year:
1. The designated provider's committed demand;
 2. The demand at build-out for customers with which the designated provider has entered into an agreement to serve water, other than committed demand;
 3. A report regarding the designated provider's compliance with water quality requirements;
 4. The depth-to-static water level of all wells from which the designated provider withdrew water; and
 5. Any other information the Director may reasonably require to determine whether the designated provider continues to meet the criteria for a designation of assured water supply.
- B.** If there is a change of ownership, the subsequent owner of a designated provider shall notify the Director in writing of the change in ownership within 90 days.
- C.** The Director shall review a designation at least every 15 years following issuance of the designation to determine whether the designation should be modified or revoked. To determine whether the designation should be modified or revoked, the Director shall use the standards in place at the time of review.
- D.** The Director may modify a designation for good cause, including a merger, division of the designated provider, or a change in ownership of the designated provider.
- E.** A designated provider may request a modification of the designation at any time pursuant to R12-15-710.
- F.** The Director may revoke a designation if:
1. After notifying the designated provider and initiating a review of the designated provider's status, the Director determines that the designated provider has less water, according to the criteria in R12-15-710(E), than the amount required for a 100-year supply for the provider's:
 - a. Current demand,
 - b. Committed demand, and
 - c. Projected demand during the next two calendar years;
 2. The designated provider fails to construct adequate delivery, storage, and treatment works in a timely manner;
 3. ADEQ or another governmental entity with equivalent jurisdiction has determined, after notice and an opportunity for a hearing, that the designated provider is in significant noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance; or
 4. The designated provider has violated its management plan requirements for two or more consecutive calendar years, and one of the following applies:
 - a. The provider fails to amend its water use plan in a manner that the Director determines will achieve compliance, or

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- b. The provider fails to sign a stipulated agreement to remedy the violation.
- G. If the Director determines that a designation of assured water supply should be revoked, the Director shall provide for an administrative hearing, in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- H. If a designated provider's designated status terminates, the provider may apply for re-designation at anytime after termination.
- I. Notwithstanding any other provision in this Article, a decision and order of the Director designating a city, town, or private water company as having an assured water supply is not affected by this Article solely because the rule numbers cited in the decision and order may have changed after the effective date of the decision and order.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-712. Analysis of Adequate Water Supply

- A. A person proposing to develop land outside an AMA that will not be served by a designated provider may apply for an analysis of adequate water supply before applying for a water report. An applicant for an analysis must be the owner of the land that is the subject of the application or have the written consent of the owner. The commissioner of the Arizona State Land Department may apply for an analysis for land owned by the state of Arizona outside an AMA or may consent to the inclusion of such land in an application.
- B. An applicant for an analysis shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and attach the following:
 - 1. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted to the Director, demonstrating the ownership of the land that is the subject of the application;
 - 2. A description of the development, including:
 - a. A map of the land uses included in the development,
 - b. A list of water supplies proposed to be used by the development,
 - c. A summary of land use types included in the development, and
 - d. An estimate of the water demand for the land uses included in the development; and
 - 3. Evidence that the applicant has complied with subsection (E) of this Section.
- C. An applicant shall sign the application for an analysis. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land that is the subject of the water report, the authorized representative may sign the application on the applicant's behalf.
- D. After a complete application is submitted, the Director shall determine the estimated water demand of the development.
- E. The Director shall issue an analysis if an applicant demonstrates one or more of the following:
 - 1. Sufficient supplies of water are physically available to meet all or part of the estimated water demand of the development for 100 years, according to the criteria in R12-15-716;
 - 2. Sufficient supplies of water are continuously available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-717;
 - 3. Sufficient supplies of water are legally available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-718;
 - 4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719.
- F. For 10 years after the Director issues an analysis, or a longer period allowed under subsections (H) or (I) of this Section:
 - 1. If groundwater is a source of supply in the analysis and the applicant demonstrates that groundwater is physically available under subsection (E)(1), the Director shall consider that supply of groundwater reserved for the use of the proposed development in subsequent determinations of physical availability pursuant to R12-15-716(B).
 - 2. If an analysis holder applies for a water report for a subdivision located on land included in the analysis, the Director shall presume that a criterion demonstrated in the analysis remains satisfied with respect to the subdivision, unless the Director has received new evidence demonstrating that the criterion is not satisfied. If the Director issues the water report, the Director shall reduce the volume of groundwater reserved pursuant to subsection (F)(1) of this Section by the amount of the estimated water demand for the water report that will be met with groundwater.
- G. The Director shall reduce the amount of water considered reserved for use of the development upon request by the analysis holder. If the analysis holder requesting a reduction is not the person to whom the analysis was issued, the Director shall reduce the amount of reserved groundwater only if the person to whom the analysis was issued or that person's designee consents to the request for reduction. The person to whom the analysis was issued shall notify the Director in writing of the person's designee for purposes of this subsection.
- H. The analysis holder may apply to the Director for a five-year extension of the time period in subsection (F) of this Section by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the time period and no later than 30 days before the end of the time period. If an extension is granted, the analysis holder may apply to the Director for an additional five-year extension by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the extended time period and no later than 30 days before the end of the extended time period. The Director shall extend the time period for no more than two successive five-year periods under this subsection if the analysis holder demonstrates one of the following:
 - 1. The analysis holder has made a substantial capital investment in developing the land included in the analysis.
 - 2. The analysis holder has made material progress in developing the land included in the analysis.
 - 3. Progress in developing the land included in the analysis has been delayed for reasons outside the control of the analysis holder.
- I. After the Director grants two five-year extensions pursuant to subsection (H) of this Section, the Director may extend the time period for additional five-year periods if the analysis holder files a timely application pursuant to subsection (H) of this Section and demonstrates one of the criteria in subsections (H)(1), (2), or (3) of this Section.
- J. The Director shall review an application for an analysis or an application for an extension pursuant to subsections (H) or (I) of this Section pursuant to the licensing time-frame provisions in R12-15-401.

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Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-713. Water Report

- A. An application for a water report shall be filed by the current owner of the land that is the subject of the application.
- B. An applicant for a water report shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and provide the following:
 1. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is filed and demonstrating that the applicant is the owner of the land that is the subject of the application;
 2. A plat of the subdivision;
 3. An estimate of the 100-year water demand for the subdivision;
 4. A list of all proposed sources of water that will be used by the subdivision;
 5. If the applicant is seeking a finding that the subdivision has an adequate water supply, evidence that the criteria in subsection (E) of this Section are met; and
 6. Any other information that the Director reasonably determines is necessary to decide whether an adequate water supply exists for the subdivision.
- C. Each applicant shall sign the application for a water report. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the water report, the authorized representative may sign the application on the applicant's behalf.
- D. After a complete application is submitted, the Director shall review the application and associated evidence to determine:
 1. The estimated water demand of the subdivision,
 2. Whether the applicant has demonstrated all of the requirements in subsection (E) of this Section.
- E. The Director shall determine that the subdivision has an adequate water supply if the applicant demonstrates all of the following:
 1. Sufficient supplies of water are physically available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-716;
 2. Sufficient supplies of water are continuously available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-717;
 3. Sufficient supplies of water are legally available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-718;
 4. The proposed sources of water will be of adequate quality, according to the criteria in R12-15-719;
 5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720.
- F. The Director shall issue a water report to the applicant that states whether the applicant has complied with the requirements in subsection (E) of this Section.

- G. The Director shall review an application for a water report pursuant to the licensing time-frame provisions in R12-15-401.
- H. The Director may review or modify a water report if the Director receives new evidence regarding the criteria in subsection (E) of this Section. The Director shall not modify a water report pursuant to this subsection if any of the residential lots included in the plat have been sold. To determine whether a water report should be modified pursuant to this subsection, the Director shall use the standards in place at the time the original application was submitted for the water report. If the Director modifies a water report, the Director shall:
 1. Provide for an administrative hearing pursuant to A.R.S. Title 41, Chapter 6, Article 10; and
 2. Notify the Arizona Department of Real Estate.
- I. An owner of land that is the subject of a water report may request a modification of the water report at any time by submitting an application in accordance with subsection (B) of this Section. To determine whether a water report should be modified pursuant to this Section, the Director shall use the standards in place at the time of review.
- J. A water report is subject to the provisions of R12-15-708.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-714. Designation of Adequate Water Supply

- A. A municipal provider applying for a designation of adequate water supply shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and the following:
 1. The applicant's current demand;
 2. The applicant's committed demand;
 3. The applicant's projected demand for the proposed term of the designation;
 4. The proposed term of the designation, which shall not be less than two years;
 5. Evidence that the criteria in subsection (E) of this Section are met; and
 6. Any other information that the Director determines is necessary to decide whether an adequate water supply exists for the municipal provider.
- B. A city or town, other than a municipal provider, that is applying for a designation shall submit an application on a form prescribed by the Director with the initial fee required in R12-15-103(C), and provide the following:
 1. The current demand of the applicant's service area;
 2. The committed demand of the applicant's service area;
 3. The projected demand of the applicant's service area for the proposed term of the designation;
 4. The proposed term of the designation, which shall not be less than two years; and
 5. Evidence that the requirements in A.R.S. § 45-108(D) are met.
- C. An application for a designation shall be signed by:
 1. If the applicant is a city or town, the city or town manager or a person employed in an equivalent position. The application shall also include a resolution of the governing body of the city or town, authorizing that person to sign the application; or

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2. If the applicant is a private water company, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant.
- D. After a complete application is submitted, the Director shall review the application and associated evidence to determine:
 1. The annual volume of water that is physically, continuously, and legally available for at least 100 years;
 2. The term of the designation, which shall not be less than two years;
 3. The estimated water demand for the applicant's service area for 100 years; and
 4. Whether the applicant has demonstrated compliance with all requirements in subsection (E) or (F) of this Section.
- E. The Director shall designate the applicant as having an adequate water supply pursuant to subsection (A) of this Section if the applicant demonstrates all of the following:
 1. Sufficient supplies of water are physically available to meet the applicant's estimated water demand, according to the criteria in R12-15-716;
 2. Sufficient supplies of water are continuously available to meet the applicant's estimated water demand, according to the criteria in R12-15-717;
 3. Sufficient supplies of water are legally available to meet the applicant's estimated water demand, according to the criteria in R12-15-718;
 4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719; and
 5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works in a timely manner according to the criteria in R12-15-720.
- F. The Director shall issue a designation pursuant to subsection (B) of this Section if the applicant demonstrates that the requirements of A.R.S. § 45-108(D) are met.
- G. The Director shall review an application for a designation of adequate water supply pursuant to the licensing time-frame provisions in R12-15-401.
- B. If there is a change of ownership, the subsequent owner of a designated provider shall notify the Director in writing of the change in ownership within 90 days.
- C. The Director shall review a designation at least every 15 years following issuance of the designation to determine whether the designation should be modified or revoked.
- D. The Director may modify a designation for good cause, including a merger, division of the designated provider, or a change in ownership of the designated provider. A designated provider may request a modification of the designation at any time pursuant to R12-15-714. To determine whether the designation should be modified, the Director shall use the standards in place at the time of review.
- E. The Director may revoke a designation if:
 1. After notifying the designated provider and initiating a review of the designated provider's status, the Director determines that the designated provider has less water, according to the criteria in R12-15-714(E), than the amount required for a 100-year supply for the provider's:
 - a. Current demand,
 - b. Committed demand, and
 - c. Projected demand for the next two calendar years;
 2. The designated provider fails to construct adequate delivery, storage, and treatment works in a timely manner; or
 3. ADEQ or another governmental entity with equivalent jurisdiction has determined, after notice and an opportunity for a hearing, that the designated provider is in significant noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance.
- F. To determine whether the designation should be revoked, the Director shall use the standards in place at the time of review. If the Director determines that a designation of adequate water supply should be revoked, the Director shall provide for an administrative hearing, in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- G. If a designated provider's designated status terminates, the provider may apply for re-designation at anytime after termination.
- H. Notwithstanding any other provision in this Article, a decision and order of the Director designating a city, town, or private water company as having an assured water supply is not affected by this Article solely because the rule numbers cited in the decision and order may have changed after the effective date of the decision and order.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-715. Designation of Adequate Water Supply; Annual Report Requirements, Review, Modification, Revocation

- A. By March 31 of each calendar year, a designated provider shall submit the following information for the preceding calendar year on a form provided by the Director:
 1. The designated provider's committed demand;
 2. The demand at build-out for customers with which the designated provider has entered into an agreement to serve water, other than committed demand;
 3. A report regarding the designated provider's compliance with water quality requirements;
 4. The depth-to static water level of all wells from which the designated provider withdrew water;
 5. A report regarding volume of water withdrawn, diverted, or received from each source for delivery to customers;
 6. Any other information the Director may reasonably require to determine whether the designated provider continues to meet the criteria for a designation of adequate water supply.

Historical Head

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-716. Physical Availability

- A. The volume of a proposed source of water that is physically available to an applicant for a determination of assured water supply or a determination of adequate water supply is the amount determined by the Director to be physically available pursuant to subsections (B) through (L) of this Section.
- B. If the proposed source is groundwater, the applicant shall submit a hydrologic study, using a method of analysis approved by the Director, that accurately describes the hydrology of the affected area. Except as provided in subsection (D) of this Section, the Director shall determine that the proposed volume of groundwater will be physically available for the proposed use if both of the following apply:
 1. The groundwater will be withdrawn as follows:
 - a. Except as provided in subsection (B)(1)(b) of this Section, from wells owned by the applicant or the proposed municipal provider that are located within

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the service area of the applicant or the proposed municipal provider or from proposed wells that the Director determines are likely to be constructed for future uses of the applicant or the proposed municipal provider.

- b. If the application is for a dry lot development, from wells that the Director determines are likely to be constructed on individual lots.
- 2. Except as provided in subsection (C) of this Section, the groundwater will be withdrawn from depths that do not exceed the applicable maximum 100-year depth-to-static water level according to the following:

Type and location of development	Maximum 100-year depth-to-static water level
a. Developments in Phoenix, Tucson, or Prescott AMAs, except dry lot developments	1000 feet below land surface
b. Developments in Pinal AMA, except dry lot developments	1100 feet below land surface
c. Developments outside AMAs, except dry lot developments	1200 feet below land surface
d. Dry lot developments	400 feet below land surface

- 3. The Director shall calculate the projected 100-year depth-to-static water level by adding the following for the area where groundwater withdrawals are proposed to occur:
 - a. The depth-to-static water level on the date of application.
 - b. The projected declines caused by existing uses, using the projected decline in the 100-year depth-to-static water level during the 100-year period after the date of application, calculated using records of declines for the maximum period of time for which records are available up to 25 calendar years before the date of application. If evidence is provided to the Director of likely changes in pumpage patterns and aquifer conditions, as opposed to those patterns and conditions occurring historically, the Director may determine projected declines using a model rather than evidence of past declines.
 - c. The projected decline in the depth-to-static water level during the 100-year period after the date of application, calculated by adding the projected decline from each of the following that are not accounted for in subsection (B)(3)(b) of this Section:
 - i. The estimated water demand of issued certificates and water reports that will be met with groundwater or stored water recovered outside the area of impact of the stored water, not including the demand of subdivided lots included in abandoned plats;
 - ii. The estimated water demand of designations that will be met with groundwater or stored water recovered outside the area of impact of the stored water; and
 - iii. The groundwater reserved for developments for which the Director has issued an analysis pursuant to R12-15-703 or R12-15-712.
 - d. The projected decline in depth-to-static water level that the Director projects will result from the applicant's proposed use over a 100-year period.

- C. The Director shall lower the maximum 100-year depth-to-static water level requirement specified in subsection (B)(2) of this Section for an applicant seeking a determination of adequate water supply if the applicant demonstrates both of the following:
 - 1. Groundwater is available at the lower depth; and
 - 2. The applicant has the financial capability to obtain the groundwater at the lower depth, according to the criteria in R12-15-720.
- D. If the proposed source is groundwater that will be withdrawn from a groundwater basin outside an AMA and transported into an AMA, the Director shall determine that the proposed volume of groundwater will be physically available if both of the following apply:
 - 1. The groundwater will be withdrawn from wells owned by the applicant or the proposed municipal provider or from proposed wells that the Director determines are likely to be constructed for the future uses of the applicant or the proposed municipal provider.
 - 2. Withdrawal of the groundwater will comply with any depth-to-static water level criteria, decline rate criteria, and volume limitation criteria prescribed by statute. If there are no applicable depth-to-static water level criteria prescribed by statute, withdrawal of the groundwater shall comply with the depth-to-static water level criteria in subsection (B)(2) of this Section.
- E. Subject to subsection (L) of this Section, if the proposed source of water is surface water, other than CAP water, or Colorado River water, the Director shall determine the annual volume of water that is physically available for the proposed use, taking into consideration the priority date of the right or claim, by calculating 120% of the firm yield of the proposed source at the point of diversion as limited by the capacity of the diversion works; except that if the applicant demonstrates that an alternative source of water will be physically available during times of shortage in the proposed surface water supply, the Director shall determine the annual volume of water available by calculating 100% of the median flow of the proposed source at the point of diversion as limited by the capacity of the diversion works. The Director shall determine the firm yield or median flow as follows:
 - 1. By calculating the firm yield or median flow at the point of diversion based on at least 20 calendar years of flow records from the point of diversion, unless 20 calendar years of records are unavailable and the Director determines that a shorter period of record provides information necessary to determine the firm yield or median flow; or
 - 2. By calculating the firm yield or median flow at the point of diversion using a hydrologic model that projects the firm yield or median flow, taking into account at least 20 calendar years of historic river flows, changes in reservoir storage facilities, and projected changes in water demand. The yield available to any applicant may be composed of rights to stored water, direct diversion, or normal flow rights. If the permit for the water right was issued less than five years before the date of application, the Director shall require the applicant to submit evidence, as applicable, in accordance with this subsection.
- F. Subject to subsection (L) of this Section, if the proposed source of water is CAP water, the Director shall determine the annual volume of water that is physically available for the proposed use as follows:
 - 1. If the applicant or the proposed municipal provider has a non-declining, long-term municipal and industrial subcontract for CAP water, calculate 100% of the annual amount of water established in the subcontract.

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2. If the applicant has a lease for Indian priority CAP water, calculate 100% of the annual amount of water established in the lease.
 3. If the applicant has a subcontract for CAP water other than a non-declining, long-term municipal and industrial subcontract or a lease for Indian priority CAP water:
 - a. If the applicant submits evidence of sufficient backup water supplies, calculate 100% of the annual amount of water established in the subcontract. The applicant may establish backup water supplies by one or more of the following:
 - i. A drought response plan;
 - ii. Long-term storage credits;
 - iii. A contract for water with a multi-county water conservation district; or
 - iv. Evidence of other backup supplies that are physically, continuously, and legally available.
 - b. If the applicant does not submit evidence of sufficient backup water supplies pursuant to subsection (F)(3)(a) of this Section, calculate the percentage of the annual amount of water established in the subcontract that reasonably reflects the reliability of the applicant's CAP water supply.
- G.** Subject to subsection (L) of this Section, if the proposed source of water is Colorado River water, the Director shall determine the annual volume of water that is physically available for the proposed use as follows:
1. If the priority of the contract for Colorado River water provides reliability equal to or better than CAP municipal and industrial water, calculate 100% of the annual amount of water established in the contract.
 2. If the contract for Colorado River water provides reliability that is less than CAP municipal and industrial water:
 - a. If the applicant submits evidence of sufficient backup water supplies, calculate 100% of the annual amount of water in the contract. The applicant may establish backup water supplies by one or more of the following:
 - i. A drought response plan;
 - ii. Long-term storage credits;
 - iii. A contract for water with a multi-county water conservation district; or
 - iv. Evidence of other backup supplies that are physically, continuously, and legally available.
 - b. If the applicant does not submit evidence of sufficient backup water supplies pursuant to subsection (G)(2)(a) of this Section, calculate the percentage of the annual amount of water established in the contract that reasonably reflects the reliability of the applicant's Colorado River water supply.
- H.** Subject to subsection (I) of this Section, if the proposed source of water is effluent, the Director shall determine the annual volume of water that will be physically available by evaluating the current, metered production or the projected production of effluent. The volume of effluent that is physically available shall not include the following:
1. If the effluent will be delivered directly from a wastewater treatment plant, the volume of effluent that exceeds the applicant's estimated water demand that will be met with effluent; and
 2. The volume of effluent that does not comply with any applicable water quality requirements for the proposed use of the effluent.
- I.** If the proposed source of water is stored water to be recovered from recovery wells, the Director shall determine the volume of water that is physically available for the proposed use as follows:
1. If the stored water is represented by long-term storage credits in existence on the date of application, the amount that is physically available is the amount that may be recovered pursuant to the credits in a manner consistent with A.R.S. Title 45, Chapter 3.1, subject to subsection (I)(3) of this Section.
 2. If the applicant proposes to use long-term storage credits that do not exist on the date of application or recover stored water on an annual basis pursuant to A.R.S. § 45-851.01, the Director shall evaluate the following in determining whether to include the proposed credits or the water proposed to be stored and recovered annually in the amount of water that is physically available for the applicant's proposed use:
 - a. The terms of a contract to obtain water to store in a storage facility;
 - b. The physical, continuous, and legal availability of the water proposed to be stored;
 - c. The presence of an existing storage facility that will be available for use for the proposed storage;
 - d. The existence of all required permits of an adequate duration; and
 - e. Whether recovery of the stored water will comply with subsection (I)(3) of this Section.
 3. If the applicant proposes to recover the stored water from recovery wells located outside the area of impact of storage, the stored water will be considered physically available only if sufficient water exists for the withdrawals consistent with both of the following:
 - a. The maximum 100-year depth-to-static water level requirements established in subsection (B)(2) of this Section; and
 - b. Any criteria for the withdrawals prescribed in the management plan in effect at the time of the application.
- J.** If the applicant will obtain the source of water through a water exchange agreement, the Director shall determine that the water is physically available for the proposed use if the applicant submits evidence that the source of water the applicant or the applicant's customers will use will be physically available in accordance with the terms of this Section.
- K.** In the case of two or more pending, conflicting, complete and correct applications for determinations of assured water supply or determinations of adequate water supply, the Director shall give priority to the application with the earliest priority date. The priority date of an application for a determination of assured water supply or determination of adequate water supply shall be the date that a complete and correct application is filed with the Director. The Director shall consider an application complete and correct if it contains all the information required and the Director verifies that the information is accurate.
- L.** For a certificate applicant that proposes to use surface water, the Director shall determine that the proposed source is physically available only if the applicant demonstrates one of the following:
1. The land that is the subject of the application is a member land of the CAGRD.
 2. The applicant has independently obtained the surface water supply.
 3. The proposed municipal provider would satisfy the criteria in R12-15-722 if the municipal provider were subject to those requirements.

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Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-717. Continuous Availability

- A.** The Director shall determine that an applicant will have sufficient supplies of water that will be continuously available for 100 years if the applicant submits sufficient evidence that adequate delivery, storage, and treatment works will be in place in a timely manner to make the water available to the applicant or the applicant's customers for 100 years and the applicant meets any applicable requirements in subsections (B) through (G) of this Section.
- B.** If the proposed source of water is groundwater, the applicant shall demonstrate that wells of a sufficient capacity will be constructed in a timely manner to serve the proposed uses on a continuous basis for 100 years.
- C.** If the proposed source of water is surface water other than CAP water or Colorado River water, the applicant shall demonstrate that a continuous supply will exist because of one or more of the following:
1. The projected volume to be diverted from the source is perennial at the point of diversion;
 2. Adequate storage facilities will be available to the applicant in a timely manner to store water for use when a volume of surface water is not available at the point of diversion to satisfy the applicant's water demands;
 3. The applicant has presented evidence of supplies of other sources of water that the Director has determined will be physically, continuously, and legally available to supplement the applicant's proposed surface water supplies;
 4. The applicant or the proposed municipal provider will withdraw surface water from wells of sufficient capacity to meet the applicant's estimated water demand on a continuous basis for 100 years; or
 5. The applicant has submitted a drought response plan that the Director has determined will conserve or augment a volume of water equal to the volume of water that is subject to drought.
- D.** If the proposed source of water is CAP water or Colorado River water, the applicant shall demonstrate that a continuous supply is available because of one or more of the following:
1. Adequate storage facilities will be available to the applicant in a timely manner to store water when a volume of CAP water or Colorado River water is not available to meet the applicant's water demands;
 2. The applicant has presented evidence of supplies of other sources of water that the Director has determined will be physically, continuously, and legally available to the applicant to supplement the proposed CAP water or Colorado River water supplies; or
 3. The applicant has submitted a drought response plan that the Director has determined will conserve or augment a volume of water equal to the volume subject to drought.
- E.** If the proposed source of water is effluent, the applicant shall demonstrate that the capability to use the effluent to meet the demands of the proposed use will not be affected by any fluctuations in the supply of the effluent.
- F.** If the proposed source of water is stored water to be recovered from recovery wells, the applicant shall demonstrate that recovery wells of a sufficient capacity will be constructed in a timely manner to serve the proposed use on a continuous basis for 100 years.
- G.** If an applicant will obtain the source of water through a water exchange agreement, the applicant shall demonstrate that the source of water the applicant or the applicant's customers will

use will be continuously available in accordance with the terms of this Section.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Amended by emergency rulemaking at 11 A.A.R. 2706, effective June 29, 2005 for 180 days (Supp. 05-2). Emergency renewed for 180 days at 12 A.A.R. 144, effective December 23, 2005 (Supp. 05-4). Emergency expired. Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-718. Legal Availability

- A.** The Director shall determine that an applicant will have sufficient supplies of water that will be legally available for at least 100 years if the applicant submits all of the applicable information required by this Section.
- B.** If the applicant is an applicant for a certificate or a water report, the applicant shall submit the following, as applicable:
1. A Notice of Intent to Serve agreement between the owner of the land to be included in the subdivision and the proposed municipal provider, stating the proposed municipal provider's intent to serve the subdivision;
 2. If the proposed municipal provider is a city or town, evidence indicating that the proposed subdivision is located within the incorporated limits of the city or town or evidence of the legal right of the city or town to serve water to the subdivision outside the city or town's incorporated limits; or
 3. If the proposed municipal provider is a private water company, one of the following:
 - a. Evidence that the proposed municipal provider has a certificate of convenience and necessity approved by the Arizona Corporation Commission and the subdivision is located within the geographic area described in the certificate of convenience and necessity or any other area in which the Arizona Corporation Commission authorizes the private water company to serve water;
 - b. Evidence that the proposed municipal provider has an order preliminary issued by the Arizona Corporation Commission authorizing the municipal provider to provide water service and the proposed subdivision is located within the area described in the order preliminary; or
 - c. Evidence that the proposed municipal provider is not a public service corporation regulated by the Arizona Corporation Commission.
- C.** If the applicant is a private water company applying for a designation, the applicant shall submit evidence that the applicant has a certificate of convenience and necessity approved by the Arizona Corporation Commission, or has been issued an order preliminary by the Arizona Corporation Commission for a certificate of convenience and necessity, authorizing the applicant to serve the proposed use.
- D.** If a proposed source of water is groundwater to be withdrawn within an AMA, the applicant shall submit evidence that the applicant or the proposed municipal provider has one or more of the following:
1. A service area right;
 2. An applicable non-irrigation grandfathered right to withdraw groundwater, in an amount sufficient to serve the proposed use; or
 3. A pending notice of intent to establish a new service area and all of the following apply:

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- a. The notice of intent to establish a new service area identifies the proposed subdivision,
 - b. The applicant or the proposed municipal provider has obtained a permit for any wells used to establish the service area right,
 - c. The proposed municipal provider has obtained a water right or recovery well permit to establish the service area right, and
 - d. The water right is of sufficient volume and duration to meet the estimated water demand of the proposed subdivision until the anticipated date of issuance of a service area right.
- E.** If a proposed source of water is surface water other than CAP water or Colorado River water:
1. The applicant shall submit evidence that the applicant or the proposed municipal provider has a certificated surface water right, decreed water right, or a pre-1919 claim for the proposed source. If the applicant or the proposed municipal provider does not hold a surface water right or claim, but will receive water pursuant to a water right or claim that is appurtenant to the land that is the subject of the application, the applicant shall submit evidence of the water right or claim and evidence that the water right or claim may neither be legally withheld nor severed and transferred by the right holder or claimant.
 2. If the certificated surface water right or decreed water right pre-dates the date of application by at least five years, or the applicant submits a pre-1919 claim, the applicant shall submit one of the following:
 - a. Evidence that the surface water supply has been used pursuant to the applicable water right or claim within the five years before the date of application;
 - b. Evidence that a court has determined that the right has not been abandoned; or
 - c. Evidence that the non-use would not have resulted in an abandonment of the right pursuant to A.R.S. § 45-189.
 3. The Director shall determine that the volume of water that is legally available pursuant to a certificated surface water right, a decreed water right, or a pre-1919 claim is equal to the face value of the right or claim. If the right or claim is subsequently adjudicated, the Director shall determine the volume of water that is legally available based on the adjudicated amount of water.
- F.** Subject to subsections (M) and (N) of this Section, if a proposed source of water is CAP water, the applicant shall submit evidence that the applicant or the proposed municipal provider has entered into a subcontract with a multi-county water conservation district for the proposed volume of CAP water. The Director shall presume that a 50-year long-term, non-declining municipal and industrial subcontract is sufficient evidence of the legal availability of the volume of CAP water specified in the subcontract for 100 calendar years.
- G.** Subject to subsections (M) and (N) of this Section, if a proposed source of water is Colorado River water, the applicant shall submit evidence of one of the following:
1. The applicant or the proposed municipal provider has a contract with the United States Secretary of the Interior for the proposed supply; or
 2. The applicant has obtained an allocation of Colorado River water from an entity to which all of the following apply:
 - a. The entity holds a contract for Colorado River water with the United States Secretary of the Interior;
 - b. The entity provides Colorado River water to the proposed municipal provider;
 - c. The entity has allocated a sufficient volume of the Colorado River water to the subdivision; and
 - d. The area that the entity may serve, described in the contract with the United States Secretary of the Interior, includes the subdivision.
- H.** If a proposed source of water is effluent, the applicant shall submit evidence that the applicant or the proposed municipal provider has the legal right to use the effluent.
- I.** If the applicant will obtain a proposed source of water through a written contract other than a water exchange agreement, a contract between a certificate applicant and the municipal provider proposed to serve the applicant, a contract with the United States Secretary of the Interior for Colorado River water, or a subcontract with a multi-county water conservation district, the applicant shall submit evidence that the person providing the water under the contract has a legal right to the water in accordance with the terms of this Section and that the terms of the contract will ensure that the proposed source of water will be delivered to the applicant or to the proposed subdivision. The Director shall determine the term of years for which the proposed source of water is legally available based on the term of years remaining in the contract. The Director shall determine the quantity of water legally available based on the volume established in the contract.
- J.** If the applicant will obtain a proposed source of water through a water exchange agreement, the applicant shall submit evidence that the water exchange agreement satisfies the requirements of A.R.S. Title 45, Chapter 4.
- K.** If the Director can determine the proposed source of water to be physically and continuously available only because of the use of storage facilities by the applicant or by the proposed municipal provider, the applicant shall submit evidence of the applicant's or the proposed municipal provider's legal right to store water in the storage facilities.
- L.** If the applicant proposes to use long-term storage credits, the applicant shall submit evidence that the applicant or the proposed municipal provider has the legal right to use the credits under A.R.S. Title 45, Chapter 3.1.
- M.** If a proposed supply of water is Colorado River water or CAP water leased from an Indian community, the applicant shall submit evidence that the water leased has a priority equal to or higher than CAP municipal and industrial water, evidence that the Indian community is expressly authorized by an Act of Congress to lease the water for use off Indian community lands, evidence of the lease, and evidence of one of the following:
1. The proposed water supply is available under the lease for at least 100 years from any time during the year in which the applicant submits the application.
 2. The term of the lease has less than 100 years remaining in the year in which the applicant submits the application and a supplemental water supply, together with the leased water, provides a 100-year water supply. The applicant shall demonstrate that the supplemental water supply is physically, continuously, and legally available and, if such supplemental supply is groundwater, that use of the groundwater is consistent with the management goal of the AMA. If the supplemental supply is water recovered through the use of long-term storage credits, the applicant shall also submit the following, as applicable:
 - a. If the applicant is to use the long-term storage credits before the beginning of the lease term, evidence that the applicant or the proposed municipal provider has obtained a recovery well permit that allows the applicant or the proposed municipal provider to

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recover water pursuant to the long-term storage credits; or

- b. If the long-term storage credits will be accrued in the future, evidence that the applicant or the proposed municipal provider will accrue the long-term storage credits within 20 years after the effective date of the designation, certificate, or water report by storing the water under an issued water storage permit at a permitted storage facility and that no more than 20 years of the applicant's supplemental water supply will be provided by the long-term storage credits.
- N. If the Director previously determined that Colorado River water or CAP water leased from an Indian community was legally available to a designated provider for 100 years, the Director shall determine that the designated provider continues to have a legally available supply of water for 100 years for the annual amount of water available under the lease if:
1. The lease has at least 50 years remaining in its term or the lease has at least 40 years remaining in its term and the designated provider submits evidence to the Director of active and ongoing negotiations with the Indian community to renew or re-negotiate the lease; and
 2. One of the following applies:
 - a. No more than 15% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through leases with Indian communities;
 - b. Groundwater will be physically, continuously, and legally available to the designated provider at the end of the lease term to substitute for the leased water for the remainder of the 100-year period, and the projected use of groundwater is consistent with the management goal of the AMA. For purposes of this subsection, the designated provider may demonstrate that the proposed use is consistent with the management goal by entering into a written agreement with the Director under which the designated provider agrees to replace through replenishment or underground storage any groundwater used at the end of the lease term if groundwater use is not consistent with the management goal. The written agreement shall provide that specific performance is the only remedy in the event of default;
 - c. A non-groundwater source of water will be physically, continuously, and legally available at the end of the lease term to substitute for the leased water for the remainder of the 100-year period; or
 - d. The designated provider's governing board or council submits a resolution requesting that the designated provider be allowed to increase its projected use of Indian lease water from 15%, as allowed by subsection (N)(2)(a) of this Section, to 20%, and the Director finds that all of the following apply:
 - i. No more than 20% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through leases with Indian communities;
 - ii. No more than 15% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through any single lease with an Indian community; and

- iii. The designated provider does not meet the requirements of subsections (N)(2)(a), (b), or (c) of this Section.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-719. Water Quality

- A. Except as provided in subsection (B) of this Section, when reviewing an application for a determination of assured water supply or a determination of adequate water supply, the Director shall determine that the water supply is of adequate quality if one of the following applies:

1. The applicant certifies on the application that the applicant or the proposed municipal provider will be regulated by ADEQ, or another governmental entity with equivalent jurisdiction, as a public water system pursuant to A.R.S. § 49-351, et seq., unless ADEQ, or another governmental entity with equivalent jurisdiction, has determined, after notice and an opportunity for a hearing, that the public water system is in significant noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance; or
2. The applicant has submitted results of a lab analysis demonstrating that the water meets water quality requirements in accordance with A.A.C. Title 18, Chapter 4, or that the water will meet these requirements after treatment that is required by law. The lab analysis shall be based on water withdrawn from a well representative of the well or wells from which water will be withdrawn for the proposed use, conducted in compliance with sample collection and analysis requirements in A.A.C. Title 18, Chapter 4, and completed within 60 days of the date the application is submitted to the Director. If ADEQ waives any of the water quality or sample collection and analysis requirements in A.A.C. Title 18, Chapter 4, the Director shall not require the applicant to meet the waived requirements.

- B. If a well or a proposed well from which water will be withdrawn for the proposed use is located within one mile of a WQARF site or Superfund site, the Director shall determine that the water supply is of adequate quality only if the applicant submits a contaminant migration and mitigation analysis, demonstrating that the water supply will continue to meet the requirements in A.A.C. Title 18, Chapter 4 for 100 years. The contaminant migration and mitigation analysis may include the impact of any mitigation or treatment, including mitigation or treatment required pursuant to a consent decree.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-720. Financial Capability

- A. The Director shall determine that an applicant for a certificate or a water report has the financial capability to construct adequate delivery, storage, and treatment works if the applicant demonstrates one or more of the following:

1. The applicant will submit its final plat to a qualified platting authority;
2. The applicant has constructed adequate delivery, storage, and treatment works, and water service is available to each lot; or

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- 3. The applicant has posted a performance bond with the platting authority for the entire cost of adequate delivery, storage, and treatment works.
- B. Upon receiving evidence that a platting authority has established standards for proof of financial capability to construct adequate delivery, storage, and treatment works, pursuant to A.R.S. § 9-463.01(C)(8) or A.R.S. § 11-806.01(G), the Director shall classify the platting authority as a qualified platting authority. The Director shall maintain a list of qualified platting authorities.
- C. The Director shall determine that an applicant for a designation has the financial capability to construct adequate delivery, storage, and treatment works if the applicant demonstrates one or more of the following for each of those facilities:
 - 1. The applicant has constructed adequate delivery, storage, and treatment works;
 - 2. The applicant has entered into written agreements requiring a potential developer to construct adequate delivery, storage, and treatment works;
 - 3. If the applicant is a city or town, the applicant has:
 - a. Adopted a five year capital improvement plan that provides for the construction, or the commencement of construction, of adequate delivery, storage, and treatment works in a timely manner, and has submitted a certification by the applicant's chief financial officer that finances are available to implement that portion of the five-year plan; or
 - b. Submitted evidence demonstrating that financing mechanisms are in place to construct adequate delivery, storage, and treatment works in a timely manner; or
 - 4. If the applicant is a private water company, the applicant has received approval from the Arizona Corporation Commission for financing the construction of adequate delivery, storage, and treatment works.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-721. Consistency with Management Plan

- A. The Director shall determine whether a designation applicant's projected use of groundwater withdrawn within an active management area is consistent with the management plan as follows:
 - 1. If the applicant is providing water to customers as of the date of application, the applicant's projected water use is consistent with the management plan if either of the following apply:
 - a. The applicant is in compliance with its applicable management plan requirements in the most recent calendar year for which data is available before the date of application; or
 - b. The applicant has signed a stipulation and consent order that is in effect on the date of the application, or that becomes effective during the time of review of the application, to remedy non-compliance with the management plan requirements and the applicant is in compliance with the terms of the stipulation and consent order.
 - 2. If the applicant has not commenced serving water to customers as of the date of application, the applicant shall submit a water use plan that demonstrates to the Director that compliance with management plan requirements will be achieved through the use of conservation or augmentation measures.

- 3. If the applicant has a pending request for an administrative review or variance from its management plan requirements, the Director shall not make a finding regarding compliance with this Section until the Director has issued a final decision and order on the request or the request has been withdrawn.
- B. The Director shall determine that a certificate applicant's projected use of groundwater withdrawn within an AMA is consistent with the management plan if the applicant submits a water use plan for the subdivision that includes both of the following:
 - 1. Information demonstrating that compliance with management plan requirements will be achieved through conservation or augmentation measures; and
 - 2. All information required to calculate the water requirements for each proposed water use.
- C. A certificate applicant for a subdivision of 50 or fewer lots is exempt from the requirements of this rule.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-722. Consistency with Management Goal

- A. For the Phoenix, Prescott, or Tucson AMAs, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the AMA in which the proposed use is located for at least 100 years by adding the following:
 - 1. The amount of the groundwater allowance, according to R12-15-724(A), R12-15-726(A), or R12-15-727(A).
 - 2. The amount of any extinguishment credits pledged to the certificate or designation, according to R12-15-724(B), R12-15-726(B), or R12-15-727(B).
 - 3. Any groundwater that is consistent with the achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.
- B. The Director shall determine that a proposed groundwater use in the Phoenix, Prescott, or Tucson AMA is consistent with the management goal of the AMA if the volume calculated in subsection (A) is equal to or greater than the portion of the applicant's estimated water demand to be met with groundwater.
- C. For a certificate in the Pinal AMA, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the AMA for at least 100 years by adding the following:
 - 1. The amount of the groundwater allowance, according to R12-15-725(A)(1).
 - 2. The amount of any extinguishment credits pledged to the certificate for a grandfathered right that was extinguished on or after January 1, 2019, according to R12-15-725(B), except that annual reported use of such extinguishment credits to make groundwater use consistent with the management goal is limited to the following percentages of groundwater use from the sixth year after certificate issuance:

Years After Certificate Issuance	Percentage of Total Groundwater Use that May Be Made Consistent with the Pinal AMA Management Goal with Extinguishment Credits Pledged to Certificate
Years Six through Ten	75%
Years Eleven through Fifteen	50%
Years Sixteen through Twenty	25%

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Years Twenty-one and After	0%
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- 3. The amount of any extinguishment credits pledged to the certificate for a grandfathered right that was extinguished on or after October 1, 2007 and before January 1, 2019.
- 4. The amount of any extinguishment credits pledged to the certificate for a grandfathered right that was extinguished before October 1, 2007. The Director shall calculate the amount of the extinguishment credits by multiplying the annual amount of the credits by 100.
- 5. Any groundwater that is consistent with achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.
- D.** For a certificate in the Pinal AMA, the Director shall determine that the proposed groundwater use is consistent with the management goal of the AMA if the volume calculated in subsection (C) is equal to or greater than the portion of the applicant's estimated water demand to be met with groundwater.
- E.** For a designation in the Pinal AMA, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the Pinal AMA on an annual basis for at least 100 years by adding the following for each year during the 100-year period:
 - 1. The amount of the groundwater allowance, according to R12-15-725(A)(2). If any of the groundwater allowance is not used during a year, the unused groundwater allowance shall not be added to the volume calculated under this subsection for the following year.
 - 2. The amount of any extinguishment credits pledged to the designation for a grandfathered right that was extinguished on or after January 1, 2019, divided by the number of years remaining in which the credits may be used pursuant to R12-15-725(B). These credits shall be included in the calculation only for those years in which the credits may be used. If any of the extinguishment credits were originally pledged to a certificate and are being used to support the municipal provider's designation pursuant to R12-15-723(G)(2), the extinguishment credits shall not be limited by the percentages in subsection (C)(2) of this section.
 - 3. The amount of any extinguishment credits pledged to the designation for a grandfathered right that was extinguished on or after October 1, 2007 and before January 1, 2019, divided by 100. Extinguishment credits for a grandfathered right that was extinguished on or after October 1, 2007 and before January 1, 2019 may be used in any year.
 - 4. The annual amount of any extinguishment credits pledged to the designation for a grandfathered right that was extinguished before October 1, 2007. The following shall apply if any of the extinguishment credits are not used during a calendar year:
 - a. If the extinguishment credits were pledged to the designation before October 1, 2007, any extinguishment credits not used during a calendar year shall be added to the volume calculated under this subsection for the following calendar year.
 - b. If the extinguishment credits are pledged to the designation on or after October 1, 2007, any of the extinguishment credits not used during a calendar year shall not be added to the volume calculated under this subsection for the following calendar year, except that if the extinguishment credits were originally pledged to a certificate before October 1, 2007 and are used to support the municipal provider's designation pursuant to R12-15-723(G)(2), any of the extinguishment credits not used during a

calendar year shall be added to the volume calculated under this subsection for the following calendar year.

- 5. Any groundwater that is consistent with the achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.
- F.** For a designation in the Pinal AMA, the Director shall determine that the proposed groundwater use is consistent with the management goal of the Pinal AMA if the volume calculated in subsection (E) for each year during the 100-year period is equal to or greater than the portion of the applicant's annual estimated water demand to be met with groundwater.
- G.** Upon application, the following volumes of groundwater used by an applicant are considered consistent with the management goal:
 - 1. If the Director determines that a surface water supply is physically available under R12-15-716 and the volume of the supply actually available during a calendar year is equal to or less than the drought volume for the supply, the volume of groundwater, other than the groundwater that is accounted for under subsection (A), (C), or (E), withdrawn within the AMA that, when combined with the available surface water supply, is equal to or less than the drought volume.
 - 2. Any volume of groundwater withdrawn within a portion of an AMA that is exempt from conservation requirements under A.R.S. Title 45 due to waterlogging. The Director shall review the application of this exclusion on a periodic basis, not to exceed 15 years.
 - 3. Remedial groundwater that is consistent with the management goal according to the requirements of R12-15-729.
- H.** An applicant for a certificate of assured water supply for a dry lot subdivision of 20 lots or fewer is exempt from the requirements of this Section.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2). Amended by final rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4). At the request of the Department R12-15-722(A)(2) through (5) have been removed since they were not part of the amendments made to this Section in Supp. 18-4; subsections R12-15-722(A)(2) through (3) as amended at 13 A.A.R. 1394 have been restored (Supp. 19-2).

R12-15-723. Extinguishment Credits

- A.** Except as provided in subsection (D), the owner of a grandfathered right may extinguish the right in exchange for extinguishment credits by submitting the following:
 - 1. A notarized statement of extinguishment of a grandfathered right on a form provided by the Director;
 - 2. The grandfathered right number;
 - 3. If the right being extinguished is a Type 1 non-irrigation grandfathered right or an irrigation grandfathered right, evidence of ownership of the land to which the grandfathered right is appurtenant;
 - 4. If the grandfathered right is located in the Prescott AMA, evidence that all of the following conditions are met:
 - a. The land to which the right is appurtenant has not been and will not be subdivided pursuant to a preliminary plat or a final plat that was approved by a city, town, or county before August 21, 1998; and

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- b. The land to which the right is appurtenant is not and will not be the location of a subdivision for which a complete and correct application for a certificate of assured water supply was submitted to the Director before August 21, 1998;
5. If the right being extinguished is an irrigation grandfathered right, evidence that the development of the land to which the right is appurtenant is not completed; and
6. Any additional information the Director may reasonably require to process the extinguishment.
- B.** The Director shall calculate the amount of extinguishment credits pursuant to R12-15-724(B), R12-15-725(B), R12-15-726(B) or R12-15-727(B). The Director shall notify the owner of the amount of extinguishment credits in writing. If the owner is extinguishing only a portion of the right, the Director shall issue a new certificate of grandfathered right for the remainder of the right.
- C.** A Type 1 non-irrigation grandfathered right or an irrigation grandfathered right may be extinguished in whole or in part. A Type 2 non-irrigation grandfathered right may be extinguished only in whole.
- D.** The following rights may not be extinguished in exchange for extinguishment credits:
1. An irrigation grandfathered right that is appurtenant to land that has been physically developed for a non-irrigation use. The Director shall not consider the land to be physically developed until the development is completed.
 2. A Type 1 non-irrigation grandfathered right, if the Director determines that the holder is likely to continue to receive groundwater from an undesignated municipal provider for the same use pursuant to the provider's service area right or pursuant to a groundwater withdrawal permit.
 3. A Type 2 non-irrigation grandfathered right that was issued based on the withdrawal of groundwater for mineral extraction or processing or for the generation of electrical energy.
 4. On or after January 1, 2025, any grandfathered right that is in the Phoenix, Prescott, or Tucson AMAs.
 5. A Type 1 non-irrigation grandfathered right that was requested to be included by a city or town in the Tucson AMA in the determination made under A.R.S. § 45-463(F).
- E.** The owner of extinguishment credits may pledge the credits to a certificate or to a designation before the certificate or designation is issued by submitting with the application for the certificate or designation a notice of intent to pledge extinguishment credits on a form provided by the Director. The extinguishment credits shall be pledged to the certificate or designation upon issuance of the certificate or designation.
- F.** The owner of extinguishment credits may pledge the credits to a certificate or to a designation after the certificate or designation is issued by submitting a notice of intent to pledge extinguishment credits on a form provided by the Director. The Director shall notify the owner of the extinguishment credits and the certificate holder or designated provider that the credits have been pledged to the certificate or designation.
- G.** Extinguishment credits that have not been pledged to a certificate or designation may be conveyed within the same AMA. Extinguishment credits pledged to a certificate or designation shall not be conveyed to another person, except that:
1. If extinguishment credits are pledged to a certificate that is later assigned or reissued, any unused credits are transferred, by operation of this subsection, to the assigned or reissued certificate. If the certificate is partially assigned or reissued, a pro rata share of the unused extinguishment credits is transferred to each assigned or reissued certificate according to the estimated water demand.
 2. If extinguishment credits are pledged to a certificate for a subdivision that is later served by a designated provider or a municipal provider that is applying for a designation, any unused extinguishment credits may be used to support the municipal provider's designation as long as the municipal provider serves the subdivision and remains designated. If the municipal provider is no longer serving the subdivision or if the municipal provider loses its designated status, any unused extinguishment credits shall revert, by operation of this subsection, to the certificate to which they were originally pledged.
- H.** The Director shall review a statement of extinguishment of a grandfathered right and a notice of intent to pledge extinguishment credits pursuant to the licensing time-frame provisions in R12-15-401.
- I.** A person may apply to the Director on or before December 31, 2015 for the restoration of all or a portion of an irrigation grandfathered right extinguished under this Section during calendar year 2005, 2006 or 2007 if all of the following conditions are met:
1. The person owns the land to which the right or portion of the right was appurtenant;
 2. The land to which the right or portion of the right was appurtenant is physically capable of being irrigated and the infrastructure for delivering water to the land for irrigation purposes remains intact and is operable;
 3. The person holds extinguishment credits that were issued for the extinguishment of a grandfathered right in the AMA in which the land is located and that have not been pledged to a certificate or designation under subsection (E) or (F) in the following amount, as applicable:
 - a. If the person seeks to restore the entire irrigation grandfathered right, an amount of extinguishment credits equal to the amount of extinguishment credits issued by the Director in exchange for extinguishment of the irrigation grandfathered right; or
 - b. If the person seeks to restore a portion of the irrigation grandfathered right, an amount of extinguishment credits equal to the result obtained by multiplying the percentage of the right sought to be restored by the amount of extinguishment credits issued by the Director in exchange for the extinguishment of the right.
- J.** An application to restore all or a portion of an irrigation grandfathered right under subsection (I) shall be on a form provided by the Director and include all of the following:
1. A fee of \$250.00;
 2. The irrigation grandfathered right number of the right sought to be restored;
 3. If a certificate of extinguishment credits was issued by the Director for the extinguishment credits described in subsection (I)(3), the original certificate or an affidavit stating that the certificate is lost;
 4. A copy of a deed showing that the applicant owns the land to which the right or portion of the right sought to be restored was appurtenant and, if the application seeks to restore only a portion of the right, the legal description of the land to which that portion of the right was appurtenant;
 5. A certification by the applicant that the conditions described in subsection (I) are met; and
 6. An agreement in writing that if the right or portion of the right is restored, the flexibility account for the land to which the right or portion of the right is appurtenant shall

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have an account balance of zero at the beginning of the calendar year in which the right or portion of the right is restored and that any credits registered to the flexibility account after the right is restored may not be conveyed or sold to any person, including the applicant.

- K. The Director shall approve an application to restore all or a portion of an irrigation grandfathered right submitted under subsection (I) if the application includes the fee and the information required under subsection (J) and the Director determines that the information is correct. If the Director approves an application to restore all or a portion of an irrigation grandfathered right, all of the following apply:
 1. The irrigation water duty for the land to which the right or portion of the right is restored shall be the same as it was when the right was extinguished, unless the irrigation water duty is changed in a management plan adopted after the right was extinguished or is modified pursuant to A.R.S. § 45-575;
 2. The flexibility account for the land to which the right or portion of the right is appurtenant shall have an account balance of zero at the beginning of the calendar year in which the right or portion of the right is restored and any credits registered to the flexibility account after the right is restored may not be conveyed or sold to any person, including the applicant.
 3. The applicant shall forfeit the extinguishment credits described in subsection (I)(3); and
 4. The restored irrigation grandfathered right may be extinguished in exchange for extinguishment credits under this Section. For purposes of calculating the amount of extinguishment credits under R12-15-724(B), R12-15-725(B), R12-15-726(B) or R12-15-727(B), the calendar year of extinguishment is the calendar year in which the restored irrigation grandfathered right is extinguished.
- L. The Director shall review an application to restore an irrigation grandfathered right under subsection (I) pursuant to the licensing time-frame provisions in R12-15-401. The application shall have an administrative completeness review time-frame of 30 days, a substantive review time-frame of 90 days, and an overall time-frame of 120 days.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2). Amended by final rulemaking at 17 A.A.R. 1989, effective September 13, 2011 (Supp. 11-3). Amended by final rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4).

R12-15-724. Phoenix AMA Calculation of Groundwater Allowance and Extinguishment Credits

- A. The Director shall calculate the groundwater allowance for a certificate or designation in the Phoenix AMA as follows:
 1. If the application is for a certificate, multiply the applicable allocation factor in the table below by the annual estimated water demand for the proposed subdivision.

MANAGEMENT PERIOD	ALLOCATION FACTOR
Third	4
Fourth	2
Fifth	1
After Fifth	0

2. If the application is for a designation and the applicant provided water to its customers prior to February 7, 1995, multiply 7.5 by the total volume of water provided by the applicant to its customers from any source during calendar year 1994, consistent with the municipal conservation requirements established for the applicant pursuant to Section 5-103(A)(1) of the Second Management Plan for the Phoenix AMA.
3. If the application is for a designation and the applicant commenced providing water to its customers on or after February 7, 1995, the applicant's groundwater allowance is zero acre-feet.
4. For each calendar year of a designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Phoenix AMA and add that volume to the designated provider's groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider's total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor as provided in A.R.S. § 45-566.01(E)(1). The Director may establish a different incidental recharge factor for the designated provider if the provider demonstrates to the satisfaction of the Director that the ratio of the average annual amount of incidental recharge expected to be attributable to the provider during the management period, to the average amount of water expected to be withdrawn, diverted, or received for delivery by the provider for use within its service area during the management period, is different than 4%.

- B. The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Phoenix AMA as follows:
 1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the difference between 2025 and the calendar year of extinguishment.
 2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply the product by the difference between 2025 and the calendar year of extinguishment, except that:
 - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
 - b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment.

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-725. Pinal AMA Calculation of Groundwater Allowance and Extinguishment Credits

- A. The Director shall calculate the groundwater allowance for a certificate or designation in the Pinal AMA as follows:

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1. If the application is for a certificate:
 - a. If the certificate application is filed before January 1, 2019, multiply the annual estimated water demand for the proposed subdivision by 10.
 - b. If the certificate application is filed on or after January 1, 2019, the groundwater allowance shall be zero.
2. If the application is for a designation:
 - a. If the applicant was designated as having an assured water supply as of October 1, 2007:
 - i. Multiply the applicant's service area population as of October 1, 2007 by 125 gallons per capita per day and multiply the product by 365 days. The service area population shall be determined using the methodology set forth in Section 5-103(D) of the Third Management Plan for the Pinal AMA.
 - ii. Convert the number of gallons determined in subsection (A)(2)(a)(i) into acre-feet by dividing the number by 325,851 gallons.
 - iii. Determine the number of residential lots within plats that were recorded as of October 1, 2007 but not served water as of that date, and to which the applicant commenced water service by January 1, 2010.
 - iv. Multiply the number of lots determined in subsection (A)(2)(a)(iii) by 0.35 acre-foot per lot.
 - v. Add the volume from subsection (A)(2)(a)(ii) and the volume from subsection (A)(2)(a)(iv) of this Section.
 - b. If the applicant provided water to its customers before October 1, 2007 but was not designated as having an assured water supply as of that date, and a complete and correct application for designation was filed before January 1, 2012, multiply the applicant's service area population as of October 1, 2007 by 125 gallons per capita per day and multiply the product by 365 days. The service area population shall be determined using the methodology in Section 5-103(D) of the Third Management Plan for the Pinal AMA.
 - c. If the applicant provided water to its customers before October 1, 2007 but was not designated as having an assured water supply as of that date, and a complete and correct application for designation was filed on or after January 1, 2012, the applicant's groundwater allowance is zero acre-feet.
 - d. If the applicant commenced providing water to its customers on or after October 1, 2007, the applicant's groundwater allowance is zero acre-feet.
3. For each calendar year of a designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Pinal AMA and add that volume to the designated provider's groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider's total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor by submitting a hydrologic study demonstrating, to the satisfaction of the Director, that the ratio of the average annual amount of incidental recharge expected to be attributable to the designated provider during the management period to the average annual amount of water expected to be withdrawn, diverted or received for delivery by the designated pro-

vider for use within its service area during the management period is different than 4%. The hydrologic study shall include the amount of water withdrawn, diverted or received for delivery by the designated provider for use within its service area during each of the preceding five years and the amount of incidental recharge that was attributable to the designated provider during each of those years. The Director may establish a different incidental recharge factor for the designated provider upon such demonstration.

- B. The Director shall calculate the extinguishment credits for extinguishing a grandfathered right in the Pinal AMA as follows:
 1. The Director shall calculate the initial volume of extinguishment credits for the extinguishment of a grandfathered right in the Pinal AMA as follows:
 - a. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate of grandfathered right by 100.
 - b. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, multiply 1.5 acre-feet by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply that product by 100, except that:
 - i. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, only those acres associated with the portion of the right that is extinguished shall be included in the calculation; and
 - ii. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the amount of the debit shall be subtracted from the amount of the extinguishment credits.
 2. For grandfathered rights extinguished in the Pinal active management area on or after January 1, 2019, if the amount of the extinguishment credits remaining unused in the fifth, tenth, fifteenth, and twentieth year after the year of extinguishment is greater than an amount calculated by multiplying the initial volume of extinguishment credits by the applicable percentage shown in the table below, the amount of unused credits shall be reduced to an amount calculated by multiplying the initial volume of extinguishment credits by the applicable percentage:

Year After Extinguishment	Percentage
Fifth	75%
Tenth	50%
Fifteenth	25%
Twentieth	0%

3. For purposes of subsection (B)(2), the amount of extinguishment credits remaining unused shall be the initial volume of extinguishment credits issued for the extinguishment of the right, less:
 - a. The amount of any of the extinguishment credits previously pledged to a certificate of assured water supply or designation of assured water supply pursuant to R12-15-723, subsections (E) or (F) and reported to the department as having been used; and

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- b. The amount of any previous reductions made to the extinguishment credits pursuant to subsection (B)(2).

Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2). Amended by final rulemaking at 15 A.A.R. 1979, effective January 2, 2010 (Supp. 09-4). Amended by final rulemaking at 19 A.A.R. 4174, effective December 3, 2013 (Supp. 13-4). Amended by final rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4).

R12-15-725.01. Repealed**Historical Note**

New Section made by final rulemaking at 19 A.A.R. 4174, effective December 3, 2013; with automatic repeal date of September 15, 2014 (Supp. 13-4). Section amended with automatic repeal, removed by final rulemaking at 20 A.A.R. 2673; effective September 12, 2014 (Supp. 14-3). Repealed by final rulemaking at 24 A.A.R. 3578, effective January 1, 2019 (Supp. 18-4).

R12-15-725.02. Repealed**Historical Note**

New Section made by final rulemaking at 19 A.A.R. 4174, effective September 15, 2014 (Supp. 13-4). Repealed by final rulemaking at 20 A.A.R. 2673, effective September 12, 2014 (Supp. 14-3).

R12-15-726. Prescott AMA Calculation of Groundwater Allowance and Extinguishment Credits

- A. The Director shall calculate the groundwater allowance for a certificate or designation in the Prescott AMA as follows:
1. If the application is for a certificate of assured water supply, the Director shall:
 - a. Subtract the year of application from 2025,
 - b. Multiply the number determined in subsection (A)(1)(a) by the applicant's annual estimated water demand, and
 - c. Divide that product by two. The minimum volume that may be calculated in this subsection is zero acre-feet.
 2. If the application is for a designation of assured water supply:
 - a. Except as provided in subsections (A)(3) and (A)(5), if the applicant was in existence as of January 12, 1999, and the application is filed before calendar year 2026, the Director shall:
 - i. Multiply by 100 the largest volume of groundwater determined by the Director to have been withdrawn by the applicant from within the Prescott AMA for use within the applicant's service area in any calendar year from 1995 through 1998, consistent with the municipal conservation requirements applicable under the second management plan for the Prescott active management area;
 - ii. Determine the volume of the applicant's total water demand, from any source, for 1999, consistent with the municipal conservation requirements established for the applicant in the management plan in effect on the date of application;
 - iii. Determine the volume of the applicant's total water demand, from any source, for 2014, consistent with the municipal conservation requirements established for the applicant in the management plan in effect on the date of application;
 - iv. Subtract the volume calculated in subsection (A)(2)(a)(ii) from the volume calculated in subsection (A)(2)(a)(iii) and then multiply the difference by 26;
 - v. Divide the product obtained in subsection (A)(2)(a)(iv) by two;
 - vi. If any residential groundwater uses, including residential groundwater uses served by an exempt well, in existence on August 21, 1998, have been replaced by permanent water service from the applicant after August 21, 1998, multiply one-half acre-foot of groundwater by the number of housing units receiving the service and then multiply that product by 100;
 - vii. Determine the volume of groundwater withdrawn by the applicant from within the Prescott active management area during the period beginning January 1, 1999, and ending December 31 of the calendar year before the date of the application;
 - viii. Multiply the volume of groundwater withdrawn by the applicant from within the Prescott active management area in 1999 by the number of calendar years in the period beginning with 1999 and ending with the calendar year before the date of application;
 - ix. Subtract from the volume calculated in subsection (A)(2)(a)(vii) the volume calculated in subsection (A)(2)(a)(viii). The volume calculated in this subsection shall not be less than zero; and
 - x. Add the volumes calculated in subsections (A)(2)(a)(i), (A)(2)(a)(v), and (A)(2)(a)(vi), and then subtract from the sum the volume calculated in subsection (A)(2)(a)(ix).
 - b. If the applicant did not exist as of January 12, 1999, or the date of application occurs after calendar year 2025, the groundwater allowance is zero acre-feet, except that if any residential groundwater uses, including residential groundwater uses served by an exempt well, in existence on August 21, 1998, have been replaced by permanent water service from the applicant after August 21, 1998, the groundwater allowance is a volume of groundwater computed by multiplying one-half acre-foot of groundwater by the number of housing units receiving the service and multiplying that product by 100.
 3. For the purpose of determining the groundwater allowance under subsection (A)(2)(a), at the request of the applicant, the Director shall replace the volume of groundwater calculated in subsection (A)(2)(a)(ii) through (v) with the amount of groundwater necessary for the applicant to serve the residential lots described in subsection (A)(4):
 - a. To compute this amount of groundwater, the Director shall:
 - i. Determine the average dwelling occupancy within the applicant's service area and multiply that average occupancy by an amount of

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- groundwater, calculated by multiplying 150 gallons per capita per day by 365 days; and
 - ii. Multiply the product in subsection (A)(3)(a)(i) by the number of residential lots described in subsection (A)(4), and then multiply that product by 100.
 - b. The Director shall not include the amount computed in subsection (A)(3)(a) within the amount of groundwater that the applicant may use under subsection (A)(2)(a) until a final plat for the lots has been recorded.
 - 4. The Director shall include residential lots that will be served by the applicant in the calculation made under subsection (A)(3) if the lots meet all of the following criteria:
 - a. A preliminary plat for the lots was submitted to the city, town, or county on or before August 21, 1998, and the final plat is subsequently recorded;
 - b. The lots were not being served water on or before August 21, 1998; and
 - c. Any one of the following applies:
 - i. The lots were included within an application for certificate of assured water supply that was filed before August 21, 1998, the Director determined that the application was complete and correct as of August 21, 1998, and the Director subsequently issued a certificate of assured water supply for the lots.
 - ii. A preliminary plat for the lots was approved by a city, town, or county on or before August 21, 1998. At the time the preliminary plat was approved, the subdivider of the lots obtained a written commitment of water service from a municipal provider that was designated as having an assured water supply and the provider demonstrated to the satisfaction of the Director that sufficient water is physically available to serve the lots under the criteria in R12-15-716.
 - 5. For the purpose of determining the groundwater allowance under subsection (A)(2)(a), if the applicant makes the request described in subsection (A)(3), the Director shall replace the volume of groundwater calculated in subsection (A)(2)(a)(viii) with an amount of groundwater calculated as follows. The Director shall:
 - a. Determine the number of calendar years in the period beginning with 1999 and ending with the calendar year before the date of application and multiply that number of years by the largest volume of groundwater determined by the Director to have been withdrawn by the applicant from within the Prescott active management area for use within the applicant's service area in any calendar year from 1995 through 1998, consistent with the municipal conservation requirements applicable under the second management plan for the Prescott active management area;
 - b. Determine the average dwelling occupancy within the applicant's service area and multiply that average dwelling occupancy by an amount of groundwater calculated by multiplying 150 gallons per capita per day by 365 days;
 - c. For each year in the period beginning with 1999 and ending with the calendar year before the date of application, determine the number of the residential lots that meet the criteria in subsection (A)(4) and were served water by the applicant as of July 1 of the relevant year and add the number of these residential lots determined for each year;
 - d. Multiply the volume of groundwater calculated in subsection (A)(5)(b) by the number of residential lots in subsection (A)(5)(c); and
 - e. Add the volumes of groundwater from subsections (A)(5)(a) and (A)(5)(d).
- B.** The Director shall calculate the extinguishment credits for extinguishing a grandfathered right in the Prescott AMA as follows:
1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the difference between 2025 and the calendar year of extinguishment.
 2. For the extinguishment of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right:
 - a. Through December 31, 2010:
 - i. If the irrigation acres associated with the extinguished right were irrigated for at least four of the six calendar years preceding January 1, 2000, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished right or the number of acres to which the extinguished right is appurtenant and multiply that product by 25.
 - ii. If the irrigation acres associated with the extinguished right were not irrigated for at least four of the six calendar years preceding January 1, 2000, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished right or the number of acres to which the extinguished right is appurtenant and multiply the product by the difference between 2025 and the year in which the statement of intent to extinguish is filed.
 - b. After December 31, 2010, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished right or the number of acres to which the extinguished right is appurtenant and multiply the product by the difference between 2025 and the year in which the statement of intent to extinguish is filed.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-727. Tucson AMA Calculation of Groundwater Allowance and Extinguishment Credits

- A.** The Director shall calculate the groundwater allowance for a certificate or designation in the Tucson AMA as follows:
1. If the application is for a certificate, multiply the applicable allocation factor in the table below by the annual estimated water demand for the proposed subdivision.

MANAGEMENT PERIOD	ALLOCATION FACTOR
Third	8
Fourth	4
Fifth	2
After Fifth	0

2. If the application is for a designation and the applicant provided water to its customers before February 7, 1995, multiply 15 by the total volume of water provided by the

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applicant to its customers from any source during calendar year 1994, consistent with the municipal conservation requirements established for the applicant pursuant to Section 5-103(A)(1) of the Second Management Plan for the Tucson AMA.

3. If the application is for a designation and the applicant commenced providing water to its customers on or after February 7, 1995, the applicant's groundwater allowance is zero acre-feet.
 4. For each calendar year of the designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Tucson AMA and add that volume to the designated provider's groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider's total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor as provided in A.R.S. § 45-566.01(E)(1). The Director may establish a different incidental recharge factor for the designated provider if the provider demonstrates to the satisfaction of the Director that the ratio of the average annual amount of incidental recharge expected to be attributable to the provider during the management period, to the average amount of water expected to be withdrawn, diverted, or received for delivery by the provider for use within its service area during the management period, is different than 4%.
- B.** The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Tucson AMA as follows:
1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the difference between 2025 and the calendar year of extinguishment.
 2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply the product by the difference between 2025 and the calendar year of extinguishment, except that:
 - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
 - b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment.
- Historical Note**
- New Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).
- R12-15-728. Reserved**
- R12-15-729. Remedial Groundwater; Consistency with Management Goal**
- A.** Use of remedial groundwater by a municipal provider before January 1, 2025, is deemed consistent with the management goal of the AMA in which the remedial groundwater is withdrawn and is excluded when determining compliance with management goal requirements in this Article if all of the following apply:
1. The Director determines that the remedial groundwater use is consistent with the management goal under subsection (F) or (H) of this Section or the remedial groundwater use is consistent with the management goal under subsection (J) of this Section; and
 2. The municipal provider complies with the metering and reporting requirements in subsection (K) of this Section.
- B.** A municipal provider that is using remedial groundwater or that has agreed in a consent decree or other document approved by ADEQ or the EPA to use remedial groundwater may apply to the Director for a determination that the municipal provider's use of the remedial groundwater is consistent with the management goal of the active management area by submitting an application on a form provided by the Director with the information required in subsection (D) of this Section before January 1, 2010.
- C.** A municipal provider filing an application under subsection (B) of this Section for remedial groundwater use associated with a treatment plant in operation before June 15, 1999, may request an increase in the project's annual authorized volume at the time the application is filed. The Director shall grant the request and increase the annual authorized volume up to the maximum treatment capacity of the treatment plant if the municipal provider submits evidence that an increase in the annual authorized volume is necessary to further the purpose of the remedial action project and that the increase is not in violation of the consent decree or other document approved by ADEQ or the EPA for the remedial action project.
- D.** An applicant shall provide the following with an application submitted under subsection (B) of this Section:
1. A document evidencing ADEQ's or EPA's approval of the municipal provider's withdrawal and use of remedial groundwater, such as a remedial action plan, record of decision, or consent decree;
 2. The volume of remedial groundwater that will be withdrawn and used annually by the municipal provider and the purpose for which the remedial groundwater will be used;
 3. The time period during which the remedial groundwater will be withdrawn and used by the municipal provider;
 4. A reference to the annual authorized volume provided in the document submitted pursuant to subsection (D)(1) of this Section or, if the document submitted pursuant to subsection (D)(1) does not specify the annual authorized volume for the project, the annual authorized volume claimed by the municipal provider and a written justification for that volume;
 5. If the approved remedial action project is currently operating, the volume of remedial groundwater withdrawn pursuant to the project for each year before the year in which the application is filed;
 6. The designated provider or certificate to which the remedial groundwater will be pledged;
 7. If the municipal provider is requesting an increase in the annual authorized volume of the project pursuant to subsection (C) of this Section, evidence that the increase is necessary to further the purpose of the remedial action project and that the increase is not in violation of the consent decree or other document approved by ADEQ or the EPA for the project;
 8. The name and telephone number of a person the Department may contact regarding the application; and

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9. Any other information reasonably required to assist the Director in making the determination under subsection (F) of this Section.
- E.** After receiving an application under subsection (B) of this Section, the Director shall determine that the application is complete and correct if it contains all the information required in subsection (D) of this Section and the Director verifies that the information is accurate. If the Director determines that the application is complete and correct, the Director shall assign a priority date to the application according to the following:
1. If the Director determines that the application was complete and correct when filed, the priority date of the application is the date the application was filed.
 2. If the Director determines that the application was not complete or correct when filed because of minor deficiencies, the Director shall notify the applicant of the deficiencies in writing and give the applicant 30 days to correct the deficiencies. If the applicant submits the necessary information to correct the deficiencies within 30 days after the date of the notice, the priority date of the application is the date the application was filed.
 3. If the Director determines that the application was not complete or correct when filed and that the deficiencies are not minor, the Director shall notify the applicant of the deficiencies and give the applicant at least 60 days to submit the necessary information to correct the deficiencies. If the applicant submits the necessary information to correct the deficiencies within the time allowed by the Director, the priority date of the application is the date the applicant submits the necessary information to correct the deficiencies.
- F.** The Director shall approve a complete and correct application filed under subsection (B) of this Section if the Director determines that the applicant will use remedial groundwater before January 1, 2025. If the Director approves a municipal provider's application, the Director shall calculate the annual amount of remedial groundwater use that is deemed consistent with the management goal of the AMA as follows:
1. The Director shall determine the total annual amount of remedial groundwater use in all AMAs that is deemed to be consistent with the management goal under this subsection and subsections (H) and (I) of this Section for applications with a priority date earlier than the priority date of the municipal provider's application.
 2. If the amount determined in subsection (F)(1) of this Section is less than 65,000 acre-feet and the difference between those amounts is equal to or greater than the municipal provider's authorized remedial groundwater use during the year, the amount of remedial groundwater use by the municipal provider that is deemed to be consistent with the management goal during the year is the amount of the municipal provider's authorized remedial groundwater use during the year.
 3. If the amount determined in subsection (F)(1) of this Section is less than 65,000 acre-feet and the difference between those amounts is less than the municipal provider's authorized remedial groundwater use during the year, the amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal during the year is the amount of the municipal provider's authorized remedial groundwater use during the year up to the difference between the amount determined in subsection (F)(1) and 65,000 acre-feet, plus a percentage of the municipal provider's authorized remedial groundwater use during the year that exceeds the difference. The percentage is 50 percent for calendar years 2000 through 2009, 25 percent for calendar years 2010 through 2019, and 10 percent for calendar years 2020 through 2024.
4. If the amount determined in subsection (F)(1) of this Section is equal to or greater than 65,000 acre-feet, the amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal during the year is a percentage of the municipal provider's authorized remedial groundwater use during the year. The percentage is 50 percent for calendar years 2000 through 2009, 25 percent for calendar years 2010 through 2019, and 10 percent for calendar years 2020 through 2024.
- G.** If the Director determines that remedial groundwater use by a municipal provider is consistent with the management goal of the active management area under subsection (F) of this Section, the determination shall apply to remedial groundwater used by the municipal provider between the priority date of the application and January 1, 2025.
- H.** If, before the effective date of this Section, a municipal provider filed an application with the Director requesting that the Director determine that the provider's use of remedial groundwater pursuant to an approved remedial action project is consistent with the management goal of the active management area under Laws 1997, Ch. 287, § 52, as amended by Laws 1999, Ch. 295, § 50, the following shall apply:
1. If the Director approved the application before the effective date of this Section and determined the annual amount of remedial groundwater use by the applicant that will be considered consistent with the management goal, the Director's determination shall apply after the effective date of this Section and the Director shall include the annual amount of remedial groundwater use determined by the Director to be consistent with the management goal in the total amount of remedial groundwater determined in subsection (F)(1) of this Section.
 2. If the Director did not approve the application before the effective date of this Section, the Director shall process the application under subsections (E) and (F) of this Section. If the Director approves the application, the Director's determination shall apply to remedial groundwater withdrawn and used by the municipal provider pursuant to the approved remedial action project from the priority date of the application until January 1, 2025.
- I.** A municipal provider that is using remedial groundwater that has been determined by the Director to be consistent with the management goal under subsection (F) or (H) of this Section may apply to the Director for an increase in the annual authorized volume of the approved remedial action project as follows:
1. The applicant shall submit an application on a form provided by the Director.
 2. The Director shall determine that the application is complete and correct if it contains all of the required information and the Director verifies that the information is accurate.
 3. If the Director determines that an application filed under this subsection is complete and correct, the Director shall assign a priority date to the application using the criteria in subsection (E) of this Section.
 4. The Director shall approve the application if the municipal provider submits information that demonstrates one of the following:
 - a. The annual authorized volume of the approved remedial action project has been increased in a con-

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sent decree or other document approved by ADEQ or the EPA; or

- b. An increase is necessary to further the purpose of the approved remedial action project, and the increase is not in violation of the consent decree or other document approved by ADEQ or the EPA for the project.
5. If the Director approves the application, the Director shall determine the additional annual amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal of the active management area, using the criteria in subsections (F) and (G) of this Section. The Director shall include the annual amount of remedial groundwater use determined by the Director to be consistent with the management goal under this subsection in the total amount of remedial groundwater determined in subsection (F)(1) of this Section.
- J. Until January 1, 2025, use of remedial groundwater by a municipal provider during a year is deemed consistent with the management goal of the AMA in which the remedial groundwater was withdrawn without approval of the Director under subsection (F) or (H) of this Section if:
1. The total annual amount of remedial groundwater withdrawn from all wells pursuant to the approved remedial action project does not exceed 250 acre-feet; and
 2. If remedial groundwater withdrawals pursuant to the approved remedial action project commenced before June 15, 1999, the municipal provider notified the Director in writing of the volume and duration of the anticipated withdrawals on or before August 15, 1999. If remedial groundwater withdrawals pursuant to the approved remedial action project commenced on or after June 15, 1999, the municipal provider gave written notice of the volume and duration of the anticipated withdrawals on or before August 15, 1999, or before the date the withdrawals commenced, whichever is later. If the municipal provider gives notice after the effective date of this Section, the municipal provider shall include or attach all of the following:
 - a. A copy of a document evidencing ADEQ's or EPA's approval of the municipal provider's withdrawal and use of remedial groundwater, such as a remedial action plan, record of decision, or consent decree;
 - b. The volume of remedial groundwater that will be withdrawn and used annually by the municipal provider and the purpose for which the remedial groundwater will be used;
 - c. The time period during which the remedial groundwater will be withdrawn and used by the municipal provider;
 - d. If the approved remedial action project is currently operating, the volume of remedial groundwater withdrawn pursuant to the project for each year before the year in which the application is filed;
 - e. The designated provider or certificate of assured water supply to which the remedial groundwater will be pledged; and
 - f. The name and telephone number of a person the Department may contact regarding the exemption.
- K. A municipal provider withdrawing remedial groundwater that has been determined to be consistent with the management goal under subsection (F) or (H) of this Section or that is consistent with the management goal under subsection (J) of this Section shall meter the remedial groundwater withdrawals separately from groundwater withdrawn pursuant to another groundwater withdrawal authority. The municipal provider

shall include in its annual reports, filed under A.R.S. § 45-632, the amount of remedial groundwater withdrawn during the reporting year that is consistent with the management goal under this Section and the purposes for which the remedial groundwater was used.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

R12-15-730. Repealed**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Section repealed by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). New Section made by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Section repealed by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS**R12-15-801. Definitions**

In addition to the definitions set forth in A.R.S. §§ 45-101, 45-402, and 45-591 and in R12-15-202, the following words and phrases in this Article shall have the following meanings, unless the context otherwise requires:

1. "Annular space" means the space between the outer well casing and the borehole wall. An annular space also means the space between an inner well casing and outer well casing.
2. "Aquifer" means an underground formation capable of yielding or transmitting usable quantities of water.
3. "Artesian aquifer" means an aquifer which is overlain by a confining formation and which contains groundwater under sufficient pressure for the water to rise above the top of the aquifer.
4. "Artesian well" means a well that penetrates an artesian aquifer.
5. "Bentonite" means a colloidal clay composed mainly of sodium montmorillonite, a hydrated aluminum silicate.
6. "Cap" means a tamper-resistant, watertight steel plate of at least one-quarter inch thickness on the top of all inside and outside casings of a well.
7. "Casing" means the tubing or pipe installed in the borehole during or after drilling to support the sides of the well and prevent caving.
8. "Confining formation" means the relatively impermeable geologic unit immediately overlying an artesian aquifer.
9. "Consolidated formation" means a naturally occurring geologic unit through or into which a well is drilled, having a composition, density, and thickness which will provide a natural hydrologic barrier.
10. "Department" means the Arizona Department of Water Resources.
11. "Director" means the Director of the Arizona Department of Water Resources.
12. "Drilling card" means a card which is issued by the Director to the well drilling contractor or single well licensee designated in the notice of intent or permit, authorizing the well drilling contractor or licensee to drill the specific well or wells in the specific location as noticed or permitted.
13. "Exploration well" means a well drilled in search of geophysical, mineralogical or geotechnical data.

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14. "Flowing artesian well" means an artesian well in which the pressure is sufficient to cause the water to rise above the land surface.
15. "Grout" or "cement grout" means cement mixed with no more than 50% sand by volume, and containing no more than six gallons of water per 94 pound sack of cement.
16. "Mineralized water" means any groundwater containing over 3000 milligrams per liter (mg/l) of total dissolved solids or containing any of the following chemical constituents above the indicated concentrations:
- | Constituent | Concentration (mg/l) |
|------------------|----------------------|
| Arsenic | 0.05 |
| Barium | 1.0 |
| Cadmium | 0.01 |
| Chromium (total) | 0.05 |
| Fluoride | 4.0 |
| Lead | 0.05 |
| Mercury | 0.002 |
| Nitrate (as N) | 10.0 |
| Selenium | 0.01 |
| Silver | 0.05 |
17. "Monitor well" means a well designed and drilled for the purpose of monitoring water quality within a specific depth interval.
18. "Open well" means a well which is not equipped with either a cap or a pump.
19. "Perforations" means a series of openings in a casing, made either before or after installation of the casing, to permit the entrance of water into the well.
20. "Piezometer well" means a well that is designed and drilled for the purpose of monitoring water levels within a specific depth interval.
21. "Pitless adaptor" means a commercially manufactured watertight unit or device designed for attachment to a steel well casing which permits discharge from the well below the land surface and allows access into the well casing while preventing contaminants from entering the well.
22. "Polluted water" means water whose chemical, physical, biological, or radiological integrity has been degraded through the artificial or natural infusion of chemicals, radionuclides, heat, biological organisms, or mineralogical or other extraneous matter.
23. "Pressure grouting" means a process by which a grout is confined within the borehole or casing of a well by the use of retaining plugs, packers, or a displacing fluid by which sufficient pressure is applied to drive the grout into and within the annular space or interval to be grouted.
24. "Qualifying party" means a partner, officer, or employee of a well drilling contractor, who has significant supervisory responsibilities and who has been designated to take the licensing examination for that well drilling contractor.
25. "Single well license" means a license issued to a person which allows the drilling or modification of a single exempt well on land owned by that person.
26. "Vadose zone well" means a well constructed in the interval between the land surface and the top of the static water level.
27. "Vault" means a tamper-resistant watertight structure used to complete a well below the land surface.
28. "Well abandonment" means the modification of the structure of a well by filling or sealing the borehole so that water may not be withdrawn or obtained from the well.
29. "Well drilling" means the construction or repair of a well, or the modification, except for abandonment, of a well, regardless of whether compensation is involved, includ-

ing any deepening or additional perforating, any addition of casing or change to existing casing construction, and any other change in well construction not normally associated with well maintenance, pump replacement, or pump repair.

30. "Well drilling contractor" means an individual, public or private corporation, partnership, firm, association, or any other public or private organization or enterprise that holds a well driller's license pursuant to A.R.S. § 45-595(B).

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

R12-15-802. Scope of Article

This Article shall apply to man-made openings in the earth through which water may be withdrawn or obtained from beneath the surface of the earth, including all water wells, monitor wells and piezometer wells. It shall also apply to geothermal wells to the extent provided by A.R.S. § 45-591.01, and all exploration wells and grounding or cathodic protection holes greater than 100 feet in depth. However, this Article shall not apply to the following:

1. Man-made openings in the earth not commonly considered to be wells, such as construction and mining blast holes, underground mines and mine shafts, open pit mines, tunnels, septic tank systems, caissons, basements, and natural gas storage cavities.
2. Injection wells and vadose zone wells which are subject to regulation by the Arizona Department of Environmental Quality.
3. Oil, gas, and helium wells drilled pursuant to the provisions of A.R.S. Title 27.
4. Drilled boreholes in the earth less than 100 feet in depth which are made for purposes other than withdrawing or encountering groundwater, such as exploration wells and grounding or cathodic protection holes; except that in the event that groundwater is encountered in the drilling of a borehole, this Article shall apply.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

R12-15-803. Well Drilling and Abandonment Requirements; Licensing and Supervision Requirements

- A. A person shall not drill or abandon a well, or cause a well to be drilled or abandoned, in a manner which is not in compliance with A.R.S. Title 45, Chapter 2, Article 10, and the rules adopted thereunder.
- B. A person, other than a single well licensee or a bona fide employee of a well drilling contractor, shall not engage in well drilling or abandonment without first securing a well drilling license in accordance with R12-15-804, R12-15-805 and R12-15-806.
- C. A qualifying party of a well drilling contractor shall provide direct and personal supervision of the contractor's employees to ensure that all wells are constructed and abandoned in accordance with this Article.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Section 12-15-803 amended and the text of former Section R12-15-804 renumbered to subsections (B) and (C) and amended effective June 18, 1990 (Supp. 90-2).

R12-15-804. Application for well drilling license

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- A. An applicant for a well drilling license shall submit a verified application of a form prescribed and furnished by the Director which contains the following information:
1. A designation of the classification of license sought by the applicant.
 2. If the applicant is an individual, the individual's name, address and telephone number.
 3. If the applicant is a partnership, the names, addresses, and telephone numbers of all partners, with a designation of any limited partners.
 4. If the applicant is a corporation, association or other organization, the names, addresses and telephone numbers of the directors and of the president, vice president, secretary and treasurer, or the names, addresses and telephone numbers of the functional equivalent of such officers.
 5. The address or location of the applicant's place of business, the mailing address if it is different from the applicant's place of business, and if applicant is a corporation, the state in which it is incorporated.
 6. The name, address and telephone number of each qualifying party, the qualifying party's relationship to the applicant, and a detailed history of each qualifying party's supervisory responsibilities and well drilling experience, including previous employers, job descriptions, duties and types of equipment utilized.
 7. The names, addresses and telephone numbers of three persons not members of each qualifying party's immediate family, who can attest to each qualifying party's good character and reputation, experience in well drilling, and qualifications for licensing.
 8. Such additional information relevant to the applicant's or qualifying party's experience and qualifications in well drilling as the Director may require.
- B. An applicant shall notify the Director in writing of any change in the information contained in the application within 30 days after such change.
- C. The Director shall not issue a license under this Article if the applicant or a qualifying party lacks good character and reputation.
- D. Prior to the issuance of a license, a qualifying party shall demonstrate three years of experience, dealing specifically with the type of drilling for which the applicant is applying for a license. This experience requirement may be reduced if the Director finds that the qualifying party has clearly and convincingly demonstrated a high degree of understanding and knowledge of well drilling techniques for the type of drilling for which the applicant is applying for a license. In no case, however, shall the practical experience requirement be less than two years.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Former Section R12-15-804 renumbered to R12-15-803(B) and (C), new Section R12-15-804 adopted effective June 18, 1990 (Supp. 90-2).

R12-15-805. Examination for Well Drilling License

- A. The Director shall offer an examination for a well drilling license no less than six times yearly. The examination shall be administered to those eligible applicants whose applications were submitted at least 20 days prior to the date of the examination. The examination shall consist of a section on legal requirements, a section on general knowledge and one or more of six specialized sections. The section on legal requirements shall test the qualifying party's knowledge of A.R.S. Title 45, Chapter 2, Article 10, and the rules adopted thereunder. The section on general knowledge shall test the qualifying party's knowledge of general hydrologic concepts, principles, and practices in the well construction industry, and shall test knowledge of groundwater protection, pollution, water quality and public health effects. The specialized sections shall test the qualifying party's knowledge in the following classifications:
1. Cable tool drilling in rock and unconsolidated material.
 2. Air rotary drilling in rock and unconsolidated material.
 3. Mud rotary drilling in rock and unconsolidated material.
 4. Reverse rotary drilling in rock and unconsolidated material.
 5. Jetting and driving wells in unconsolidated material.
 6. Boring and augering in unconsolidated material.
- B. Only the qualifying party, department personnel, and persons having the express permission of the Director shall be permitted in the examination room while the examination is in progress. The qualifying party shall not bring books or notes into the examination room, or communicate by any means whatsoever while the examination is in progress without the express permission of the presiding examiner. The qualifying party shall not leave the examination room while the examination is in progress without first obtaining the permission of the presiding examiner. The Director may disqualify an applicant for violation of this subsection.
- C. To obtain a well drilling license, a qualifying party of the applicant shall pass the section on legal requirements, the section on general knowledge, and one or more specialized sections. Each section of the examination shall be graded separately. The passing grade on each section shall be 70 percent.
- D. No person may take the examination more than twice during any 12 months.
- E. The Director may exempt a qualifying party from taking the section on general knowledge, and one or more of the specialized sections, if the qualifying party provides proof of passing an equivalent examination given by the National Ground Water Association.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Section repealed, new Section adopted effective June 18, 1990 (Supp. 90-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

R12-15-806. License Fee; Issuance and Term of Licenses; Renewal; Display of License

- A. The fee for a well driller's license shall be \$50.00.
- B. Upon submittal of the license fee and satisfactory completion of an examination, the Director shall issue the applicant a well drilling license. The license shall be numbered and shall state the specialized classifications of drilling activities for which the applicant is qualified and licensed. The applicant shall be licensed in only those classifications for which the qualifying party has passed the specialized sections of the examination. If the qualifying party subsequently passes other specialized sections, the applicant's license shall be amended. The applicant shall pay a fee of \$50.00 for the amendment of a well driller's license.
- C. A well drilling contractor shall notify the Director in writing within 30 days of the date on which the well drilling contractor no longer has a qualifying party for one or more of its specialized drilling classifications. Upon such notification, the Director may revoke or suspend part or all of the well drilling license of the well drilling contractor and require a new qualifying party to take and pass the examination.
- D. A well drilling license shall expire each year on June 30th, unless renewed pursuant to subsection (E).

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- E. A person may renew a well drilling license by submitting an application for renewal on forms prescribed and furnished by the Director and a fee of \$50.00. If the application and renewal fee are postmarked on or before June 30, the well drilling contractor may operate as a licensee until actual issuance of the renewal license. A license which has expired may be reactivated and renewed within one year of its expiration by filing the required application and a reactivation fee of \$50.00. If a license has been expired for one or more years for failure to renew, the well drilling contractor shall apply for a new license and repeat the examination.
- F. A well drilling contractor shall prominently display the well drilling license number on all well drilling rigs owned or operated by the contractor in this state. Good quality paint or commercial decal numbers shall be used in placing each identification number on the drilling rig. The license number shall not be inscribed in crayon, chalk, pencil, or other temporary markings.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-807. Single Well License

- A. An applicant for a single well license pursuant to A.R.S. § 45-595(D) shall submit a verified application on forms prescribed and furnished by the Director, which shall include:
1. The name and address of the applicant.
 2. The location of the well and whether the applicant owns the land.
 3. The type of drill rig to be used and the owner of the rig.
 4. The proposed design of the well or method of abandonment.
 5. The names of any people who will be assisting the applicant in the drilling or abandonment of the well, and whether the applicant will compensate them for their efforts.
 6. The applicant's experience, if any, in well drilling or abandonment.
 7. Such other information as the Director may require relevant to the applicant's experience and qualifications in well drilling or abandonment.
- B. The Director shall offer the single well examination no less than six times yearly and shall administer the examination to those eligible applicants whose applications were submitted at least 20 days prior to the date of the examination.
- C. The single well examination shall be of a form prescribed and furnished by the Director and shall test the applicant's knowledge of abandonment techniques, or those minimum well construction requirements and drilling techniques applicable to the proposed design of the well. The passing grade on the sections of the examination dealing with construction requirements and drilling techniques, respectively, shall be 70 percent.
- D. Rule R12-15-805 relating to testing procedures shall be fully applicable.
- E. Applicants who twice fail the examination shall wait a minimum of 90 days before re-testing.
- F. Upon passing the examination, the applicant shall be issued a single well license, authorizing the applicant to drill or abandon one exempt well at the location specified in the applica-

tion. The license shall be valid for a period of one year from issuance.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

R12-15-808. Revocation of License

The Director may revoke, suspend, or place on probationary status a well drilling license issued pursuant to R12-15-806, or a single well license, for good cause, including:

1. Intentionally making a misstatement of fact on any filing with the Department.
2. Violating any provision of A.R.S. Title 45, Chapter 2, Article 10, and the rules promulgated thereunder, or aiding and abetting in such a violation.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Section number corrected (Supp. 93-1).

R12-15-809. Notice of Intention to Drill

A notice of intention to drill required to be filed pursuant to A.R.S. § 45-596 shall be signed by the owner or lessee of the property upon which the well is to be drilled.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2).

R12-15-810. Authorization to Drill

- A. A well drilling contractor or single well licensee may commence drilling a well only if the well drilling contractor or licensee has possession of a drilling card at the well site issued by the Director in the name of the well drilling contractor or licensee, authorizing the drilling of the specific well in the specific location.
- B. In extraordinary situations not requiring a permit but only a notice of intention to drill, the Director may grant a request by telephone for emergency authorization of commencement of drilling prior to the actual receipt by the well driller of the drilling card. Within seventy-two hours after such a request is granted, the well driller shall file a written statement indicating the nature and reasons for the request, and the date, time and Department employee granting the request, and the well owner shall file a notice of intent to drill if such a notice has not previously been filed.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Amended to correct typographical error under A.A.C. R1-1-109 (Supp. 01-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

R12-15-811. Minimum Well Construction Requirements

- A. Well casing
1. Casing shall be of a sufficient strength and wall thickness to hold the borehole open and survive any necessary grouting. A person shall use only steel or thermoplastic casing in the construction of a well, unless the person has received a variance from the Director pursuant to R12-15-820. The well casing or an extension of the casing shall extend a minimum of one foot above ground level. When installing a pitless adaptor, the casing may be terminated below ground level for aesthetic reasons or freeze protection purposes. Casing made of, or which has been exposed to, hazardous or potentially harmful materials, such as asbestos, shall not be used.

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2. All well casing joints or overlaps shall be made watertight to prevent the degradation of the water supply by the migration of inferior quality water. Except as provided in subsection (H) of this rule, any openings in the casing that will be above the water level in the well, such as bar holes, cracks or perforations, shall be completely plugged or sealed.
 3. Thermoplastic casing shall be installed only in an over sized drillhole without driving. Thermoplastic casing shall conform with American Society for Testing and Materials Standard Specification F480-89 (1989), which is incorporated herein by reference and is on file with the Office of the Secretary of State. Rivets or screws used in the casing joints shall not penetrate the inside of the casing.
 4. Steel casing shall be new or in like-new condition, free from pits or breaks, and shall conform with American Society for Testing and Materials Standard Specification A53-89a (1989), A139-89b (1989) or A312/A312M-89a (1989), whichever is applicable, all of which are incorporated herein by reference and are on file with the Office of the Secretary of State.
 5. Copies of The American Society for Testing and Materials standard specifications referred to in subsections (3) and (4) above may be obtained with these rules at the Office of the Secretary of State of the State of Arizona, State Capitol, West Wing, Phoenix, Arizona 85007; from the Department of Water Resources, 3550 N. Central Avenue, Phoenix, AZ 85012; and from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. This rule does not include any later amendments or editions of those standard specifications.
- B. Surface seal**
1. Except as provided in subsections (2) and (4) of this subsection, and R12-15-817(B)(1), all wells shall be constructed with a surface seal as herein provided. The seal shall consist of steel casing, one foot of which shall extend above ground level, and cement grout placed in one continuous application from the bottom of the zone to be grouted to the land surface. If a pitless adaptor is utilized, the cement grout may terminate at the bottom of the pitless adaptor. The minimum length of the steel casing shall be 20 feet. The minimum annular space between the casing and the borehole for placement of grout shall be one and one-half inches. Curing additives, such as calcium chloride, shall not exceed ten percent of the total volume of grout. Bentonite as an additive shall not exceed five percent of the total volume. The minimum length of the surface seal shall be 20 feet. Any annular space between the outer casing and an inner casing shall be completely sealed to prevent contamination of the well.
 2. All hand-dug wells shall be constructed with a watertight curbing extending, at a minimum, from one foot above the natural ground level to the static water level, or into the confining formation if the aquifer is artesian. The curbing shall consist of poured cement grout or casing surrounded by cement grout. Concrete block with cement grout and rock with cement grout may also be used. The poured cement grout shall not be less than six inches thick. If casing is to be used, the minimum annular space between the casing and the borehole shall be three inches. Hand-dug wells shall be sealed at the surface with a watertight, tamper-resistant cover to prevent contaminants from entering the well.
 3. All wells constructed by jetting or driving shall have cement grout placed in the annular space to a minimum depth of six feet. The minimum annular space between the casing and the borehole for placement of the grout shall be one and one-half inches.
 4. All horizontal wells, to prevent leakage, shall be constructed with a surface seal consisting of steel casing and cement grout extending a minimum of ten feet into the land surface.
- C. Access port.** Every well with casing four inches in diameter or larger shall be equipped with a functional watertight access port with a minimum diameter of one-half inch so that the water level or pressure head in the well can be monitored at all times.
- D. Gravel packed wells**
1. If a gravel pack has been installed, the annular space between the outer casing and the inner casing shall be sealed, either by welding a cap at the top or by filling with cement grout from the bottom of the outer casing to the surface.
 2. If a gravel tube is installed, it shall be sealed with a cap.
- E. Vents.** All vents installed in the well casing shall open downward and be screened to prevent the entrance of foreign material.
- F. Removal of drilling materials**
1. In constructing a water well, the well driller shall take all reasonable precautions to protect the producing aquifer from contamination by drilling materials. Upon completion of the well, the well driller shall remove all foreign substances and materials introduced into the aquifer or aquifers during well construction. For purposes of this subsection, "substances and materials" means all drilling fluids, filter cake, lost circulation materials, and any other organic or inorganic substances.
 2. Materials known to present a health hazard, such as chrome-based mud thinners, asbestos products, and petroleum-based fluids, shall not be used as construction, seal or fill materials or drilling fluids.
 3. Drilling fluids and cuttings shall be contained in a manner which prevents discharge into any surface water.
- G. Repair of existing wells**
1. If, in the repair of a well, the old casing is withdrawn, the well shall be recased in conformance with these rules.
 2. If an inner casing is installed to prevent leakage of undesirable water into a well, the annular space between the casings shall be completely sealed by packers, casing swedging, pressure grouting or other methods which will prevent the movement of water between the casings.
- H. Monitor wells**
1. A monitor well may be screened up to ten feet above the highest seasonal static water level of record for the purpose of monitoring contaminants.
 2. A monitor well shall be identified as such on the vault cover or at the top of the steel casing. Identification information shall include the well registration number.
- I. Completion at the surface.** In areas of traffic or public rights-of-way, wells may be constructed below the land surface in a vault. All other requirements in this Article shall apply.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). The reference to R12-14-817(B)(1) in subsection (B)(1) corrected to read R12-15-817(B)(1) (Supp. 93-1). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006

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(Supp. 05-4).

R12-15-812. Special Aquifer Conditions**A. Artesian wells**

1. The well casing shall extend into the confining formation immediately overlying the artesian aquifer and shall be grouted from a minimum of ten feet into the confining formation to the land surface to prevent surface leakage into and subsurface leakage from the artesian aquifer.
2. If leaks occur adjacent to the well or around the well casing, within 30 days the well shall be completed with the seals, packers, or casing and grouting necessary to eliminate such leakage or the well shall be abandoned according to R12-15-816.
3. If the well flows at land surface, the well shall be equipped with a control valve, or suitable alternative means of completely controlling the flow, which must be available for inspection at the well site at all times.

- B. Mineralized or polluted water.** In all water-bearing geologic units containing mineralized or polluted water as indicated by available data, the borehole shall be cased and grouted so that contamination of the overlying or underlying groundwater zones will not occur.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

R12-15-813. Unattended Wells

All wells, when unattended during well drilling, shall be securely covered for safety purposes and to prevent the introduction of foreign substances into the well.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Section number corrected (Supp. 93-1).

R12-15-814. Disinfection of Wells

A well drilling contractor shall disinfect any well from which the water to be withdrawn is intended to be utilized for human consumption or culinary purposes without prior treatment before removing the drill rig from the well site in accordance with the requirements contained in Engineering Bulletin No. 8, "Disinfection of Water Systems", issued by the Arizona Department of Health Services in August 1978, and Engineering Bulletin No. 10, "Guidelines for the Construction of Water Systems", issued by the Arizona Department of Health Services in May 1978, both of which are incorporated by reference and are on file with the Office of the Secretary of State. Copies of the Engineering Bulletins referred to above may be obtained with these rules at the Office of the Secretary of State of the State of Arizona, State Capitol, West Wing, Phoenix, Arizona 85007, and from the Department of Water Resources, 3550 N. Central Avenue, Phoenix, AZ 85012. This rule does not include any later amendments or editions of those Bulletins.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

R12-15-815. Removal of Drill Rig from Well Site

The drilling rig shall not be removed from the well site unless the well is in one of the following conditions:

1. Constructed in full conformance with R12-15-811 and R12-15-812 and either sealed with a cap or equipped with a pump.
2. Abandoned in accordance with R12-15-816.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

R12-15-816. Abandonment

- A.** Well abandonment shall be performed only by a licensed well drilling contractor or single well licensee.
- B.** Except as provided in subsection (F) of this Section, the owner of a well shall file a notice of intent to abandon the well prior to abandonment, on a form prescribed and furnished by the Director, which shall include:
1. The name and mailing address of the person filing the notice.
 2. The legal description of the land upon which the well proposed to be abandoned is located and the name and mailing address of the owner of the land.
 3. The legal description of the location of the well on the land.
 4. The depth, diameter and type of casing of the well.
 5. The well registration number.
 6. The materials and methods to be used to abandon the well.
 7. When abandonment is to begin.
 8. The name and well drilling license number of the well drilling contractor or single well licensee who is to abandon the well.
 9. The reason for the abandonment.
 10. Such other information as the Director may require.
- C.** The Director shall, upon receipt of a proper notice of intent to abandon, mail a well abandonment authorization card to the designated well drilling contractor or single well licensee.
- D.** Except as described in subsection (F) of this Section, a well drilling contractor or single well licensee may commence abandoning a well only if the driller has possession of an abandonment card at the well site, issued by the Director in the name of the driller, authorizing the abandonment of that specific well or wells in that specific location.
- E.** Within 30 days after a well is abandoned pursuant to this Section, the well drilling contractor or single well licensee shall file with the Director a Well Abandonment Completion Report on a form prescribed and furnished by the Director which shall include the date the abandonment of the well was completed and such other information as the Director may require.
- F.** In the course of drilling a new well, the well may be abandoned without first filing a notice of intent to abandon and without an abandonment card. If the well is abandoned pursuant to this subsection without first filing a notice of intent to abandon and without an abandonment card, the well drilling contractor or single well licensee shall provide the following information in the Well Abandonment Completion Report:
1. The legal description of the land upon which the well was abandoned and the name and mailing address of the owner of the land.
 2. The legal description of the location of the well on the land.
 3. The depth, diameter and type of casing of the well prior to abandonment.
 4. The well registration number.
 5. The materials and methods used to abandon the well.
 6. The name and well drilling license number of the well drilling contractor or single well licensee who abandoned the well.
 7. The date of completion of the abandonment of the well.
 8. The reason for the abandonment.
 9. Such other information as the Director may require.
- G.** The abandonment of a well shall be accomplished through filling or sealing the well so as to prevent the well, including the

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annular space outside the casing, from being a channel allowing the vertical movement of water.

- H.** A well drilling contractor or single well licensee shall construct a surface seal for a well that does not penetrate an aquifer, as follows:
1. If the casing is removed from the top 20 feet of the well, a cement grout plug shall be set extending from two feet below the land surface to a minimum of 20 feet below the land surface, and the well shall be backfilled above the top of the cement grout plug to the original land surface.
 2. If the casing is not removed from the top 20 feet of the well, a cement grout plug shall be set extending from the top of the casing to a minimum of 20 feet below the land surface and the annular space outside the casing shall be filled with cement from the land surface to a minimum of 20 feet below the land surface.
- I.** In addition to the surface seal required in subsection (H):
1. A well penetrating a single aquifer system with no vertical flow components shall be filled with cement grout, concrete, bentonite drilling muds, clean sand with bentonite, or cuttings from the well.
 2. A well penetrating a single or multiple aquifer system with vertical flow components shall be sealed with cement grout or a column of bentonite drilling mud of sufficient volume, density, and viscosity to prevent fluid communication between aquifers.
- J.** Materials containing organic or toxic matter shall not be used in the abandonment of a well.
- K.** The owner or operator of the well shall notify the Director in writing no later than 30 days after abandonment has been completed. The notification shall include the well owner's name, the location of the well, and the method of abandonment.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

R12-15-817. Exploration Wells

- A.** Notification. Prior to drilling one or more exploration wells, the well owner, lessee, or exploration firm shall file a notice of intention to drill on forms provided by the Director. If the notice of intention to drill is filed for the project as a whole, the drilling card shall be issued for the project as a whole.
- B.** Construction and abandonment.
1. If an exploration well which is to be left open for re-entry at a later date encounters groundwater, it shall be cased and capped in accordance with R12-15-811, R12-15-812, and R12-15-822. The minimal length of surface seal shall be either 20 feet, or five feet into the first encountered consolidated formation, whichever is less. If no groundwater is encountered, the well shall be cased, grouted and capped in such a manner so as to prevent contamination of the well bore from the surface.
 2. Exploration wells not left open for re-entry shall be abandoned in accordance with R12-15-816.
- C.** Completion report. Within 30 days of project completion, the well owner, lessee, or exploration firm shall submit a project completion report on forms provided by the Director. The report shall include:
1. The exact number of wells drilled.
 2. The depth to water encountered or detected, with reference to specific wells.
 3. The abandonment method utilized, or construction details if completed for re-entry.
 4. Any other information which the Director may require.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

R12-15-818. Well Location

Except for monitor wells and piezometer wells, no well shall be drilled within 100 feet of any septic tank system, sewage disposal area, landfill, hazardous waste facility, storage area of hazardous materials or petroleum storage areas and tanks, unless authorized in writing by the Director.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

R12-15-819. Use of Well as Disposal Site

No well may be used as a storage or disposal site for sewage, toxic industrial waste, or other materials that may pollute the groundwater, except as authorized by the Arizona Department of Environmental Quality.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

R12-15-820. Request for Variance

- A.** If extraordinary or unusual conditions exist, a well drilling contractor or owner may request a variance from the provisions of this Article.
- B.** The request for variance shall be in writing and shall set forth the location of the well site, the reasons for the request, and the recommended requirements to be applied. The Director may approve the request only if the well drilling contractor or owner has clearly demonstrated that the variance will not adversely affect other water users or the local aquifers.
- C.** A variance shall not be effective until the well drilling contractor or owner receives from the Director a written approval of the variance and a new drilling card stamped "variance issued."

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

R12-15-821. Special Requirements

If the Director determines that the literal application of the minimum well construction requirements contained in this Article would not adequately protect the aquifer or other water users, the Director may require that further additional measures be taken, such as increasing the length of the surface seal or increasing the well's minimum distance from a potential source of contamination.

Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

R12-15-822. Capping of Open Wells

- A.** The owner of an open well shall either install a cap on the well or abandon the well in accordance with R12-15-816. Within five days after capping the well, the owner of the well shall file with the Department a notice of well capping on a form approved by the Director which shall include the following information:
1. The name and address of the well owner.
 2. The name and address of the person installing the cap.
 3. The well registration number.
 4. The legal description of the location of the well.
 5. The date the well was capped.
 6. The method of capping.
 7. The type and diameter of casing.

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- B. If no casing exists in an open well, or if the integrity of the existing casing is insufficient to allow installation of a cap, the well owner shall install a surface seal in accordance with R12-15-811(B) prior to capping.
- C. The owner of a well on which a cap is installed shall make the cap tamper resistant by welding the cap to the top of the casing by the electric arc method of welding, except that the owner of a well may make the cap tamper resistant by securing the cap to the top of the casing with a lock during temporary periods of well maintenance, modification or repair, not to exceed 30 days, or at any time if the well is a monitor well or piezometer well.

Historical Note

Adopted as an emergency effective March 2, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective June 2, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective September 5, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency expired. Readopted without change as an emergency effective December 1, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency expired. Readopted without change as an emergency effective March 23, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Permanent rule adopted with changes effective June 18, 1990 (Supp. 90-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

R12-15-823. Reserved

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R12-15-849. Reserved**R12-15-850. Evaluation of Notices of Intention to Drill; Notification of Registered Site Locations; Vertical Cross-Contamination Evaluation**

- A. The Director shall, upon receipt of a complete and correct notice of intention to drill form required under A.R.S. § 45-596, or upon receipt of an application for a permit under A.R.S. § 45-597 through 45-599, identify whether the proposed well will be drilled within a groundwater basin or subbasin in which there exists a site listed on the registry established under A.R.S. § 49-287.01(D). If the proposed well is situated within such a groundwater basin or subbasin, the Director shall notify the applicant and the authorized well drilling contractor in writing of the existence of the site and shall enclose a map indicating the boundaries of all listed sites within the groundwater basin or subbasin. The notification letter shall include the name, address, and telephone number of a Department contact person, along with a reference to the provision in R12-15-851 that requires the applicant to notify the Department in advance of the date drilling of the well will commence. The Department shall also specify in the notification letter whether the applicant is subject to the requirements of R12-15-851.
- B. The Director shall, upon receipt of a complete and correct notice of intention to drill form required under A.R.S. § 45-596, or upon receipt of an application for a permit under A.R.S. § 45-597 through 45-599, identify whether the proposed well will be drilled within an area where existing or anticipated future groundwater contamination presents a risk of vertical cross-contamination, as defined in A.R.S. § 49-281(15). If the Director determines that the proposed well will be drilled in such an area, and if the Director finds that the

requirements of R12-15-811 are insufficient to prevent the risk of vertical cross-contamination, the Director shall establish site-specific requirements pursuant to R12-15-812 and R12-15-821.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 469, effective January 3, 2000 (Supp. 00-1).

R12-15-851. Notification of Well Drilling Commencement

A well owner who has been issued a drilling card for a notice of intent to drill authorizing the drilling of a well located within a site listed on the registry established under A.R.S. § 49-287.01, shall provide written notice to the Director indicating the date drilling will commence. The well owner shall coordinate with the contracted well driller to ensure that the Department receives proper notification under this Section. This notification shall consist of a letter or facsimile transmission received by the Department at least 2 business days before drilling commences at the well site. The Department shall use notification letters required by R12-15-850(A) to inform well owners whether they are subject to the requirements of this Section.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 469, effective January 3, 2000 (Supp. 00-1).

R12-15-852. Notice of Well Inspection; Opportunity to Comment

- A. At least 30 days before the beginning of a well inspection under A.R.S. § 45-605(A), the Director shall notify in writing all potentially affected well owners of record within a community involvement area established under A.R.S. § 49-289.02 or within other areas that the Director has selected for inspection of wells that may be contributing to vertical cross-contamination. The notices shall include a map of the community involvement area, remedial site, or a subsection of either, that the Department intends to inspect, indicating the location of affected wells of record. The notice shall indicate the approximate date the inspection will start, the approximate duration of the inspection, an access agreement defining what specific activities will occur during a well inspection, and the name, address, and telephone number of a Department contact person.
- B. Once the Director has given notice of a well inspection under A.R.S. § 45-605(A), potentially affected well owners have 30 days from the date the letter is postmarked to comment on the proposed inspection. The Director, upon receiving a written request, may extend the comment period for a maximum of 30 additional days.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 469, effective January 3, 2000 (Supp. 00-1).

ARTICLE 9. WATER MEASUREMENT**R12-15-901. Definitions**

In addition to the definitions set forth in A.R.S. §§ 45-101 and 45-402, the following words and phrases shall have the following meanings, unless the context otherwise requires:

1. "Approved measuring device" means an instrument, approved by the Director pursuant to R12-15-903 or R12-15-909(A) which measures the volume or flow rate of water withdrawn, delivered, received, transported, recharged, stored, recovered, or used, and which measurements, when used with an approved measuring method, allow for accurate computation of a volume of water.

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2. "Approved measuring method" means a procedure, approved by the Director in R12-15-903 or R12-15-909(A), which, when used with an approved measuring device, will accurately calculate a volume of water.
 3. "Flow rate" or "discharge" means the volume of water, including any sediment or other solids that may be dissolved or mixed with it, which passes through a particular reference section in a unit of time.
 4. "Measured system" means a system through which water passes for the purpose of withdrawal, delivery, receipt, transportation, recharge, storage, replenishment, recovery or use.
 5. "Responsible party" means an irrigation district or a person required by A.R.S. Title 45 or by a permit, rule, or order issued pursuant to A.R.S. Title 45, to use a measuring device or method approved by the Director.
1. Totalizing measuring method: This method requires an approved measuring device which continuously records the volume of water passing through the measured system;
 2. Electrical consumption measuring method: This method requires measurements of either pipeflow rates or open-channel flow rates used in combination with electrical energy records;
 3. Natural gas consumption measuring method: This method requires measurements of either pipe flow rates or open channel flow rates used in combination with natural gas energy records;
 4. Hour meter measuring method: This method requires measurements of either pipe flow rates or open-channel flow rates used in combination with hour meter readings;
 5. Elapsed time of flow method: This method requires measurements of flow rates used in combination with elapsed time of the flow. This method may be used only by a responsible party who receives water from an open channel or by a person or entity who delivers water in an open channel to one or more grandfathered rightholders or permit holders, if it is not possible to use the electrical or gas consumption measurement methods or hour meter measuring method.

Historical Note

Adopted effective December 27, 1982 (Supp. 82-6).
Amended effective June 15, 1995 (Supp. 95-2). Amended to correct typographical error under A.A.C. R1-1-109 (Supp. 01-2).

R12-15-902. Installation of Approved Measuring Devices

- A. A responsible party shall install an approved measuring device to monitor the volume of water withdrawn, delivered, transported, recharged, stored, replenished, recovered, and used.
- B. A responsible party shall install and use a sufficient number of approved measuring devices to allow for the separate monitoring and reporting of the volume of water passing through the measured system pursuant to the following categories of rights:
 1. Irrigation grandfathered rights,
 2. Non-irrigation grandfathered rights,
 3. Service area rights,
 4. Groundwater withdrawal permits, and
 5. Recovery well permits or water storage permits.

This subsection does not require separate measuring devices for rights within each category unless otherwise required by A.R.S. Title 45, a permit, rule, or order pursuant to that Title.

- C. An approved measuring device which measures groundwater withdrawals shall be installed as close to the wellhead as is practical, consistent with the manufacturer's instructions. An approved measuring device which measures another point in the measured system shall be installed as close as is practical to the point of delivery, receipt, transportation, recharge, storage, replenishment, recovery, or use which the device is intended to measure, consistent with the manufacturer's instructions.

Historical Note

Adopted effective December 27, 1982 (Supp. 82-6).
Amended effective June 15, 1995 (Supp. 95-2). Amended to correct typographical error under A.A.C. R1-1-109 (Supp. 01-2).

R12-15-903. Approved Water Measuring Devices and Methods

- A. Any measuring device is approved by the Director if it is installed, maintained, and used in accordance with the manufacturer's recommendations, and if it meets the accuracy requirements set forth in R12-15-905(A).
- B. An approved measuring device shall be used with an approved measuring method set forth in R12-15-903(C) or an alternative measuring method approved by the Director as provided in R12-15-909(A).
- C. The following water measuring methods are approved by the Director:

Historical Note

Adopted effective December 27, 1982 (Supp. 82-6).
Amended effective June 15, 1995 (Supp. 95-2).

R12-15-904. Water Measuring Method Reporting Requirements

- A. A responsible party using one of the water measuring methods described in R12-15-903 shall file, with the annual report required by A.R.S. Title 45 and on a form prescribed by the Director, the following information, unless that information has not changed from that submitted in the annual report filed in the previous calendar year.
 1. The approved measuring method used;
 2. The type of approved measuring device used;
 3. The make, model, and size of the approved measuring device used.
- B. Except as provided in R12-15-904(B)(5) and R12-15-909(B) and (D), a responsible party shall file with the annual report the information required in subsection (A) of this Section and the following information on a form prescribed by the Director:
 1. Totalizing measuring method:
 - a. The initial totalizing meter reading for the reporting year taken prior to the first use of the measured system during the reporting year;
 - b. The end totalizing meter reading for the year taken subsequently to the last use of the measured system during the reporting year;
 - c. The units in which the water is measured;
 - d. Whether the power meter serves uses other than the pump motor or engine;
 - e. An estimate of the amount of any water passing through the measured system during measuring device malfunctions;
 - f. If the well is in operation for more than a 30-day period, the results of a minimum of two flow-rate measurements per reporting year taken under normal system operating conditions. The responsible party shall not submit the results of the flow-rate measurements with the annual report unless a meter malfunction continues longer than 72 hours during the reporting year;

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- g. The installation or overhaul date of the totalizing meter; and
 - h. The name of the energy company supplying energy to the responsible party's measured system, its power account number, meter number, total energy consumption for the year, and the type of energy unit.
2. Electrical consumption measuring method:
- a. The results of a minimum of two flow-rate measurements per reporting year taken at least 30 days apart and under normal system operating conditions or, if the measured system is used during a single period of 30 days or less during the year, the result of one flow-rate measurement taken during that single period in that year under normal system operating conditions;
 - b. The dates of the measurements;
 - c. The discharges in gallons per minute;
 - d. The time, in seconds, of ten cycles of the electric meter disk, power indicator pulse, or an alternative measurement, provided that the alternative means of measurement is approved in advance by the Director;
 - e. The inside diameter of the discharge pipe;
 - f. The multiplier (K_r) and disk constant (K_d) of the electric meter; and
 - g. The name of the energy company supplying energy to the responsible party's measured system, its power account number, meter number, total energy consumption for the year, and the type of energy unit.
3. Natural gas consumption measuring method:
- a. The results of a minimum of two flow-rate measurements per reporting year taken at least 30 days apart and under normal system operating conditions or, if the measured system is used during a single period of 30 days or less during the year, the result of one flow-rate measurement taken during that single period in that year under normal system operating conditions;
 - b. The dates of the measurements;
 - c. The discharges in gallons per minute;
 - d. The amounts of gas per second in cubic feet indicated by the gas meter;
 - e. The billing factors (F);
 - f. The inside diameter of the discharge pipe; and
 - g. The name of the energy company supplying energy to the responsible party's measured system, its power account number, meter number, total energy consumption for the year, and the type of energy unit.
4. Hour meter measuring method:
- a. The results of a minimum of two flow-rate measurements per reporting year taken at least 30 days apart and under normal system operating conditions or, if the measured system is used during a single period of 30 days or less during the year, the result of one flow-rate measurement taken during that single period in that year under normal system operating conditions;
 - b. The dates of the measurements;
 - c. The discharges in gallons per minute;
 - d. The initial hour meter reading for the reporting year taken prior to the first use of the measured system during the reporting year;
 - e. The end hour meter reading taken subsequently to the last use of the measured system during the reporting year;
 - f. Whether the energy meter serves uses other than the pump motor or engine;
 - g. The installation or overhaul date of the hour meter; and
 - h. The name of the energy company supplying energy to the responsible party's measured system, its power account number, meter number, total energy consumption for the year, and the type of energy unit.
5. Elapsed time of flow measuring method: A responsible party using this measuring method shall not be required to submit the following information with the annual report but instead shall record and retain it for three years after the reporting year.
- a. The responsible party or agent shall measure and record an initial flow rate taken at the start of flow for each delivery of water;
 - b. If the flow rate continues for more than eight hours, a subsequent measured flow-rate measurement shall be taken. If any subsequently measured flow-rate differs by more than 10% from the initial flow rate, and the delivery is not adjusted to conform with the initial flow rate, the responsible party or agent shall record the subsequent flow rate;
 - c. The time the flow begins and the time the flow ends for each delivery of water; and
 - d. The dates of the measurements.
- C. A responsible party or person or entity who uses an approved measuring method or an approved alternative water measurement method shall save the records required by subsections (A) and (B) of this Section for three years after the reporting year.

Historical Note

Adopted effective December 27, 1982 (Supp. 82-6). Former Section R12-15-904 renumbered to R12-15-905, new Section adopted effective June 15, 1995 (Supp. 95-2). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

R12-15-905. Accuracy of Approved Measuring Devices

- A. A responsible party shall install, maintain, and use an approved measuring device and method in a manner which will ensure that its measurement error does not exceed 10% of the actual flow rate.
- B. All measured systems shall be installed or constructed and thereafter maintained so as to allow the Director, using another measuring device, to check readily the accuracy of the measuring device utilized by the responsible party.

Historical Note

Adopted effective December 27, 1982 (Supp. 82-6). Former Section R12-15-905 renumbered to R15-15-906, new Section R12-15-905 renumbered from R12-15-904 and amended effective June 15, 1995 (Supp. 95-2).

R12-15-906. Repair and Replacement of Approved Measuring Devices

If an approved measuring device fails to perform its designated function for more than 72 hours, the responsible party shall notify the Director of the failure, in writing, within seven calendar days after the discovery of the failure of the device. The reason for such failure shall be stated, as well as the estimated date of return to service of the device. If the malfunction is discovered by the Director and the malfunction does not appear to be the result of an attempt to

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render the device inaccurate, the Director shall notify the responsible party of the malfunction. The responsible party shall return the measuring device to full service within 30 days of either original notice by the responsible party to the Director or by the Director to the responsible party, unless repair or replacement service or parts are not available. In such case, the responsible party shall notify the Director of the delay within seven days and the reasons for it. The responsible party shall take corrective action in such cases as soon as practical. In all cases, the responsible party shall notify the Director within seven days when the measuring device is returned to full service and shall submit on a form prescribed by the Director estimates of the volume of water, if any, passing through the measured system during the period the measuring device was out of service and a description of the method used to calculate the estimates.

Historical Note

Section R12-15-906 renumbered from R12-15-905 and amended effective June 15, 1995 (Supp. 95-2).

R12-15-907. Calculation of Irrigation Water Deliveries

If one or more irrigation grandfathered rights receive water by a common distribution system where water is measured with an approved device or method at the point of delivery to the common distribution system, but not at a point of delivery to each irrigation grandfathered right, each irrigation grandfathered rightholder or agent shall report the water used by either of the following methods:

1. Estimate the amount of water used based on a pro rata share of the acres irrigated, or
2. Estimate the amount of water used based on a combination of the pro rata share of the acres irrigated and the consumptive use of each crop grown.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R12-15-908. Measurement of Water by One Person on Behalf of Another

A responsible party shall be liable for any fines, penalties, or other sanctions resulting from the installation, monitoring, use, or accuracy of any measuring device, method, or recordkeeping, notwithstanding that the installation, monitoring, use, or recordkeeping may have been done by an agent of the responsible party.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R12-15-909. Alternative Water Measuring Devices, Methods, and Reporting

- A. A responsible party may use an alternative water measuring device or method that differs from those described in R12-15-903 provided the device or method is approved in advance by the Director. The Director shall approve an alternative water measuring device or method if the device meets the requirements of R12-15-905. The Director may require from the responsible party such information as may be necessary to demonstrate that the alternative device or method meets the requirements of R12-15-905.
- B. Responsible parties may substitute equivalent information for the information required on the annual report form or use reporting formats that differ from that required in R12-15-904, provided the substituted information or format is approved in advance by the Director.
- C. Responsible parties may use estimation methods that differ from those described in R12-15-907 provided they are approved in advance by the Director.
- D. A municipal provider is exempted from the reporting requirements under R12-15-904 and the provisions under R12-15-906 pertaining to notification to the Director of measuring device

malfunctions regarding metered service connections, unless required to report by A.R.S. Title 45 or by a permit, rule, or order issued pursuant to A.R.S. Title 45.

- E. Municipal providers and irrigation districts may notify the Director of measuring device malfunctions at the time of filing the annual report and in a manner that differs from the requirements of R12-15-906, provided the municipal provider or irrigation district implements a schedule of regular maintenance of measuring devices, repairs or replaces malfunctioning measuring devices within seven days of discovery of the malfunction, and the alternative notification is approved in advance by the Director.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

ARTICLE 10. REPORTING REQUIREMENTS FOR ANNUAL REPORTS, ANNUAL ACCOUNTS, OPERATING FLEXIBILITY ACCOUNTS, AND CONVEYANCES OF GROUNDWATER RIGHTS**R12-15-1001. Definitions**

In addition to the definitions in A.R.S. §§ 45-101 and 45-402, the following words and phrases in this Article have the following meanings, unless the context otherwise requires:

1. "Annual account" means an accounting of water required to be filed pursuant to A.R.S. § 45-468.
2. "Annual report" means an annual report of water withdrawn, delivered, received, transported, recharged, stored, recovered, replenished or used as required by A.R.S. §§ 45-437, 45-467, 45-632, 45-875.01, 45-876.01, 45-877.01, 45-878.01 or 45-1004.
3. "Central Arizona project water" means Colorado River water delivered through the facilities of the central Arizona project, and surface water from any other source conserved and developed by dams and reservoirs in the central Arizona project and lawfully delivered by the United States or a multi-county conservation district.
4. "Decreed or appropriative surface water" means surface water which is delivered or used pursuant to a decreed or appropriative water right, except any such water which is included in central Arizona project water.
5. "Farm" means an area of irrigated land under the same ownership as defined in A.R.S. § 45-402, including the area of land described in a certificate of irrigation grandfathered right, as well as contiguous land that the owner is legally entitled to irrigate only with decreed or appropriative surface water.
6. "Maximum annual groundwater allotment" means the quantity of water in acre-feet obtained by multiplying the number of water duty acres for a farm by the current irrigation water duty for the farm unit.
7. "Normal flow" means water delivered or used pursuant to a right to appropriate an unstored, natural flow of surface water.
8. "Operating flexibility account" means an accounting of water use pursuant to an irrigation grandfathered right as provided in A.R.S. § 45-467.
9. "Responsible party" means a person required by law to file an annual account or annual report.
10. "Spillwater" means surface water, other than Colorado River water, released for beneficial use from storage, diversion, or distribution facilities to avoid spilling that would otherwise occur due to uncontrolled surface water inflows that exceed facility capacity and to which one of the following applies:

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- a. The water is released from the facility under written criteria for releasing water to avoid spilling that have been approved in writing by the Director.
 - b. The water is released from the facility because an unreasonable risk exists that the storage capacity of the facility will be exceeded within the next 30 days because the facility is near capacity and either the inflow to the facility or the forecast runoff into the facility is equal to or greater than the quantity of water ordered from the facility.
 - c. The water is released from the facility because an unreasonable risk exists that the storage capacity of the facility will be exceeded more than 30 days in the future because the forecast runoff into the facility exceeds current unused storage capacity and projected water demand during the forecast period, provided that the Director has made a written finding before the release that the forecast is reasonable.
11. "Surface water right acre" means land to which the owner is legally entitled to apply decreed or appropriative surface water.
 12. "Tailwater" means water which, after having been applied to a farm for irrigation purposes,
 - a. Is subsequently used for the irrigation of a different farm, without having entered the distribution system of a city, town, private water company or irrigation district, or
 - b. Is delivered to an irrigation district in accordance with R12-15-1010. Such water, once having entered the distribution system of the irrigation district, loses its characterization as tailwater.
 13. "Water deliverer" means a city, town, private water company or irrigation district delivering a combination of groundwater and any other type of water for irrigation purposes.

Historical Note

Adopted effective December 27, 1982 (Supp. 82-6). Section R12-15-1001 renumbered to R12-15-1003, new Section R12-15-1001 adopted effective December 12, 1990 (Supp. 90-4). Amended to correct typographical error under A.A.C. R1-1-109 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

R12-15-1002. Form of Annual Account or Annual Report

- A. A person filing an annual account or an annual report shall do so on a form prescribed by the Director, unless the person has requested and received the Director's prior written approval to use an alternative form.
- B. A person may file both an annual account and an annual report in one document. A person required to file an annual account shall designate in the annual account whether the annual account is being filed also as an annual report.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).

R12-15-1003. Accuracy of Annual Reports

The quantity of water a responsible party reports in an annual report as having been withdrawn, delivered, received, transported, recharged, replenished, stored, recovered, or used during a year shall not deviate from the quantity of water actually withdrawn, delivered, received, transported, recharged, replenished, stored, recovered, or used by the responsible party during the year unless both of the following apply:

1. The deviation is 10 percent or less.

2. The deviation is not the result of an intentional act of misrepresentation by the responsible party.

Historical Note

Section R12-15-1003 renumbered from R12-15-1001 effective December 12, 1990 (Supp. 90-4). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

R12-15-1004. Annual Reports Filed on Behalf of a Responsible Party

- A. A responsible party is liable for any fines, penalties, or other sanctions resulting from or attributable to the filing or content of an annual report filed on behalf of the responsible party by an irrigation district pursuant to A.R.S. § 45-632, or by another person in a form acceptable to the Director.
- B. If a responsible party has not filed an annual report for a calendar year, and the Department receives an annual report for that calendar year purportedly filed on behalf of the responsible party by an irrigation district pursuant to A.R.S. § 45-632, or by another person in a form acceptable to the Director, there is a rebuttable presumption that the annual report was filed with the responsible party's knowledge, consent, and authorization.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4). Amended to correct typographical error under A.A.C. R1-1-109 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

R12-15-1005. Management Plan Monitoring and Reporting Requirements

A responsible party who is required by a provision of a management plan to comply with monitoring and reporting requirements shall comply with such requirements and shall include all such information in an annual account or annual report.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).

R12-15-1006. Reporting Requirements for Holders of Recovery Well Permits

A responsible party recovering water during a year pursuant to a recovery well permit shall include in the annual report required by A.R.S. § 45-875.01 the names of any persons, other than non-irrigation customers of cities, towns, private water companies and irrigation districts, to whom the responsible party delivered the recovered water during the year, the quantity of recovered water delivered to each person named, and the uses to which the recovered water was applied. If the recovered water included commingled groundwater, decreed or appropriative surface water other than spillwater, central Arizona project water, effluent or spillwater, the responsible party shall include in the annual report an estimate of the quantity of each type of water delivered to each person named in the annual report or put to a specific use by the responsible party.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

R12-15-1007. Reporting Requirements for Annual Account

A person required to file an annual account pursuant to A.R.S. § 45-468 shall account for water provided to the following classes of users:

1. Cities and towns,
2. Private water companies,
3. Irrigation districts,
4. Dairies,
5. Metal mining facilities,

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6. Cattle feed lots,
7. Turf-related facilities,
8. Sand and gravel facilities,
9. Electrical power generation facilities,
10. Other industrial users.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).

R12-15-1008. Information Required to Maintain an Operating Flexibility Account

A. A responsible party who withdraws, receives, or uses groundwater during a calendar year pursuant to an irrigation grandfathered right, including any in lieu water received pursuant to a groundwater savings facility permit issued pursuant to A.R.S. § 45-812.01, shall include the following information for the calendar year in an annual report filed pursuant to A.R.S. § 45-467 or 45-632:

1. The quantity of groundwater withdrawn from each well.
2. The quantity of groundwater withdrawn and delivered to another person for irrigation purposes.
3. The quantity of groundwater received from a city, town, private water company, or irrigation district, including any in lieu water received pursuant to a groundwater savings facility permit issued pursuant to A.R.S. § 45-812.01.
4. The quantity of groundwater received from a person other than a city, town, private water company, or irrigation district, including any in lieu water received pursuant to a groundwater savings facility permit issued pursuant to A.R.S. § 45-812.01.
5. The quantity of effluent received.
6. The quantity of decreed or appropriate surface water received, other than normal flow and spillwater.
7. The quantity of normal flow received.
8. The quantity of spillwater received.
9. The quantity of tailwater used.
10. The quantity of tailwater delivered in accordance with the provisions of R12-15-1010(A), and the farm or irrigation district to which the tailwater was delivered.
11. The quantity of central Arizona project water received.
12. The quantity of any surface water received and not accounted for pursuant to subsections (6) through (11) of this subsection.
13. The number of surface water right acres in the farm to which the irrigation grandfathered right is appurtenant.
14. The quantity of water used for the legal irrigation of acres in the farm to which irrigation grandfathered rights are not appurtenant. If the responsible party omits this information, the Director shall presume that the total amount of water received or used for the irrigation of the farm was applied to acres to which irrigation grandfathered rights are appurtenant.
15. Any other information the Director may reasonably require to accomplish the management goals of the applicable active management area.

B. A water deliverer shall include the following information for an accounting period in an annual account filed pursuant to A.R.S. § 45-468:

1. The quantity of groundwater delivered to each farm, including any in lieu water delivered pursuant to a groundwater savings facility permit issued pursuant to A.R.S. § 45-812.01.
2. The quantity of normal flow delivered to each farm.
3. The quantity of spillwater delivered to each farm.

4. The quantity of decreed or appropriate surface water, other than normal flow and spillwater, delivered to each farm.
5. The quantity of central Arizona project water delivered to each farm.
6. The quantity of decreed or appropriate surface water, other than normal flow and spillwater, delivered for use within the service area of the water deliverer, including all farm and non-farm deliveries.
7. The number of surface water right acres within the service area of the water deliverer.
8. The quantity of effluent delivered to each farm.
9. Any other information the Director may reasonably require to accomplish the purposes of A.R.S. § 45-468.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).
Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

R12-15-1009. Credits to Operating Flexibility Account

- A.** Except as provided in subsection (B) of this Section and in R12-15-1010, if the total amount of water from all sources other than spillwater used by a farm for irrigation purposes in a calendar year is less than the farm's maximum annual groundwater allotment for the year, the Director shall register the difference as a credit to the farm's operating flexibility account.
- B.** If a farm is within the service area of a water deliverer, the Director shall reduce the credit as calculated pursuant to subsection (A) of this Section by an amount equal to the difference between the farm's pro rata share of the total quantity of decreed or appropriate surface water, other than normal flow or spillwater, delivered by the water deliverer during the year for use within its service area, and the quantity of water actually received by the farm during the year. The Director shall determine the farm's pro rata share by dividing the number of surface water right acres in the farm that are within the service area of the water deliverer by the total number of surface water right acres within the service area of the water deliverer, and multiplying the quotient by the total quantity of decreed or appropriate surface water, other than normal flow or spillwater, delivered by the water deliverer during the year for use within its service area.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).
Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

R12-15-1010. Operating Flexibility Account; Tailwater

- A.** When calculating credits or debits to a farm's operating flexibility account for a year, the Director shall exclude from the total amount of water used on the farm during that year the amount of any tailwater that originated on the farm and that was delivered from the farm to another farm or to an irrigation district for irrigation purposes during the year if all of the following apply:
1. Prior to January 1 of the year in which the deliveries of tailwater take place, the Director approves a written plan to measure and record the tailwater deliveries. The plan shall include:
 - a. The installation and use of a totalizing water measuring device that will record tailwater deliveries with no greater than a 10 percent margin of error.
 - b. Procedures for keeping accurate records of the tailwater deliveries.
 - c. A description of how the tailwater will be delivered.

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- d. An identification of the farm or irrigation district to which the tailwater will be delivered.
2. The person has measured, recorded, and delivered the tailwater in accordance with the plan approved under subsection (A)(1) of this Section.
3. The tailwater was delivered directly from the farm on which it originated to:
 - a. A specified farm that used the tailwater for the legal irrigation of irrigation acres or surface water right acres on that farm, or
 - b. A specified irrigation district that delivered the tailwater for the legal irrigation of irrigation acres or surface water right acres within that district.
- B.** A person who delivers tailwater in accordance with subsection (A) of this Section, and a person who directly receives and uses the tailwater pursuant to subsection (A)(3)(a) of this Section, shall account for and report the tailwater as if it were comprised of a mixture of groundwater, decreed and appropriative surface water other than normal flow, central Arizona project water, spillwater, other surface water, and effluent, as applicable, in the same proportions as those types of water comprise the total amount of water other than normal flow received or withdrawn for irrigation use during the calendar year on the farm on which the tailwater originated.
- C.** A person who uses tailwater that has not been delivered and accounted for as provided in subsections (A) and (B) of this Section may credit against the person's use of groundwater in a calendar year the amount of the tailwater used during the calendar year if the use of such tailwater would cause a debit to be incurred. The credit shall be applied only against the person's operating flexibility account debits that otherwise would have been incurred that year and shall not be used to discharge debits from prior years or accumulate credits for future years. For purposes of calculating credits to the person's operating flexibility account, the Director shall treat tailwater as groundwater, unless reported otherwise according to its source.
- D.** An irrigation district that receives tailwater pursuant to subsection (A)(3)(b) shall account for the water in the same manner as other water in the district's distribution system.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).
Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

R12-15-1011. Statement of Operating Flexibility Account

- A.** The Director shall annually issue to each owner or user of an irrigation grandfathered right for which a current annual report has been filed a statement of the operating flexibility account setting forth the status of the operating flexibility account for the farm, based on the information submitted in the annual report filed for the right.
- B.** Upon a motion or on the initiative of the Director, the Director may amend a statement of operating flexibility account at any time to correct clerical mistakes or to adjust the balance of the account based on information submitted in an amended or late annual report. The Director shall give written notice of any amendments made pursuant to this subsection to the person to whom the statement of operating flexibility account was issued.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).
Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

R12-15-1012. Rule of Construction

Nothing in A.A.C. R12-15-1001 through R12-15-1011 shall be construed to determine the legality of any water use for which an accounting is required under these rules.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).

R12-15-1013. Retention of Records for Annual Accounts and Annual Reports

The responsible party shall keep and maintain, for at least three calendar years following the filing of an annual account or an annual report, all records which may be necessary to verify the information and data contained therein.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).

R12-15-1014. Late Filing or Payment of Fees; Extension Penalties

- A.** An annual account, an annual report, or a request for extension pursuant to subsection (E) of this rule shall be deemed to be filed at the time a complete annual account, a complete annual report or a request for extension is hand-delivered to any Department office, or at the time the envelope in which it is mailed is postmarked.
- B.** Except as provided in subsection (C) of this Section, groundwater withdrawal fees and long-term storage credit recovery fees are deemed paid at the time the fees are hand-delivered to any Department office, or at the time the envelope in which they are mailed is postmarked.
- C.** If any groundwater withdrawal fees or long-term storage credit recovery fees are paid with a negotiable instrument that is not honored and paid upon the Department's initial demand, the fees are deemed paid at the time the Department actually receives the fees in cash or when the negotiable instrument is honored and paid to the Department.
- D.** If an annual account or an annual report filed on or before the date required by the applicable statute is found by the Director to be incomplete, the Director shall notify the responsible party of the inadequacies and allow the responsible party 30 days from the date of the notice to provide the missing information in a form prescribed by the Director. If the responsible party does not provide the missing information within 30 days from the date of the notice, late penalties under A.R.S. §§ 45-437, 45-632, 45-875.01, 45-876.01, 45-877.01, 45-878.01 or 45-1004 shall begin to accrue on the 31st day following the date of the notice. The Director shall not recommend to a court, pursuant to A.R.S. §§ 45-634, 45-635, 45-881.01, 45-882.01, 45-1062 or 45-1063, that civil penalties be imposed through the first 30 days following the date of the notice. However, if the inadequacy included the failure to pay all groundwater withdrawal fees due or all long-term storage credit recovery fees due, late penalties under A.R.S. §§ 45-614 or 45-874.01 shall begin to accrue on April 1, except as provided in subsection (E) of this Section.
- E.** A responsible party required to file an annual account or annual report for a year may request a 30-day extension of the first day of accrual of the late penalties under A.R.S. §§ 45-437, 45-614, 45-632, 45-874.01, 45-875.01, 45-876.01, 45-877.01, 45-878.01 or 45-1004 and of the civil penalties that the Director may recommend that a court impose pursuant to A.R.S. §§ 45-634, 45-635, 45-881.01, 45-882.01, 45-1062 or 45-1063. The request shall be filed no later than the date the annual account or annual report is required to be filed under the applicable statute. The Director shall grant a request for a 30-day extension if good cause is shown. If the Director grants the request, the late penalties and civil penalties shall begin to accrue on the first day after the 30-day extension period,

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except that if the Director finds that the person making the request presented false or misleading information to the Director and the Director relied on that information in granting the request, the late penalties and civil penalties shall begin to accrue as if the request was not granted. The Director shall not grant an extension to a responsible party who was granted an extension in the preceding calendar year and who subsequently failed to file a complete annual account or annual report and pay all groundwater withdrawal fees and all long-term storage credit recovery fees due within the 30-day extension period.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).
Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

R12-15-1015. Reporting Requirements for Conveyances of Grandfathered Rights and Groundwater Withdrawal Permits

- A. A person who is required by A.R.S. § 45-482 to notify the Director of a conveyance of a grandfathered right shall file a notice of conveyance, on a form prescribed by the Director, within 30 days of the conveyance. All parties to the conveyance may use a single form for the required notice. Except provided in subsection (B) of this rule, the notice of conveyance shall include an accounting of the amount of water withdrawn or received pursuant to that grandfathered right from January 1 to the date of conveyance for that calendar year.
- B. If the person to whom a grandfathered right is conveyed is unable, because of extraordinary circumstances and good cause shown, to perform the accounting otherwise required by subsection (A) of this rule, the Director may waive the requirement for that person.
- C. If a person, including a person who is granted a waiver pursuant to subsection (B) of this rule, fails to include the required accounting in a timely filed notice of conveyance pursuant to subsection (A) of this rule, the Director shall determine the amount of groundwater withdrawn or received pursuant to the grandfathered right from January 1 to the date of conveyance for that calendar year. Such a person shall bear the burden, in any subsequent administrative or judicial proceeding, of establishing by clear and convincing evidence that the Director's determination was incorrect.
- D. A person requesting the Director's approval of a proposed conveyance of a groundwater withdrawal permit pursuant to A.R.S. § 45-520(B) shall include with such request the quantity of groundwater withdrawn pursuant to the groundwater withdrawal permit for that calendar year and all other information required to be submitted pursuant to A.R.S. § 45-632.

Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).

R12-15-1016. Spillwater Reporting by Water Deliverers

A water deliverer that delivers spillwater during a year shall include the following information in the annual account or annual report submitted by the water deliverer for that year:

1. The total quantity of spillwater delivered for non-irrigation uses during the year.
2. The total quantity of spillwater delivered for irrigation uses during the year.
3. Any other information the Director may reasonably require to determine whether the water qualifies as spillwater under R12-15-1001(10).

Historical Note

New Section made by final rulemaking at 11 A.A.R.

5395, effective February 4, 2006 (Supp. 05-4).

R12-15-1017. Maintenance and Filing of Annual Reports Required by A.R.S. § 45-343

A community water system required to file an annual report under A.R.S. § 45-343 shall maintain the report on a calendar year basis and shall file the report with the Director no later than June 1 of each year for the preceding calendar year.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

ARTICLE 11. INSPECTIONS AND AUDITS**R12-15-1101. Inspections**

- A. For the purpose of this rule, "inspection" means an entry by the Director at reasonable times onto private or public property for any of the following purposes:
 1. To obtain factual data or access to records required to be kept under A.R.S. §§ 45-632, 45-879.01, or 45-1004.
 2. To inspect a well or another facility for the withdrawal, transportation, use, measurement, or recharge of groundwater under A.R.S. § 45-633.
 3. To inspect a facility that is used for the purpose of water storage, stored water recovery, or stored water use under A.R.S. § 45-880.01(A).
 4. To inspect a body of water under A.R.S. § 45-135 or to ascertain compliance with A.R.S. Title 45, Chapter 1, Article 3.
 5. To inspect or to obtain factual data or access to records pursuant to any Section of A.R.S. Title 45 that requires the Director to adopt rules for conducting inspections, examining records, and obtaining warrants.
 6. To inspect facilities used for the withdrawal, diversion, or use of water pursuant to a water exchange under A.R.S. § 45-1061.
- B. Not less than seven days prior to an inspection, the Director shall mail notice of the inspection by first class letter to the owner, manager or occupant of the property. The notice shall include the statutory authorization and purpose for the inspection. The notice shall specify a date and time certain or a seven-day period within which the inspection may take place. If a request is made before the seven-day period, the Director shall schedule the inspection for a time certain within the seven-day period to allow an opportunity for a representative of the property to be present at the inspection. The notice shall include the name and telephone number of a Department employee who may be contacted to arrange such an appointment.
- C. Whenever practical, Department employees shall minimize disruptions to on-going operations caused by an inspection.
- D. If the property is controlled or secured against entry at the time specified in the notice of inspection but consent to the inspection was not denied, the Director shall give a second notice in the manner prescribed in subsection (B) before seeking a search warrant or its equivalent. The second notice shall request that a representative of the property be present at the inspection to accompany Department personnel.
- E. If the Director gives notice of an inspection and is not permitted to conduct an inspection, the Director may apply for and obtain a search warrant or its equivalent.
- F. Notice of inspection shall not be required under subsections (B) and (D) of this rule if the Director reasonably believes that notice would frustrate the enforcement of A.R.S. Title 45, or where entry is sought for the sole purpose of inspecting water measuring devices required pursuant to A.R.S. § 45-604.

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- G.** The Director shall mail a copy of the report of the inspection either to the person to whom the notice of inspection was directed, or to the owner, manager or occupant of the property if no notice of inspection was given. The report shall include the date of the inspection and a short summary of the findings. If no notice was given, the report shall include an explanation of the reason for determining that notice would not be given, unless providing the explanation would frustrate enforcement of A.R.S. Title 45. An aggrieved person may file with the Director written comments on the report within 30 days after the report is mailed.
- H.** The owner, manager or occupant of the property may waive the provisions for notice contained in this rule.
- I.** The Director shall comply with the requirements of A.R.S. § 41-1009 when conducting inspections under this Section.

Historical Note

Adopted effective August 31, 1992 (Supp. 92-3).
Amended effective July 22, 1994 (Supp. 94-3). Amended
by final rulemaking at 11 A.A.R. 5395, effective
February 4, 2006 (Supp. 05-4).

R12-15-1102. Audits

- A.** For the purpose of this rule, “representative” means
1. An officer or director of a corporation subject to the audit,
 2. A general partner of a partnership subject to the audit, or
 3. A person who appears at an audit and produces a signed authorization to act on behalf of the person subject to the audit.
- B.** This rule applies to audits conducted pursuant to A.R.S. §§ 45-633(C), 45-880.01, and any other Section of A.R.S. Title 45 that authorizes the Director to require a person to appear at the Director’s office and produce records and information and that also requires the Director to adopt rules for conducting inspections, examining records, and obtaining warrants.
- C.** No less than 20 days prior to an audit, the Director shall mail notice of the audit by first class letter to the person that is the subject of the audit. The notice shall state the date, time and place of the audit. The notice shall specify the records or information which the person must produce. The notice shall also include the statutory authorization and purpose for the audit and the name and telephone number of a Department employee who may be contacted for further information. The audit shall be held at the Department’s offices, unless the Director grants a request to have the audit conducted at a different location.
- D.** The person subject to the audit or a representative shall appear at the scheduled time and shall produce the records and information specified in the notice. The person subject to the audit or a representative may make one request to reschedule the audit, which the Department shall grant if practicable.
- E.** The Director shall mail a copy of the report of the audit to the person subject to the audit. An aggrieved person may file with the Director written comments on the report within 30 days after the report is mailed.
- F.** The person subject to the audit may waive the provisions for notice contained in this rule.

Historical Note

Adopted effective August 31, 1992 (Supp. 92-3).
Amended effective July 22, 1994 (Supp. 94-3).

ARTICLE 12. DAM SAFETY PROCEDURES**R12-15-1201. Applicability**

- A.** This Article applies to any artificial barrier meeting the specifications of A.R.S. § 45-1201(1) as interpreted by R12-15-1204. This Article applies to an application for the construction of a dam and reservoir; an application to reconstruct,

repair, alter, enlarge, breach, or remove an existing dam and reservoir, including a breached or damaged dam; operation and maintenance of an existing dam and reservoir; and enforcement. A structure identified in R12-15-1203 is exempt from this Article.

- B.** This Article is applicable to any dam regardless of hazard potential classification, with the following exceptions:
1. R12-15-1208, R12-15-1209, R12-15-1213, R12-15-1221, R12-15-1225, and R12-15-1226 apply only to a dam classified as a high or significant hazard potential dam.
 2. R12-15-1210 applies only to a dam classified as a low hazard potential dam. A low hazard potential dam is exempt from R12-15-1208, R12-15-1209, R12-15-1211, R12-15-1213, R12-15-1221, R12-15-1225, and R12-15-1226.
 3. R12-15-1211 applies only to a dam classified as a very low hazard potential dam. A very low hazard potential dam is exempt from R12-15-1208, R12-15-1209, R12-15-1210, R12-15-1212, R12-15-1213, R12-15-1215, R12-15-1216, R12-15-1221, R12-15-1225, and R12-15-1226.
 4. R12-15-1216(B) applies only to an embankment dam.

Historical Note

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-01 renumbered without change as Section R12-15-1201 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1202. Definitions

In addition to the definitions provided in A.R.S. § 45-1201, the following definitions are applicable to this Article:

1. “Alteration or repair of an existing dam or appurtenant structure” means to make different from the originally approved construction drawings and specifications or current condition without changing the height or storage capacity of the dam or reservoir, except for ordinary repairs and general maintenance as prescribed in R12-15-1217.
2. “Appurtenant structure” means any structure that is contiguous and essential to the safe operation of the dam including embankments, saddle dikes, outlet works and controls, diversion ditches, spillway and controls, access structures, bridges, and related housing at a dam.
3. “Classification of dams” means the placement of dams into categories based upon an evaluation of the size and hazard potential, regardless of the condition of the dam.
4. “Concrete dam” means any dam constructed of concrete, including arch, gravity, arch-gravity, slab and buttress, and multiple arch dams. A dam that only has a concrete facing is not a concrete dam.
5. “Construction” means any activity performed by the owner or someone employed by the owner that is related to the construction, reconstruction, repair, enlargement, removal, or alteration of any dam, unless the context indicates otherwise. Construction is performed after approval of an application and before issuance of a license.
6. “Dam failure inundation map” means a map depicting the maximum area downstream from a dam that would be flooded in the event of the worst condition failure of the dam.
7. “Department” means the Arizona Department of Water Resources.
8. “Director” means the Director of the Arizona Department of Water Resources or the Director’s designee.

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9. "Embankment dam" means a dam that is constructed of earth or rock material.
10. "Emergency spillway" means a spillway designed to safely pass the inflow design flood routed through the reservoir. If the flow is controlled by gates, it is a controlled spillway. If the flow is not controlled by gates, it is an uncontrolled spillway.
11. "Engineer" means a Professional Engineer registered and licensed in accordance with A.R.S. Title 32, Chapter 1, with proficiency in engineering and knowledge of dam technology.
12. "Enlargement to an existing dam or appurtenant structure" means any alteration, modification, or repair that increases the vertical height of a dam or the storage capacity of the reservoir.
13. "Flashboards" mean timber, concrete, or steel sections placed on the crest of a spillway to raise the retention water level that may be quickly removed at time of flood either by a tripping device or by designed failure of the flashboards or their supports.
14. "Flood control dam" means a dam that uses all of its reservoir storage capacity for temporary impoundment of flood waters and collection of sediment or debris.
15. "Hazard potential" means the probable incremental adverse consequences that result from the release of water or stored contents due to failure or improper operation of a dam or appurtenances.
16. "Hazard potential classification" means a system that categorizes dams according to the degree of probable incremental adverse consequences of failure or improper operation of a dam or appurtenances. The hazard potential classification does not reflect the current condition of the dam with regard to safety, structural integrity, or flood routing capacity.
17. "Height" means the vertical distance from the lowest elevation of the outside limit of the barrier at its intersection with the natural ground surface to the spillway crest elevation. For the purpose of determining jurisdictional status, the lowest elevation of the outside limit of the barrier may be the outlet pipe invert elevation if the outlet is constructed below natural ground.
18. "Impound" means to cause water or a liquid to be confined within a reservoir and held with no discharge.
19. "Incremental adverse consequences" means under the same loading conditions, the additional adverse consequences such as economic, intangible, lifeline, or human losses, that would occur due to the failure or improper operation of the dam over those that would have occurred without failure or improper operation of the dam.
20. "Inflow design flood" or "IDF" means the reservoir flood inflow magnitude selected on the basis of size and hazard potential classification for emergency spillway design requirements of a dam.
21. "Intangible losses" means incremental adverse consequences to property that are not economic in nature, including property related to social, cultural, unique, or resource-based values, including the loss of irreplaceable and unique historic and cultural features; long-lasting pollution of land or water; or long-lasting or permanent changes to the ecology, including fish and endangered species habitat identified and evaluated by a public natural resource management or protection agency.
22. "Jurisdictional dam" means a barrier that meets the definition of a dam prescribed in A.R.S. § 45-1201 that is not exempted by R12-15-1203 over which the Department of Water Resources exercises jurisdiction.
23. "Levee" means an embankment of earth, concrete, or other material used to prevent a watercourse from spreading laterally or overflowing its banks. A levee is not used to impound water.
24. "License" means license of final approval issued by the Director upon completion or enlargement of a dam under A.R.S. § 45-1209.
25. "Lifeline losses" mean disruption of essential services such as water, power, gas, telephone, or emergency medical services.
26. "Liquid-borne material" means mine tailings or other milled ore products transported in a slurry to a storage impoundment.
27. "Maximum credible earthquake" means the most severe earthquake that is believed to be possible at a point on the basis of geologic and seismological evidence.
28. "Maximum water surface" means the maximum elevation of the reservoir water level attained during routing of the inflow design flood.
29. "Natural ground surface" means the undisturbed ground surface before excavation or filling, or the undisturbed bed of the stream or river.
30. "Outlet works" means a closed conduit under or through a dam or through an abutment for the controlled discharge of the contents normally impounded by a dam and reservoir. The outlet works include the inlet and outlet structures appurtenant to the conduit. Outlet works may be controlled or uncontrolled.
31. "Probable" means likely to occur, reasonably expected, and realistic.
32. "Probable maximum flood" or "PMF" means the flood runoff expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the region, including rain and snow where applicable. 1/2 PMF is that flood represented by the flood hydrograph with ordinates equal to 1/2 the corresponding ordinates of the PMF hydrograph.
33. "Probable maximum precipitation" means the greatest depth of precipitation for a given duration that is theoretically physically possible over a particular size storm area at a particular geographical location at a particular time of year.
34. "Reservoir" means any basin that contains or is capable of containing water or other liquids impounded by a dam.
35. "Residual freeboard" means the vertical distance between the highest water surface elevation during the inflow design flood and the lowest point at the top of the dam.
36. "Restricted storage" means a condition placed on a license by the Director to reduce the storage level of a reservoir because of a safety deficiency.
37. "Saddle dike or saddle dam" means any dam constructed in a topographically low area on the perimeter of a reservoir, required to contain the reservoir at the highest water surface elevation.
38. "Safe" means that a dam has sufficient structural integrity and flood routing capacity to make failure of the dam unlikely.
39. "Safe storage level" means the maximum reservoir water surface elevation at which the Director determines it is safe to impound water or other liquids in the reservoir.
40. "Safety deficiency" means a condition at a dam that impairs or adversely affects the safe operation of the dam.
41. "Safety inspection" means an investigation by an engineer or a person under the direction of an engineer to assess the safety of a dam and determine the safe storage level for a reservoir, which includes review of design

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reports, construction documents, and previous safety inspection reports of the dam, spillways, outlet facilities, seepage control and measurement systems, and permanent monument or monitoring installations.

- 42. "Spillway crest" means the highest elevation of the floor of the spillway along a centerline profile through the spillway.
- 43. "Storage capacity" means the maximum volume of water, sediment, or debris that can be impounded in the reservoir with no discharge of water, including the situation where an uncontrolled outlet becomes plugged. The storage capacity is reached when the water level is at the crest of the emergency spillway, or at the top of permanently mounted emergency spillway gates in the closed position. Storage capacity excludes dead storage below the natural ground surface.
- 44. "Surcharge storage" means the additional water storage volume between the emergency spillway crest or closed gates, and the top of the dam.
- 45. "Total freeboard" means the vertical distance between the emergency spillway crest and the top of the dam.
- 46. "Unsafe" means that safety deficiencies in a dam or spillway could result in failure of the dam with subsequent loss of human life or significant property damage.

Historical Note

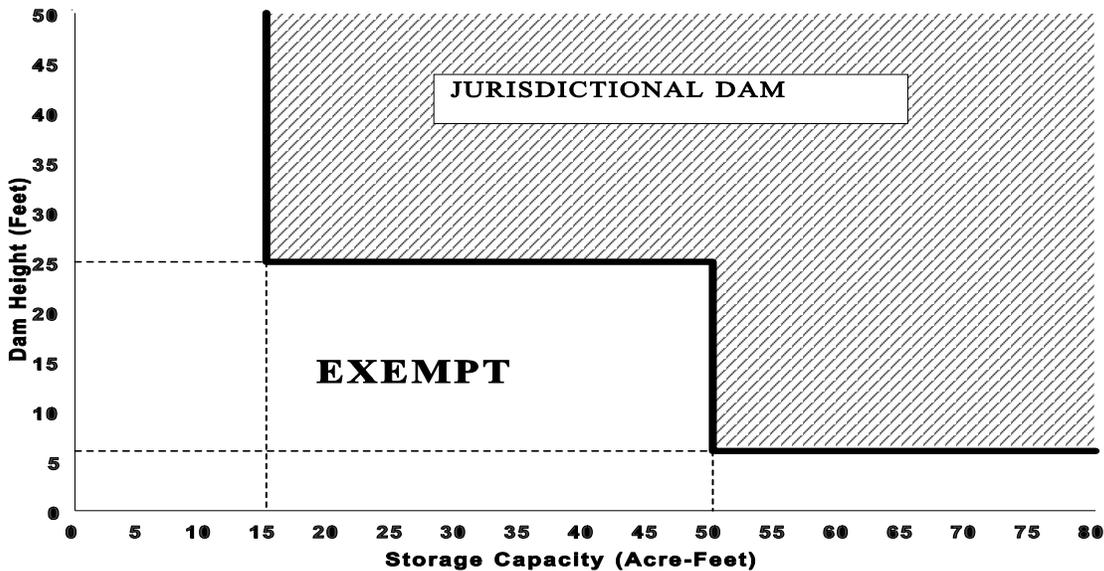
Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-02 renumbered without change as Section R12-15-1202 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended to correct typographical error under A.A.C. R1-1-109 (Supp. 01-2).

R12-15-1203. Exempt Structures

The following structures are exempt from regulation by the Department:

- 1. Any artificial barrier identified as exempt on Table 1 and defined as follows:

Table 1. Exempt Structures



Historical Note

- a. Less than 6 feet in height, regardless of storage capacity.
- b. Between 6 and 25 feet in height with a storage capacity of less than 50 acre-feet.
- c. Greater than 25 feet in height with 15 acre-feet or less of storage capacity.
- 2. A dam owned by the federal government. A dam designed by the federal government for any non-federal entity or person that will subsequently be owned or operated by a person or entity defined as an owner in A.R.S. § 45-1201 is subject to jurisdiction, beginning with design and construction of the dam.
- 3. A dam owned or operated by an agency or instrumentality of the federal government, if a dam safety program at least as stringent as this Article is applicable to and enforced against the agency or instrumentality.
- 4. A transportation structure such as a highway, road, or railroad fill that exists solely for transportation purposes. A transportation structure designed, constructed, or modified with the intention of impounding water on an intermittent or permanent basis and meeting the definition of dam in A.R.S. § 45-1201 is subject to jurisdiction.
- 5. A levee constructed adjacent to or along a watercourse, primarily to control floodwater.
- 6. A self-supporting concrete or steel water storage tank.
- 7. An impoundment for the purpose of storing liquid-borne material.
- 8. A release-contained barrier as defined by A.R.S. § 45-1201(5).

Historical Note

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-03 renumbered without change as Section R12-15-1203 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

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New Table adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1204. Provision for Guidelines

The Department may develop and adopt substantive policy statements that serve as dam safety guidelines to aid a dam owner or engineer in complying with this Article. The Department recommends that dam owners and engineers consult design guidelines published by agencies of the federal government, including the U.S. Bureau of Reclamation, the U.S. Army Corps of Engineers, the Natural Resources Conservation Service, and the Federal Energy Regulatory Commission, for the design of concrete, roller compacted concrete, stone masonry, timber, inflatable rubber, and mechanically-stabilized earth dams. The Director may require that other criteria be used or revise any of the specific criteria for the purpose of dam safety. An owner shall obtain advance approval by the Director of design criteria.

Historical Note

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-04 renumbered without change as Section R12-15-1204 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1205. General Responsibilities

- A. Each owner is responsible for the safe design, operation, and maintenance of a dam. The owner shall operate, maintain, and regularly inspect a dam so that it does not constitute a danger to human life or property. The owner of a high or significant hazard potential dam shall provide timely warning to the Department and all other persons listed in the emergency action plan of problems at the dam. The owner shall develop and maintain effective emergency action plans and coordinate those plans with local officials as prescribed in R12-15-1221.
- B. The owner shall conduct frequent observation of the dam, as prescribed in the emergency action plan and as follows:
 1. The owner shall increase the frequency of observation when the reservoir is full, during heavy rains or flooding, and following an earthquake.
 2. The owner shall report to the Director any condition that threatens the safety of the dam as prescribed in R12-15-1224(A). The owner shall make the report as soon as possible, but not later than 12 hours after discovery of the conditions.
 3. If dam failure appears imminent, the owner shall notify the county sheriff or other emergency official immediately.
 4. The owner is responsible for the safety of the dam and shall take action to lower the reservoir if it appears that the dam has weakened or is in danger of failing.
- C. The owner of a dam shall install, maintain, and monitor instrumentation to evaluate the performance of the dam. The Director shall require site-specific instrumentation that the Director deems necessary for monitoring the safety of the dam when failure may endanger human life and property. Conditions that may require monitoring include land subsidence, earth fissures, embankment cracking, phreatic surface, seepage, and embankment movements.
- D. The owner shall perform timely maintenance and ordinary repair of a dam. The owner shall implement an annual plan to inspect the dam and accomplish the maintenance and ordinary repairs necessary to protect human life and property.
- E. If a change of ownership of a dam occurs, the new owner shall notify the Department within 15 days after the date of the transaction and provide the mailing address and telephone number where the new owner can be contacted. Within 90 days after the date of the transaction, the new owner shall pro-

vide the name and telephone number of the individual or individuals who are responsible for operating and maintaining the dam.

Historical Note

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-05 renumbered without change as Section R12-15-1205 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1206. Classification of Dams

- A. Size Classification. Dams are classified by size as small, intermediate, or large. Size is determined with reference to Table 2. An owner or engineer shall determine size by storage capacity or height, whichever results in the larger size.
- B. Hazard Potential Classification
 1. The Department shall base hazard potential classification on an evaluation of the probable present and future incremental adverse consequences that would result from the release of water or stored contents due to failure or improper operation of the dam or appurtenances, regardless of the condition of the dam. The evaluation shall include land use zoning and development projected for the affected area over the 10 year period following classification of the dam. The Department considers all of the following factors in hazard potential classification: probable loss of human life, economic and lifeline losses, and intangible losses identified and evaluated by a public resource management or protection agency.
 - a. The Department bases the probable incremental loss of human life determination primarily on the number of permanent structures for human habitation that would be impacted in the event of failure or improper operation of a dam. The Department considers loss of human life unlikely if:
 - i. Persons are only temporarily in the potential inundation area;
 - ii. There are no residences or overnight campsites; and
 - iii. The owner has control of access to the potential inundation area and provides an emergency action plan with a process for warning in the event of a dam failure or improper operation of a dam.
 - b. The Department bases the probable economic, lifeline, and intangible loss determinations on the property losses, interruptions of services, and intangible losses that would be likely to result from failure or improper operation of a dam.
 2. The 4 hazard potential classification levels are very low, low, significant, and high, listed in order of increasing probable adverse incremental consequences, as prescribed in Table 3. The Director shall classify intangible losses by considering the common or unique nature of features or habitats and temporary or permanent nature of changes.
 - a. Very Low Hazard Potential. Failure or improper operation of a dam would be unlikely to result in loss of human life and would produce no lifeline losses and very low economic and intangible losses. Losses would be limited to the 100 year floodplain or property owned or controlled by the dam owner under long-term lease. The Department considers

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loss of life unlikely because there are no residences or overnight camp sites.

- b. Low Hazard Potential. Failure or improper operation of a dam would be unlikely to result in loss of human life, but would produce low economic and intangible losses, and result in no disruption of lifeline services that require more than cosmetic repair. Property losses would be limited to rural or agricultural property, including equipment, and isolated buildings.
 - c. Significant Hazard Potential. Failure or improper operation of a dam would be unlikely to result in loss of human life but may cause significant or high economic loss, intangible damage requiring major mitigation, and disruption or impact on lifeline facilities. Property losses would occur in a predominantly rural or agricultural area with a transient population but significant infrastructure.
 - d. High Hazard Potential. Failure or improper operation of a dam would be likely to cause loss of human life because of residential, commercial, or industrial development. Intangible losses may be major and potentially impossible to mitigate, critical lifeline services may be significantly disrupted, and property losses may be extensive.
3. An applicant shall demonstrate the hazard potential classification of a dam before filing an application to construct. The Department shall review the applicant's demonstration early in the design process at pre-application meetings prescribed in R12-15-1207(D).
 4. The Department shall review the hazard potential classification of each dam during each subsequent dam safety inspection and revise the classification in accordance with current conditions.

Historical Note

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-06 renumbered without change as Section R12-15-1206 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

Exhibit A. Repealed

Historical Note

Exhibit repealed by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000; a Historical Note for Exhibit A did not exist before this date (Supp. 00-2).

Table 2. Size Classification

Category	Storage Capacity (acre-feet)	Height (feet)
Small	50 to 1,000	25 to 40
Intermediate	greater than 1,000 and not exceeding 50,000	higher than 40 and not exceeding 100
Large	greater than 50,000	higher than 100

Historical Note

New Table adopted by final rulemaking at 6 A.A.R. 2558,

effective June 12, 2000 (Supp. 00-2).

Table 3. Downstream Hazard Potential Classification

Hazard Potential Classification	Probable Loss of Human Life	Probable Economic, Lifeline, and Intangible Losses
Very Low	None expected	Economic and lifeline losses limited to owner's property or 100-year floodplain. Very low intangible losses identified.
Low	None expected	Low
Significant	None expected	Low to high
High	Probable - One or more expected	Low to high (not necessary for this classification)

Historical Note

New Table adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1207. Application Process

- A. An applicant shall obtain written approval from the Director before constructing, reconstructing, repairing, enlarging, removing, altering, or breaching a dam. Application requirements differ according to the hazard potential of the dam.
 1. To construct, reconstruct, repair, enlarge, or alter a high or significant hazard potential dam, the applicant shall comply with R12-15-1208.
 2. To breach or remove a high or significant hazard potential dam, the applicant shall comply with R12-15-1209.
 3. To construct, reconstruct, repair, enlarge, alter, breach, or remove a low hazard potential dam, the applicant shall comply with R12-15-1210.
 4. To construct, reconstruct, repair, enlarge, alter, breach, or remove a very low hazard potential dam, the applicant shall comply with R12-15-1211.
- B. An application shall not be filed with the Director under the following circumstances:
 1. The dam is exempt under R12-15-1203;
 2. A dam owner starts repairs to an existing dam that are necessary to safeguard human life or property and the Director is notified without delay;
 3. The owner performs general maintenance or ordinary repairs as prescribed in R12-15-1217(A) or (B); or
 4. Breach, removal, or reduction of a very low hazard dam as prescribed in R12-15-1211(C).
- C. An applicant is not required to comply with a requirement in this Article if the Director finds that, considering the site characteristics and the proposed design, the requirement is unduly burdensome or expensive and is not necessary to protect human life or property. The Director shall consider the size, hazard potential classification, physical site conditions, and applicability of a requirement to a proposed dam. The Director shall state in writing the reason or reasons the applicant is not required to comply with a requirement.
- D. An applicant shall schedule pre-application conferences with the Department to discuss the requirements of this Article and to resolve issues essential to the design of a dam while the design is in preliminary stages. The Director shall view the dam site during the pre-application process. The following are examples of issues for pre-application conferences: the hazard

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potential classification, the approximate inflow design flood, the basic design concepts, and any requirements that may be found by the Director to be unduly burdensome or expensive and not necessary to protect human life or safety. In addition, the applicant may submit preliminary design calculations to the Department for review and comment. The Department shall comment as soon as practicable, depending on the size of the submittal and the current workload.

E. The Department shall review applications as follows:

1. Applications will be received by appointment. During this meeting the Department shall make a brief review of the application to determine that the application contains each of the items required by R12-15-1208, R12-15-1209, R12-15-1210, or R12-15-1211.
2. Following receipt of an application submitted under R12-15-1208, R12-15-1209, R12-15-1210, or R12-15-1211, the Director shall complete an administrative review as prescribed in R12-15-401(1) and notify the applicant in writing whether the application is administratively complete. If the application is not administratively complete, the notification shall include a list of additional information that is required to complete the application.
3. After finding the application submitted under R12-15-1208, R12-15-1209, R12-15-1210, or R12-15-1211 administratively complete, the Director shall complete a substantive review as prescribed in R12-15-401(3) and notify the applicant in writing of the Director's approval or disapproval. If during this review period, the Director determines that there are defects in the application that would impact human life and property, a written notice of the defects shall be sent to the applicant.
4. An applicant may request in writing that the Director expedite the review of an application by employing an expert consultant on a contract basis under A.R.S. § 45-104(D). The Director shall establish on-call contracts with expert consultants to facilitate the process of expediting review. The Director may retain a consultant to review all or a portion of the application as necessary to expedite the process in response to an owner's request or to comply with time-frame rules. Before conducting the review, the consultant shall provide the Director and the applicant with a proposed time schedule and cost estimate. If the applicant agrees to the consultant's proposal for an expedited review of an application and the Director employs the consultant, the applicant shall pay to the Department the cost of the consultant's services in addition to the application fees. The Director retains the authority to review and approve, disapprove, or modify the findings and recommendations of the consultant.
5. The Director shall not approve an application in less than 10 days from the date of receipt.
6. If the Director disapproves the application, the Director shall provide the applicant with a statement of the Director's objections.
7. If the Director approves an application, the applicant shall submit in triplicate revised drawings and specifications that incorporate any required changes.
 - a. The Director shall return to the applicant 1 set of final construction drawings and specifications with the Department's approval stamp to be retained onsite during construction;
 - b. The Director shall retain for permanent state record 1 set of final construction drawings and specifications with the Department's approval stamp; and
 - c. The Director shall retain for use by the Department during construction the 3rd set of final construction

drawings and specifications with the Department's approval stamp.

8. The Director shall impose conditions and limitations that the Director deems necessary to safeguard human life and property. Examples of the conditions of approval include but are not limited to:
 - a. The applicant shall not cover the foundation or abutment with the material of the dam until the Department has been given notice and a reasonable time to inspect and approve them.
 - b. The applicant shall start construction within 1 year from the date of approval.
 - c. The applicant shall maintain a safe storage level for an existing dam being reconstructed, repaired, enlarged, altered, or breached.
- F.** An approval to construct a new dam or repair, enlarge, alter, breach, or remove an existing dam is valid for 1 year.
 1. If construction does not begin within 1 year, the approval is void.
 2. Upon written request and good cause shown by the owner, the time for commencing construction may be extended. An applicant shall not start construction before the Director reviews the application for changes and grants approval.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1208. Application to Construct, Reconstruct, Repair, Enlarge, or Alter a High or Significant Hazard Potential Dam

- A.** An application package to construct, reconstruct, repair, enlarge, or alter a high or significant hazard potential dam shall include the following prepared by or under the supervision of an engineer as defined in R12-15-1202(11):
1. A completed application filed in duplicate on forms provided by the Director.
 2. A design information summary or checklist of items prepared in duplicate on forms provided by the Director.
 3. An initial application fee based on the total estimated project cost and computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7).
 4. A detailed estimate of project costs. Project costs are all costs associated with construction of the dam and appurtenant works including preliminary investigations and surveys, engineering design, supervision of construction, and any other engineering costs.
 5. Two complete sets of construction drawings as prescribed in R12-15-1215(1).
 6. Two complete sets of construction specifications as prescribed in R12-15-1215(2).
 7. An engineering design report that includes information needed to evaluate all aspects of the design of the dam and appurtenances, including references with page numbers to support any assumptions used in the design, as prescribed in R12-15-1215(3). The engineering design report shall recommend a safe storage level for existing dams being reconstructed, repaired, enlarged, or altered.
 8. A construction quality assurance plan describing all aspects of construction supervision.
 9. A description of the use for the impounded or diverted water, proof of a right to appropriate, and a permit to store water as prescribed in A.R.S. §§ 45-152 and 45-161.
 10. A long-term budget plan and evidence of financing, prepared using customary accounting principles, that demonstrate that the applicant has the financial capability to construct, operate, and maintain the dam in a safe man-

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ner. If the applicant does not have evidence that can be verified by an independent audit of the financial capability to construct, operate, and maintain the dam in a safe manner, the Director may require a performance bond for the entire cost of the proposed construction work.

- B.** The following may be submitted with the application or during construction.
1. An emergency action plan as prescribed in R12-15-1221.
 2. An operation and maintenance plan to accomplish the annual maintenance.
 3. An instrumentation plan regarding instruments that evaluate the performance of the dam.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-1209. Application to Breach or Remove a High or Significant Hazard Potential Dam

- A.** An applicant shall excavate the dam down to the level of the natural ground at the maximum section. Upon approval of the Director, additional breaches may be made. This provision shall not be construed to require more than total removal of the dam regardless of the flood magnitude. The breach or breaches shall be of sufficient width to pass the greater of:
1. The 100 year flood at a depth of less than 5 feet, or
 2. The 100 year flood at a normal flood depth of not more than 2 feet at a distance of 2,000 feet downstream of the dam.
- B.** The sides of each breach shall be excavated to a slope ratio that is stable and not steeper than 1 horizontal to 1 vertical.
- C.** Each breach shall be designed to prevent silt that has previously been deposited on the reservoir bottom and the excavated material from the breach from washing downstream.
- D.** Before breaching the dam, the reservoir shall be emptied in a controlled manner that will not endanger lives or damage downstream property. The applicant shall obtain approval from the Director for the method of breaching or removal.
- E.** An application package to breach or remove a high or significant hazard potential dam shall include the following prepared by or under the supervision of an engineer as defined in R12-15-1202(11).
1. The construction drawing or drawings for the breach or removal of a dam, including the location, dimensions, and lowest elevation of each breach.
 2. A long-term budget plan and evidence of financing, prepared using customary accounting principles, that demonstrate that the applicant has the financial capability to breach or remove the dam in a safe manner. If the applicant does not have evidence that can be verified by an independent audit of the financial capability to breach or remove the dam in a safe manner, the Director may require a performance bond for the entire cost of the proposed construction work.
 3. A construction quality assurance plan describing all aspects of construction supervision.
- F.** Reduction of a high or significant downstream hazard potential dam to nonjurisdictional size may be approved by letter under the following circumstances:
1. The owner shall submit a completed application form and construction drawings for the reduction and the appropri-

- ate specifications, prepared by or under the supervision of an engineer as defined in R12-15-1202(11).
2. The construction drawings and specifications shall contain sufficient detail to enable a contractor to bid on and complete the project.
3. The plans shall comply with all requirements of this Section except that the breach is not required to be to natural ground.
4. Upon completion of an alteration to nonjurisdictional size, the engineer shall file as constructed drawings and specifications with the Department.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1210. Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Low Hazard Potential Dam

- A.** An application package to construct, reconstruct, repair, enlarge, or alter a low hazard potential dam shall include the following prepared by or under the supervision of an engineer as defined in R12-15-1202(11):
1. A completed application filed in duplicate on forms provided by the Director.
 2. An initial application fee based on the total estimated project cost, computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7).
 3. A detailed estimate of project costs. Project costs are all costs associated with construction of the dam and appurtenant works, including preliminary investigations and surveys, engineering design, supervision of construction, and any other engineering costs.
 4. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304.
 5. A statement by the responsible engineer that classifies the dam as low hazard in accordance with R12-15-1206(B). The responsible engineer shall submit a map of the area that would be inundated by failure or improper operation of the dam. The responsible engineer shall demonstrate that failure or improper operation of the dam would be unlikely to result in:
 - a. Loss of human life. The demonstration may be based on an emergency action plan for persons who may be in the area of inundation;
 - b. Significant incremental adverse consequences; or
 - c. Significant intangible losses, as defined in R12-15-1202(21) and identified and evaluated by a public natural resource management or protection agency.
 6. Two complete sets of construction drawings as prescribed by R12-15-1215(1).
 7. Two complete sets of construction specifications as prescribed by R12-15-1215(2).
 8. An engineering design report that includes information needed to evaluate all aspects of the design of the dam and appurtenances, including references with page numbers to support any assumptions used in the design, as prescribed in R12-15-1215(3).
 9. A description of the use for the impounded or diverted water, proof of a right to appropriate, and a permit to store water as prescribed in A.R.S. §§ 45-152 and 45-161.
 10. A construction quality assurance plan clearly describing all aspects of construction supervision.
 11. A long-term budget plan and evidence of financing, prepared using customary accounting principles, that demonstrate that the applicant has the financial capability to construct, operate, and maintain the dam in a safe man-

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ner. If the applicant does not have evidence that can be verified by an independent audit of the financial capability to construct, operate, and maintain the dam in a safe manner, the Director may require a performance bond for the entire cost of the proposed construction work.

- B.** An application package for the breach or removal of a low hazard potential dam shall include the following:
1. A completed application filed in duplicate on forms provided by the Director that contains the following information:
 - a. The name and address of the owner of the dam or the agent of the owner.
 - b. A description of the proposed removal.
 - c. The proposed time for beginning and completing the removal.
 2. An initial application fee based on the total estimated project cost and computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7).
 3. A statement by the responsible engineer demonstrating both of the following:
 - a. That the dam will be excavated to the level of natural ground at the maximum section; and
 - b. That the breach or breaches will be of sufficient width to pass the greater of:
 - i. The 100 year flood at a depth of less than 5 feet, or
 - ii. The 100 year flood at a normal flood depth of not more than 2 feet at a distance of 2,000 feet downstream of the dam,
 - iii. Subsection (B)(3)(b) shall not be construed to require more than a total removal of the dam regardless of flood magnitude.
 - c. That the sides of the breach will be excavated to a slope ratio that is stable and not steeper than 1 horizontal to 1 vertical.
 4. A detailed estimate of project costs. Project costs are all costs associated with the removal of the dam and appurtenant works, including preliminary investigations and surveys, engineering design, supervision of removal, and any other engineering costs.
- C.** An applicant intending to reduce a low hazard potential dam to nonjurisdictional size shall submit a written notice to the Director at least no less than 60 days before the date that construction begins.
- D.** Within 45 days after receipt of a complete application package as prescribed by subsection (A) or (B), the Director shall either:
1. Determine that the dam falls within the low hazard potential classification, or
 2. Issue a written notice that the dam does not fall within the low hazard potential classification.
- E.** The Director's determination that the proposed dam does not fall within the low hazard classification is an appealable agency action and subject to administrative and judicial review under A.R.S. Title 41, Chapter 6, Article 10.
- F.** Upon completion of construction, the owner shall notify the Department in writing. The owner shall not use the dam or reservoir before issuance of a license unless the Director issues written approval.
- G.** Within 90 days after completing construction, reconstruction, repair, enlargement, or alteration of a low hazard potential dam, the owner shall file the following:
1. An affidavit showing the actual cost of construction, reconstruction, repair, enlargement, or alteration of the dam. The owner shall submit a detailed accounting of the costs, including all engineering costs.
 2. An additional fee or refund request computed in accordance with A.R.S. § 45-1209 and R12-15-104(A)(7), based on the actual cost of construction, reconstruction, repair, enlargement, or alteration.
 3. A brief completion report summarizing the salient features of the project, including a description of the causes for any changes or deviations from the approved application package prepared by the engineer who supervised the construction, in accordance with A.R.S. Title 32, Chapter 1. The engineer shall indicate:
 - a. That the dam has been designed and constructed in compliance with basic principles of dam construction currently being practiced in the industry;
 - b. That the dam as constructed has structural integrity and flood routing capacity consistent with its hazard potential classification; and
 - c. That the as constructed drawings and the report accurately represent the construction of the dam.
 4. As constructed drawings prepared and sealed by the engineer who supervised the construction. The owner and the engineer shall maintain a record of the drawings.
- H.** Upon receiving the Director's written approval, the owner may operate the dam and appurtenant works. Within 30 days after receipt of the information in subsection (G), the Director shall issue to the owner either a license or a notice that the dam and appurtenant works shall not be operated because the dam and appurtenant works do not qualify as low hazard or were not built according to the submitted design. The license shall include conditions of operation, including:
1. The safe storage level of the reservoir,
 2. A requirement that the dam be operated and maintained so that it does not constitute a danger to human life and property,
 3. A requirement that the conditions resulting in the low hazard classification be maintained throughout the life of the dam, and
 4. A requirement that the owner demonstrate in writing the low hazard classification in the manner prescribed by subsection (A)(5) every five years.
- I.** Within 90 days after completing removal of a low hazard potential dam, the owner shall file the following. The Director shall remove the dam from jurisdiction upon approval of the submittal.
1. An affidavit showing the actual cost of removal of the dam. The owner shall submit a detailed accounting of the costs, including all engineering costs.
 2. An additional fee or refund request computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7), based on the actual cost of removal.
 3. A brief completion report, including a description of the causes for any changes or deviations from the approved application package prepared by the engineer who supervised the construction, in accordance with A.R.S. Title 32, Chapter 1. The engineer shall certify that the as removed drawings and the report accurately represent the actual removal of the dam.
 4. As-removed drawings prepared and sealed by the engineer who supervised the removal. The owner and the engineer shall maintain a record of the drawings.
- J.** An owner shall immediately commence repairs necessary to safeguard human life and property and prevent failure and improper operation of a low hazard potential dam. The owner shall notify the Department as soon as reasonably possible and in all cases within 10 days of commencing the required repairs.

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Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2).

Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-1211. Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Very Low Hazard Potential Dam

- A.** An application package to construct, reconstruct, repair, enlarge, or alter a very low hazard potential dam shall include the following prepared by an engineer or a person under the supervision of an engineer as defined in R12-15-1202(11):
1. A completed application filed in duplicate on forms provided by the Director that contains the following information:
 - a. The name and address of the owner of the dam or the agent of the owner.
 - b. The location, type, size, and height of the proposed dam and appurtenant works.
 - c. The storage capacity of the reservoir associated with the proposed dam.
 - d. The proposed time for beginning and completing construction.
 - e. A description of the use for the impounded or diverted water and proof of a right to impound that water.
 2. The means, plans, and specifications by which the stream or body of water is to be dammed, by-passed, or controlled during construction.
 3. Maps, drawings, and specifications of the proposed dam.
 4. An initial application fee based on the total estimated project cost and computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7).
 5. A detailed estimate of project costs. Project costs are all costs associated with construction of the dam and appurtenant works, including preliminary investigations and surveys, engineering design, supervision of construction, and any other engineering costs.
 6. A statement by the responsible engineer that classifies the dam as very low hazard in accordance with R12-15-1206(B). The responsible engineer shall submit a map of the area that would be inundated by failure or improper operation of the dam. The responsible engineer shall demonstrate that failure or improper operation would be unlikely to result in:
 - a. Loss of human life. The demonstration may be based on an emergency action plan for persons who may be in the area of inundation;
 - b. Significant incremental adverse consequences; or
 - c. Significant intangible losses, as defined in R12-15-1202(21) and identified and evaluated by a public natural resource management protection agency, because the dam has a size classification of either small or intermediate under R12-15-1206(A) and any release would be limited to the 100 year floodplain or property owned or controlled by the dam owner under long-term lease.
 7. The seal and signature of the responsible engineer in accordance with A.R.S. Title 32, Chapter 1.
 8. The drawings required by subsection (A)(3) shall include a plan view and maximum section of the dam; the outlet works; and the spillway plan, profile, and cross section.
 9. The specifications required by subsection (A)(3) shall include the construction materials, testing criteria, and installation techniques.
- B.** The Director may make other requirements for drawings and specifications for the proposed repair or alteration of a very low hazard potential dam. In determining other requirements, the Director shall consider the size and extent of the repair or alteration, the portions of the dam that will be repaired or altered, and whether the requirements elicit a description of the proposed construction work that is adequate to allow the Director to evaluate the repair or alteration.
- C.** An owner intending to breach, remove, or reduce a very low hazard potential dam to nonjurisdictional size shall submit written notice to the Director at least 60 days before the date that construction begins.
- D.** After receipt of a complete application package as prescribed by subsection (A), the Director shall either:
1. Determine that the dam falls within the very low hazard classification and approve the application in writing; or
 2. Issue a written notice that the dam does not fall within the very low hazard classification.
- E.** The Director's determination that the proposed dam does not fall within the very low hazard classification is an appealable agency action and subject to administrative and judicial review under A.R.S. Title 41, Chapter 6, Article 10.
- F.** Upon completion of construction, the owner shall notify the Department in writing. The owner shall not use the dam and reservoir before receipt of a license unless the Director issues written approval.
- G.** Within 90 days after completion of the construction, reconstruction, repair, enlargement, or alteration of a very low hazard potential dam, the owner shall file the following:
1. An affidavit showing the actual cost of construction, reconstruction, repair, enlargement, or alteration of the dam. The owner shall submit a detailed accounting of the costs, including all engineering costs.
 2. An additional fee or refund request computed in accordance with A.R.S. § 45-1209 and R12-15-104(A)(7), based on the actual cost of construction, reconstruction, repair, enlargement, or alteration.
 3. A brief completion report summarizing the salient features of the project, including a description of the causes for any changes or deviations from the approved application package prepared by the engineer who supervised the construction in accordance with A.R.S. Title 32, Chapter 1. The report shall include:
 - a. That the dam has been designed and constructed in compliance with basic principles of dam construction currently being practiced in the industry;
 - b. That the dam as constructed has structural integrity and flood routing capacity consistent with its hazard potential classification; and
 - c. That the as constructed drawings and the report accurately represent the construction of the dam.
 4. As constructed drawings prepared by the engineer who supervised the construction. The owner and the engineer shall maintain a record of the drawings.
- H.** Within 30 days after receipt of the information in subsection (G), the Director shall issue to the owner either a license or a notice that the dam and appurtenant works shall not be operated because the dam and appurtenant works do not qualify as very low hazard or were not built according to the submitted design. Upon receiving the Director's written approval, the

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owner may operate the dam and appurtenant works. The license shall include conditions of operation, including:

1. The safe storage level of the reservoir,
 2. A requirement that the conditions resulting in the very low hazard classification be maintained throughout the life of the dam, and
 3. A requirement that the owner demonstrate in writing the very low hazard classification in the manner prescribed by subsection (A)(6) every five years.
- I.** An owner shall immediately commence repairs necessary to safeguard human life and property and prevent failure or improper operation of a very low hazard potential dam. The owner shall notify the Department as soon as reasonably possible and in all cases within 10 days of commencing the required repairs.
- J.** The Department may periodically inspect construction to confirm that it is proceeding according to the approved design and that proper construction quality assurance is being exercised by the owner's engineer. The owner, or the owner's engineer under the direction of the owner, shall remedy any unsatisfactory condition using the contractor.
- K.** The owner shall provide the Department access to the dam site for purposes of inspecting all phases of construction, including the foundation, embankment and concrete placement, inspection and test records, and mechanical installations.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-1212. Construction of a High, Significant, or Low Hazard Potential Dam

- A.** Before commencement of construction activities, the owner shall invite to a pre-construction conference all involved regulatory agencies, the prime contractor, and all subcontractors. At this meeting the Department shall identify, to the extent possible, the key construction stages at which an inspection will be made. At least 48 hours before each key construction stage identified for inspection, the owner or the owner's engineer shall provide notice to the Department.
- B.** The owner and the owner's engineer shall oversee construction of a new dam or reconstruction, repair, enlargement, alteration, breach, or removal of an existing dam. Failure to perform the work in accordance with the construction drawings and specifications approved by the Director renders the approval revocable. The owner's engineer shall exercise professional judgment independent of the contractor.
- C.** A professional engineer with proficiency in engineering and knowledge of dam technology shall supervise or direct the supervision of construction in accordance with the construction quality assurance plan.
- D.** The owner's engineer shall submit summary reports of construction activities and test results according to a schedule approved by the Department.
- E.** The owner shall immediately report to the Department any condition encountered during construction that requires a deviation from the approved plans and specifications.
- F.** The owner shall promptly submit a written request for approval of any necessary change and sufficient information to justify the proposed change. The owner shall not commence construction without the written approval of the Director unless the change is a minor change. A minor change is a

change that complies with the requirements of this Article and provides equal or better safety performance.

- G.** Upon completion of construction, the owner shall notify the Department in writing. The Department shall make a final inspection. The owner shall correct any deficiencies noted during the inspection.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1213. Completion Documents for a Significant or High Hazard Potential Dam

Within 90 days after completion of the construction or removal work for a significant or high hazard potential dam and final inspection by the Department, the owner shall file the following:

1. An affidavit showing the actual cost of the construction. The owner shall submit a detailed accounting of the costs, including all engineering costs.
2. An additional fee or refund request based on the actual cost of the construction, computed in accordance with A.R.S. § 45-1209 and R12-15-104(A)(7).
3. One set of full sized as constructed drawings prepared and sealed by the engineer who supervised the construction. If changes were made during construction, the owner shall file supplemental drawings showing the dam and appurtenances as actually constructed.
4. Construction records, including grouting, materials testing, and locations and baseline readings for permanent bench marks and instrumentation, initial surveys, and readings.
5. Photographs of construction from exposure of the foundation to completion of construction.
6. A brief completion report summarizing the salient features of the project, including a description of the causes for any changes or deviations from the approved drawings and specifications that were made during the construction phase.
7. A schedule for filling the reservoir, specifying fill rates, water level elevations to be held for observation, and a schedule for inspecting and monitoring the dam. The owner shall monitor the dam monthly during the first filling.
8. An operating manual for the dam and its appurtenant structures. The operating manual shall include a process for safety inspections prescribed in R12-15-1219. The operating manual shall include schedules for surveillance activities and baseline information for any installed instrumentation as follows:
 - a. The frequency of monitoring,
 - b. The data recording format,
 - c. A graphical presentation of data, and
 - d. The person who will perform the work.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-1214. Licensing

- A.** Upon review and approval of the documents filed under R12-15-1213 and finding that the construction at the dam has been completed in accordance with the approved plans and specifications and finding that the dam is safe, the Director shall

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issue a license. The license shall specify the safe storage level for the reservoir and shall specify conditions for the safe operation of the dam. The dam and reservoir shall not be used before issuance of a license unless the Director issues written approval. Procedures for issuance of a license for low and very low hazard potential dams are prescribed in R12-15-1210(H) and R12-15-1211(H), respectively.

B. A new license shall be issued in the following instances:

1. Upon change of ownership of a dam.
2. Upon change of the safe storage level.
3. Upon expiration of time to appeal a notice issued under R12-15-1223(B).
4. Upon expiration of time to appeal an order issued by the Director under R12-15-1223(D).
5. Upon expiration of time to appeal an order of a court.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1215. Construction Drawings, Construction Specifications, and Engineering Design Report for a High, Significant, or Low Hazard Potential Dam

The owner and engineer are responsible for complete and adequate design of a dam and for including in the application all aspects of the design pertaining to the safety of the dam.

1. Construction Drawing Requirements. The construction drawings required by R12-15-1208(5), R12-15-1209(E)(1), and R12-15-1210(A)(6) shall include the following:
 - a. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304.
 - b. One or more topographic maps of the dam, spillway, outlet works, and reservoir on a scale large enough to accurately locate the dam and appurtenances, indicate cut and fill lines, and show the property lines and ownership status of the land. Contour intervals shall be compatible with the height and size of the dam and its appurtenances and shall show design and construction details.
 - c. A reservoir area and capacity curve that reflect area in acres and capacity in acre-feet in relation to depth of water and elevation in the reservoir. The construction drawings shall show the spillway invert and top of dam elevations. The construction drawings shall also show the reservoir volume and space functional allocations. The construction drawings may include alternate scales as required for the owner's use.
 - d. Spillway and outlet works rating curves and tables at a scale or scales that allow determination of discharge rate in cubic feet per second at both low and high flows as measured by depth of water passing over the spillway control section.
 - e. A location map showing the dam footprint and all exploration drill holes, test pits, trenches, adits, borrow areas, and bench marks with elevations, reference points, and permanent ties. This map shall use the same vertical and horizontal control as the topographic map.
 - f. Geologic information including 1 or more geologic maps, profile along the centerline, and other pertinent cross sections of the dam site, spillway or spillways, and appurtenant structures, aggregate and material sources, and reservoir area at 1 or more scales compatible with the site and geologic complexity, showing logs of exploration drill holes, test pits, trenches, and adits.

- g. One or more plans of the dam to delineate design and construction details.
 - h. Foundation profile along the dam centerline at a true scale where the vertical scale is equal to the horizontal scale, showing the existing ground and proposed finished grade at cut and fill elevations, including anticipated geologic formations. The foundation profile shall include any proposed grout and drain holes.
 - i. Profile and a sufficient number of cross sections of the dam to delineate design and construction details. The drawings shall illustrate and show dimensions of camber, details of the top, core zone, interior filters and drains, and other zone details. The profile of the dam may be drawn to different horizontal and vertical scales if required for detail. A maximum section of the dam shall be drawn to a true scale, where the vertical scale is equal to the horizontal scale. The outlet conduit may be shown on the maximum section if this is typical of the proposed construction.
 - j. One or more dam foundation plans showing excavation grades and cut slopes with any proposed foundation preparation, grout and drain holes, and foundation dewatering requirements.
 - k. Plan, profile, and details of the outlet works, including the intake structure, the gate system, conduit, trashrack, conduit filter diaphragm, conduit concrete encasement, and the downstream outlet structure. The drawings shall include all connection and structural design details.
 - l. Plan, profile, control section, and cross sections of the spillway, including details of any foundation preparation, grouting, or concrete work that is planned. A complex control structure, a concrete chute, or an energy dissipating device for a terminal structure shall include both hydraulic and structural design details.
 - m. Hydrologic data, drainage area and flood routing, and diversion criteria.
2. Construction Specification Requirements. The construction specifications required by R12-15-1208(6) and R12-15-1210(A)(7) shall include the following:
 - a. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304.
 - b. The statement that the construction drawings and specifications shall not be materially changed without the prior written approval of the Director.
 - c. A detailed description of the work to be performed and a statement of the requirements for the various types of materials and installation techniques that will enter into the permanent construction.
 - d. The statement that construction shall not be considered complete until the Director has approved the construction in writing.
 - e. The statement that the owner's engineer shall control the quality of construction.
 - f. The following construction information:
 - i. All earth and rock material descriptions, placement criteria, and construction requirements for all elements of the dam and related structures.
 - ii. All concrete, grout, and shotcrete material and mix descriptions, placement and consolidation criteria, temperature controls, and construction requirements for all elements of the dam and related structures.

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- iii. Material criteria and material testing, cleaning, and treatment. If foundation or curtain grouting is required, the specifications shall describe the type of grout, grouting method, special equipment necessary, recording during grouting, and foundation monitoring to avoid disturbance from grouting.
 - iv. All materials testing that will be performed by the contractor for pre-qualification of materials, including special performance testing, such as water pressure tests in conduits. The Director shall accept materials that are pre-tested successfully and constructed in-place in accordance with specifications.
 - v. A plan for control or diversion of surface water during construction. The design engineer may determine frequency of storm runoff to be controlled during construction, commensurate with the risk of economic loss during construction.
 - vi. Criteria for blast monitoring and acceptable blast vibration levels, including particle velocities for the dam and other critical appurtenances. Monitoring equipment and monitoring locations shall be specified.
 - vii. Instrumentation material descriptions, placement criteria, and construction requirements and a statement that instrumentation shall be installed by experienced speciality subcontractors.
3. Engineering Design Report Requirements. The engineering design report required by R12-15-1208(7) and R12-15-1210(A)(8) shall include the following:
- a. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304.
 - b. The classification under R12-15-1206 of the proposed dam, or for the proposed enlargement of an existing dam or reservoir.
 - c. Hydrologic considerations, including calculations and a summary table of data used in determining the required emergency spillway capacity and freeboard, and design of any diversion or detention structures. The design report shall include input and output listings on both hard copy and computer diskette.
 - d. Hydraulic characteristics, engineering data, and calculations used in determining the capacities of the outlet works and emergency spillway. The design report shall include input and output listings on both hard copy and computer diskette.
 - e. Geotechnical investigation and testing of the dam site and reservoir basin. Results and analysis of subsurface investigations, including logs of test borings and geologic cross sections.
 - f. Guidelines and criteria for blasting to be used by the contractor in preparing the blasting plan.
 - g. Details of the plan for control or diversion of surface water during construction.
 - h. Details of the dewatering plan for subsurface water during construction.
 - i. Testing results of earth and rock materials, including the location of test pits and the logs of these pits.
 - j. Discussion and design of the foundation blanket grouting, grout curtain, and grout cap based on foundation stability and seepage considerations.
 - k. Calculations and basic assumptions on loads and limiting stresses for reinforced concrete design. The design report shall include input and output listings on both hard copy and computer diskette.
 - l. A discussion and stability analysis of the dam including appropriate seismic loading, safety factors, and embankment zone strength characteristics. Analyses shall include both short-term and long-term loading on upstream and downstream slopes. The design report shall include input and output listings on both hard copy and computer diskette.
 - m. A discussion of seismicity of the project area and activity of faults in the vicinity. The design report shall use both deterministic and statistical methods and identify the appropriate seismic coefficient for use in analyses.
 - n. Discussion and design of the cutoff trench based on seepage and other considerations.
 - o. Permeability characteristics of foundation and dam embankment materials, including calculations for seepage quantities through the dam, the foundation, and anticipated in the internal drain system. The design report shall include input and output listings on both hard copy and computer diskette. The design report shall include copies of any flow nets used.
 - p. Discussion and design of internal drainage based on seepage quantity calculations. The design report shall include instrumentation necessary to monitor the drainage system and filter design calculations for protection against piping of foundation and embankment.
 - q. Erosion protection against waves and rainfall runoff for both the upstream and downstream slopes, as appropriate.
 - r. Discussion and design of foundation treatment to compensate for geological weakness in the dam foundation and abutment areas and in the spillway foundation area.
 - s. Post-construction vertical and horizontal movement systems.
 - t. Discussion of foundation conditions including the potential for subsidence, fissures, dispersive soils, collapsible soils, and sink holes.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1216. Design of a High, Significant, or Low Hazard Potential Dam**A. General Requirements.**

- 1. Emergency Spillway Requirements. An applicant shall:
 - a. Construct each spillway in a manner that avoids flooding in excess of the flooding that would have occurred in the same location under the same conditions before construction. The owner of a dam shall demonstrate that a spillway discharge would not result in incremental adverse consequences. In determining whether a spillway discharge of a dam would result in incremental adverse consequences, the Director shall evaluate whether the owner has taken any or all of the following actions: issuing public notice to downstream property owners, complying with flood insurance requirements, adopting emergency action plans, conducting mock flood drills, acquiring flow easements or other acquisitions of real property, or other actions appropriate to safeguard the dam site and flood channel.

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- b. Include a control structure to avoid head cutting and lowering of the spillway crest for spillways excavated in soils or soft rock. In the alternative, the design may provide evidence acceptable to the Director that erosion during the inflow design flood will not result in a sudden release of the reservoir.
 - c. Provide each spillway and channel with a minimum width of 10 feet and suitable armor to prevent erosion during the discharge resulting from the inflow design flood.
 - d. Ensure that downstream spillway channel flows do not encroach on the dam unless suitable erosion protection is constructed.
 - e. Ensure that each spillway, in combination with outlets, is able to safely pass the peak discharge flow rate, as calculated on the basis of the inflow design flood.
 - f. Not construct bridges or fences across a spillway unless the construction is approved in writing by the Director. The Director's approval may include conditions regarding the design and operation of the spillway and fencing, based on safety concerns.
 - g. Not use a pipe or culvert as an emergency spillway unless the Director approves the use following review of the dam design and site characteristics.
2. Inflow Design Flood Requirements
- a. Unless directed otherwise in writing by the Director, the inflow design flood requirements for determining the spillway minimum capacity are stated in Table 4.
 - b. As an alternative to the requirements prescribed in Table 4, the Director may accept an inflow design flood determined by an incremental damage assessment study, based on the relative safety of the alternatives.
 - c. The Director may accept site-specific probable maximum precipitation studies in determination of the inflow design flood.
 - d. An applicant shall ensure that the total freeboard is the largest of the following:
 - i. The sum of the inflow design flood maximum water depth above the spillway crest plus wave run up.
 - ii. The sum of the inflow design flood maximum water depth above the spillway crest plus 3 feet.
 - iii. A minimum of 5 feet.
3. Outlet Works Requirements. An applicant shall ensure that a dam has a low level outlet works that:
- a. Is capable of draining the reservoir to the sediment pool level. A low level outlet works for a high or significant hazard potential dam shall be a minimum of 36 inches in diameter. A low level outlet works for a low hazard potential dam shall be a minimum of 18 inches in diameter.
 - b. For a high or significant hazard potential dam, has the capacity to evacuate 90% of the storage capacity of the reservoir within 30 days, excluding reservoir inflows.
 - c. Has a filter diaphragm or other current practice measures to reduce the potential for piping along the conduit.
 - d. Has accessible outlet controls when the spillway is in use.
 - e. Has an emergency manual override system or can be operated manually.
 - f. Is constructed of materials appropriate for loading condition, seismic forces, thermal expansion, cavitation, corrosion, and potential abrasion. The applicant shall not use corrugated metal pipes or other thin-walled pipes except as a form for a cast-in-place concrete conduit. The applicant shall construct outlet conduits of cast-in-place reinforced concrete. The applicant shall design each outlet to maintain water tightness. The applicant shall construct each outlet to prevent the occurrence of piping adjacent to the outlet.
 - g. Has an operating or guard gate on the upstream end of any gated outlet.
 - h. Has an outlet conduit near the base of 1 of the abutments on native bedrock or other competent material. The applicant shall support the entire length of the conduit on foundation materials of uniform density and consistency to prevent adverse differential settlement.
 - i. Has an upstream valve or gate capable of controlling the discharge through all ranges of flow on any gated outlet conduit.
 - j. Has a trashrack designed for a minimum of 25% of the reservoir head to which it would be subjected if completely clogged at the upstream end of the outlet.
 - k. Has an air vent pipe just downstream of the control gate. The applicant shall include a blow-off valve at or near the downstream toe of the dam for an outlet conduit that is connected directly to a distribution system.
 - l. Has an outlet conduit designed for internal pressure equal to the full reservoir head and for superimposed embankment loads, acting separately.
4. Dam Site And Reservoir Area Requirements
- a. An applicant shall demonstrate that reservoir storage during the inflow design flood will not result in incremental adverse consequences and that the design will not result in the inundation or wave damage of properties within the reservoir, except marina-type structures, during the inflow design flood. In determining whether a discharge will result in incremental adverse consequences, the Director shall evaluate whether the owner has taken any or all of the following actions: issuing public notice to upstream affected property owners, complying with flood insurance requirements, adopting emergency action plans, conducting mock flood drills, acquiring flood easements or other acquisitions of real property, or other actions appropriate to safeguard the dam site and reservoir. Permanent habitations are not allowed within the reservoir below the spillway elevation.
 - b. The applicant shall clear the reservoir storage area of logs and debris.
 - c. The applicant shall place borrow areas a safe distance from the upstream toe and the downstream toe of the dam to prevent a piping failure of the dam.
 - d. The applicant shall keep the top of the dam and appurtenant structures accessible by equipment and vehicles for emergency operations and maintenance.
5. Geotechnical Requirements
- a. The applicant shall provide an evaluation of the static stability of the foundation, dam, and slopes of the reservoir rim and demonstrate that sufficient

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material is available to construct the dam as designed.

- b. The applicant shall not construct a dam on active faults, collapsible soils, dispersive soils, sink holes, or fissures, unless the applicant demonstrates that the dam can safely withstand the anticipated offset or other unsafe effects on the dam.

6. Seismic Requirements

- a. The applicant shall submit a review of the seismic or earthquake history of the area around the dam within a radius of 100 miles to establish the relationship of the site to known faults and epicenters. The review shall include any known earthquakes and the epicenter locations and magnitudes of the earthquakes.
- b. The applicant shall identify the location of active or potentially active faults that have experienced Holocene or Late Pleistocene displacement within a radius of 100 miles of the site.
- c. For a high or significant hazard potential dam, the applicant shall design the dam to withstand the maximum credible earthquake.
- d. For a low hazard potential dam, the applicant shall use probabilistic or deterministic methods to determine the design earthquake. The magnitude of the design earthquake shall vary with the size of the dam, site condition, and specific location.

B. Embankment Dam Requirements.

1. Geotechnical Requirements. Table 5 states minimum factors of safety for embankment stability under various loading conditions. For an embankment dam an applicant shall provide a written analysis of minimum factors of safety for stability.

- a. The analysis of minimum factors of safety shall include the effects of anisotropy on the phreatic surface position by using a ratio of horizontal permeability to vertical permeability of at least 10. The Director may require ratios of up to 100 if the material types and construction techniques will cause excessive stratification.
- b. The applicant shall use tests modeling the conditions being analyzed to determine the strengths used in the stability analysis. The stability analysis shall include total and effective stress strengths appropriate for the different material zones and conditions analyzed. The stability analysis shall use undrained strengths or strength parameters for all saturated materials.
- c. The applicant shall perform an analysis of the upstream slope stability for a partial pool with steady seepage considering the reservoir level that provides the lowest factor of safety.
- d. A stability analysis is not required for low hazard potential dams if the owner or the owner's engineer demonstrates that conservative slopes and competent materials are included in the design.

2. Seismic Requirements

- a. The applicant shall determine the seismic characteristics of the site as prescribed in subsection (A)(6).
- b. The applicant shall determine the liquefaction susceptibility of the embankment, foundation, and abutments. The applicant shall use standard penetration testing, cone penetration testing, shear wave velocity measurements, or a combination of these methods to make this determination. The applicant shall compute the minimum factor of safety against liquefaction at specific points and make a determination of whether the overall site is subject to liquefaction.

- c. The applicant shall determine the safety of the dam under seismic loading using a pseudo static stability analysis, computing the minimum factor of safety if the embankment, foundation or abutment is not subject to liquefaction and has a maximum peak acceleration of 0.2g or less, or a maximum peak acceleration of 0.35g or less, and consists of clay on a clay or bedrock foundation. The applicant shall use in the pseudo static stability analysis a pseudo static coefficient that is at least 60% of the maximum peak bedrock acceleration at the site.

- d. The applicant shall compute a minimum factor of safety against overtopping due to deformation and settlement in each of the following cases. The minimum factor of safety against overtopping can be no less than 2.5, determined by dividing the total pre-earthquake freeboard by the estimated vertical settlement in feet. The applicant shall determine the total vertical settlement by adding the settlement values of the upstream and downstream slopes.

- i. The minimum factor of safety in a pseudo static analysis is less than 1.0;
- ii. An embankment, foundation, or abutment is not subject to liquefaction, has a maximum peak acceleration of more than 0.2g or a maximum peak acceleration of more than 0.35g and consists of clay on a clay or bedrock foundation; or
- iii. The embankment, foundation or abutment is subject to liquefaction.

- e. The applicant shall perform a liquefaction analysis to establish approximate boundaries of liquefiable zones and physical characteristics of the soil following liquefaction for an embankment, foundation, or abutment subject to liquefaction. The applicant shall perform an analysis of the potential for flow liquefaction.

- f. Other, more sophisticated analytical procedures may be required by the Director for sites with high seismicity or low strength embankment or foundation soils.

3. Miscellaneous Design Requirements

- a. The design of any significant or high hazard potential dam shall provide seepage collection and prevent internal erosion or piping due to embankment cracking or other causes.

- b. The Director shall review the filter and permeability design for a chimney drain, drain blanket, toe drain, or outlet conduit filter diaphragms on the basis of unique site characteristics.

- i. The minimum thickness of an internal drain is 3 feet.

- ii. The minimum width of a chimney drain is 6 feet.

- iii. The applicant shall filter match an internal drain to its adjacent material.

- iv. The applicant shall design internal drains with sufficient capacity for the expected drainage without the use of drainpipes using only natural granular materials.

- c. The use of a geosynthetic is not permitted in a design if it serves as the sole defense against dam failure. The use of geotextiles and geonets as a filter or drain material or a geomembrane liner is permitted only in a location that is easily accessible for repair or if its excavation cannot create an unsafe

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condition at the dam. A geosynthetic liner is allowed under special conditions and in specific situations if it is subject to monitoring and redundant safety controls. The Director may impose conditions, including monitoring appropriate to the hazard classification, inspection, and necessary repairs, each performed every 5 years.

- d. The applicant shall use armoring on any upstream slope of an embankment dam that impounds water for more than 30 days at a time. If the applicant uses rock riprap, it shall be well-graded, durable, sized to withstand wave action, and placed on a well-graded pervious sand and gravel bedding or geotextile with filtering capacity appropriate for the site.
- e. The applicant shall protect the downstream slopes and groins of an embankment dam from erosion.
- f. The minimum width of the top of an embankment dam is equal to the structural height of the dam divided by 5 plus an additional 5 feet. The required minimum width for any embankment dam is 12 feet. The maximum width for any embankment dam is 25 feet.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

Table 4. Inflow Design Flood

Dam Hazard Class	Dam Size Classification	IDF Magnitude
Very Low	All Sizes	100-year
Low	All Sizes	0.25 PMF
Significant	Small Intermediate Large	0.25 PMF 0.5 PMF 0.5 PMF
High*	All Sizes	*

* For a high hazard potential dam, the applicant shall design the dam to withstand an inflow design flood that varies from .5 PMF to the full PMF, with size increasing based on persons at risk and potential for downstream damage. The applicant shall consider foreseeable future conditions.

Historical Note

New Table adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

Table 5. Minimum Factors of Safety for Stability¹

Embankment Loading Condition	Minimum Factor of Safety
End of construction case – upstream and downstream slopes	1.3
End of construction case for embankments greater than 50 feet in height on weak foundations	1.4
Steady state seepage - upstream (critical partial pool) and downstream slope (full pool)	1.5
Instantaneous drawdown - upstream slope	1.2

¹ Not applicable to an embankment on a clay shale foundation.

Historical Note

New Table adopted by final rulemaking at 6 A.A.R. 2558,

effective June 12, 2000 (Supp. 00-2).

R12-15-1217. Maintenance and Repair; Emergency Actions

- A. An owner shall perform general maintenance and ordinary repairs that do not impair the safety of the dam. General maintenance and ordinary repair activities listed under this subsection do not require prior approval of the Director. These repair activities include:
 1. Removing brush or tall weeds.
 2. Cutting trees and removing slash from the embankment or spillway. Small stumps may be removed provided no excavation into the embankment occurs.
 3. Exterminating rodents by trapping or other methods. Rodent damage may be repaired provided it does not involve excavation that extends more than 2 feet into the embankment and replacement materials are compacted as they are placed.
 4. Repairing erosion gullies less than 2 feet deep on the embankment or in the spillway.
 5. Grading the surface on the top of the dam embankment or spillway to eliminate potholes and provide proper drainage, provided the freeboard is not reduced.
 6. Placing additional riprap and bedding on the upstream slope, or in the spillway in areas that have sustained minor damage and restoring the original riprap protection where the damage has not yet resulted in erosion and weakening of the dam.
 7. Painting, caulking, or lubricating metal structures.
 8. Patching or caulking spalled or cracked concrete to prevent deterioration.
 9. Removing debris, rock, or earth from outlet conduits or spillway channels and basins.
 10. Patching to prevent deterioration within outlet works.
 11. Replacing worn or damaged parts on outlet valves or controls to restore them to original condition or its equivalent.
 12. Repairing or replacing fences intended to keep traffic or livestock off the dam or spillway.
- B. General maintenance and ordinary repair that may impair or adversely effect safety, such as excavation into or near the toe of the dam, construction of new appurtenant structures for the dam, and repair of damage that has already significantly weakened the dam shall be performed in accordance with this Article. The Director may approve maintenance performed according to a standard detail or method of repair on file with the Department upon submittal of a letter. The Director shall determine whether general maintenance and ordinary repair activities not listed in subsection (A) will impair safety.
- C. Emergency actions not impairing the safety of the dam may be taken before guidance can be provided by an engineer and do not require prior approval of the Director. Emergency actions do not excuse an owner's responsibility to promptly undertake a permanent solution. Emergency actions include:
 1. Stockpiling materials such as riprap, earth fill, sand, sandbags, and plastic sheeting.
 2. Lowering the reservoir level by making releases through the outlet or a gated spillway, by pumping, or by siphoning.
 3. Armoring eroded areas by placing sandbags, riprap, plastic sheeting, or other available material.
 4. Plugging leakage entrances on the upstream slope.
 5. Increasing freeboard by placing sandbags or temporary earth fill on the dam.
 6. Diverting flood waters to prevent them from entering the reservoir basin.
 7. Constructing training berms to control flood waters.

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8. Placing sandbag ring dikes or reverse filter materials around boils at the downstream toe to provide back pressure.
 9. Removing obstructions from outlet or spillway flow areas.
- D.** Emergency actions impairing the safety of the dam require prior approval of the Director. An owner shall not lower the water level by excavating the spillway or embankment unless failure is imminent.
- E.** For all high and significant hazard potential dams, the emergency action plan shall be implemented with any emergency actions taken at the dam.
- F.** The owner shall notify the Director immediately of any emergency condition that exists and any emergency action taken.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1218. Safe Storage Level

The Director has the authority to determine the safe storage level for the reservoir behind each dam, including the storage level of an existing dam while it is being repaired, enlarged, altered, breached, or removed. The elevation of the safe storage level is stated on the license. The owner shall not store water in excess of the level determined by the Director to be safe. The owner shall not place flashboards or other devices in the emergency spillway without approval of an alteration of the dam in accordance with this Article.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1219. Safety Inspections; Fees

- A.** Except as provided in subsection (E), the Director shall conduct a dam safety inspection annually or more frequently for each high hazard potential dam, triennially for each significant hazard potential dam, and once every five years for each low and very low hazard potential dam. An owner of a dam shall pay the inspection fee required by R12-15-105 for each inspection of the dam pursuant to this subsection.
- B.** An engineer is considered qualified to provide information to the Director regarding the safe storage level of a reservoir if the engineer:
1. Meets the criteria in R12-15-1202(11),
 2. Has three years of experience in the field of dam safety, and
 3. Has actual experience in conducting dam safety inspections.
- C.** A dam safety inspection includes:
1. Review of previous inspections, reports, and drawings;
 2. Inspection of the dam, spillways, outlet facilities, seepage control, and measurement systems;
 3. Inspection of any permanent monument or monitoring installations;
 4. Assessment of all parts of the dam that are related to the dam's safety; and
 5. A recommendation regarding the safe storage level of the reservoir.
- D.** The engineer shall submit a safety inspection report that describes the findings and lists actions that will improve the safety of the dam. The report shall include the engineer's recommendation of the safe storage level. The engineer shall use a report form approved by the Director.
- E.** Inspections by the Owner
1. An owner may provide to the Director, at the owner's expense, a safety inspection report that complies with the requirements of subsections (B), (C), and (D) in place of

an inspection by the Department. The owner's engineer shall notify the Director and submit a written summary of the engineer's qualifications at least 14 days before the scheduled safety inspection.

2. The Director may refuse to accept an inspection that does not conform to this Article.
 3. A safety inspection report submitted pursuant to this subsection shall include the fee required by R12-15-105(D).
- F.** Inspections by the Department
1. The Director may enter at reasonable times upon private or public property and the owner shall permit such entry, where a dam is located, including a dam under construction, reconstruction, repair, enlargement, alteration, breach, or removal, for any of the following purposes:
 - a. To enforce the conditions of approval of the construction drawings and specifications related to an application for construction, reconstruction, repair, enlargement, alteration, breach, or removal.
 - b. To inspect a dam that is subject to this Article.
 - c. To investigate or assemble data to aid review and study of the design and construction of dams, reservoirs, and appurtenances or make watershed investigations to facilitate decisions on public safety to fulfill the duties of A.R.S. § 45-1214.
 - d. To ascertain compliance with this Article and A.R.S. Title 45, Chapter 6.
 2. Upon receipt of a complaint that a dam is endangering people or property:
 - a. The Director shall inspect the dam unless there is substantial cause to believe the complaint is without merit.
 - b. If the complainant files a complaint in writing and deposits with the Director sufficient funds to cover the costs of the inspection, the Director shall make an inspection.
 - c. The Director shall provide a written report of the inspection to the complainant and the dam owner.
 - d. If an unsafe condition is found, the Director shall cause it to be corrected and return the deposit to the complainant. If the complaint was without merit the deposit shall be paid into the general fund.
 3. The Director may employ qualified on-call consultants to conduct inspections.
 4. Inspections under subsection (A) shall comply with the requirements of A.R.S. § 41-1009.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

R12-15-1220. Existing Dams

- A.** The requirements of this Article apply to existing dams, except as provided in subsections (B) and (C).
- B.** If the Director has determined that an existing dam is in a safe condition, the owner is not required to comply with R12-15-1216 unless the Director determines that it is cost effective to upgrade the dam to comply with the requirements of R12-15-1216 at the time a major alteration or major repair is planned. In determining whether it is cost effective to upgrade a dam, the Director shall consider:
1. The hazard potential classification of the dam;

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2. Whether the cost of the upgrade would exceed 25% of the total cost of the major alteration or major repair; and
 3. Whether there is a more cost effective alternative that would provide an equivalent increase in safety.
- C. If the Director has determined that a dam is in an unsafe condition, the owner shall comply with the requirements in R12-15-1216. The owner is not required to comply with a requirement in this Article if the Director finds that, considering the site characteristics and the proposed design, the requirement is unduly burdensome or expensive and is not necessary to protect human life or property. The Director shall consider the size, hazard potential classification, physical site conditions, and applicability of a requirement to the dam. The Director shall state in writing the reason or reasons the owner is not required to comply with a requirement.
- D. The owner shall ensure that installation of utilities beneath or through an existing dam is accomplished by open cuts or jacking and boring methods.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1221. Emergency Action Plans

- A. Each owner of a high or significant hazard potential dam shall prepare, maintain, and exercise a written emergency action plan for immediate defensive action to prevent failure of the dam and minimize any threat to downstream development. The emergency action plan shall contain a:
1. Notification chart showing the priority for notification in an emergency situation. The owner shall notify local emergency response agencies, affected downstream populations, county emergency management agencies, and affected flood control districts;
 2. Description of the demand reservoir and scope of the emergency action plan;
 3. Delineation of potentially unsafe conditions, evaluation procedures, and triggering events that require the initiation of partial or full emergency notification procedures, based on the urgency of the situation;
 4. Delineation of areas of responsibility of the owner and other parties. The emergency action plan shall clearly identify individuals responsible for notifications and declaring an emergency;
 5. Specific notification procedure for each emergency situation anticipated;
 6. Description of emergency supplies and resources, equipment access to the site, and alternative means of communication. The emergency action plan shall also identify specific preparedness activities required, such as annual full or partial mock exercises and updates of the emergency action plan; and
 7. Map showing the area that would be subject to flooding due to spillway flows and dam failures.
- B. The owner shall use the Director's model emergency action plan, which is available at no cost, or an equivalent model, for guidance in preparing the emergency action plan.
- C. The owner shall submit a copy of the proposed emergency action plan for review by the Arizona Division of Emergency Management and all local emergency coordinators involved in the plan. The owner shall incorporate appropriate recommendations generated by the reviews and submit the revised emergency action plan to the Department.
- D. The owner shall review and update the emergency action plan annually or more frequently to incorporate changes such as new personnel, changing roles of emergency agencies, emergency response resources, conditions of the dam, and informa-

tion learned from mock exercises. The owner shall send updated portions of the plan to persons and agencies holding copies of the plan within 15 days after preparation of an update.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1222. Right of Review

- A. An applicant or owner aggrieved by a decision of the Director regarding the determination of hazard classification, jurisdictional status, or the Director's application of this Article may seek review of an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10.
- B. An applicant or owner aggrieved by a decision of the Director that requires the exercise of professional engineering judgment or discretion or the assessment of risk to human life or property, such as the adequacy of an applicant's project documentation, dam design, safe storage level, requirements for existing dams, or maintenance, may seek review by a board of review under A.R.S. §§ 45-1210 and 45-1211.
- C. The following actions are not subject to review:
1. Emergency measures taken under A.R.S. §§ 45-1212 or 45-1221.
 2. Agency decisions made under A.R.S. §§ 41-1009(E) or (F).
 3. Agency actions made exempt from review by law.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1223. Enforcement Authority

- A. The Department may exercise its discretion to take action necessary to prevent danger to human life or property. The Director may take any legal action that is proper and necessary for the enforcement of this Chapter.
- B. If the Director has cause to believe that a dam is unsafe or a person is violating or has violated a provision of this Article or A.R.S. Title 45, Chapter 6, Article 1, the Director may issue a notice directing the owner to remedy the safety deficiency or correct the violation. The owner may appeal a notice issued under this subsection as an appealable agency action in accordance with A.R.S. Title 41, Chapter 6, Article 10. If the owner does not appeal within 30 days after the date on the notice, the notice becomes final and may be incorporated as a condition of any license based on the duration of the requirement.
- C. If the Director has cause to believe that a dam is unsafe or a person is violating or has violated a provision of this Article or A.R.S. Title 45, Chapter 6, Article 1, the Director may proceed under A.R.S. § 45-1221 to initiate a contested case under A.R.S. Title 41, Chapter 6, Article 10 by requesting an administrative hearing.
- D. Following a written decision by an administrative law judge, the Director shall issue a decision and order accepting, rejecting, or modifying the administrative law judge's decision. Upon expiration of time to appeal, the decision and order becomes final and may be incorporated as a condition of any license based on the duration of the requirement.
- E. If the Director has cause to believe that a dam is unsafe or a person is violating or has violated a provision of this Article or A.R.S. Title 45, Chapter 6, Article 1 the Director may commence an action in a court of appropriate jurisdiction if:
1. The violation is an emergency requiring appropriate steps to be taken without delay; or
 2. The Director has cause to believe that use of the administrative procedure would be ineffective or that delay

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would ensue and a deterioration in the safety of the dam would occur.

- F. If the Director commences an action it shall be brought in a court of appropriate jurisdiction in which:
1. The cause or some part of the cause arose; or
 2. The owner or person complained of has his or her place of business; or
 3. The owner or person complained of resides.
- G. A person determined to be in violation of this Article; A.R.S. Title 45, Chapter 6; a license; or order may be assessed a civil penalty not exceeding \$1,000 per day of violation. The Director may offer evidence relating to the amount of the penalty in accordance with A.R.S. § 45-1222.
- H. A violation of A.R.S. Title 45, Chapter 6, Article 1 regarding Supervision of Dams, Reservoirs, and Projects is a class 2 misdemeanor, in accordance with A.R.S. § 45-1216.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1224. Emergency Procedures

- A. The owner of a dam shall immediately notify the Department and responsible authorities in adjacent and downstream communities, including emergency management authorities, of a condition that may threaten the safety of the dam. The owner shall take necessary actions to protect human life and property, including action required under an emergency action plan or order issued under this Article.
1. A condition that may threaten the safety of a dam includes:
 - a. Sliding of upstream or downstream slopes or abutments contiguous to the dam;
 - b. Sudden subsidence of the top of the dam;
 - c. Longitudinal or transverse cracking of the top of the dam;
 - d. Unusual release of water from the downstream slope or face of the dam;
 - e. Other unusual conditions at the downstream slope of the dam;
 - f. Significant landslides in the reservoir area;
 - g. Increasing volume of seepage;
 - h. Cloudy seepage or recent deposits of soil at seepage exit points;
 - i. Sudden cracking or displacement of concrete in a concrete or masonry dam spillway or outlet works;
 - j. Loss of freeboard or dam cross section due to storm wave erosion;
 - k. Flood waters overtopping an embankment dam; or
 - l. Spillway backcutting that threatens evacuation of the reservoir.
 2. In case of an emergency, the owner shall telephone the Arizona Department of Public Safety's emergency numbers at (800) 411-2336 or (602) 223-2000.
- B. The Director shall issue an emergency approval to repair, alter, or remove an existing dam if the Director finds that immediate remedial action is necessary to alleviate an imminent threat to human life or property.
1. The emergency approval shall be provided in writing on a form developed for this purpose.
 2. The emergency approval may contain conditions the Director determines are appropriate to protect human life or property.
 3. The emergency approval is effective immediately for 30 days after notice is issued unless extended in writing by the Director. The Director shall also send notice to the county flood control district of the county in which the

dam is located, all municipalities within 5 miles downstream of the dam, and any additional persons identified in the emergency action plan.

4. The Director may institute legal or administrative proceedings that the Director deems appropriate for violations of the emergency approval or conditions of the emergency approval.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1225. Emergency Repairs

- A. The Director shall use monies from the dam repair fund, established under A.R.S. § 45-1212.01 to employ any remedial measure necessary to protect human life and property resulting from a condition that threatens the safety of a dam if the dam owner is unable or unwilling to take action and there is not sufficient time to issue and enforce an order.
- B. The deputy director may authorize an expenditure not to exceed \$10,000 from the dam repair fund for remedial measures under A.R.S. § 45-1212. The expenditure of any additional funds shall be approved by the Director.
- C. The Director shall hold a lien against all property of the owner in accordance with A.R.S. § 45-1212.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

R12-15-1226. Non-Emergency Repairs; Loans and Grants

- A. If the Director determines that a dam represents a threat to human life and property but is not in an emergency condition, the Director may use the dam repair fund, established under A.R.S. § 45-1212.01, as prescribed in this Article to defray the costs of repair.
- B. Monies from the dam repair fund may be used for loans and grants to owners as provided in A.R.S. §§ 45-1218 and 45-1219.
- C. To qualify for a loan or grant from the dam repair fund, a dam shall be classified as unsafe by the Director.
- D. The Director may authorize grant funds for all or part of the cost of engineering studies or construction needed to mitigate the threat to human life and property created by a dam.
 1. The Director and the grantee shall execute a financial assistance agreement that includes terms of financial assistance, the work progress, and payment schedule.
 2. The Director shall disburse grant funds in accordance with the financial assistance agreement.
 3. The Director shall establish a priority ranking for grants based on factors including the potential for failure of a dam, the number of lives at risk, and the capability of the owner to pay a portion of the costs.
- E. The Director may loan funds for engineering studies or for all or part of construction as prescribed in A.R.S. § 45-1218.
 1. The Director and the dam owner shall execute a loan repayment agreement. The loan repayment agreement shall be delivered to and held by the Department.
 2. The Director shall establish a priority ranking for loans based on factors including the potential for failure of a dam, the number of human lives at risk, and the capability of the owner to pay a portion of the costs.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

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**ARTICLE 13. WELL SPACING REQUIREMENTS;
REPLACEMENT WELLS IN APPROXIMATELY THE
SAME LOCATION****R12-15-1301. Definitions**

In addition to the definitions in A.R.S. §§ 45-101, 45-402, and 45-591, the following words and phrases in this Article shall have the following meanings, unless the context otherwise requires:

1. "Abandoned well" means a well for which a well abandonment completion report has been filed pursuant to R12-15-816(E) or for which a notification of abandonment has been filed pursuant to R12-15-816(K).
2. "Additional drawdown" means a lowering in the water levels surrounding a well that is the result of the operation of the well and that is not attributable to existing regional rates of decline or existing impacts from other wells.
3. "Applicant" means any of the following:
 - a. A person who has filed an application for a permit to construct a new well or a replacement well in a new location under A.R.S. § 45-599;
 - b. A person who has filed an application for a recovery well permit under A.R.S. § 45-834.01 for a new well as defined in A.R.S. § 45-591 or, except as provided in A.R.S. § 45-834.01(B)(2) or (3), an existing well as defined in A.R.S. § 45-591;
 - c. A person who has filed an application for approval to use a well to withdraw groundwater for transportation to an active management area under A.R.S. § 45-559; or
 - d. A person, other than a city, town, private water company, or irrigation district, who has filed an application for a water exchange permit under A.R.S. § 45-1041.
4. "ADEQ" means the Arizona Department of Environmental Quality.
5. "Contaminated groundwater" means groundwater that has been contaminated by a release of a hazardous substance, as defined in A.R.S. § 49-201, or a pollutant, as defined in A.R.S. § 49-201.
6. "DOD" means the United States Department of Defense.
7. "EPA" means the United States Environmental Protection Agency.
8. "LCR plateau groundwater transporter" means a person transporting groundwater from the Little Colorado River plateau groundwater basin to another groundwater basin pursuant to A.R.S. § 45-544(B)(1).
9. "Notice of water exchange participant" means a person, other than a city, town, private water company, or irrigation district, named as a participant in a water exchange in a notice of water exchange filed under A.R.S. § 45-1051.
10. "Original well" means the well replaced by a replacement well in approximately the same location, except that if the replacement well is the latest in a succession of two or more wells drilled as replacement wells in approximately the same location under R12-15-1308 or temporary rule R12-15-840 adopted by the director on March 11, 1983, "original well" means the well replaced by the first replacement well in approximately the same location.
11. "Remedial action site" means any of the following:
 - a. The site of a remedial action undertaken pursuant to the comprehensive environmental response, compensation, and liability act ("CERCLA") of 1980, as amended, 42 U.S.C. 9601, et seq., commonly known as a "superfund" site;
 - b. The site of a corrective action undertaken pursuant to A.R.S. Title 49, Chapter 6, commonly known as a leaking underground storage tank ("LUST") site;
 - c. The site of a voluntary remediation action undertaken pursuant to A.R.S. Title 49, Chapter 1, Article 5;
 - d. The site of a remedial action undertaken pursuant to A.R.S. Title 49, Chapter 2, Article 5, commonly known as a water quality assurance revolving fund ("WQARF") site;
 - e. The site of a remedial action undertaken pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901, et seq.; or
 - f. The site of remedial action undertaken pursuant to the Department of Defense Environmental Restoration Program, 10 U.S.C. 2701, et seq., commonly known as a "Department of Defense site" or a "DOD site."
12. "Replacement well" means a well drilled for the purpose of replacing another well.
13. "Replacement well in a new location" means a replacement well that does not qualify as a replacement well in approximately the same location under R12-15-1308.
14. "Replacement well in approximately the same location" means a replacement well that qualifies as a replacement well in approximately the same location under R12-15-1308.
15. "Well" has the meaning prescribed in A.R.S. § 45-402. An abandoned well is not a well.
16. "Well of record" means, with respect to an applicant, an LCR plateau groundwater transporter, or a notice of water exchange participant, any well or proposed well not owned by the applicant, LCR plateau groundwater transporter, or notice of water exchange participant, or proposed to be drilled by the applicant, LCR plateau groundwater transporter, or notice of water exchange participant, to which any of the following apply:
 - a. The well is an existing well as defined in A.R.S. § 45-591 and the owner or operator has registered the well with the Department, unless the current well information on file with the Department identifies the sole purpose or purposes of the well as one or more of the following:
 - i. Cathodic protection;
 - ii. Use as a sump pump or heat pump;
 - iii. Air sparging;
 - iv. Injection of liquids or gasses into the aquifer or vadose zone, including injection wells that are part of an underground storage facility permitted under A.R.S. Title 45, Chapter 3.1;
 - v. Monitoring water levels or water quality, including a piezometer well;
 - vi. Obtaining geophysical, mineralogical, or geo-technical data;
 - vii. Grounding;
 - viii. Soil vapor extraction;
 - ix. Electrical energy generation pursuant to a temporary permit for electrical energy generation issued under A.R.S. § 45-517;
 - x. Dewatering pursuant to a dewatering permit issued under A.R.S. § 45-513 or a temporary dewatering permit issued under A.R.S. § 45-518;
 - xi. Drainage pursuant to a drainage water withdrawal permit issued under A.R.S. § 45-519; or

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- xii. Hydrologic testing pursuant to a hydrologic testing permit issued under A.R.S. § 45-519.01.
 - b. The well is a new well as defined in A.R.S. § 45-591 for which a notice of intention to drill was not filed pursuant to A.R.S. § 45-596 and for which a permit was not issued pursuant to A.R.S. §§ 45-599 or 45-834.01, and the owner or operator has registered the well with the Department, unless the current well information on file with the Department identifies the sole purpose or purposes of the well as one or more of the purposes in subsection (16)(a)(i) through (xii) of this Section;
 - c. A filing has been made for the well pursuant to A.R.S. § 45-596(A) or (B), unless any of the following apply:
 - i. The filing has expired pursuant to A.R.S. § 45-596(E);
 - ii. The filing identifies the sole purpose or purposes of the well as one or more of the purposes in subsection (16)(a)(i) through (xii) of this Section; or
 - iii. The well is an exempt well and the director is prohibited by A.R.S. § 45-454(D)(4) from considering impacts on the well when determining whether to approve or reject a permit application filed under A.R.S. § 45-599.
 - d. An application for a permit to drill the well has been received by the Department pursuant to A.R.S. § 45-599, unless the application has been rejected after exhaustion of all administrative and judicial appeals or the permit issued pursuant to the application has been revoked or has expired according to its terms or for failure to complete the well in a timely manner pursuant to A.R.S. § 45-599(G);
 - e. An application for a permit pursuant to A.R.S. §§ 45-514 or 45-516 has been received by the Department pursuant to A.R.S. § 45-521, unless the application has been rejected after exhaustion of all administrative and judicial appeals or the permit issued pursuant to the application has been revoked or has expired according to its terms or for failure to complete the well before expiration of the drilling authority; or
 - f. An application for a permit to drill a recovery well has been received by the Department pursuant to A.R.S. § 45-834.01, unless the application has been rejected after exhaustion of all administrative and judicial appeals or the permit issued pursuant to the application has been revoked or has expired according to its terms or for failure to complete the well in a timely manner pursuant to A.R.S. § 45-834.01(F).
- B.** The director shall determine that the withdrawals from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells if any of the following apply:
1. Except as provided in subsection (D) of this Section, the director determines that the probable impact of the withdrawals from the proposed well or wells on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of operation of the proposed well or wells. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study delineating those areas surrounding the proposed well or wells in which the projected impacts on water levels will exceed 10 feet of additional drawdown after the first five years of operation of the proposed well or wells. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection;
 2. The director determines that the proposed well or wells will be located in an area of known land subsidence and the withdrawals from the proposed well or wells will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the withdrawals from the proposed well or wells on regional land subsidence. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection; or
 3. Except as provided in subsection (E) of this Section, the director determines, after consulting with ADEQ, that withdrawals from the proposed well or wells will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence as of the date of the receipt of the application, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study demonstrating whether the withdrawals from the proposed well or wells will have the effect described in this subsection. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

R12-15-1302. Well Spacing Requirements - Applications to Construct New Wells or Replacement Wells in New Locations Under A.R.S. § 45-599

- A.** The director shall not approve an application for a permit to construct a new well or a replacement well in a new location under A.R.S. § 45-599 if the director determines that the withdrawals from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B) of this Section.

- C.** In making a determination under subsection (B)(1), (B)(2), or (B)(3) of this Section, if the proposed well is a replacement well in a new location, the director shall take into account the collective effects of reducing or terminating withdrawals from the well being replaced combined with the proposed withdrawals from the replacement well if the applicant submits a hydrological study demonstrating those collective effects to the satisfaction of the director.
- D.** If the director determines under subsection (B)(1) of this Section that the probable impact of the withdrawals from the proposed well or wells on one or more wells of record in existence

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as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of operation of the proposed well or wells, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the withdrawals from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:

1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals from the proposed well or wells. The applicant shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- E. If the director determines that withdrawals from the proposed well or wells will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence as of the date of receipt of the application, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the withdrawals from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals from the proposed well or wells. The applicant shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- F. At any time before a final determination under this Section, the applicant may:
1. Amend the application to change the location of the proposed well or wells or the amount of groundwater to be withdrawn from the proposed well or wells to lessen the degree of impact on wells of record or regional land subsidence; or
 2. Agree to construct or operate the proposed well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. The director shall indicate in the well permit that compliance with the agreement is a condition of the well permit.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

R12-15-1303. Well Spacing Requirements - Applications for Recovery Well Permits Under A.R.S. § 45-834.01

- A. The director shall not approve an application for a recovery well permit under A.R.S. § 45-834.01 that is filed for a new well as defined in A.R.S. § 45-591 or, except as provided in

A.R.S. § 45-834.01(B)(2) or (3), for an existing well as defined in A.R.S. § 45-591, if the director determines that the recovery of stored water from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B) of this Section.

- B. The director shall determine that the recovery of stored water from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells if any of the following apply:
1. Except as provided in subsection (D) of this Section, the director determines that the probable impact of the recovery of stored water from the proposed well or wells on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of the recovery of stored water from the proposed well or wells. To assist the director in making a determination under this subsection, the applicant shall submit with the application a hydrological study delineating those areas surrounding the proposed well or wells in which the projected impacts on water levels will exceed 10 feet of additional drawdown after the first five years of the recovery of stored water from the proposed well or wells;
 2. The director determines that the proposed recovery well or wells will be located in an area of known land subsidence and the recovery of stored water from the proposed well or wells will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the recovery of stored water from the proposed recovery well or wells on regional land subsidence. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection; or
 3. Except as provided in subsection (E) of this Section, the director determines, after consulting with ADEQ, that the recovery of stored water from the proposed well or wells will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence as of the date of receipt of the application, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study demonstrating whether the recovery of stored water from the proposed well or wells will have the effect described in this subsection. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection.
- C. In making a determination under subsection (B)(1), (B)(2), or (B)(3) of this Section:
1. If the proposed recovery well is a replacement well in a new location, the director shall take into account the collective effects of reducing or terminating withdrawals from the well being replaced combined with the proposed

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recovery of stored water from the replacement well if the applicant submits a hydrological study demonstrating those collective effects to the satisfaction of the director.

2. If the proposed recovery well will be located within the area of impact, as defined in A.R.S. § 45-802.01, of an underground storage facility and the applicant will account for all of the water recovered from the well as water stored at the facility, the director shall take into account the effects of water storage at the facility on the proposed recovery of stored water from the recovery well if the applicant submits a hydrological study demonstrating those effects to the satisfaction of the director.
- D. If the director determines under subsection (B)(1) of this Section that the probable impact of the recovery of stored water from the proposed recovery well or wells on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of operation of the proposed well or wells, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the recovery of stored water from the proposed recovery well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the recovery of stored water from the proposed recovery well or wells. The applicant shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- E. If the director determines that the recovery of stored water from the proposed recovery well or wells will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence as of the date of receipt of the application, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the recovery of stored water from the proposed recovery well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the recovery of stored water from the proposed recovery well or wells. The applicant shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- F. At any time before a final determination under this Section, the applicant may:
1. Amend the application to change the location of the proposed recovery well or wells or the amount of stored water to be recovered from the proposed recovery well or wells to lessen the degree of impact on wells of record or regional land subsidence; or
 2. Agree to construct or operate the proposed recovery well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. The director shall indicate in the recovery well permit that compliance with the agreement is a condition of the recovery well permit.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

R12-15-1304. Well Spacing Requirements - Wells Withdrawing Groundwater From the Little Colorado River Plateau Groundwater Basin for Transportation to Another Groundwater Basin Under A.R.S. § 45-544(B)(1)

- A. An LCR plateau groundwater transporter may not withdraw groundwater from a well or wells drilled in the Little Colorado river plateau groundwater basin after January 1, 1991, except a replacement well in approximately the same location or a well drilled after that date pursuant to a notice of intention to drill filed on or before that date, for transportation away from the basin pursuant to A.R.S. § 45-544(B)(1) if the director determines that the withdrawals for that purpose will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B) of this Section.
- B. The director shall determine that the withdrawals of groundwater from the well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells if any of the following apply:
1. Except as provided in subsection (D) of this Section, the director determines that the probable impact of the withdrawals of groundwater from the well or wells on any well of record in existence when the withdrawals commenced or are proposed to commence will exceed 10 feet of additional drawdown after the first five years of the withdrawals. To assist the director in making a determination under this subsection, the LCR plateau groundwater transporter may submit to the director a hydrological study delineating those areas surrounding the LCR plateau groundwater transporter's well or wells in which the projected impacts on water levels will exceed 10 feet of additional drawdown after the first five years of the withdrawals. The director may require the LCR plateau groundwater transporter to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection;
 2. The director determines that the well or wells from which the groundwater is withdrawn are located in an area of known land subsidence and the withdrawals of groundwater will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the LCR plateau groundwater transporter may submit to the director a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the withdrawals on regional land subsidence. The director may require the LCR plateau groundwater transporter to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection; or

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3. Except as provided in subsection (E) of this Section, the director determines, after consulting with ADEQ, that the withdrawals of groundwater from the well or wells will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence when the groundwater withdrawals commenced or are proposed to commence, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the LCR plateau groundwater transporter may submit to the director a hydrological study demonstrating whether the withdrawals of groundwater will have the effect described in this subsection. The director may require the LCR plateau groundwater transporter to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection.
- C. In making a determination under subsection (B)(1), (B)(2), or (B)(3) of this Section, if a well from which the groundwater is withdrawn is a replacement well in a new location, the director shall take into account the collective effects of reducing or terminating withdrawals from the well being replaced combined with the withdrawals from the replacement well if the LCR plateau groundwater transporter submits a hydrological study demonstrating those collective effects to the satisfaction of the director.
- D. If the director determines under subsection (B)(1) of this Section that the probable impact of the withdrawals of groundwater from the well or wells on any well of record in existence when the withdrawals commenced or are proposed to commence will exceed 10 feet of additional drawdown after the first five years of the withdrawals, the director shall notify the LCR plateau groundwater transporter in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the withdrawals will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the LCR plateau groundwater transporter submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals. The LCR plateau groundwater transporter shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the LCR plateau groundwater transporter made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- E. If the director determines that the withdrawals of groundwater from the well or wells will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence when the groundwater withdrawals commenced or are proposed to commence, the director shall notify the LCR plateau groundwater transporter in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the withdrawals will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the LCR plateau groundwater transporter submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals. The LCR plateau groundwater transporter shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the LCR plateau groundwater transporter made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- F. At any time before a final determination under this Section, the LCR plateau groundwater transporter may agree to construct or operate the well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. Compliance with the agreement is a condition for the use of the well or wells to withdraw groundwater for transportation away from the basin pursuant to A.R.S. § 45-544(B)(1).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

R12-15-1305. Well Spacing Requirements - Applications to Use a Well to Withdraw Groundwater for Transportation to an Active Management Area Under A.R.S. § 45-559

- A. The director shall not approve an application to use a well or wells constructed after September 21, 1991, to withdraw groundwater for transportation to an active management area under A.R.S. § 45-559 if the director determines that the withdrawals for that purpose will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B) of this Section.
- B. The director shall determine that the withdrawals of groundwater will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells if any of the following apply:
1. Except as provided in subsection (C) of this Section, the director determines that the probable impact of the groundwater withdrawals on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of the withdrawals. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study delineating those areas surrounding the proposed well or wells in which the projected impacts of the groundwater withdrawals on water levels will exceed 10 feet of additional drawdown after the first five years of the withdrawals. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection;
 2. The director determines that the proposed well or wells will be located in an area of known land subsidence and the groundwater withdrawals will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the groundwater

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withdrawals on regional land subsidence. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection; or

3. Except as provided in subsection (D) of this Section, the director determines, after consulting with ADEQ, that the groundwater withdrawals will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence as of the date of receipt of the application, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study demonstrating whether the groundwater withdrawals will have the effect described in this subsection. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection.
- C.** If the director determines under subsection (B)(1) of this Section that the probable impact of the groundwater withdrawals on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of the withdrawals, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the groundwater withdrawals will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals. The applicant shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- D.** If the director determines that the groundwater withdrawals will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence as of the date of receipt of the application, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the groundwater withdrawals will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals. The applicant shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- E.** At any time before a final determination under this Section, the applicant may:
1. Amend the application to change the location of the proposed well or wells or the amount of groundwater to be withdrawn from the proposed well or wells to lessen the degree of impact on wells of record or regional land subsidence; or
 2. Agree to construct or operate the proposed well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. The director shall indicate in the permit that compliance with the agreement is a condition of the permit to use the well or wells to withdraw groundwater for transportation to an active management area under A.R.S. § 45-559.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

R12-15-1306. Well Spacing Requirements - Applications for Water Exchange Permits Under A.R.S. § 45-1041

- A.** The director shall not approve an application for a water exchange permit filed under A.R.S. § 45-1041 by a person other than a city, town, private water company or irrigation district if the director determines that any new or increased pumping by the applicant from a well or wells within an active management area pursuant to the water exchange will cause unreasonably increasing damage to surrounding land or other water users under subsection (B) of this Section.
- B.** The director shall determine that new or increased pumping by the applicant from a well or wells within an active management area will cause unreasonably increasing damage to surrounding land or other water users if any of the following apply:
1. Except as provided in subsection (C) of this Section, the director determines that the probable impact of the new or increased pumping on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of the pumping. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study delineating those areas surrounding the proposed well or wells in which the projected impacts of the new or increased pumping on water levels will exceed 10 feet of additional drawdown after the first five years of the pumping. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection;
 2. The director determines that the new or increased pumping will occur in an area of known land subsidence and the pumping will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the new or increased pumping on regional land subsidence. The director may require the applicant to submit such a hydrological study if the

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- director determines that the study will assist the director in making a determination under this subsection; or
3. Except as provided in subsection (D) of this Section, the director determines, after consulting with ADEQ, that the new or increased pumping will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence as of the date of receipt of the application, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the applicant may submit with the application a hydrological study demonstrating whether the new or increased pumping will have the effect described in this subsection. If the applicant does not submit such a hydrological study with the application, the director may require the applicant to submit the study if the director determines that the study will assist the director in making a determination under this subsection.
- C. If the director determines under subsection (B)(1) of this Section that the probable impact of the new or increased pumping on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of the pumping, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the new or increased pumping will cause unreasonably increasing damage to surrounding land or other water users under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
 1. A signed and notarized consent form from the owner of the well of record consenting to the new or increased pumping. The applicant shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
 - D. If the director determines that the new or increased pumping will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence as of the date of receipt of the application, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the new or increased pumping will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
 1. A signed and notarized consent form from the owner of the well of record consenting to the new or increased pumping. The applicant shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
 - E. At any time before a final determination under this Section, the applicant may:
 1. Amend the application to change the location of the proposed well or wells or the amount of the new or increase pumping to lessen the degree of impact on wells of record or regional land subsidence; or
 2. Agree to construct or operate the proposed well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. The director shall indicate in the water exchange permit that compliance with the agreement is a condition of the water exchange permit.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

R12-15-1307. Well Spacing Requirements - Notices of Water Exchange Under A.R.S. § 45-1051

- A. A notice of water exchange participant may not participate in a water exchange for which a notice is filed under A.R.S. § 45-1051 if the director determines that any new or increased pumping by the person from a well or wells within an active management area pursuant to the water exchange will cause unreasonably increasing damage to surrounding land or other water users under subsection (B) of this Section.
- B. The director shall determine that new or increased pumping from the well or wells in an active management area will cause unreasonably increasing damage to surrounding land or other water users if any of the following apply:
 1. Except as provided in subsection (C) of this Section, the director determines that the probable impact of the new or increased pumping on any well of record in existence when the pumping commenced or is proposed to commence will exceed 10 feet of additional drawdown after the first five years of the pumping. To assist the director in making a determination under this subsection, the notice of water exchange participant may submit to the director a hydrological study delineating those areas surrounding the notice of water exchange participant's well or wells in which the projected impacts of the new or increased pumping on water levels will exceed 10 feet of additional drawdown after the first five years of the pumping. The director may require the notice of water exchange participant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection;
 2. The director determines that the new or increased pumping is in an area of known land subsidence and the pumping will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the notice of water exchange participant may submit to the director a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the pumping on regional land subsidence. The director may require the notice of water exchange participant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection; or
 3. Except as provided in subsection (D) of this Section, the director determines, after consulting with ADEQ, that the

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new or increased pumping will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence when the pumping commenced or is proposed to commence, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the notice of water exchange participant may submit to the director a hydrological study demonstrating whether the new or increased pumping will have the effect described in this subsection. The director may require the notice of water exchange participant to submit such a study if the director determines that the study will assist the director in making a determination under this subsection.

- C. If the director determines under subsection (B)(1) of this Section that the probable impact of the new or increased pumping on any well of record in existence when the pumping commenced or is proposed to commence will exceed 10 feet of additional drawdown after the first five years of the pumping, the director shall notify the notice of water exchange participant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the new or increased pumping will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the notice of water exchange participant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the new or increased pumping. The notice of water exchange participant shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the notice of water exchange participant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- D. If the director determines that the new or increased pumping will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence when the pumping commenced or is proposed to commence, the director shall notify the notice of water exchange participant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the new or increased pumping will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the notice of water exchange participant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the new or increased pumping. The notice of water exchange participant shall use the consent form furnished by the director; or
 2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the notice of water exchange participant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- E. At any time before a final determination under this Section, the notice of water exchange participant may agree to construct or operate the well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. Compliance with the agreement is a condition for the use of the well to pump water for the water exchange.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

R12-15-1308. Replacement Wells in Approximately the Same Location

- A. For purposes of A.R.S. §§ 45-544, 45-596, and 45-597, a replacement well in approximately the same location is a proposed well to which all of the following apply:
1. The proposed well will be located no greater than 660 feet from the original well, and the location of the original well can be determined at the time the notice of intention to drill the proposed well is filed;
 2. Except as provided in subsections (A)(3) and (A)(4) of this Section, the proposed well will not annually withdraw an amount of water in excess of the maximum annual capacity of the original well. The director shall determine the maximum annual capacity of the original well by multiplying the maximum pump capacity of the original well in gallons per minute by 525,600, and then converting the result into acre-feet by dividing the result by 325,851 gallons. The director shall presume that the maximum pump capacity of the original well is the maximum pump capacity of the well in gallons per minute as shown in the Department's well registry records, except that:
 - a. If the director has reason to believe that the maximum pump capacity as shown in the Department's well registry records is inaccurate, or if the applicant submits evidence demonstrating that the maximum pump capacity as shown in the Department's well registry records is inaccurate, the director shall determine the maximum pump capacity by considering all available evidence, including the depth and diameter of the well and any evidence submitted by the applicant; or
 - b. If the Department's well registry records do not show the maximum pump capacity of the original well, the director shall not approve the proposed well as a replacement well in approximately the same location unless the applicant demonstrates to the director's satisfaction the maximum pump capacity of the original well;
 3. If a well permit was issued for the original well under A.R.S. § 45-599, the proposed well will not annually withdraw an amount of groundwater in excess of the maximum annual volume set forth in the well permit;
 4. If a recovery well permit was issued for the well to be replaced pursuant to A.R.S. § 45-834.01(B) and the permit sets forth a maximum annual volume of stored water that may be recovered from the well, the proposed well will not annually recover an amount of stored water in excess of the maximum annual volume set forth in the recovery well permit;

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5. If the well to be replaced has been physically abandoned in accordance with R12-15-816, a notice of intention to drill the proposed well is filed no later than 90 days after the well to be replaced was physically abandoned; and
 6. If the proposed well will be used to withdraw groundwater from the Little Colorado river plateau groundwater basin for transportation away from the basin pursuant to A.R.S. § 45-544(B)(1), one of the following applies:
 - a. The original well was drilled on or before January 1, 1991, or was drilled after that date pursuant to a notice of intention to drill that was on file with the Department on that date; or
 - b. The director previously determined that the withdrawal of groundwater from the original well for transportation away from the Little Colorado river plateau groundwater basin complies with R12-15-1304.
- B.** After a replacement well in approximately the same location is drilled, the replacement well may be operated in conjunction with the original well and any other wells that replaced the original well if the total annual withdrawals from all wells do not exceed the maximum amount allowed under subsection (A)(2), (A)(3), or (A)(4) of this Section, whichever applies.
- C.** A proposed well may be drilled as a replacement well in approximately the same location for more than one original well if the criteria in subsections (A)(1), (A)(5), and (A)(6) of this Section are met with respect to each original well and if the total annual withdrawals from the proposed well will not exceed the combined maximum annual amounts allowed for each original well under subsections (A)(2), (A)(3), or (A)(4) of this Section, whichever apply.
- D.** The director may include conditions in the approval of the notice of intention to drill the replacement well to ensure that the drilling and operation of the replacement well meets the requirements of this Section.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

TAB C

***General and Specific Statutes
Authorizing the Rule***

TAB C1

Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 1. Administration and General Provisions (Refs & Annos)

Article 3. Bodies of Water (Refs & Annos)

A.R.S. § 45-133

§ 45-133. Permit for interim water use; application; fee; surcharge on use of groundwater

Currentness

A. A person otherwise subject to the prohibitions of § 45-132 may use groundwater withdrawn pursuant to a type 1 or type 2 non-irrigation grandfathered right or water other than groundwater to fill or refill all or a portion of a body of water until sufficient effluent is available to fill or refill the body of water if the person applies for and obtains a permit for interim water use from the director. The director may issue a permit if the applicant demonstrates to the satisfaction of the director that all of the following apply:

1. The applicant otherwise has a right to use the water for the proposed purpose.
2. Sufficient effluent to fill or refill the body of water is not reasonably available but it has been demonstrated by clear and convincing evidence that sufficient effluent will be available no later than five years from the date the permit is issued.
3. The applicant has:
 - (a) Provided the necessary easements for an on-site treatment facility or access to an off-site treatment facility and for transportation of a permanent effluent supply to the body of water.
 - (b) Provided the site location for the facility and received approval for the facility from the department of environmental quality, if an on-site treatment facility will be used.
 - (c) Recorded the easements and any site location for an on-site treatment facility on the plat of record for the subdivision or development within which the body of water is located.
4. The body of water will store effluent that will be applied to grow landscaping plants on common areas or will be used for other beneficial purposes that would otherwise require use of surface water or groundwater.
5. The development or facility in which the body of water is located will include an effective water conservation program. The specific conservation requirements in the water conservation program shall be consistent with and shall not by this paragraph be required to be more strict than any specific conservation requirements in the applicable management plan.

6. The body of water otherwise complies with this article.

B. The director may issue a permit under this section for a period of up to three years. The director shall specify the amount of water that may be used each year pursuant to the permit. The director shall determine the duration of the permit and the amount of water that may be used pursuant to the permit on the basis of the estimated time until sufficient effluent will be available to fill and refill the body of water. The director shall monitor the use of water pursuant to the permit and shall modify the terms of the permit as necessary and terminate the permit if any of the conditions for issuance of the permit no longer apply. The director may renew a permit for no more than two successive one-year periods subject to the same criteria used in granting the original permit.

C. An application for a permit under this section shall be made on a form prescribed and furnished by the director. The director shall levy and collect a reasonable application fee to cover the costs of administrative services and expenses, which shall be remitted to the augmentation and conservation assistance fund described in § 45-615, paragraph 1.

D. The director shall levy and collect an annual surcharge from each holder of a permit for interim groundwater use. The amount of the surcharge shall be as follows:

1. For the first year following issuance of the permit, twenty-five dollars per acre-foot of groundwater withdrawn pursuant to the permit.

2. For the second year following issuance of the permit, fifty dollars per acre-foot of groundwater withdrawn pursuant to the permit.

3. For the third year following issuance of the permit, one hundred dollars per acre-foot of groundwater withdrawn pursuant to the permit.

4. For the fourth year following issuance of the permit, two hundred dollars per acre-foot of groundwater withdrawn pursuant to the permit.

5. For the fifth year following issuance of the permit, four hundred dollars per acre-foot of groundwater withdrawn pursuant to the permit.

E. All monies collected pursuant to subsection D of this section shall be remitted as follows:

1. Fifty per cent to the augmentation and conservation assistance fund described in § 45-615, paragraph 1, or if a water district is organized in the active management area under title 48, chapter 28,¹ to the general fund of the district.

2. Fifty per cent to the purchase and retirement fund described in § 45-615, paragraph 2.

F. If the holder of a permit for interim groundwater use fails to pay the surcharge levied pursuant to subsection D of this section by the date set by the director, the director shall revoke the permit.

Credits

Added by Laws 1987, Ch. 238, § 1. Amended by Laws 1990, Ch. 181, § 3; Laws 1990, Ch. 320, § 1; Laws 1992, Ch. 270, § 2; Laws 1992, Ch. 282, § 2.

Footnotes

1 Section 48-4801 et seq.

A. R. S. § 45-133, AZ ST § 45-133

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 1. Administration and General Provisions (Refs & Annos)

Article 7. Water Rights Registration (Refs & Annos)

A.R.S. § 45-183

§ 45-183. Contents of statement of claim; filing procedure; fee

Effective: July 29, 2010

[Currentness](#)

A. The statement of claim for each water right shall include the following:

1. The name and mailing address of the person filing the claim.
2. The name of the watercourse or water source from which the right to divert or make use of water is claimed.
3. The quantities of water and times of year use is claimed.
4. The legal description to the nearest forty-acre tract or by other appropriate description of the point or points of diversion and place of use of the waters.
5. The purpose and extent of use.
6. The approximate dates of first putting water to beneficial use for the various amounts and times claimed in paragraph 3 of this subsection.
7. The legal basis for the claim.
8. The sworn statement that the claim set forth is true and correct.

B. A statement of claim for a water right may be verified by the person claiming the right or may be verified by an authorized agent of such person.

C. Filing of a statement of claim shall be complete upon timely receipt by the department of a properly executed statement of claim and a five dollar filing fee for each such claim. The director shall deposit, pursuant to §§ 35-146 and 35-147, the fees received pursuant to this subsection in the water resources fund established by § 45-117.

Credits

Added as § 45-182 by Laws 1974, Ch. 122, § 2. Amended by Laws 1979, Ch. 139, § 29, eff. April 24, 1979; Laws 1980, 4th S.S., Ch. 1, § 59, eff. June 12, 1980. Renumbered as § 45-183 by Laws 1987, Ch. 2, § 1, eff. Feb. 27, 1987. Amended by [Laws 2010, Ch. 282, § 5](#).

A. R. S. § 45-183, AZ ST § 45-183

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 1. Administration and General Provisions (Refs & Annos)

Article 10. Registration of Stockponds (Refs & Annos)

A.R.S. § 45-273

§ 45-273. Claim of water right; penalty; fee

Effective: July 29, 2010

[Currentness](#)

A. A claim of water right for a stockpond and application for certification of such right shall be typewritten or legibly written in ink and filed in duplicate with the director upon a printed form furnished by the director. Each blank in the form shall be completed with the required information pursuant to instructions furnished by the director.

B. A claim which does not contain the required information or which is not accompanied by the required filing fee shall not be accepted, but shall be returned to the sender.

C. A separate claim shall be filed for each stockpond.

D. All claims shall be certified as true under penalty of perjury.

E. Each claim shall be accompanied by a filing fee of ten dollars.

F. The director shall deposit, pursuant to §§ 35-146 and 35-147, all fees received pursuant to this section in the water resources fund established by § 45-117.

Credits

Added as § 45-403 by Laws 1977, Ch. 69, § 2. Amended by Laws 1979, Ch. 139, § 71, eff. April 24, 1979. Renumbered as § 45-273 and amended by Laws 1980, 4th S.S., Ch. 1, §§ 74, 76, eff. June 12, 1980. Amended by [Laws 2010, Ch. 282, § 6](#).

A. R. S. § 45-273, AZ ST § 45-273

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 1. Administration and General Provisions (Refs & Annos)

Article 11. Exportation of Water from this State (Refs & Annos)

A.R.S. § 45-292

§ 45-292. Approval required to transport water out of state; application; fee; criteria; hearing

Effective: July 29, 2010

[Currentness](#)

A. A person may withdraw, or divert, and transport water from this state for a reasonable and beneficial use in another state if approved by the director pursuant to this article. A person shall not transport water from this state unless approved by the director, but this article does not apply to or prohibit transporting water from this state as required by interstate compact, federal law or international treaty.

B. An application to transport water from this state for use in another state shall be filed with the director, including a fee established by the director by rule. In establishing a fee by rule, the director may consider factors including the amount of time likely to be expended in processing the application, the amount of preexisting hydrological information available, if any, and the complexity of the application. The application shall include:

1. The name and address of the applicant's statutory agent in this state for service of process and other legal notices.
2. The legal basis for acquiring the water to be transported.
3. The purpose for which the water will be used.
4. The annual amount of water in acre-feet for which the application is made.
5. The proposed duration of the permit, not to exceed fifty years with an option to renew.
6. Studies satisfactory to the director of the probable hydrologic impact on the area from which the water is proposed to be transported.
7. Any other information which the director may require.

C. The director shall approve or reject the application. If the director approves the application, the director may prescribe terms and conditions for the approval. In determining whether to approve the application the director shall consider:

1. Whether the proposed action would be consistent with conservation of water, including any applicable management goals and plans.
2. Potential harm to the public welfare of the citizens of this state.
3. The supply of water to this state and current and future water demands in this state in general and the proposed source area in particular.
4. The feasibility of intrastate transportation of the water that is the subject of the application to alleviate water shortages in this state.
5. The availability of alternative sources of water in the other state.
6. The demands placed on the applicant's supply in the other state.
7. Whether the proposed action is prohibited or affected by other law, including §§ 45-165 and 45-172 and chapter 2 of this title.¹

D. This article does not authorize and the director shall not approve transporting from this state water allocated to this state by federal law or interstate compact.

E. An administrative hearing shall be held on the application, and the director shall give notice of the hearing by publication once a week for three consecutive weeks in a newspaper of general circulation in the county or counties from which the applicant proposes to transport the water. The hearing shall be conducted in the area from which water is proposed to be transported. Any interested person, including the department, may appear and give oral or written testimony on all issues involved.

F. Section 45-114, subsections A and B govern administrative proceedings, rehearing or review and judicial review of final decisions of the director under this section.

G. The director shall deposit, pursuant to §§ 35-146 and 35-147, all fees received under this section in the water resources fund established by § 45-117.

Credits

Added by Laws 1989, Ch. 168, § 3. Amended by Laws 1998, Ch. 57, § 79; Laws 2008, Ch. 153, § 1; Laws 2010, Ch. 282, § 7.

Footnotes

¹ Section 45-401 et seq.

A. R. S. § 45-292, AZ ST § 45-292

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 2. Groundwater Code (Refs & Annos)

Article 5. Grandfathered Groundwater Rights in Active Management Areas (Refs & Annos)

A.R.S. § 45-467

§ 45-467. Withdrawals in excess of irrigation grandfathered right; withdrawals less than irrigation grandfathered right; flexibility account; conveyances; variance; exemption

Effective: July 29, 2010

[Currentness](#)

A. A person who is entitled to use groundwater pursuant to an irrigation grandfathered right may:

1. In an active management area other than the Santa Cruz active management area, use groundwater in excess of the amount allowed by the right in an amount determined pursuant to subsection I of this section.
2. In the Santa Cruz active management area, use water, other than stored water, withdrawn from a well in excess of the farm's current irrigation water duty multiplied by the farm's water duty acres in an amount determined pursuant to subsection J of this section.
3. Use less than the amount allowed by the right in one accounting period and use the remaining amount allowed by the right in a succeeding accounting period or periods.

B. The director shall establish rules for the maintenance of a flexibility account for each farm in an active management area.

C. If a farm located in an active management area other than the Santa Cruz active management area is irrigated solely with groundwater, the director shall:

1. Register a debit to the account in any accounting period in which the amount of groundwater used for the irrigation of the irrigation acres in the farm is greater than the current irrigation water duty for the farm multiplied by the water duty acres in the farm.
2. Register a credit to the account in any accounting period in which the amount of groundwater used for the irrigation of the irrigation acres in the farm is less than the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

D. Except as provided in subsection G of this section, if a farm located in an active management area other than the Santa Cruz active management area is irrigated with a combination of surface water or effluent, or both, and groundwater, and uses of water by the farm from all sources for irrigation purposes, except for surface water, other than Colorado river water, released for

beneficial use from storage, diversion or distribution facilities to avoid spilling that would otherwise occur due to uncontrolled surface water inflows that exceed facility capacity, in the accounting period:

1. Exceed the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of groundwater used up to the amount of the excess, less any effluent used, shall be registered as a debit to the account.
2. Are less than the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water not used which would have been groundwater shall be registered as a credit to the account.

E. If a farm located in the Santa Cruz active management area is irrigated solely with water, other than stored water, withdrawn from a well, the director shall:

1. Register a debit to the account in any accounting period in which the amount of water, other than stored water, withdrawn from a well and used for the irrigation of the irrigation acres in the farm is greater than the current irrigation water duty for the farm multiplied by the water duty acres in the farm. The amount of the debit shall equal the amount of the excess.
2. Register a credit to the account in any accounting period in which the amount of water, other than stored water, withdrawn from a well and used for the irrigation of the irrigation acres in the farm is less than the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

F. If a farm located in the Santa Cruz active management area is irrigated with a combination of surface water not withdrawn from a well and effluent, or both, and water, other than stored water, withdrawn from a well, and uses of water by the farm from all sources for irrigation purposes in the accounting period:

1. Exceed the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water, other than stored water, withdrawn from a well and used on the farm up to the amount of the excess, less any effluent used that does not qualify as stored water, shall be registered as a debit to the account.
2. Are less than the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water not used which would have been water, other than stored water, withdrawn from a well shall be registered as a credit to the account.

G. Beginning January 1, 1995 through December 31, 1999, if a farm that qualifies under this subsection as determined pursuant to subsection H of this section is irrigated during an accounting period with a combination of surface water or effluent, or both, and groundwater, and uses of water by the farm from all sources for irrigation purposes, except for surface water, other than Colorado river water, released for beneficial use from storage, diversion or distribution facilities to avoid spilling that would otherwise occur due to uncontrolled surface water inflows that exceed facility capacity, in the accounting period:

1. Exceed the amount of the first intermediate irrigation water duty established for the farm pursuant to [§ 45-565](#) multiplied by the water duty acres in the farm, the amount of groundwater used up to the amount of the excess, less any effluent used, shall be registered as a debit to the account.

2. Are less than the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water not used that would have been groundwater shall be registered as a credit to the account.

3. Exceed or equal the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm but are less than or equal to the amount of the first intermediate irrigation water duty established for the farm pursuant to § 45-565 multiplied by the water duty acres in the farm, no credit or debit may be registered to the account.

H. A farm qualifies under subsection G of this section if it is located in an active management area other than the Santa Cruz active management area and either of the following applies:

1. The amount of groundwater used to irrigate the farm during the accounting period does not exceed an amount computed by multiplying the water duty acres in the farm by one and one-half acre-feet of water, except that an electrical district organized under title 48, chapter 12¹ or an irrigation district may apply to the director no later than March 31 of a year for an increase in that amount for that year for the farms located within the boundaries of the district that do not qualify under paragraph 2 of this subsection. The director shall grant the increase if the district demonstrates that it holds a contract for the purchase of hydroelectric power marketed by the western area power administration or the Arizona power authority and that the use of groundwater during that year by all of the farms within the boundaries of the district that do not qualify under paragraph 2 of this subsection in an amount that does not exceed one and one-half acre-feet of water multiplied by the total number of water duty acres of those farms would result in the district being unable to use its hydroelectric power capacity entitlement under the contract. If the director grants the increase, the director shall compute the maximum amount of groundwater that may be used by a farm within the district during the year in order to qualify under subsection G of this section as follows:

(a) Determine the total amount of groundwater that must be used during the year by all farms in the district that do not qualify under paragraph 2 of this subsection to enable the district to efficiently use its hydroelectric kilowatt demand allocation.

(b) Divide the amount determined in subdivision (a) of this paragraph by the total number of water duty acres of the farms in the district that do not qualify under paragraph 2 of this subsection.

(c) Multiply the farm's water duty acres by the quotient in subdivision (b) of this paragraph or two acre-feet of water, whichever is less.

2. The farm is irrigated with water supplied by an irrigation district that owns or leases and operates all of the wells used to withdraw groundwater for irrigation use within the district, and the total amount of groundwater supplied by the irrigation district for irrigation use during the year does not exceed an amount computed by multiplying the total number of water duty acres within the irrigation district by one and one-half acre-feet of water, except that the irrigation district or an electrical district organized under title 48, chapter 12 may apply to the director no later than March 31 of a year for an increase in that amount for that year for the farms located within the boundaries of the irrigation district. The director shall grant the increase if the irrigation district or electrical district demonstrates that it holds a contract for the purchase of hydroelectric power marketed by the western area power administration or the Arizona power authority and that the irrigation district or electrical district would be unable to use its hydroelectric power capacity entitlement under the contract if the total amount of groundwater supplied by the irrigation district for irrigation use during the year does not exceed an amount computed by multiplying the total number of water duty acres within the irrigation district by one and one-half acre-feet of water. If the director grants the increase, the maximum amount of groundwater that may be supplied by the irrigation district for irrigation use during the year in order for

the farms located within the boundaries of the irrigation district to qualify under subsection G of this section shall be the lesser of the following:

(a) The amount of groundwater that the director determines must be supplied by the irrigation district for irrigation use during the year to enable the irrigation district or electrical district to efficiently use its hydroelectric kilowatt demand allocation.

(b) An amount of groundwater computed by multiplying the total number of water duty acres within the irrigation district by two acre-feet of water.

I. The maximum excess amount of groundwater that may be used pursuant to this section is equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm. An owner of an irrigation grandfathered right and the person using groundwater pursuant to the right violate this section if the flexibility account for the farm in which the irrigation acres to which the right is appurtenant are located is in arrears at any time in excess of this amount. Groundwater equal to the credit balance in the flexibility account may be used at any time.

J. In the Santa Cruz active management area, the maximum excess amount of water, other than stored water, withdrawn from a well that may be used pursuant to this section is equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm. A person using water, other than stored water, withdrawn from a well for an irrigation use in the Santa Cruz active management area violates this section if the flexibility account for the farm is in arrears at any time in excess of this amount. Water, other than stored water, withdrawn from a well in an amount equal to the credit balance in the flexibility account may be used at any time, except that if the water is surface water, the amount that may be used shall not exceed the amount allowed by the decreed or appropriative surface water right.

K. If an irrigation grandfathered right is conveyed for an irrigation use pursuant to § 45-472, each acre conveyed shall carry with it a proportional share of any debits or credits in the flexibility account for the farm. If an irrigation grandfathered right is conveyed for a non-irrigation use pursuant to § 45-472, each acre conveyed shall carry with it a proportional share of any debits in the flexibility account for the farm.

L. A person in an active management area other than the Santa Cruz active management area who is using groundwater pursuant to an irrigation grandfathered right and who is operating under a variance to the irrigation water duty pursuant to § 45-574:

1. May accumulate a maximum debit in an amount equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

2. Shall accumulate credits pursuant to subsection C or D of this section.

M. A person in the Santa Cruz active management area who is using water, other than stored water, withdrawn from a well for an irrigation use and who is operating under a variance to the irrigation water duty pursuant to § 45-574:

1. May accumulate a maximum debit in an amount equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

2. Shall accumulate credits pursuant to subsection E or F of this section.

N. In an active management area other than the Santa Cruz active management area, a person using groundwater pursuant to an irrigation grandfathered right shall file a report with the director each year which shall include the amount of groundwater used pursuant to the irrigation grandfathered right and such other information as the director shall require. In the Santa Cruz active management area, a person using water, other than stored water, withdrawn from a well for irrigation use shall file a report with the director each year which shall include the amount of water used on the farm and such other information as the director shall require. The director may consolidate the reporting requirements of this section with the reporting requirements of § 45-632. A person using groundwater pursuant to an irrigation grandfathered right that is regulated under a best management practices program adopted by the director, pursuant to § 45-566.02, subsection F, § 45-567.02, subsection G or § 45-568.02, subsection F, is exempt from the reporting requirements of this subsection for groundwater used pursuant to the irrigation grandfathered right, except that the person shall file a report with the director each year that includes the information required by the best management practices program. A person using groundwater pursuant to an irrigation grandfathered right that is appurtenant to ten or fewer irrigation acres is exempt from the reporting requirements of this subsection for groundwater used pursuant to the irrigation grandfathered right unless one of the following applies:

1. The land to which the irrigation grandfathered right is appurtenant is part of an integrated farming operation.

2. Groundwater is withdrawn from the land to which the irrigation grandfathered right is appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter² or a grandfathered groundwater right other than an irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to § 45-563.02.

3. Groundwater is withdrawn from land that is both owned by the owner of the irrigation grandfathered right and contiguous to the land to which the irrigation grandfathered right is appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter or a grandfathered groundwater right other than an irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to § 45-563.02.

O. A person who owns an irrigation grandfathered right that is appurtenant to irrigation acres that were capable of being irrigated as of December 31 of the preceding calendar year and whose farm has registered a credit balance to its flexibility account may convey or sell all or a portion of the credit balance to any person, including the conveyor or seller of the credit balance, who owns another irrigation grandfathered right or who uses groundwater pursuant to another irrigation grandfathered right, except that:

1. A credit balance that is registered to the flexibility account of a farm located within an irrigation district may be transferred only to:

(a) The flexibility account of a farm that is located within the same irrigation district.

(b) The flexibility account of a farm that is located outside of that irrigation district if both farms are located in the same groundwater subbasin and the same active management area and if the farm to which the credits are conveyed is owned or leased by the owner or lessee of the farm from which the credits are conveyed.

2. A credit balance that is registered to the flexibility account of a farm that is not located within an irrigation district may be transferred only to:

(a) The flexibility account of a farm that is located within the same groundwater subbasin and the same active management area and that is not located within an irrigation district.

(b) The flexibility account of a farm that is located within the same groundwater subbasin and the same active management area and that is located within an irrigation district if the farm to which the credits are conveyed is owned or leased by the owner or lessee of the farm from which the credits are conveyed.

3. A credit registered to a flexibility account for a year may be conveyed or sold only during the second calendar year following the year for which the credit was registered.

4. A person who owns a farm that includes protected farmland may not sell or otherwise convey any credit registered to the farm's flexibility account.

P. A person who sells or conveys all or a portion of a credit balance pursuant to subsection O of this section, and the person to whom the credit balance is sold or conveyed, shall notify the director of the sale or conveyance within thirty days after the sale or conveyance on a form prescribed and furnished by the director.

Q. The director shall establish and collect a reasonable fee from the conveyee or purchaser of a credit balance pursuant to subsection O of this section to cover the cost of administrative services and other expenses associated with registering a deduction to the conveyor's or seller's flexibility account balance and an addition to the conveyee's or purchaser's flexibility account balance pursuant to subsection R of this section. The conveyee or purchaser shall pay the fee at the time the notice required pursuant to subsection P of this section is given to the director. The director shall deposit, pursuant to §§ 35-146 and 35-147, all fees received under this subsection in the water resources fund established by § 45-117.

R. A sale or conveyance of all or part of a credit balance under subsection O of this section is effective only if the director receives the notice required by subsection P of this section and the fee required by subsection Q of this section within thirty days after the sale or conveyance. After receiving the notice and the fee, the director shall register a deduction of the credit amount conveyed or sold from the conveyor's or seller's flexibility account balance and the corresponding addition to the conveyee's or purchaser's flexibility account balance. The deduction and addition to the flexibility account balances are effective as of the date of the sale or conveyance.

S. The director shall report to the president of the senate and the speaker of the house of representatives no later than June 30, 2002 on the effect of conveyances of flexibility account credit balances pursuant to subsection O, paragraph 2 of this section on the achievement of the management goal of each active management area as stated in § 45-562 and on the conservation program included in the management plan for each active management area as provided in § 45-565, and any recommended changes to subsection O, paragraph 2 of this section.

T. Except for subsection N of this section, this section does not apply to:

1. A farm if the person entitled to use groundwater on the farm is exempt from the irrigation water duties established for the farm as provided in § 45-563.02, subsection A or if the director may not establish irrigation water duties for the farm as provided in § 45-563.02, subsection B.

2. A farm if water use within the farm is regulated under a best management practices program adopted by the director pursuant to § 45-566.02, subsection F, § 45-567.02, subsection G or § 45-568.02, subsection F.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1990, Ch. 71, § 2; Laws 1991, Ch. 67, § 3; Laws 1991, Ch. 112, § 3; Laws 1992, Ch. 57, § 1, eff. April 29, 1992; Laws 1992, Ch. 97, § 1; Laws 1992, Ch. 183, § 1; Laws 1992, Ch. 319, § 47; Laws 1993, Ch. 107, § 1; Laws 1994, Ch. 249, § 4; Laws 1994, Ch. 296, § 11, eff. April 25, 1994; Laws 1995, Ch. 258, § 5; Laws 1998, Ch. 47, § 3; Laws 1999, Ch. 187, § 3; Laws 2002, Ch. 5, § 3; Laws 2003, Ch. 98, § 3; Laws 2010, Ch. 282, § 9.

Footnotes

1 Section 48-1701 et seq.

2 Section 45-491 et seq.

A. R. S. § 45-467, AZ ST § 45-467

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 2. Groundwater Code (Refs & Annos)

Article 5. Grandfathered Groundwater Rights in Active Management Areas (Refs & Annos)

A.R.S. § 45-476.01

§ 45-476.01. Late applications for certificates of grandfathered rights; definition

Effective: July 29, 2010

[Currentness](#)

A. A person who claims the right to withdraw or receive and use groundwater in an initial active management area pursuant to a grandfathered right and who failed to file an application on or before July 1, 1983 as required by law may file a late application for a certificate of grandfathered right pursuant to this section on a form provided by the department.

B. A late application for a certificate of grandfathered right shall include the information required in [§ 45-476](#). The fee for filing a late application is one hundred dollars. The director shall deposit, pursuant to [§§ 35-146](#) and [35-147](#), all fees received under this subsection in the water resources fund established by [§ 45-117](#).

C. The director shall review each late application for a certificate of grandfathered right submitted pursuant to this section and may conduct such investigations as the director deems necessary to determine whether the information contained in the application is correct and sufficient to issue a certificate.

D. A person who files a late application for a certificate of grandfathered right pursuant to this section has the burden of establishing by clear and convincing evidence that the necessary statutory requirements for issuing the certificate of grandfathered right have been met.

E. The director's decision on a late application for a certificate of grandfathered right submitted pursuant to this section, is subject to administrative review. A person aggrieved by the director's decision is not entitled to an administrative hearing. A final decision of the director approving or denying the application is not subject to judicial review.

F. If the director, after reviewing a late application, determines that the statutory requirements for issuing the certificate of grandfathered right have been met, the director shall issue a certificate of grandfathered right to the applicant pursuant to [§ 45-481](#). A holder of a certificate of grandfathered right issued pursuant to this section has the same rights and duties as all other holders of certificates of grandfathered rights.

G. Notwithstanding [§ 41-1092.02, subsection D](#), this section is not subject to title 41, chapter 6, article 10.¹

H. For the purposes of this article, “late application for a certificate of grandfathered right” means an application that is filed after July 1, 1983 for a certificate of grandfathered right to withdraw or receive and use groundwater in an initial active management area.

Credits

Added by Laws 1987, Ch. 347, § 4, eff. May 22, 1987. Amended by [Laws 1998, Ch. 57, § 89](#); [Laws 2010, Ch. 282, § 10](#).

Footnotes

[1](#) Section 41-1092 et seq.

A. R. S. § 45-476.01, AZ ST § 45-476.01

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Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 10. Wells (Refs & Annos)

A.R.S. § 45-595

§ 45-595. Well construction requirements; licensing of well drillers

Effective: July 29, 2010

[Currentness](#)

A. New well construction, including modifications of wells, shall be performed under the direct and personal supervision of a well driller who holds a well driller's license pursuant to subsection B of this section.

B. A person who intends to construct or modify one or more wells in this state shall file an application for a well driller's license with the director. The application shall include:

1. The name, mailing address and place of business of the applicant.
2. The applicant's experience and qualifications.
3. Such other information as the director may require.

C. The director, by rule, shall establish qualifications and a reasonable fee of not more than fifty dollars for licenses for well drillers and establish procedures for the evaluation and licensing of applicants. A nontransferable well driller's license shall be issued if the director finds that the applicant meets the qualifications established pursuant to this subsection. The director may revoke a well driller's license for good cause.

D. A person who drills or modifies an exempt well on land owned by that person shall first obtain a single well license from the department. The department shall issue the license to drill the well according to standard small well construction standards. No fee may be charged for a single well license.

E. The director shall deposit, pursuant to §§ 35-146 and 35-147, all fees received under this section in the water resources fund established by § 45-117.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1981, Ch. 192, § 19, eff. April 22, 1981; Laws 1981, Ch. 221, § 34, eff. July 1, 1981; Laws 1982, Ch. 292, § 36; [Laws 2010, Ch. 282, § 11](#).

A. R. S. § 45-595, AZ ST § 45-595

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Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 10. Wells (Refs & Annos)

A.R.S. § 45-596

§ 45-596. Notice of intention to drill; fee

Effective: July 29, 2010

[Currentness](#)

A. In an area not subject to active management, a person may not drill or cause to be drilled any well or deepen an existing well without first filing notice of intention to drill pursuant to subsection C of this section or obtaining a permit pursuant to [§ 45-834.01](#). Only one notice of intention to drill is required for all wells that are drilled by or for the same person to obtain geophysical, mineralogical or geotechnical data within a single section of land.

B. In an active management area, a person may not drill or cause to be drilled an exempt well, a replacement well in approximately the same location or any other well for which a permit is not required under this article, article 7 of this chapter¹ or [§ 45-834.01](#) or deepen an existing well without first filing a notice of intention to drill pursuant to subsection C of this section. Only one notice of intention to drill is required for all wells that are drilled by or for the same person to obtain geophysical, mineralogical or geotechnical data within a single section of land.

C. A notice of intention to drill shall be filed with the director on a form that is prescribed and furnished by the director and that shall include:

1. The name and mailing address of the person filing the notice.
2. The legal description of the land on which the well is proposed to be drilled and the name and mailing address of the owner of the land.
3. The legal description of the location of the well on the land.
4. The depth, diameter and type of casing of the proposed well.
5. Such legal description of the land on which the groundwater is proposed to be used as may be required by the director to administer this chapter.
6. When construction is to begin.

7. The proposed uses to which the groundwater will be applied.
8. The name and well driller's license number of the well driller who is to construct the well.
9. The design pumping capacity of the well.
10. If for a replacement well, the maximum capacity of the original well and the distance of the replacement well from the original well.
11. Proof that the director determines to be satisfactory that the person proposing to construct the well holds a valid license issued by the registrar of contractors pursuant to title 32, chapter 10² and that the license is of the type necessary to construct the well described in the notice of intention to drill. If the proposed well driller does not hold a valid license, the director may accept proof that the proposed well driller is exempt from licensing as prescribed by § 32-1121.
12. If any water from the proposed well will be used for domestic purposes as defined in § 45-454, evidence of compliance with the requirements of subsection F of this section.
13. If for a second exempt well at the same location for the same use pursuant to § 45-454, subsection I, proof that the requirements of that subsection are met.
14. If for a well to obtain geophysical, mineralogical or geotechnical data within a single section of land, the information prescribed by this subsection for each well that will be included in that section of land before each well is drilled.
15. Such other information as the director may require.

D. On receiving a notice of intention to drill and the fee required by subsection L of this section, the director shall endorse on the notice the date of its receipt. The director shall then determine whether all information that is required has been submitted and whether the requirements of subsection C, paragraphs 11 and 12 and subsection I of this section have been met. If so, within fifteen days of receipt of the notice, or such longer time as provided in subsection J of this section, the director shall record the notice, mail a drilling card that authorizes the drilling of the well to the well driller identified in the notice and mail written notice of the issuance of the drilling card to the person filing the notice of intention to drill at the address stated in the notice. On receipt of the drilling card, the well driller may proceed to drill or deepen the well as described in the notice of intention to drill. If the director determines that the required information has not been submitted or that the requirements of subsection C, paragraphs 11 and 12 or subsection I of this section have not been met, the director shall mail a statement of the determination to the person giving the notice to the address stated in the notice, and the person giving the notice may not proceed to drill or deepen the well.

E. The well shall be completed within one year after the date of the notice unless the director approves a longer period of time pursuant to this subsection. If the well is not completed within one year or within the time approved by the director pursuant to this subsection, the person shall file a new notice before proceeding with further construction. At the time the drilling card for the well is issued, the director may provide for and approve a completion period that is greater than one year but not to exceed five years from the date of the notice if both of the following apply:

1. The proposed well is a nonexempt well within an active management area and qualifies as a replacement well in approximately the same location as prescribed in rules adopted by the director pursuant to § 45-597.

2. The applicant has submitted evidence that demonstrates one of the following:

(a) This state or a political subdivision of this state has acquired or has begun a condemnation action to acquire the land on which the original well is located.

(b) The original well has been rendered inoperable due to flooding, subsidence or other extraordinary physical circumstances that are beyond the control of the well owner.

F. If any water from a proposed well will be used for domestic purposes as defined in § 45-454 on a parcel of land of five or fewer acres, the applicant shall submit a well site plan of the property with the notice of intention to drill. The site plan shall:

1. Include the county assessor's parcel identification number.

2. Show the proposed well location and the location of any septic tank or sewer system that is either located on the property or within one hundred feet of the proposed well site.

3. Show written approval by the county health authority that controls the installation of septic tanks or sewer systems in the county, or by the local health authority in areas where the authority to control installation of septic tanks or sewer systems has been delegated to a local authority. In areas where there is no local or county authority that controls the installation of septic tanks or sewer systems, the applicant shall apply for approval directly to the department of water resources.

G. Before approving a well site plan submitted pursuant to subsection F of this section, the county or local health authority or the department of water resources, as applicable, pursuant to subsection F of this section, shall review the well site plan and determine whether the proposed well location complies with applicable local laws, ordinances and regulations and any laws or rules adopted under this title and title 49 regarding the placement of wells and the proximity of wells to septic tanks or sewer systems. If the health authority or the department of water resources, as applicable, pursuant to subsection F of this section, finds that the proposed well location complies with this title and title 49³ and with local requirements, it shall endorse the site plan and the proposed well placement in a manner indicating approval. On endorsement, the director of water resources shall approve the construction of the well, if all remaining requirements have been met. If the health authority is unable to determine whether the proposed well location complies with this title and title 49 and local requirements, it shall indicate this on the site plan and the decision to approve or reject the proposed construction rests with the director of water resources. If parcel size, geology or location of improvements on the property prevents the well from being drilled in accordance with this title and title 49 or local requirements, the property owner may apply for a variance. The property owner shall make the request for a variance to the county or local authority if a county or local law, ordinance or regulation prevents the proposed construction. If a law or rule adopted under this title or title 49 prevents the proposed construction, the property owner shall make the request for a variance directly to the department of water resources. The request for a variance shall be in the form and shall contain the information that the department of water resources, county or local authority may require. The department of water resources, or the county or local authority whose law, ordinance or regulation prevents the proposed construction, may expressly require

that a particular variance shall include certification by a registered professional engineer or geologist that the location of the well will not pose a health hazard to the applicant or surrounding property or inhabitants. If all necessary variances are obtained, the director of water resources shall approve the construction of the well if all remaining requirements have been met.

H. If a well that was originally drilled as an exploration well, a monitor well or a piezometer well or for any use other than domestic use is later proposed to be converted to use for domestic purposes as defined in § 45-454, the well owner shall file a notice of intention to drill and shall comply with this section before the well is converted and any water from that well is used for domestic purposes.

I. Except as prescribed in subsection K of this section, the director shall not approve the drilling of the well if the director determines that the well will likely cause the migration of contaminated groundwater from a remedial action site to another well, resulting in unreasonably increasing damage to the owner of the well or persons using water from the well. In making this determination, the director of water resources shall follow the applicable criteria in the rules adopted by the director of water resources pursuant to § 45-598, subsection A and shall consult with the director of environmental quality. For the purposes of this subsection:

1. “Contaminated groundwater” means groundwater that has been contaminated by a release of a hazardous substance, as defined in § 49-201, or a pollutant, as defined in § 49-201.

2. “Remedial action site” means any of the following:

(a) The site of a remedial action undertaken pursuant to the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code §§ 9601 through 9657), commonly known as “superfund”.

(b) The site of a corrective action undertaken pursuant to title 49, chapter 6.⁴

(c) The site of a voluntary remediation action undertaken pursuant to title 49, chapter 1, article 5.⁵

(d) The site of a remedial action undertaken pursuant to title 49, chapter 2, article 5, including mitigation of a nonhazardous release undertaken pursuant to an order issued by the department of environmental quality pursuant to § 49-286.

(e) The site of a remedial action undertaken pursuant to the resource conservation and recovery act of 1976 (P.L. 94-580; 90 Stat. 2795; 42 United States Code §§ 6901 through 6992).

(f) The site of remedial action undertaken pursuant to the department of defense environmental restoration program (P.L. 99-499; 100 Stat. 1719; 10 United States Code § 2701).

J. Except as prescribed in subsection K of this section, the director shall approve or deny the drilling of a well within forty-five days after receipt of the notice of intention to drill if one of the following applies:

1. The proposed well is located within a remedial action site.

2. The proposed well is located within one mile of any of the following remedial action sites:
 - (a) A remedial action undertaken pursuant to title 49, chapter 2, article 5⁶, including mitigation of a nonhazardous release undertaken pursuant to an order issued by the department of environmental quality pursuant to § 49-286.

 - (b) A remedial action undertaken pursuant to the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code §§ 9601 through 9657), commonly known as “superfund”.

 - (c) A remedial action undertaken pursuant to the department of defense environmental restoration program (P.L. 99-499; 100 Stat. 1719; 10 United States Code § 2701).

3. The proposed well is located within one-half mile of either of the following remedial action sites:

- (a) A remedial action undertaken pursuant to title 49, chapter 1, article 5.

- (b) A remedial action undertaken pursuant to the resource conservation and recovery act of 1976 (P.L. 94-580; 90 Stat. 2795; 42 United States Code §§ 6901 through 6992).

4. The proposed well is located within five hundred feet of the site of a corrective action undertaken pursuant to title 49, chapter 6.

K. Subsections I and J of this section do not apply to the deepening of a well or to the drilling of a replacement well in approximately the same location.

L. A notice of intention to drill filed under this section shall be accompanied by a filing fee of one hundred fifty dollars, except that a notice filed for a proposed well that will not be located within an active management area or an irrigation nonexpansion area, that will be used solely for domestic purposes as defined in § 45-454 and that will have a pump with a maximum capacity of not more than thirty-five gallons per minute shall be accompanied by a filing fee of one hundred dollars. The director shall deposit, pursuant to §§ 35-146 and 35-147, all fees collected pursuant to this subsection in the well administration and enforcement fund established by § 45-606.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1985, Ch. 323, § 19, eff. May 10, 1985; Laws 1986, Ch. 289, § 8; Laws 1988, Ch. 104, § 17, eff. May 24, 1988; Laws 1990, Ch. 176, § 3; Laws 1991, Ch. 19, § 6; Laws 1992, Ch. 270, § 5; Laws 1992, Ch. 280, § 1; Laws 1993, Ch. 107, § 6; Laws 1994, Ch. 291, § 26; Laws 1994, Ch. 300, § 1; Laws 2000, Ch. 85, § 2; Laws 2002, Ch. 133, § 4; Laws 2003, Ch. 165, § 1, eff. May 7, 2003; Laws 2005, Ch. 254, § 2; Laws 2006, Ch. 56, § 1; Laws 2007, Ch. 209, § 1; Laws 2010, Ch. 309, § 13.

Notes of Decisions (1)

Footnotes

- 1 Section 45-511 et seq.
- 2 Section 32-1101 et seq.
- 3 Sections 45-101 et seq., 49-101 et seq.
- 4 Section 49-1001 et seq.
- 5 Section 49-171 et seq.
- 6 Section 49-281 et seq.

A. R. S. § 45-596, AZ ST § 45-596

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Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 10. Wells (Refs & Annos)

A.R.S. § 45-599

§ 45-599. Permit application; contents; correction
of defective application; issuance of permit; fee

Currentness

A. An application for a permit to construct a new well or replacement well in a new location shall be made on a form that is prescribed and furnished by the director and that includes:

1. The name and mailing address of the applicant.
2. The legal description of the land upon which the new well is proposed to be constructed and the name and mailing address of the owner of the land.
3. The legal description of the proposed location of the new well on the land.
4. If for a replacement well, the legal description of the land upon which the original well is located, the name and mailing address of the owner of the land, the legal description of the location of the original well on the land, the depth and diameter of the original well and evidence of proper abandonment.
5. The depth, diameter and type of casing of the new well.
6. Such legal description of the land upon which the groundwater is proposed to be used as may be required by the director to administer this chapter.
7. When construction is to begin.
8. The proposed use of the groundwater to be withdrawn.
9. The design pumping capacity of the new well.
10. The name and well driller's license number of the well driller who is to construct the well.

11. The estimated time required to complete the well, if more than one year from the date of receipt of the permit.

12. Such other information including any maps, drawings and data as the director may require.

B. Upon receipt of a permit application and the fee required by subsection J of this section, the director shall endorse on the application the date of its receipt. If the application is incorrect or incomplete, the director may request additional information from the applicant. The director may conduct independent investigations as may be necessary to determine whether the application should be approved or rejected.

C. The director shall approve an application for a permit for a new well or a replacement well in a new location if the proposed well complies with the rules adopted pursuant to [§ 45-598, subsection A](#) and, if the proposed well is in the Santa Cruz active management area, if the location of the proposed well is consistent with the management plan for the active management area.

D. Except as provided in subsection E of this section, within sixty days of receipt of a complete and correct application and the fee required by subsection J of this section, the director shall approve or reject the application and mail notice of the action to the applicant.

E. If the director determines that an administrative hearing should be held before approving or rejecting an application, the director shall notify the applicant of the date of the hearing within sixty days of receipt of the complete and correct application and the fee required by subsection J of this section.

F. If at the request of the applicant the director determines that an emergency exists, the director shall expedite all decisions under this section.

G. If the application is approved, the director shall issue a permit and the applicant may proceed to construct the well. If the application is rejected, the applicant shall not proceed with construction of the well. The well shall be completed within one year of receipt of the permit, unless the director in granting the permit approves a longer period to complete the well. If the well is not completed within one year or the longer period approved by the director, the applicant shall file a new application before proceeding with construction.

H. The permit shall state the following:

1. The legal description of the land upon which the well may be constructed.

2. The legal description of the location of the new well on the land.

3. The depth and diameter of the well and type of casing.

4. The maximum pumping capacity of the well.

5. The legal description of the land upon which the groundwater will be used.

6. The use of the groundwater to be withdrawn.

7. The latest date for completing the well.

I. Section 45-114, subsections A and B govern administrative proceedings, rehearing or review and judicial review of final decisions of the director under this section. If an administrative hearing is held, it shall be conducted in the active management area in which the use is located.

J. An application for a permit filed under this section shall be accompanied by a filing fee of one hundred fifty dollars. The director shall deposit, pursuant to §§ 35-146 and 35-147, all fees collected pursuant to this subsection in the well administration and enforcement fund established by § 45-606.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1982, Ch. 191, § 24, eff. April 22, 1982; Laws 1983, Ch. 306, § 15, eff. April 28, 1983; Laws 1984, Ch. 148, § 13, eff. April 18, 1984; Laws 1994, Ch. 296, § 19, eff. April 25, 1994; Laws 1998, Ch. 57, § 100; Laws 2002, Ch. 133, § 6; Laws 2003, Ch. 165, § 2, eff. May 7, 2003.

A. R. S. § 45-599, AZ ST § 45-599

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 3.1. Underground Water Storage, Savings and Replenishment (Refs & Annos)

Article 5. Permit Application Procedures, Financial Provisions and Enforcement

A.R.S. § 45-871.01

§ 45-871.01. Permit application; fee; notice of application; objections; hearing; appeal

Effective: July 29, 2010

[Currentness](#)

A. The director shall prescribe and furnish application forms for the permits prescribed by articles 2 and 3 of this chapter.¹ The application forms shall require the applicant to submit the information needed by the director to determine whether the permit may be issued. The director shall establish and collect a reasonable fee from the applicant to cover the cost of administrative services and other expenses associated with evaluating and issuing each permit. The director shall deposit, pursuant to §§ 35-146 and 35-147, all fees received under this subsection in the water resources fund established by § 45-117.

B. On receipt of an application for a permit pursuant to this chapter, the director shall endorse on the application the date of its receipt and shall keep a record of the application. Within fifteen days after receipt of an application for an underground storage facility permit, the director shall post notice of the application on the department's website until the director issues a decision on the application. The notice shall state the name of the applicant, the location of the proposed underground storage facility, the date the application was filed and the application number. The notice required by this subsection is in addition to the notice requirement in subsection D of this section. The director shall conduct a review of the application within one hundred days of receipt of the application. If the director determines in the review that the application is incomplete or incorrect, the director shall notify the applicant and the review period is extended by fifteen days. The application is incomplete or incorrect until the applicant files the information requested in the application. The director may conduct independent investigations as necessary to determine whether the application should be approved or rejected.

C. If the application is for water storage at an underground storage facility that is exempt from the requirement for an aquifer protection permit under § 49-250, subsection B, paragraph 12, 13 or 24, the director of water resources shall consult with the director of environmental quality and shall develop a coordinated and unified permit review process, that conforms to the time schedule prescribed by this section, to determine whether the permit application is correct and whether the development of a plan of action for monitoring and data analysis shall be required.

D. Except as provided in subsection E of this section, if the application is determined to be complete and correct and the application is for a storage facility permit or a water storage permit, the director, within fifteen days of that determination or a longer period if requested by the applicant, shall give notice of the application once each week for two consecutive weeks in a newspaper of general circulation in the county or counties in which persons reside who could reasonably be expected to be affected by the water storage. The director shall also give notice by first class mail to each city, town, private water company, conservation district, irrigation district and electrical district that serves land within the area of impact of the stored water. The notice shall state that persons who may be adversely affected by the water storage may file written objections to the issuance of the permit with the director for fifteen days after the last publication of notice. An objection shall state the name and mailing address of the objector, shall be signed by the objector or the objector's agent or attorney and shall clearly set forth the reasons

why the permit should not be issued. The grounds for objection are limited to whether the application meets the criteria for issuing the permit being requested as prescribed by articles 2 and 3 of this chapter.

E. If the application is determined to be complete and correct and the application is for a water storage permit to store Colorado river water at a storage facility where storage of Colorado river water has previously been permitted, the director may issue the permit within twenty days of that determination if all of the following apply:

1. The holder of the storage facility permit with which the water storage permit will be affiliated has consented to the water storage.
2. The water storage permit will not require a modification of an affiliated water storage facility permit.
3. Colorado river water will be the only type of water stored under the water storage permit.
4. The applicant has the right to use the Colorado river water.

F. Except as provided in [§ 45-834.01, subsection D](#), if the application is determined to be complete and correct and the application is for a recovery well permit, the director, within fifteen days of the determination or a longer period if requested by the applicant, shall give notice of the application once each week for two consecutive weeks in a newspaper of general circulation in the county in which the applicant proposes to recover stored water. If the application is for a well located inside of or within three miles of the exterior boundaries of the service area of a city, town, private water company or irrigation district, the applicant shall give notice of the application by first class mail to each city, town, private water company or irrigation district within that distance. The applicant shall file proof of the notice with the director. The notice shall state that persons who may be adversely affected by the recovery well may file written objections to the issuance of the permit with the director for fifteen days after the last publication of notice. An objection shall state the name and mailing address of the objector, shall be signed by the objector or the objector's agent or attorney and shall clearly set forth reasons why the permit should not be issued. The grounds for objection are limited to whether the application meets the criteria for issuing a recovery well permit as set forth in [§ 45-834.01, subsection B](#). For the purposes of this subsection, if the proposed recovery well is located within three miles outside of the exterior boundaries of the service area of a city, town, private water company or irrigation district, a city, town, private water company or irrigation district within that distance shall be considered a person who may be adversely affected by the recovery well.

G. In appropriate cases, including cases in which a proper objection to the permit application has been filed, an administrative hearing may be held before the director's decision on the application if the director deems a hearing necessary. At least thirty days before the hearing, the director shall notify the applicant and any person who filed a proper objection to the issuance of the permit. The hearing shall be scheduled for at least sixty days but not more than ninety days after the expiration of the time in which to file objections.

H. If a hearing is not held, the director shall issue a decision and order within six months of the date notice of the application is first given pursuant to subsection D or F of this section, or within ninety days in the case of an application under article 6 of this chapter.² The director shall record and endorse the approval or rejection of the application on the application. If the permit is denied, the director shall return a copy of the application to the applicant specifically stating the reasons for denial.

I. The applicant or any person who filed a proper objection to the application may seek judicial review of the final decision of the director as provided in § 45-114, subsection B in superior court as provided in § 45-405.

J. Section 45-114, subsections A and B govern administrative proceedings, rehearings or review and judicial review of final decisions of the director under this section. If an administrative hearing is held, it shall be conducted in the active management area in which the storage or recovery is located.

K. On receipt of an application for a permit pursuant to this section, the director shall provide written notice of the proposed permit to the city, town or county that has land use jurisdiction over the site that is the subject of the permit. The notice shall be given at the same time and in the same manner as the notices prescribed by subsections D and F of this section in order to provide the city, town or county with the opportunity to comment on the proposed facility's or well's compliance with site planning and operational requirements of the city, town or county. This subsection shall not be construed to limit the exclusive authority of the director to determine the issuance of the permit or the site of the facility or well or to reduce the authority of the city, town or county to enforce its applicable ordinances governing site planning and operational requirements.

Credits

Added by Laws 1994, Ch. 291, § 32. Amended by Laws 1995, Ch. 258, § 24; Laws 1996, Ch. 103, § 17, eff. April 9, 1996; Laws 1996, Ch. 194, § 3; Laws 1997, Ch. 15, § 15, eff. July 21, 1997; Laws 1998, Ch. 48, § 1; Laws 1998, Ch. 57, § 103; Laws 2003, Ch. 155, § 7; Laws 2007, Ch. 161, § 1; Laws 2010, Ch. 282, § 14.

Footnotes

¹ Sections 45-811.01 et seq. and 45-831.01 et seq.

² Section 45-891.01 et seq.

A. R. S. § 45-871.01, AZ ST § 45-871.01

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Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 4. Water Exchanges (Refs & Annos)
Article 3. Permits for Water Exchanges

A.R.S. § 45-1041

§ 45-1041. Water exchange permits; fee

Effective: July 29, 2010

[Currentness](#)

A. A person who seeks to give surface water, other than Colorado river water, in a water exchange to which neither [§ 45-1002, subsection A](#), paragraph 1 nor 3 applies shall apply to the director for a water exchange permit. The director shall issue either a specific use water exchange permit or a general use water exchange permit, as applicable, if the applicant demonstrates that all of the following apply:

1. The water exchange will be made pursuant to a written contract.
2. The water exchange will not affect vested rights to water.
3. Each party to the water exchange contract has a right to the water the party will give in the water exchange.
4. If an applicant is not a city, town, private water company or irrigation district, any new or increased pumping by the applicant from a well within an active management area pursuant to the water exchange will not unreasonably increase damage to surrounding land or other water users.
5. If an applicant is a city, town, private water company or irrigation district with a service area located partly or wholly in an active management area, any new or increased pumping by the applicant within the applicant's service area pursuant to the water exchange is consistent with the management plan and achievement of the management goal for the active management area.
6. Each party to a water exchange contract either:
 - (a) Receives at least ninety per cent of the quantity of water that the other party gives in the water exchange.
 - (b) Receives at least fifty per cent of the quantity of water that the other party gives in the water exchange, unless otherwise authorized by law, and the director determines the water exchange is beneficial to water management in this state.

B. Subsection A of this section does not apply to the proposed modification of a previously enrolled or permitted water exchange contract that involves surface water other than Colorado river water, if the proposed modification meets both of the following conditions:

1. The proposed modification involves the addition of one or more of the following water sources as the only new or additional water source of exchange:

(a) Colorado river water.

(b) Groundwater.

(c) Effluent.

(d) Surface water that is captured in the additional storage capacity created by modified Roosevelt dam after April 9, 1986.

2. Notice of the proposed modification is filed by the person seeking the modification pursuant to [§ 45-1051](#) and is subject to the requirements of that section and the conditions prescribed by [§ 45-1052](#).

C. Any person may apply for a specific use water exchange permit. A specific use permit allows the parties to exchange specific sources of water in specific quantities for the uses and in the locations specified in the permit.

D. Two or more political subdivisions of this state, or one or more political subdivisions and one or more private water companies, Indian communities, agencies of this state or agencies of the United States may apply for a general use water exchange permit. A general use permit shall specify that the holders may engage in one or more exchanges of water at any time during the term of the permit. The water received pursuant to a general use permit may be used for any lawful purpose specified in the permit. Before making any exchange pursuant to a general use permit, the parties to the permit shall notify the director of the amounts of water to be exchanged and the specific uses to which each source of water will be applied.

E. An application for a water exchange permit shall be accompanied by a filing fee in an amount to be determined by rule by the director to cover the cost of administering this article.

F. The director shall deposit, pursuant to [§§ 35-146](#) and [35-147](#), all fees received under this section in the water resources fund established by [§ 45-117](#).

Credits

Added by [Laws 1992, Ch. 225, § 2](#). Amended by [Laws 1993, Ch. 107, § 12](#); [Laws 1995, Ch. 258, § 26](#); [Laws 1998, Ch. 47, § 8](#); [Laws 2010, Ch. 282, § 17](#).

A. R. S. § 45-1041, AZ ST § 45-1041

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 6. Dams and Reservoirs (Refs & Annos)

Article 1. Supervision of Dams, Reservoirs and Projects (Refs & Annos)

A.R.S. § 45-1204

§ 45-1204. Estimated cost of dam; application fees

Currentness

A. The estimated cost of the dam or alterations thereof shall include the cost of all labor and materials entering into the construction of the dam and appurtenant works. The cost of preliminary investigation and surveys, the construction plant and all other items properly included in the cost of the dam shall be chargeable to the cost of the dam.

B. The director shall establish by rule and the department shall collect a reasonable filing fee which shall be based on the estimated cost of the dam but in no event shall the fee exceed two per cent of the estimated cost. The applicant shall pay the filing fee at the time of filing the application. The fee shall be required of all applicants including the state and its departments, institutions or agencies.

C. An application shall not be considered nor shall construction be permitted until the filing fee has been paid.

Credits

Formerly § 45-704. Renumbered as § 45-1204 by Laws 1987, Ch. 2, § 4, eff. Feb. 27, 1987. Amended by Laws 1987, Ch. 287, § 1; Laws 1999, Ch. 187, § 13.

Notes of Decisions (2)

A. R. S. § 45-1204, AZ ST § 45-1204

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 9. Weather Control and Cloud Modification (Refs & Annos)

Article 1. In General (Refs & Annos)

A.R.S. § 45-1603

§ 45-1603. Application fee; statement accompanying application

Effective: July 29, 2010

[Currentness](#)

A. At the time of applying for the license, the applicant shall pay to the director a fee of one hundred dollars, and shall file an application in the form prescribed by the director and furnish a statement showing:

1. The name and address of the applicant.
2. The names of the operating personnel, and if unincorporated all individuals connected with the organization, or if a corporation the names of each of the officers and directors thereof, together with the address of each.
3. The scientific qualifications of all operating or supervising personnel.
4. A statement of all other contracts completed or in process of completion at the time the application is made, giving the names and addresses of the persons to whom the services were furnished and the areas in which such operations have been or are being conducted.
5. Methods of operation the licensee will use and the description of the aircraft, ground and meteorological services to be utilized.
6. Names of the contracting parties within the state, including:
 - (a) The area to be served.
 - (b) The months in which operations will be conducted.
 - (c) The dates when evaluations will be submitted.

B. The director shall deposit, pursuant to §§ [35-146](#) and [35-147](#), all fees received under this section in the water resources fund established by § [45-117](#).

Credits

Formerly § 45-2403. Amended by Laws 1971, Ch. 49, § 27, eff. April 13, 1971; Laws 1980, 4th S.S., Ch. 1, § 121, eff. June 12, 1980. Renumbered as § 45-1603 by Laws 1987, Ch. 2, § 12, eff. Feb. 27, 1987. Amended by [Laws 2010, Ch. 282, § 21](#).

A. R. S. § 45-1603, AZ ST § 45-1603

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 9. Weather Control and Cloud Modification (Refs & Annos)

Article 1. In General (Refs & Annos)

A.R.S. § 45-1605

§ 45-1605. Equipment license; fee; application; reports required; revocation of license

Effective: July 29, 2010

[Currentness](#)

A. Any individual or corporation engaging in manufacturing, selling or offering for sale, leasing or offering to lease, licensing or offering to license equipment and supplies designed for weather control or cloud modification shall, before engaging in such manufacture, sale or offering for sale, procure a license from the director. The license shall be issued upon payment of a license fee of ten dollars and the filing of an application which shall show:

1. The name and address of the applicant.
2. The full description of the type and design of the equipment and supplies manufactured and sold by the applicant.
3. The operating technique of the equipment or supplies.

B. Within sixty days after issuance of an equipment license and semiannually thereafter, the licensee shall file with the director a copy of all advertising material used in selling or offering for sale, leasing or offering for lease, licensing or offering for license the equipment and supplies manufactured or sold by it.

C. The holder of a license shall within ten days after each sale of equipment or supplies report to the director, in writing, the exact character and quantity of equipment or supplies sold, the date of the sale and the persons to whom the sale was made.

D. Failure to file a copy of advertising material or reports required in this section constitutes grounds for immediate revocation of the equipment license.

E. The director shall deposit, pursuant to §§ [35-146](#) and [35-147](#), all fees received under this section in the water resources fund established by § [45-117](#).

Credits

Formerly § 45-2405. Amended by Laws 1971, Ch. 49, § 29, eff. April 13, 1971; Laws 1980, 4th S.S., Ch. 1, § 123, eff. June 12, 1980. Renumbered as § 45-1605 by Laws 1987, Ch. 2, § 12, eff. Feb. 27, 1987. Amended by [Laws 2010, Ch. 282, § 22](#).

A. R. S. § 45-1605, AZ ST § 45-1605

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

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TAB C2



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 1. Administration and General Provisions (Refs & Annos)

Article 1. Department of Water Resources (Refs & Annos)

A.R.S. § 45-105

§ 45-105. Powers and duties of director

Effective: January 1, 2018

[Currentness](#)

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.
2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.
3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.
4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.
5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.
6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.
7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3¹ and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board, congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; [33 United States Code § 701-1](#)).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title.² If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 ([P.L. 96-510](#)) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.
2. Administer all laws relating to groundwater, as provided in this title.
3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.
4. Coordinate and confer with and may contract with:
 - (a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.
 - (b) The department of environmental quality with respect to title 49, chapter 2³ for its assistance in the development of state water plans.
 - (c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.⁴
 - (d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.
5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.
6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.
7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.
8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.
9. Report to and consult with the Arizona water resources advisory board at regular intervals.

10. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.
11. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.⁵
12. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.⁶
13. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.
14. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:
 - (a) The current status of the water supply in this state and any likely changes in that status.
 - (b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.
 - (c) The status of current water conservation programs in this state.
 - (d) The current state of each active management area and the level of progress toward management goals in each active management area.
 - (e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.
 - (f) The status of any pending or likely litigation regarding surface water adjudications or other water related litigation and the potential impacts on this state's water supplies.
 - (g) The status of Indian water rights settlements and related negotiations that affect this state.
 - (h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 35, eff. June 12, 1980. Amended by Laws 1986, Ch. 11, § 2, eff. April 4, 1986; Laws 1986, Ch. 154, § 1, eff. April 18, 1986; Laws 1986, Ch. 368, § 126; Laws 1986, Ch. 368, § 127, eff. July 1, 1987; [Laws 1990](#),

Ch. 181, § 2; Laws 1991, Ch. 19, § 1; Laws 1992, Ch. 3, § 1, eff. March 24, 1992; Laws 1992, Ch. 94, § 6; Laws 1992, Ch. 156, § 22; Laws 1992, Ch. 270, § 1; Laws 1992, Ch. 282, § 1; Laws 1992, Ch. 319, § 45; Laws 1994, Ch. 278, § 5; Laws 1994, Ch. 296, § 1, eff. April 25, 1994; Laws 1996, Ch. 308, § 1, eff. April 30, 1996; Laws 1997, Ch. 287, § 14, eff. April 29, 1997; Laws 1998, Ch. 57, § 67; Laws 2002, Ch. 287, § 10; Laws 2003, Ch. 248, § 1, eff. May 21, 2003; Laws 2012, Ch. 170, § 77; Laws 2017, Ch. 313, § 39, eff. Jan. 1, 2018.

Footnotes

- 1 Section 11-951 et seq.
- 2 Section 45-401 et seq.
- 3 Section 49-201 et seq.
- 4 Section 49-281 et seq.
- 5 Section 45-2101 et seq.
- 6 Section 45-2401 et seq.

A. R. S. § 45-105, AZ ST § 45-105

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

TAB C3

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 1. Administration and General Provisions (Refs & Annos)
Article 1. Department of Water Resources (Refs & Annos)

A.R.S. § 45-105

§ 45-105. Powers and duties of director

Effective: January 1, 2018

[Currentness](#)

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.
2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.
3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.
4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.
5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.
6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.
7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3¹ and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board, congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; [33 United States Code § 701-1](#)).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title.² If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 ([P.L. 96-510](#)) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.
2. Administer all laws relating to groundwater, as provided in this title.
3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.
4. Coordinate and confer with and may contract with:
 - (a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.
 - (b) The department of environmental quality with respect to title 49, chapter 2³ for its assistance in the development of state water plans.
 - (c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.⁴
 - (d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.
5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.
6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.
7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.
8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.
9. Report to and consult with the Arizona water resources advisory board at regular intervals.

10. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.
11. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.⁵
12. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.⁶
13. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.
14. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:
 - (a) The current status of the water supply in this state and any likely changes in that status.
 - (b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.
 - (c) The status of current water conservation programs in this state.
 - (d) The current state of each active management area and the level of progress toward management goals in each active management area.
 - (e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.
 - (f) The status of any pending or likely litigation regarding surface water adjudications or other water related litigation and the potential impacts on this state's water supplies.
 - (g) The status of Indian water rights settlements and related negotiations that affect this state.
 - (h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 35, eff. June 12, 1980. Amended by Laws 1986, Ch. 11, § 2, eff. April 4, 1986; Laws 1986, Ch. 154, § 1, eff. April 18, 1986; Laws 1986, Ch. 368, § 126; Laws 1986, Ch. 368, § 127, eff. July 1, 1987; [Laws 1990](#),

Ch. 181, § 2; Laws 1991, Ch. 19, § 1; Laws 1992, Ch. 3, § 1, eff. March 24, 1992; Laws 1992, Ch. 94, § 6; Laws 1992, Ch. 156, § 22; Laws 1992, Ch. 270, § 1; Laws 1992, Ch. 282, § 1; Laws 1992, Ch. 319, § 45; Laws 1994, Ch. 278, § 5; Laws 1994, Ch. 296, § 1, eff. April 25, 1994; Laws 1996, Ch. 308, § 1, eff. April 30, 1996; Laws 1997, Ch. 287, § 14, eff. April 29, 1997; Laws 1998, Ch. 57, § 67; Laws 2002, Ch. 287, § 10; Laws 2003, Ch. 248, § 1, eff. May 21, 2003; Laws 2012, Ch. 170, § 77; Laws 2017, Ch. 313, § 39, eff. Jan. 1, 2018.

Footnotes

- 1 Section 11-951 et seq.
- 2 Section 45-401 et seq.
- 3 Section 49-201 et seq.
- 4 Section 49-281 et seq.
- 5 Section 45-2101 et seq.
- 6 Section 45-2401 et seq.

A. R. S. § 45-105, AZ ST § 45-105

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

TAB C4

Arizona Revised Statutes Annotated
Title 41. State Government (Refs & Annos)
Chapter 6. Administrative Procedure (Refs & Annos)
Article 7.1. Licensing Time Frames (Refs & Annos)

A.R.S. § 41-1073

§ 41-1073. Time frames; exception

Currentness

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 [§ 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.

Credits

Added by [Laws 1996, Ch. 102, § 42](#). Amended by [Laws 1998, Ch. 57, § 52](#); [Laws 2002, Ch. 334, § 13](#).

A. R. S. § 41-1073, AZ ST § 41-1073

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

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TAB C5



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 1. Administration and General Provisions (Refs & Annos)

Article 1. Department of Water Resources (Refs & Annos)

A.R.S. § 45-105

§ 45-105. Powers and duties of director

Effective: January 1, 2018

[Currentness](#)

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.
2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.
3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.
4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.
5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.
6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.
7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3¹ and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board, congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; [33 United States Code § 701-1](#)).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title.² If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 ([P.L. 96-510](#)) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.
2. Administer all laws relating to groundwater, as provided in this title.
3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.
4. Coordinate and confer with and may contract with:
 - (a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.
 - (b) The department of environmental quality with respect to title 49, chapter 2³ for its assistance in the development of state water plans.
 - (c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.⁴
 - (d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.
5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.
6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.
7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.
8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.
9. Report to and consult with the Arizona water resources advisory board at regular intervals.

10. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.
11. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.⁵
12. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.⁶
13. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.
14. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:
 - (a) The current status of the water supply in this state and any likely changes in that status.
 - (b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.
 - (c) The status of current water conservation programs in this state.
 - (d) The current state of each active management area and the level of progress toward management goals in each active management area.
 - (e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.
 - (f) The status of any pending or likely litigation regarding surface water adjudications or other water related litigation and the potential impacts on this state's water supplies.
 - (g) The status of Indian water rights settlements and related negotiations that affect this state.
 - (h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 35, eff. June 12, 1980. Amended by Laws 1986, Ch. 11, § 2, eff. April 4, 1986; Laws 1986, Ch. 154, § 1, eff. April 18, 1986; Laws 1986, Ch. 368, § 126; Laws 1986, Ch. 368, § 127, eff. July 1, 1987; [Laws 1990](#),

Ch. 181, § 2; Laws 1991, Ch. 19, § 1; Laws 1992, Ch. 3, § 1, eff. March 24, 1992; Laws 1992, Ch. 94, § 6; Laws 1992, Ch. 156, § 22; Laws 1992, Ch. 270, § 1; Laws 1992, Ch. 282, § 1; Laws 1992, Ch. 319, § 45; Laws 1994, Ch. 278, § 5; Laws 1994, Ch. 296, § 1, eff. April 25, 1994; Laws 1996, Ch. 308, § 1, eff. April 30, 1996; Laws 1997, Ch. 287, § 14, eff. April 29, 1997; Laws 1998, Ch. 57, § 67; Laws 2002, Ch. 287, § 10; Laws 2003, Ch. 248, § 1, eff. May 21, 2003; Laws 2012, Ch. 170, § 77; Laws 2017, Ch. 313, § 39, eff. Jan. 1, 2018.

Footnotes

- 1 Section 11-951 et seq.
- 2 Section 45-401 et seq.
- 3 Section 49-201 et seq.
- 4 Section 49-281 et seq.
- 5 Section 45-2101 et seq.
- 6 Section 45-2401 et seq.

A. R. S. § 45-105, AZ ST § 45-105

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 9. Management (Refs & Annos)

A.R.S. § 45-576

§ 45-576. Certificate of assured water supply; designated cities,
towns and private water companies; exemptions; definition

Effective: August 9, 2017

[Currentness](#)

A. Except as provided in subsections G and J of this section, a person who proposes to offer subdivided lands, as defined in [§ 32-2101](#), for sale or lease in an active management area shall apply for and obtain a certificate of assured water supply from the director prior to presenting the plat for approval to the city, town or county in which the land is located, where such is required, and prior to filing with the state real estate commissioner a notice of intention to offer such lands for sale or lease, pursuant to [§ 32-2181](#), unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section.

B. Except as provided in subsections G and J of this section, a city, town or county may approve a subdivision plat only if the subdivider has obtained a certificate of assured water supply from the director or the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section. The city, town or county shall note on the face of the approved plat that a certificate of assured water supply has been submitted with the plat or that the subdivider has obtained a written commitment of water service for the proposed subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section.

C. Except as provided in subsections G and J of this section, the state real estate commissioner may issue a public report authorizing the sale or lease of subdivided lands only on compliance with either of the following:

1. The subdivider, owner or agent has paid any activation fee required under [§ 48-3772, subsection A](#), paragraph 7 and any replenishment reserve fee required under [§ 48-3774.01, subsection A](#), paragraph 2 and has obtained a certificate of assured water supply from the director.

2. The subdivider has obtained a written commitment of water service for the lands from a city, town or private water company designated as having an assured water supply pursuant to this section and the subdivider, owner or agent has paid any activation fee required under [§ 48-3772, subsection A](#), paragraph 7.

D. The director shall designate private water companies in active management areas that have an assured water supply. If a city or town acquires a private water company that has contracted for central Arizona project water, the city or town shall assume the private water company's contract for central Arizona project water.

E. The director shall designate cities and towns in active management areas where an assured water supply exists. If a city or town has entered into a contract for central Arizona project water, the city or town is deemed to continue to have an assured water supply until December 31, 1997. Commencing on January 1, 1998, the determination that the city or town has an assured water supply is subject to review by the director and the director may determine that a city or town does not have an assured water supply.

F. The director shall notify the mayors of all cities and towns in active management areas and the chairmen of the boards of supervisors of counties in which active management areas are located of the cities, towns and private water companies designated as having an assured water supply and any modification of that designation within thirty days of the designation or modification. If the service area of the city, town or private water company has qualified as a member service area pursuant to title 48, chapter 22, article 4,¹ the director shall also notify the conservation district of the designation or modification and shall report the projected average annual replenishment obligation for the member service area based on the projected and committed average annual demand for water within the service area during the effective term of the designation or modification subject to any limitation in an agreement between the conservation district and the city, town or private water company. For each city, town or private water company that qualified as a member service area under title 48, chapter 22² and was designated as having an assured water supply before January 1, 2004, the director shall report to the conservation district on or before January 1, 2005 the projected average annual replenishment obligation based on the projected and committed average annual demand for water within the service area during the effective term of the designation subject to any limitation in an agreement between the conservation district and the city, town or private water company. Persons proposing to offer subdivided lands served by those designated cities, towns and private water companies for sale or lease are exempt from applying for and obtaining a certificate of assured water supply.

G. This section does not apply in the case of the sale of lands for developments that are subject to a mineral extraction and processing permit or an industrial use permit pursuant to §§ 45-514 and 45-515.

H. The director shall adopt rules to carry out the purposes of this section. On or before January 1, 2008, the rules shall provide for a reduction in water demand for an application for a designation of assured water supply or a certificate of assured water supply if a gray water reuse system will be installed that meets the requirements of the rules adopted by the department of environmental quality for gray water systems and if the application is for a certificate of assured water supply, the land for which the certificate is sought must qualify as a member land in a conservation district pursuant to title 48, chapter 22, article 4. For the purposes of this subsection, "gray water" has the same meaning prescribed in § 49-201.

I. If the director designates a municipal provider as having an assured water supply under this section and the designation lapses or otherwise terminates while the municipal provider's service area is a member service area of a conservation district, the municipal provider or its successor shall continue to comply with the consistency with management goal requirements in the rules adopted by the director under subsection H of this section as if the designation was still in effect with respect to the municipal provider's designation uses. When determining compliance by the municipal provider or its successor with the consistency with management goal requirements in the rules, the director shall consider only water delivered by the municipal provider or its successor to the municipal provider's designation uses. A person is the successor of a municipal provider if the person commences water service to uses that were previously designation uses of the municipal provider. Any groundwater

delivered by the municipal provider or its successor to the municipal provider's designation uses in excess of the amount allowed under the consistency with management goal requirements in the rules shall be considered excess groundwater for purposes of title 48, chapter 22. For the purposes of this subsection, "designation uses" means all water uses served by a municipal provider on the date the municipal provider's designation of assured water supply lapses or otherwise terminates and all recorded lots within the municipal provider's service area that were not being served by the municipal provider on that date but that received final plat approval from a city, town or county on or before that date. Designation uses do not include industrial uses served by an irrigation district under § 45-497.

J. Subsections A, B and C of this section do not apply to a person who proposes to offer subdivided land for sale or lease in an active management area if all the following apply:

1. The director issued a certificate of assured water supply for the land to a previous owner of the land and the certificate was classified as a type A certificate under rules adopted by the director pursuant to subsection H of this section.
2. The director has not revoked the certificate of assured water supply described in paragraph 1 of this subsection, and proceedings to revoke the certificate are not pending before the department or a court. The department shall post on its website a list of all certificates of assured water supply that have been revoked or for which proceedings are pending before the department or a court.
3. The plat submitted to the department in the application for the certificate of assured water supply described in paragraph 1 of this subsection has not changed.
4. Water service is currently available to each lot within the subdivided land and the water provider listed on the certificate of assured water supply described in paragraph 1 of this subsection has not changed.
5. The subdivided land qualifies as a member land under title 48, chapter 22 and the subdivider has paid any activation fee required under § 48-3772, subsection A, paragraph 7 and any replenishment reserve fee required under § 48-3774.01, subsection A, paragraph 2.
6. The plat is submitted for approval to a city, town or county that is listed on the department's website as a qualified platting authority.

K. Subsection J of this section does not affect the assignment of a certificate of assured water supply as prescribed by § 45-579.

L. For the purposes of this section, "assured water supply" means all of the following:

1. Sufficient groundwater, surface water or effluent of adequate quality will be continuously available to satisfy the water needs of the proposed use for at least one hundred years. Beginning January 1 of the calendar year following the year in which a groundwater replenishment district is required to submit its preliminary plan pursuant to § 45-576.02, subsection A, paragraph 1, with respect to an applicant that is a member of the district, "sufficient groundwater" for the purposes of this paragraph means that the proposed groundwater withdrawals that the applicant will cause over a period of one hundred years will be of adequate quality and will not exceed, in combination with other withdrawals from land in the replenishment district, a depth to water of

one thousand feet or the depth of the bottom of the aquifer, whichever is less. In determining depth to water for the purposes of this paragraph, the director shall consider the combination of:

(a) The existing rate of decline.

(b) The proposed withdrawals.

(c) The expected water requirements of all recorded lots that are not yet served water and that are located in the service area of a municipal provider.

2. The projected groundwater use is consistent with the management plan and achievement of the management goal for the active management area.

3. The financial capability has been demonstrated to construct the water facilities necessary to make the supply of water available for the proposed use, including a delivery system and any storage facilities or treatment works. The director may accept evidence of the construction assurances required by [§ 9-463.01](#), [11-823](#) or [32-2181](#) to satisfy this requirement.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1981, Ch. 192, § 17, eff. April 22, 1981; Laws 1982, Ch. 191, § 22, eff. April 22, 1982; Laws 1984, Ch. 103, § 8; [Laws 1989, Ch. 230, § 61](#); [Laws 1991, Ch. 112, § 5](#); [Laws 1991, Ch. 211, § 20](#); [Laws 1993, Ch. 200, § 11](#); [Laws 1994, Ch. 203, § 23](#), eff. April 19, 1994; [Laws 1994, Ch. 278, § 7](#); [Laws 1994, Ch. 291, § 21](#); [Laws 1996, Ch. 103, § 9](#), eff. April 9, 1996; [Laws 2003, Ch. 155, § 1](#); [Laws 2004, Ch. 318, § 4](#); [Laws 2005, Ch. 198, § 7](#); [Laws 2006, Ch. 228, § 1](#); [Laws 2010, Ch. 244, § 37](#), eff. Oct. 1, 2011; [Laws 2017, Ch. 298, § 1](#).

[Notes of Decisions \(4\)](#)

Footnotes

[1](#) Section 48-3771 et seq.

[2](#) Section 48-3701 et seq.

A. R. S. § 45-576, AZ ST § 45-576

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

TAB C6

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 1. Administration and General Provisions (Refs & Annos)
Article 1. Department of Water Resources (Refs & Annos)

A.R.S. § 45-105

§ 45-105. Powers and duties of director

Effective: January 1, 2018

[Currentness](#)

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.
2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.
3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.
4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.
5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.
6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.
7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3¹ and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board, congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; [33 United States Code § 701-1](#)).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title.² If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 ([P.L. 96-510](#)) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.
2. Administer all laws relating to groundwater, as provided in this title.
3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.
4. Coordinate and confer with and may contract with:
 - (a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.
 - (b) The department of environmental quality with respect to title 49, chapter 2³ for its assistance in the development of state water plans.
 - (c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.⁴
 - (d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.
5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.
6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.
7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.
8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.
9. Report to and consult with the Arizona water resources advisory board at regular intervals.

10. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.
11. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.⁵
12. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.⁶
13. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.
14. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:
 - (a) The current status of the water supply in this state and any likely changes in that status.
 - (b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.
 - (c) The status of current water conservation programs in this state.
 - (d) The current state of each active management area and the level of progress toward management goals in each active management area.
 - (e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.
 - (f) The status of any pending or likely litigation regarding surface water adjudications or other water related litigation and the potential impacts on this state's water supplies.
 - (g) The status of Indian water rights settlements and related negotiations that affect this state.
 - (h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 35, eff. June 12, 1980. Amended by Laws 1986, Ch. 11, § 2, eff. April 4, 1986; Laws 1986, Ch. 154, § 1, eff. April 18, 1986; Laws 1986, Ch. 368, § 126; Laws 1986, Ch. 368, § 127, eff. July 1, 1987; [Laws 1990](#),

Ch. 181, § 2; Laws 1991, Ch. 19, § 1; Laws 1992, Ch. 3, § 1, eff. March 24, 1992; Laws 1992, Ch. 94, § 6; Laws 1992, Ch. 156, § 22; Laws 1992, Ch. 270, § 1; Laws 1992, Ch. 282, § 1; Laws 1992, Ch. 319, § 45; Laws 1994, Ch. 278, § 5; Laws 1994, Ch. 296, § 1, eff. April 25, 1994; Laws 1996, Ch. 308, § 1, eff. April 30, 1996; Laws 1997, Ch. 287, § 14, eff. April 29, 1997; Laws 1998, Ch. 57, § 67; Laws 2002, Ch. 287, § 10; Laws 2003, Ch. 248, § 1, eff. May 21, 2003; Laws 2012, Ch. 170, § 77; Laws 2017, Ch. 313, § 39, eff. Jan. 1, 2018.

Footnotes

- 1 Section 11-951 et seq.
- 2 Section 45-401 et seq.
- 3 Section 49-201 et seq.
- 4 Section 49-281 et seq.
- 5 Section 45-2101 et seq.
- 6 Section 45-2401 et seq.

A. R. S. § 45-105, AZ ST § 45-105

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 10. Wells (Refs & Annos)

A.R.S. § 45-591.01

§ 45-591.01. Oil, gas, helium and geothermal wells; exemption

Currentness

Wells drilled for oil, gas or helium pursuant to the provisions of title 27¹ are not wells as defined in this chapter. The director, by rule or regulation, may exempt exploration wells from any requirement of this article that the director determines is not necessary for the protection of groundwater. Geothermal wells drilled pursuant to the provisions of title 27 are not wells as defined in this chapter when the director finds that the rules and regulations of the oil and gas conservation commission require the reinjection of all waters associated with the geothermal resource to the producing strata.

Credits

Added by Laws 1982, Ch. 208, § 4.

Footnotes

¹ Section 27-101 et seq.

A. R. S. § 45-591.01, AZ ST § 45-591.01

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 10. Wells (Refs & Annos)

A.R.S. § 45-594

§ 45-594. Well construction standards; remedial measures

Currentness

A. The director shall adopt rules establishing construction standards for new wells and replacement wells, the deepening and abandonment of existing wells and the capping of open wells.

B. All well construction, replacement, deepening and abandonment operations shall comply with the rules adopted pursuant to this section. A well owner shall cap an open well according to the rules adopted pursuant to subsection A.

C. If the director determines that a well is not capped in compliance with the rules adopted pursuant to subsection A, that the well is dangerous to property or public health or safety and that there is not sufficient time to issue and enforce an order relative to its capping, the director may employ remedial measures necessary to protect property or public health or safety. The remedial measures may include remaining in full charge and control of the well site until the well has been rendered safe and capping the well. This subsection does not relieve an owner or operator of a well from the legal duties, obligations and liabilities arising from such ownership or operation.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1986, Ch. 154, § 11, eff. April 18, 1986.

A. R. S. § 45-594, AZ ST § 45-594

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 10. Wells (Refs & Annos)

A.R.S. § 45-595

§ 45-595. Well construction requirements; licensing of well drillers

Effective: July 29, 2010

[Currentness](#)

A. New well construction, including modifications of wells, shall be performed under the direct and personal supervision of a well driller who holds a well driller's license pursuant to subsection B of this section.

B. A person who intends to construct or modify one or more wells in this state shall file an application for a well driller's license with the director. The application shall include:

1. The name, mailing address and place of business of the applicant.
2. The applicant's experience and qualifications.
3. Such other information as the director may require.

C. The director, by rule, shall establish qualifications and a reasonable fee of not more than fifty dollars for licenses for well drillers and establish procedures for the evaluation and licensing of applicants. A nontransferable well driller's license shall be issued if the director finds that the applicant meets the qualifications established pursuant to this subsection. The director may revoke a well driller's license for good cause.

D. A person who drills or modifies an exempt well on land owned by that person shall first obtain a single well license from the department. The department shall issue the license to drill the well according to standard small well construction standards. No fee may be charged for a single well license.

E. The director shall deposit, pursuant to §§ 35-146 and 35-147, all fees received under this section in the water resources fund established by § 45-117.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1981, Ch. 192, § 19, eff. April 22, 1981; Laws 1981, Ch. 221, § 34, eff. July 1, 1981; Laws 1982, Ch. 292, § 36; [Laws 2010, Ch. 282, § 11](#).

A. R. S. § 45-595, AZ ST § 45-595

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

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Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 10. Wells (Refs & Annos)

A.R.S. § 45-603

§ 45-603. Criteria for rules and regulations

Currentness

In developing rules and regulations under this article, the director shall consider, among other things, water quality, cones of depression and land subsidence.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980.

A. R. S. § 45-603, AZ ST § 45-603

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

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Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 10. Wells (Refs & Annos)

A.R.S. § 45-605

§ 45-605. Well inspections; cross-contamination; remedial measures; definition

Currentness

A. The director of water resources, in consultation with the director of environmental quality, may inspect wells for vertical cross-contamination of groundwater by hazardous substances and may take appropriate remedial actions to prevent or mitigate the cross-contamination at no cost to the well owner, subject to subsection D of this section. The director shall consult with and seek the voluntary compliance of affected well owners regarding well access, investigations and remedial actions. On receiving permission from the well owner or operator, the director or the director's designee may enter property owned or operated by the well owner at reasonable times under any of the following circumstances:

1. To inspect and collect samples from a well and to inspect and copy all documents or records relating to the well. If a sample is obtained pursuant to this section, the director, before leaving the property, shall give to the well owner or operator a receipt describing the sample obtained and, if requested, a portion of each sample. A copy of the results of any analysis made of these samples shall be furnished promptly to the well owner.

2. To conduct appropriate remedial actions regarding vertical cross-contamination.

B. The director shall provide notice to the director of environmental quality of the results of the inspection, including copies of the department's records and documents and the analysis of any samples taken. If it is determined that the well results in vertical cross-contamination, the director, upon receiving permission from the well owner or operator and approval from the director of the department of environmental quality, may take appropriate remedial actions, including well modification, abandonment or replacement, or provision of a replacement water supply.

C. A well owner who is not a responsible party pursuant to title 49, chapter 2, article 5¹ and who cooperates with the investigation and remedial activities of the director and the department of environmental quality to the extent possible and consistent with the owner's water delivery responsibilities and system operational requirements, shall receive a covenant not to sue from the director of environmental quality pursuant to § 49-282.04, subsection C.

D. Notwithstanding subsection C of this section, if the director takes a remedial action pursuant to subsection A of this section and the well owner or operator is later determined to be responsible under title 49, chapter 2, article 5 for a release or threatened release of hazardous substances that contaminated or may have contaminated the well, the well owner or operator shall reimburse the water quality assurance revolving fund established pursuant to § 49-282 for the owner or operator's proportionate share of the costs incurred in taking the action.

E. The director shall notify an applicant for a permit or a person who files a notice of intent to drill a new or replacement well if the location of the proposed well is within a sub-basin where there is a site on the registry established pursuant to [§ 49-287.01, subsection D](#). The director shall adopt rules requiring the review of notices and applications regarding new or replacement wells to identify whether a well will be located where existing or anticipated future groundwater contamination presents a risk of vertical cross-contamination by the well. The rules shall require that a new or replacement well in this type of location be designed and constructed in a manner to prevent vertical cross-contamination within an aquifer.

F. On approval from the director of environmental quality, the department of water resources may be reimbursed for any actions conducted pursuant to title 49, chapter 2, article 5.

G. The well inspection authority granted the director in this section is in addition to any other well inspection authority otherwise prescribed in this title.

H. For purposes of this section, “vertical cross-contamination” has the same meaning prescribed by [§ 49-281](#).

Credits

Added by [Laws 1997, Ch. 287, § 15, eff. April 29, 1997](#).

Footnotes

[1](#) Section 49-281 et seq.

A. R. S. § 45-605, AZ ST § 45-605

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

TAB C7

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 1. Administration and General Provisions (Refs & Annos)
Article 1. Department of Water Resources (Refs & Annos)

A.R.S. § 45-105

§ 45-105. Powers and duties of director

Effective: January 1, 2018

[Currentness](#)

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.
2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.
3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.
4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.
5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.
6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.
7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3¹ and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board, congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; [33 United States Code § 701-1](#)).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title.² If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 ([P.L. 96-510](#)) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.
2. Administer all laws relating to groundwater, as provided in this title.
3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.
4. Coordinate and confer with and may contract with:
 - (a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.
 - (b) The department of environmental quality with respect to title 49, chapter 2³ for its assistance in the development of state water plans.
 - (c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.⁴
 - (d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.
5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.
6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.
7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.
8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.
9. Report to and consult with the Arizona water resources advisory board at regular intervals.

10. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.
11. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.⁵
12. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.⁶
13. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.
14. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:
 - (a) The current status of the water supply in this state and any likely changes in that status.
 - (b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.
 - (c) The status of current water conservation programs in this state.
 - (d) The current state of each active management area and the level of progress toward management goals in each active management area.
 - (e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.
 - (f) The status of any pending or likely litigation regarding surface water adjudications or other water related litigation and the potential impacts on this state's water supplies.
 - (g) The status of Indian water rights settlements and related negotiations that affect this state.
 - (h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 35, eff. June 12, 1980. Amended by Laws 1986, Ch. 11, § 2, eff. April 4, 1986; Laws 1986, Ch. 154, § 1, eff. April 18, 1986; Laws 1986, Ch. 368, § 126; Laws 1986, Ch. 368, § 127, eff. July 1, 1987; [Laws 1990](#),

Ch. 181, § 2; Laws 1991, Ch. 19, § 1; Laws 1992, Ch. 3, § 1, eff. March 24, 1992; Laws 1992, Ch. 94, § 6; Laws 1992, Ch. 156, § 22; Laws 1992, Ch. 270, § 1; Laws 1992, Ch. 282, § 1; Laws 1992, Ch. 319, § 45; Laws 1994, Ch. 278, § 5; Laws 1994, Ch. 296, § 1, eff. April 25, 1994; Laws 1996, Ch. 308, § 1, eff. April 30, 1996; Laws 1997, Ch. 287, § 14, eff. April 29, 1997; Laws 1998, Ch. 57, § 67; Laws 2002, Ch. 287, § 10; Laws 2003, Ch. 248, § 1, eff. May 21, 2003; Laws 2012, Ch. 170, § 77; Laws 2017, Ch. 313, § 39, eff. Jan. 1, 2018.

Footnotes

- 1 Section 11-951 et seq.
- 2 Section 45-401 et seq.
- 3 Section 49-201 et seq.
- 4 Section 49-281 et seq.
- 5 Section 45-2101 et seq.
- 6 Section 45-2401 et seq.

A. R. S. § 45-105, AZ ST § 45-105

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 10. Wells (Refs & Annos)

A.R.S. § 45-604

§ 45-604. Water measuring devices

Currentness

A. Except as provided in subsections B, C and D of this section, a person who withdraws groundwater from a nonexempt well in an active management area or an irrigation non-expansion area, a person who withdraws water from a non-exempt well in the Santa Cruz active management area or a person who withdraws groundwater for transportation to an initial active management area pursuant to article 8.1 of this chapter¹ shall use a water measuring device approved by the director.

B. A person who holds a type 2 non-irrigation grandfathered right or a groundwater withdrawal permit in the amount of ten or fewer acre-feet per year is not required to use a water measuring device to measure withdrawals pursuant to that grandfathered right or groundwater withdrawal permit unless the person holds more than one such right or permit in the aggregate amount of more than ten acre-feet per year and withdraws more than ten acre-feet of groundwater per year pursuant to those rights or permits from one well.

C. In an irrigation non-expansion area:

1. A person who withdraws ten or fewer acre-feet of groundwater per year from a non-exempt well for a non-irrigation use is not required to use a water measuring device to measure withdrawals from that well.

2. A person who withdraws groundwater from a non-exempt well for an irrigation use is not required to use a water measuring device to measure withdrawals from that well if both of the following apply:

(a) Groundwater withdrawn from the well for an irrigation use is used only on land that is owned by a person who has the right under § 45-437 to irrigate ten or fewer contiguous acres at the place of the use.

(b) Groundwater withdrawn from the well is not used on land that is part of an integrated farming operation.

D. In an active management area, a person, other than an irrigation district, who withdraws groundwater from a non-exempt well for use pursuant to an irrigation grandfathered right that is appurtenant to ten or fewer irrigation acres is not required to use a water measuring device to measure withdrawals from that well unless groundwater withdrawn from the well is also used pursuant to either a service area right pursuant to article 6 of this chapter² or a grandfathered groundwater right other than an

irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to § 45-563.02.

E. The director shall adopt rules setting forth the requirements and specifications for water measuring devices.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1984, Ch. 148, § 14, eff. April 18, 1984; Laws 1985, Ch. 323, § 21, eff. May 10, 1985; [Laws 1991, Ch. 212, § 29](#); [Laws 1994, Ch. 249, § 12](#); [Laws 1994, Ch. 296, § 20](#), eff. April 25, 1994; [Laws 1995, Ch. 258, § 15](#).

Footnotes

1 Section 45-551 et seq.

2 Section 45-491 et seq.

A. R. S. § 45-604, AZ ST § 45-604

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

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TAB C8

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Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 1. Administration and General Provisions (Refs & Annos)
Article 1. Department of Water Resources (Refs & Annos)

A.R.S. § 45-105

§ 45-105. Powers and duties of director

Effective: January 1, 2018

[Currentness](#)

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.
2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.
3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.
4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.
5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.
6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.
7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3¹ and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board, congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; [33 United States Code § 701-1](#)).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title.² If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 ([P.L. 96-510](#)) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.
2. Administer all laws relating to groundwater, as provided in this title.
3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.
4. Coordinate and confer with and may contract with:
 - (a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.
 - (b) The department of environmental quality with respect to title 49, chapter 2³ for its assistance in the development of state water plans.
 - (c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.⁴
 - (d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.
5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.
6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.
7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.
8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.
9. Report to and consult with the Arizona water resources advisory board at regular intervals.

10. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.
11. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.⁵
12. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.⁶
13. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.
14. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:
 - (a) The current status of the water supply in this state and any likely changes in that status.
 - (b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.
 - (c) The status of current water conservation programs in this state.
 - (d) The current state of each active management area and the level of progress toward management goals in each active management area.
 - (e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.
 - (f) The status of any pending or likely litigation regarding surface water adjudications or other water related litigation and the potential impacts on this state's water supplies.
 - (g) The status of Indian water rights settlements and related negotiations that affect this state.
 - (h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 35, eff. June 12, 1980. Amended by Laws 1986, Ch. 11, § 2, eff. April 4, 1986; Laws 1986, Ch. 154, § 1, eff. April 18, 1986; Laws 1986, Ch. 368, § 126; Laws 1986, Ch. 368, § 127, eff. July 1, 1987; [Laws 1990](#),

Ch. 181, § 2; Laws 1991, Ch. 19, § 1; Laws 1992, Ch. 3, § 1, eff. March 24, 1992; Laws 1992, Ch. 94, § 6; Laws 1992, Ch. 156, § 22; Laws 1992, Ch. 270, § 1; Laws 1992, Ch. 282, § 1; Laws 1992, Ch. 319, § 45; Laws 1994, Ch. 278, § 5; Laws 1994, Ch. 296, § 1, eff. April 25, 1994; Laws 1996, Ch. 308, § 1, eff. April 30, 1996; Laws 1997, Ch. 287, § 14, eff. April 29, 1997; Laws 1998, Ch. 57, § 67; Laws 2002, Ch. 287, § 10; Laws 2003, Ch. 248, § 1, eff. May 21, 2003; Laws 2012, Ch. 170, § 77; Laws 2017, Ch. 313, § 39, eff. Jan. 1, 2018.

Footnotes

- 1 Section 11-951 et seq.
- 2 Section 45-401 et seq.
- 3 Section 49-201 et seq.
- 4 Section 49-281 et seq.
- 5 Section 45-2101 et seq.
- 6 Section 45-2401 et seq.

A. R. S. § 45-105, AZ ST § 45-105

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 2. Groundwater Code (Refs & Annos)

Article 5. Grandfathered Groundwater Rights in Active Management Areas (Refs & Annos)

A.R.S. § 45-467

§ 45-467. Withdrawals in excess of irrigation grandfathered right; withdrawals less than irrigation grandfathered right; flexibility account; conveyances; variance; exemption

Effective: July 29, 2010

[Currentness](#)

A. A person who is entitled to use groundwater pursuant to an irrigation grandfathered right may:

1. In an active management area other than the Santa Cruz active management area, use groundwater in excess of the amount allowed by the right in an amount determined pursuant to subsection I of this section.
2. In the Santa Cruz active management area, use water, other than stored water, withdrawn from a well in excess of the farm's current irrigation water duty multiplied by the farm's water duty acres in an amount determined pursuant to subsection J of this section.
3. Use less than the amount allowed by the right in one accounting period and use the remaining amount allowed by the right in a succeeding accounting period or periods.

B. The director shall establish rules for the maintenance of a flexibility account for each farm in an active management area.

C. If a farm located in an active management area other than the Santa Cruz active management area is irrigated solely with groundwater, the director shall:

1. Register a debit to the account in any accounting period in which the amount of groundwater used for the irrigation of the irrigation acres in the farm is greater than the current irrigation water duty for the farm multiplied by the water duty acres in the farm.
2. Register a credit to the account in any accounting period in which the amount of groundwater used for the irrigation of the irrigation acres in the farm is less than the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

D. Except as provided in subsection G of this section, if a farm located in an active management area other than the Santa Cruz active management area is irrigated with a combination of surface water or effluent, or both, and groundwater, and uses of water by the farm from all sources for irrigation purposes, except for surface water, other than Colorado river water, released for

beneficial use from storage, diversion or distribution facilities to avoid spilling that would otherwise occur due to uncontrolled surface water inflows that exceed facility capacity, in the accounting period:

1. Exceed the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of groundwater used up to the amount of the excess, less any effluent used, shall be registered as a debit to the account.
2. Are less than the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water not used which would have been groundwater shall be registered as a credit to the account.

E. If a farm located in the Santa Cruz active management area is irrigated solely with water, other than stored water, withdrawn from a well, the director shall:

1. Register a debit to the account in any accounting period in which the amount of water, other than stored water, withdrawn from a well and used for the irrigation of the irrigation acres in the farm is greater than the current irrigation water duty for the farm multiplied by the water duty acres in the farm. The amount of the debit shall equal the amount of the excess.
2. Register a credit to the account in any accounting period in which the amount of water, other than stored water, withdrawn from a well and used for the irrigation of the irrigation acres in the farm is less than the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

F. If a farm located in the Santa Cruz active management area is irrigated with a combination of surface water not withdrawn from a well and effluent, or both, and water, other than stored water, withdrawn from a well, and uses of water by the farm from all sources for irrigation purposes in the accounting period:

1. Exceed the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water, other than stored water, withdrawn from a well and used on the farm up to the amount of the excess, less any effluent used that does not qualify as stored water, shall be registered as a debit to the account.
2. Are less than the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water not used which would have been water, other than stored water, withdrawn from a well shall be registered as a credit to the account.

G. Beginning January 1, 1995 through December 31, 1999, if a farm that qualifies under this subsection as determined pursuant to subsection H of this section is irrigated during an accounting period with a combination of surface water or effluent, or both, and groundwater, and uses of water by the farm from all sources for irrigation purposes, except for surface water, other than Colorado river water, released for beneficial use from storage, diversion or distribution facilities to avoid spilling that would otherwise occur due to uncontrolled surface water inflows that exceed facility capacity, in the accounting period:

1. Exceed the amount of the first intermediate irrigation water duty established for the farm pursuant to [§ 45-565](#) multiplied by the water duty acres in the farm, the amount of groundwater used up to the amount of the excess, less any effluent used, shall be registered as a debit to the account.

2. Are less than the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water not used that would have been groundwater shall be registered as a credit to the account.

3. Exceed or equal the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm but are less than or equal to the amount of the first intermediate irrigation water duty established for the farm pursuant to § 45-565 multiplied by the water duty acres in the farm, no credit or debit may be registered to the account.

H. A farm qualifies under subsection G of this section if it is located in an active management area other than the Santa Cruz active management area and either of the following applies:

1. The amount of groundwater used to irrigate the farm during the accounting period does not exceed an amount computed by multiplying the water duty acres in the farm by one and one-half acre-feet of water, except that an electrical district organized under title 48, chapter 12¹ or an irrigation district may apply to the director no later than March 31 of a year for an increase in that amount for that year for the farms located within the boundaries of the district that do not qualify under paragraph 2 of this subsection. The director shall grant the increase if the district demonstrates that it holds a contract for the purchase of hydroelectric power marketed by the western area power administration or the Arizona power authority and that the use of groundwater during that year by all of the farms within the boundaries of the district that do not qualify under paragraph 2 of this subsection in an amount that does not exceed one and one-half acre-feet of water multiplied by the total number of water duty acres of those farms would result in the district being unable to use its hydroelectric power capacity entitlement under the contract. If the director grants the increase, the director shall compute the maximum amount of groundwater that may be used by a farm within the district during the year in order to qualify under subsection G of this section as follows:

(a) Determine the total amount of groundwater that must be used during the year by all farms in the district that do not qualify under paragraph 2 of this subsection to enable the district to efficiently use its hydroelectric kilowatt demand allocation.

(b) Divide the amount determined in subdivision (a) of this paragraph by the total number of water duty acres of the farms in the district that do not qualify under paragraph 2 of this subsection.

(c) Multiply the farm's water duty acres by the quotient in subdivision (b) of this paragraph or two acre-feet of water, whichever is less.

2. The farm is irrigated with water supplied by an irrigation district that owns or leases and operates all of the wells used to withdraw groundwater for irrigation use within the district, and the total amount of groundwater supplied by the irrigation district for irrigation use during the year does not exceed an amount computed by multiplying the total number of water duty acres within the irrigation district by one and one-half acre-feet of water, except that the irrigation district or an electrical district organized under title 48, chapter 12 may apply to the director no later than March 31 of a year for an increase in that amount for that year for the farms located within the boundaries of the irrigation district. The director shall grant the increase if the irrigation district or electrical district demonstrates that it holds a contract for the purchase of hydroelectric power marketed by the western area power administration or the Arizona power authority and that the irrigation district or electrical district would be unable to use its hydroelectric power capacity entitlement under the contract if the total amount of groundwater supplied by the irrigation district for irrigation use during the year does not exceed an amount computed by multiplying the total number of water duty acres within the irrigation district by one and one-half acre-feet of water. If the director grants the increase, the maximum amount of groundwater that may be supplied by the irrigation district for irrigation use during the year in order for

the farms located within the boundaries of the irrigation district to qualify under subsection G of this section shall be the lesser of the following:

(a) The amount of groundwater that the director determines must be supplied by the irrigation district for irrigation use during the year to enable the irrigation district or electrical district to efficiently use its hydroelectric kilowatt demand allocation.

(b) An amount of groundwater computed by multiplying the total number of water duty acres within the irrigation district by two acre-feet of water.

I. The maximum excess amount of groundwater that may be used pursuant to this section is equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm. An owner of an irrigation grandfathered right and the person using groundwater pursuant to the right violate this section if the flexibility account for the farm in which the irrigation acres to which the right is appurtenant are located is in arrears at any time in excess of this amount. Groundwater equal to the credit balance in the flexibility account may be used at any time.

J. In the Santa Cruz active management area, the maximum excess amount of water, other than stored water, withdrawn from a well that may be used pursuant to this section is equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm. A person using water, other than stored water, withdrawn from a well for an irrigation use in the Santa Cruz active management area violates this section if the flexibility account for the farm is in arrears at any time in excess of this amount. Water, other than stored water, withdrawn from a well in an amount equal to the credit balance in the flexibility account may be used at any time, except that if the water is surface water, the amount that may be used shall not exceed the amount allowed by the decreed or appropriative surface water right.

K. If an irrigation grandfathered right is conveyed for an irrigation use pursuant to § 45-472, each acre conveyed shall carry with it a proportional share of any debits or credits in the flexibility account for the farm. If an irrigation grandfathered right is conveyed for a non-irrigation use pursuant to § 45-472, each acre conveyed shall carry with it a proportional share of any debits in the flexibility account for the farm.

L. A person in an active management area other than the Santa Cruz active management area who is using groundwater pursuant to an irrigation grandfathered right and who is operating under a variance to the irrigation water duty pursuant to § 45-574:

1. May accumulate a maximum debit in an amount equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

2. Shall accumulate credits pursuant to subsection C or D of this section.

M. A person in the Santa Cruz active management area who is using water, other than stored water, withdrawn from a well for an irrigation use and who is operating under a variance to the irrigation water duty pursuant to § 45-574:

1. May accumulate a maximum debit in an amount equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

2. Shall accumulate credits pursuant to subsection E or F of this section.

N. In an active management area other than the Santa Cruz active management area, a person using groundwater pursuant to an irrigation grandfathered right shall file a report with the director each year which shall include the amount of groundwater used pursuant to the irrigation grandfathered right and such other information as the director shall require. In the Santa Cruz active management area, a person using water, other than stored water, withdrawn from a well for irrigation use shall file a report with the director each year which shall include the amount of water used on the farm and such other information as the director shall require. The director may consolidate the reporting requirements of this section with the reporting requirements of § 45-632. A person using groundwater pursuant to an irrigation grandfathered right that is regulated under a best management practices program adopted by the director, pursuant to § 45-566.02, subsection F, § 45-567.02, subsection G or § 45-568.02, subsection F, is exempt from the reporting requirements of this subsection for groundwater used pursuant to the irrigation grandfathered right, except that the person shall file a report with the director each year that includes the information required by the best management practices program. A person using groundwater pursuant to an irrigation grandfathered right that is appurtenant to ten or fewer irrigation acres is exempt from the reporting requirements of this subsection for groundwater used pursuant to the irrigation grandfathered right unless one of the following applies:

1. The land to which the irrigation grandfathered right is appurtenant is part of an integrated farming operation.
2. Groundwater is withdrawn from the land to which the irrigation grandfathered right is appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter² or a grandfathered groundwater right other than an irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to § 45-563.02.
3. Groundwater is withdrawn from land that is both owned by the owner of the irrigation grandfathered right and contiguous to the land to which the irrigation grandfathered right is appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter or a grandfathered groundwater right other than an irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to § 45-563.02.

O. A person who owns an irrigation grandfathered right that is appurtenant to irrigation acres that were capable of being irrigated as of December 31 of the preceding calendar year and whose farm has registered a credit balance to its flexibility account may convey or sell all or a portion of the credit balance to any person, including the conveyer or seller of the credit balance, who owns another irrigation grandfathered right or who uses groundwater pursuant to another irrigation grandfathered right, except that:

1. A credit balance that is registered to the flexibility account of a farm located within an irrigation district may be transferred only to:
 - (a) The flexibility account of a farm that is located within the same irrigation district.
 - (b) The flexibility account of a farm that is located outside of that irrigation district if both farms are located in the same groundwater subbasin and the same active management area and if the farm to which the credits are conveyed is owned or leased by the owner or lessee of the farm from which the credits are conveyed.

2. A credit balance that is registered to the flexibility account of a farm that is not located within an irrigation district may be transferred only to:

(a) The flexibility account of a farm that is located within the same groundwater subbasin and the same active management area and that is not located within an irrigation district.

(b) The flexibility account of a farm that is located within the same groundwater subbasin and the same active management area and that is located within an irrigation district if the farm to which the credits are conveyed is owned or leased by the owner or lessee of the farm from which the credits are conveyed.

3. A credit registered to a flexibility account for a year may be conveyed or sold only during the second calendar year following the year for which the credit was registered.

4. A person who owns a farm that includes protected farmland may not sell or otherwise convey any credit registered to the farm's flexibility account.

P. A person who sells or conveys all or a portion of a credit balance pursuant to subsection O of this section, and the person to whom the credit balance is sold or conveyed, shall notify the director of the sale or conveyance within thirty days after the sale or conveyance on a form prescribed and furnished by the director.

Q. The director shall establish and collect a reasonable fee from the conveyee or purchaser of a credit balance pursuant to subsection O of this section to cover the cost of administrative services and other expenses associated with registering a deduction to the conveyor's or seller's flexibility account balance and an addition to the conveyee's or purchaser's flexibility account balance pursuant to subsection R of this section. The conveyee or purchaser shall pay the fee at the time the notice required pursuant to subsection P of this section is given to the director. The director shall deposit, pursuant to §§ 35-146 and 35-147, all fees received under this subsection in the water resources fund established by § 45-117.

R. A sale or conveyance of all or part of a credit balance under subsection O of this section is effective only if the director receives the notice required by subsection P of this section and the fee required by subsection Q of this section within thirty days after the sale or conveyance. After receiving the notice and the fee, the director shall register a deduction of the credit amount conveyed or sold from the conveyor's or seller's flexibility account balance and the corresponding addition to the conveyee's or purchaser's flexibility account balance. The deduction and addition to the flexibility account balances are effective as of the date of the sale or conveyance.

S. The director shall report to the president of the senate and the speaker of the house of representatives no later than June 30, 2002 on the effect of conveyances of flexibility account credit balances pursuant to subsection O, paragraph 2 of this section on the achievement of the management goal of each active management area as stated in § 45-562 and on the conservation program included in the management plan for each active management area as provided in § 45-565, and any recommended changes to subsection O, paragraph 2 of this section.

T. Except for subsection N of this section, this section does not apply to:

1. A farm if the person entitled to use groundwater on the farm is exempt from the irrigation water duties established for the farm as provided in § 45-563.02, subsection A or if the director may not establish irrigation water duties for the farm as provided in § 45-563.02, subsection B.

2. A farm if water use within the farm is regulated under a best management practices program adopted by the director pursuant to § 45-566.02, subsection F, § 45-567.02, subsection G or § 45-568.02, subsection F.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1990, Ch. 71, § 2; Laws 1991, Ch. 67, § 3; Laws 1991, Ch. 112, § 3; Laws 1992, Ch. 57, § 1, eff. April 29, 1992; Laws 1992, Ch. 97, § 1; Laws 1992, Ch. 183, § 1; Laws 1992, Ch. 319, § 47; Laws 1993, Ch. 107, § 1; Laws 1994, Ch. 249, § 4; Laws 1994, Ch. 296, § 11, eff. April 25, 1994; Laws 1995, Ch. 258, § 5; Laws 1998, Ch. 47, § 3; Laws 1999, Ch. 187, § 3; Laws 2002, Ch. 5, § 3; Laws 2003, Ch. 98, § 3; Laws 2010, Ch. 282, § 9.

Footnotes

1 Section 48-1701 et seq.

2 Section 45-491 et seq.

A. R. S. § 45-467, AZ ST § 45-467

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 12. Enforcement (Refs & Annos)

A.R.S. § 45-632

§ 45-632. Records and annual report of groundwater
pumping, transportation and use; penalty

Currentness

A. Each person who is required to file an annual report under this section or who files an annual report under subsection E of this section shall maintain current accurate records of the person's withdrawals, transportation, deliveries and use of groundwater and, in the Santa Cruz active management area, current accurate records of the person's withdrawals, deliveries and use of all water withdrawn from a well, as prescribed by the director under subsection P of this section.

B. Except as provided in subsections C and D of this section, an annual report shall be filed with the director by each person who:

1. Owns or leases a right under this chapter to withdraw, receive or use groundwater in an active management area, unless a report is filed for that person by an irrigation district under subsection E of this section or by another person in a form acceptable to the director.

2. Uses groundwater which is transported from an active management area.

3. Is an individual user subject to a municipal conservation requirement for appropriate conservation measures included in a management plan adopted by the director pursuant to article 9 of this chapter.¹

4. Withdraws groundwater for transportation to an initial active management area pursuant to article 8.1 of this chapter.²

5. Withdraws water from a well in the Santa Cruz active management area or who uses water, other than stored water, withdrawn from a non-exempt well in the Santa Cruz active management area.

C. Persons who withdraw groundwater from exempt wells and non-irrigation customers of cities, towns, private water companies and irrigation districts, except customers receiving water pursuant to a permit, are exempt from the record keeping and reporting requirements of this section for such water.

D. A person who owns or leases an irrigation grandfathered right that is appurtenant to ten or fewer irrigation acres is exempt from the record keeping and reporting requirements of this section for the irrigation grandfathered right unless one of the following applies:

1. The land to which the irrigation grandfathered right is appurtenant is part of an integrated farming operation.
2. Groundwater is withdrawn from the land to which the irrigation grandfathered right is appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter³ or a grandfathered groundwater right other than an irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to § 45-563.02.
3. Groundwater is withdrawn from land that is both owned by the owner of the irrigation grandfathered right and contiguous to the land to which the irrigation grandfathered right is appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter or a grandfathered groundwater right other than an irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to § 45-563.02.

E. An irrigation district which delivers and distributes groundwater in an active management area may file an annual report with the director for each person who holds an irrigation grandfathered right appurtenant to irrigation acres within the service area of the irrigation district, if the irrigation district delivers all the water used on the person's irrigation acres. If an irrigation district files an annual report for such a person, the irrigation district shall report the following information for each such person:

1. The name of the person and the certificate number of the person's irrigation grandfathered right.
2. The quantity of groundwater, if any, delivered during the calendar year.

F. Persons who are required to report under subsection B, paragraph 1 of this section and who withdraw groundwater during the calendar year in an active management area shall report the following information for each well:

1. The registration number and location of the well.
2. The quantity of groundwater withdrawn from the well during the calendar year. A person who, under § 45-604, subsection B, is not required to use and does not use a water measuring device to measure withdrawals made pursuant to a type 2 non-irrigation grandfathered right or a groundwater withdrawal permit shall estimate the quantity of groundwater withdrawn pursuant to the grandfathered right or withdrawal permit.
3. The quantity of fuel or electricity consumed by the pump during the calendar year.
4. The uses to which the groundwater was applied or the persons to whom the groundwater was delivered during the calendar year.

G. Persons who are required to report under subsection B, paragraph 1 of this section and who use groundwater during the calendar year in an active management area and persons who are required to report under subsection B, paragraph 2 of this section shall report the following information:

1. The source of the groundwater, including:
 - (a) The name of the person from whom the groundwater was obtained.
 - (b) The registration number and location of the well, if known.
2. The quantity of groundwater used during the calendar year.
3. The specific uses to which the groundwater was applied during the calendar year.

H. Persons who are required to report under subsection B, paragraph 4 of this section and who transport groundwater during the calendar year to an initial active management area under article 8.1 of this chapter shall report the following information:

1. The registration number and location of each well.
2. The quantity of groundwater withdrawn from each well during the calendar year.
3. The quantity of groundwater transported during the calendar year to an initial active management area.
4. The quantity of groundwater that was withdrawn during the calendar year and that was not transported to an initial active management area and the uses to which the groundwater was applied.
5. The quantity of fuel or electricity consumed by each pump during the calendar year.
6. The uses to which the groundwater was applied or the persons to whom the groundwater was delivered during the calendar year.

I. Persons who are required to report under subsection B, paragraph 1 of this section and who neither withdraw nor use groundwater during the calendar year shall report the following information:

1. The fact that no groundwater was withdrawn or used during the calendar year.
2. The registration number and location of each well, if any.

J. Persons who are required to report under subsection B, paragraph 5 of this section and who withdraw water from a non-exempt well in the Santa Cruz active management area during the calendar year shall report the following information:

1. The registration number and location of the well.
2. The quantity of water, by type, withdrawn from the well during the calendar year.
3. The quantity of fuel or electricity consumed by the pump during the calendar year.
4. The uses to which the water was applied or the persons to whom the water was delivered during the calendar year.

K. Persons who are required to report under subsection B, paragraph 5 of this section and who use water withdrawn from a non-exempt well in the Santa Cruz active management area during the calendar year shall report the following information:

1. The source of the water, including:
 - (a) The name of the person from whom the water was obtained.
 - (b) The registration number and location of the well, if known.
2. The quantity of the water, by type, used during the calendar year.
3. The specific uses to which the water was applied during the calendar year.

L. If a person both withdraws groundwater in an active management area and uses such water, the person may combine the information required by subsections F and G of this section into one report. If a person both withdraws water, other than stored water, from a non-exempt well in the Santa Cruz active management area and uses such water, the person may combine the information required by subsections J and K of this section into one report.

M. The director may require such other information in the report as may be necessary to accomplish the management goals of the applicable active management area.

N. Each report shall contain either a sworn statement or a certification, under penalty of perjury, that the information contained in the report is true and correct according to the best belief and knowledge of the person filing the report.

O. The annual report shall be maintained on a calendar year basis and shall be filed with the director no later than March 31 of each year for the preceding calendar year. If a person who is required under this section to file an annual report for calendar year 1985 or any subsequent calendar year fails to file a report for the calendar year in question on or before March 31 of the

following year, the director may assess and collect a penalty of twenty-five dollars for each month or portion of a month that the annual report is delinquent. The total penalty assessed under this subsection shall not exceed one hundred fifty dollars. The director shall deposit, pursuant to §§ 35-146 and 35-147, all penalties collected under this subsection in the state general fund.

P. The records and reports required to be kept and filed under this section shall be in such form as the director prescribes. The director shall prepare blank forms and distribute them on a timely schedule throughout each active management area and furnish them upon request. Failure to receive or obtain the forms does not relieve any person from keeping the required records or making any required report. The director shall cooperate with cities and towns, private water companies and irrigation districts in establishing the form of the records and reports to be kept and filed by them.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1984, Ch. 148, § 16, eff. April 18, 1984; Laws 1985, Ch. 323, § 23, eff. May 10, 1985; Laws 1987, Ch. 101, § 9, eff. April 16, 1987; Laws 1988, Ch. 104, § 20, eff. May 24, 1988; Laws 1991, Ch. 212, § 31; Laws 1994, Ch. 249, § 17; Laws 1994, Ch. 296, § 21, eff. April 25, 1994; Laws 1995, Ch. 258, § 19; Laws 1997, Ch. 15, § 12; Laws 2000, Ch. 193, § 524.

Footnotes

1 Section 45-561 et seq.

2 Section 45-551 et seq.

3 Section 45-491 et seq.

A. R. S. § 45-632, AZ ST § 45-632

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

TAB C9



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

[Arizona Revised Statutes Annotated](#)

[Title 45. Waters](#)

[Chapter 1. Administration and General Provisions \(Refs & Annos\)](#)

[Article 1. Department of Water Resources \(Refs & Annos\)](#)

A.R.S. § 45-105

§ 45-105. Powers and duties of director

Effective: January 1, 2018

[Currentness](#)

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.
2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.
3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.
4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.
5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.
6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.
7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3¹ and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board, congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; [33 United States Code § 701-1](#)).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title.² If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 ([P.L. 96-510](#)) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.
2. Administer all laws relating to groundwater, as provided in this title.
3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.
4. Coordinate and confer with and may contract with:
 - (a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.
 - (b) The department of environmental quality with respect to title 49, chapter 2³ for its assistance in the development of state water plans.
 - (c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.⁴
 - (d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.
5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.
6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.
7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.
8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.
9. Report to and consult with the Arizona water resources advisory board at regular intervals.

10. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.
11. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.⁵
12. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.⁶
13. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.
14. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:
 - (a) The current status of the water supply in this state and any likely changes in that status.
 - (b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.
 - (c) The status of current water conservation programs in this state.
 - (d) The current state of each active management area and the level of progress toward management goals in each active management area.
 - (e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.
 - (f) The status of any pending or likely litigation regarding surface water adjudications or other water related litigation and the potential impacts on this state's water supplies.
 - (g) The status of Indian water rights settlements and related negotiations that affect this state.
 - (h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 35, eff. June 12, 1980. Amended by Laws 1986, Ch. 11, § 2, eff. April 4, 1986; Laws 1986, Ch. 154, § 1, eff. April 18, 1986; Laws 1986, Ch. 368, § 126; Laws 1986, Ch. 368, § 127, eff. July 1, 1987; [Laws 1990](#),

Ch. 181, § 2; Laws 1991, Ch. 19, § 1; Laws 1992, Ch. 3, § 1, eff. March 24, 1992; Laws 1992, Ch. 94, § 6; Laws 1992, Ch. 156, § 22; Laws 1992, Ch. 270, § 1; Laws 1992, Ch. 282, § 1; Laws 1992, Ch. 319, § 45; Laws 1994, Ch. 278, § 5; Laws 1994, Ch. 296, § 1, eff. April 25, 1994; Laws 1996, Ch. 308, § 1, eff. April 30, 1996; Laws 1997, Ch. 287, § 14, eff. April 29, 1997; Laws 1998, Ch. 57, § 67; Laws 2002, Ch. 287, § 10; Laws 2003, Ch. 248, § 1, eff. May 21, 2003; Laws 2012, Ch. 170, § 77; Laws 2017, Ch. 313, § 39, eff. Jan. 1, 2018.

Footnotes

- 1 Section 11-951 et seq.
- 2 Section 45-401 et seq.
- 3 Section 49-201 et seq.
- 4 Section 49-281 et seq.
- 5 Section 45-2101 et seq.
- 6 Section 45-2401 et seq.

A. R. S. § 45-105, AZ ST § 45-105

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 1. Administration and General Provisions (Refs & Annos)

Article 3. Bodies of Water (Refs & Annos)

A.R.S. § 45-135

§ 45-135. Inspections; investigations

Currentness

A. The director or the director's authorized representative may enter at reasonable times on private or public property where a body of water is located, and the owner, manager or occupant of the property shall permit such entry, to:

1. Inspect the body of water.
2. Ascertain compliance with this article.

B. Inspections and investigations under this section shall be on reasonable notice to the owner, manager or occupant of the property unless reasonable grounds exist to believe that the notice would frustrate the enforcement of this article. The director shall adopt rules for conducting inspections and obtaining warrants under this section. The director may apply for and obtain warrants. If warrants are required by law, the director shall apply for and obtain warrants for entry and inspection to carry out the administrative and enforcement purposes of this article.

C. The director shall provide a written report of each inspection and investigation under this section to the person subject to such action.

Credits

Added by Laws 1987, Ch. 238, § 1.

A. R. S. § 45-135, AZ ST § 45-135

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 12. Enforcement (Refs & Annos)

A.R.S. § 45-633

§ 45-633. Inspections, investigations and audits

Currentness

A. The director or the director's authorized representative may enter at reasonable times upon private or public property where a well, including a well under construction or a well not used to withdraw groundwater or another facility for the withdrawal, transportation or use of groundwater is located and the owner, manager or occupant of the property shall permit such entry to:

1. Inspect a well, including a well under construction or a well not used to withdraw groundwater, or another facility for the withdrawal, transportation or use of groundwater that is subject to this chapter.
2. Obtain factual data or access to records required to be kept under [§ 45-632](#).
3. Ascertain compliance with this chapter.

B. Inspections and investigations under subsection A of this section shall be upon reasonable notice to the owner, manager or occupant of the property unless reasonable grounds exist to believe that such notice would frustrate the enforcement of this chapter or where entry is sought for the sole purpose of inspecting water measuring devices required pursuant to [§ 45-604](#). The director shall adopt rules for conducting inspections, examining records and obtaining warrants pursuant to this section. The director may apply for and obtain warrants. If warrants are required by law, the director shall apply for and obtain warrants for entry and inspection to carry out the administrative and enforcement purposes of this chapter.

C. The director may require a person who is required to keep records under [§ 45-632](#) to appear, at reasonable times and upon reasonable notice, at the director's office and produce such records and information as are specified in the notice to determine whether the records and annual reports required by [§ 45-632](#) are complete, true and correct. The director shall audit the records of a sufficient number of persons under this subsection to ensure general compliance with this chapter.

D. The director shall provide a written report of each inspection, investigation and audit under this section to the person subject to such action.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 12, 1980. Amended by Laws 1985, Ch. 323, § 24, eff. May 10, 1985; Laws 1986, Ch. 289, § 11; [Laws 1991, Ch. 211, § 23](#); [Laws 1994, Ch. 291, § 30](#).

A. R. S. § 45-633, AZ ST § 45-633

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 3.1. Underground Water Storage, Savings and Replenishment (Refs & Annos)

Article 5. Permit Application Procedures, Financial Provisions and Enforcement

A.R.S. § 45-880.01

§ 45-880.01. Inspections, investigations and audits

Currentness

A. The director or the director's authorized representative may enter at reasonable times on private or public property where any facilities used for the purposes of water storage, stored water recovery or stored water use are located and the owner, manager or occupant of the property shall permit such entry to:

1. Inspect any facility that is used for the purposes of water storage, stored water recovery or stored water use and that is subject to this chapter.
2. Obtain factual data or access to records required to be kept by this article.
3. Ascertain compliance with this chapter.

B. Inspections and investigations under this section shall be on reasonable notice to the owner, manager or occupant of the property unless reasonable grounds exist to believe that this notice would frustrate the enforcement of this chapter or if entry is sought for the sole purpose of inspecting water measuring devices required pursuant to § 45-872.01. The director shall adopt rules for conducting inspections, examining records and obtaining warrants pursuant to this section. The director may, and if required by law, shall, apply for and obtain warrants for entry and inspection to carry out the administrative and enforcement purposes of this chapter.

C. The director may require a person who is required to keep records under this article to appear, at reasonable times and on reasonable notice, at the director's office and produce the records and information that are specified in the notice to determine whether the records and annual reports required by this article are complete, true and correct.

D. The director shall provide a written report of each inspection, investigation and audit under this section to the person who is subject to such action.

Credits

Added by [Laws 1994, Ch. 291, § 32](#).

A. R. S. § 45-880.01, AZ ST § 45-880.01

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

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Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 4. Water Exchanges (Refs & Annos)
Article 5. Enforcement

A.R.S. § 45-1061

§ 45-1061. Inspections; investigations and audits

Currentness

A. The director or the director's authorized representative may enter at reasonable times on private or public property where water is withdrawn, diverted or used pursuant to a water exchange, and the owner, manager or occupant of the property shall permit the entry to:

1. Inspect facilities for withdrawal, diversion or use of the water.
2. Ascertain compliance with this chapter.

B. Inspections and investigations under this section shall be on reasonable notice to the owner, manager or occupant of the property unless reasonable grounds exist to believe that the notice would frustrate the enforcement of this chapter. The director shall adopt rules for conducting inspections and obtaining warrants under this section. If warrants are required by law, the director shall apply for and obtain warrants for entry and inspection to carry out the administrative and enforcement purposes of this chapter.

C. The director may require a person who is required to keep records under [§ 45-1004](#) to appear, at reasonable times and on reasonable notice, at the director's office and produce such records and information as are specified in the notice to determine whether the records and annual reports required by [§ 45-1004](#) are complete, true and correct. The director shall audit a sufficient number of persons under this subsection to ensure general compliance with this chapter.

D. The director shall provide a written report of each inspection, investigation and audit under this section to the person who is subject to such action.

Credits

Added by [Laws 1992, Ch. 225, § 2.](#)

A. R. S. § 45-1061, AZ ST § 45-1061

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

TAB C10



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 1. Administration and General Provisions (Refs & Annos)

Article 1. Department of Water Resources (Refs & Annos)

A.R.S. § 45-105

§ 45-105. Powers and duties of director

Effective: January 1, 2018

[Currentness](#)

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.
2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.
3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.
4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.
5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.
6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.
7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3¹ and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board, congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; [33 United States Code § 701-1](#)).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title.² If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 ([P.L. 96-510](#)) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.
2. Administer all laws relating to groundwater, as provided in this title.
3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.
4. Coordinate and confer with and may contract with:
 - (a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.
 - (b) The department of environmental quality with respect to title 49, chapter 2³ for its assistance in the development of state water plans.
 - (c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.⁴
 - (d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.
5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.
6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.
7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.
8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.
9. Report to and consult with the Arizona water resources advisory board at regular intervals.

10. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.
11. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.⁵
12. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.⁶
13. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.
14. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:
 - (a) The current status of the water supply in this state and any likely changes in that status.
 - (b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.
 - (c) The status of current water conservation programs in this state.
 - (d) The current state of each active management area and the level of progress toward management goals in each active management area.
 - (e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.
 - (f) The status of any pending or likely litigation regarding surface water adjudications or other water related litigation and the potential impacts on this state's water supplies.
 - (g) The status of Indian water rights settlements and related negotiations that affect this state.
 - (h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 35, eff. June 12, 1980. Amended by Laws 1986, Ch. 11, § 2, eff. April 4, 1986; Laws 1986, Ch. 154, § 1, eff. April 18, 1986; Laws 1986, Ch. 368, § 126; Laws 1986, Ch. 368, § 127, eff. July 1, 1987; [Laws 1990](#),

Ch. 181, § 2; Laws 1991, Ch. 19, § 1; Laws 1992, Ch. 3, § 1, eff. March 24, 1992; Laws 1992, Ch. 94, § 6; Laws 1992, Ch. 156, § 22; Laws 1992, Ch. 270, § 1; Laws 1992, Ch. 282, § 1; Laws 1992, Ch. 319, § 45; Laws 1994, Ch. 278, § 5; Laws 1994, Ch. 296, § 1, eff. April 25, 1994; Laws 1996, Ch. 308, § 1, eff. April 30, 1996; Laws 1997, Ch. 287, § 14, eff. April 29, 1997; Laws 1998, Ch. 57, § 67; Laws 2002, Ch. 287, § 10; Laws 2003, Ch. 248, § 1, eff. May 21, 2003; Laws 2012, Ch. 170, § 77; Laws 2017, Ch. 313, § 39, eff. Jan. 1, 2018.

Footnotes

- 1 Section 11-951 et seq.
- 2 Section 45-401 et seq.
- 3 Section 49-201 et seq.
- 4 Section 49-281 et seq.
- 5 Section 45-2101 et seq.
- 6 Section 45-2401 et seq.

A. R. S. § 45-105, AZ ST § 45-105

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 6. Dams and Reservoirs (Refs & Annos)

Article 1. Supervision of Dams, Reservoirs and Projects (Refs & Annos)

A.R.S. § 45-1202

§ 45-1202. Jurisdiction of director of water resources; records; rules; notice of exemption

Currentness

A. All dams are under the jurisdiction of the director of water resources. Dams of the state, or any political subdivisions thereof, or dams of public utilities, and all dams within the state are included within the jurisdiction conferred by this section. It is unlawful to construct, reconstruct, repair, operate, maintain, enlarge, remove or alter any dam except upon approval of the director.

B. The records pertaining to dam supervision are public documents.

C. The director shall adopt and revise rules and issue general orders to effectuate this article.

D. To qualify for an exemption for a release-contained barrier, the owner of an existing or proposed release-contained barrier shall submit to the director a notice of exemption. The director shall accept or reject a notice of exemption within thirty days after receipt of both of the following:

1. A statement signed by the owner that:

(a) The storage capacity of the release-contained barrier would be contained within property that the release-contained barrier owner owns, operates, controls, maintains or manages and that is not open to the public.

(b) The release-contained barrier owner will maintain downstream containment structures or sites with sufficient containment throughout the useful life of the release-contained barrier.

2. A topographic site plan that shows:

(a) The property lines and ownership status of the land.

(b) Any areas of the property that are open to the public.

(c) The locations and storage capacities of the release-contained barrier and the downstream containment structures or sites.

E. The director may conduct site inspections to verify the release-contained barrier exemption.

Credits

Formerly § 45-702. Amended by Laws 1970, Ch. 204, § 193; Laws 1971, Ch. 49, § 14, eff. April 13, 1971; Laws 1980, 4th S.S., Ch. 1, § 88, eff. June 12, 1980. Renumbered as § 45-1202 by Laws 1987, Ch. 2, § 4, eff. Feb. 27, 1987. Amended by [Laws 1999, Ch. 187, § 12](#).

A. R. S. § 45-1202, AZ ST § 45-1202

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

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TAB C11

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 1. Administration and General Provisions (Refs & Annos)
Article 1. Department of Water Resources (Refs & Annos)

A.R.S. § 45-105

§ 45-105. Powers and duties of director

Effective: January 1, 2018

[Currentness](#)

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.
2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.
3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and utilization of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, utilization of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.
4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.
5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the performance of the groundwater and water quality management functions of the department.
6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.
7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3¹ and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including meetings of the Arizona water resources advisory board, congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; [33 United States Code § 701-1](#)).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title.² If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 ([P.L. 96-510](#)) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.
2. Administer all laws relating to groundwater, as provided in this title.
3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.
4. Coordinate and confer with and may contract with:
 - (a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.
 - (b) The department of environmental quality with respect to title 49, chapter 2³ for its assistance in the development of state water plans.
 - (c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.⁴
 - (d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.
5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.
6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.
7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.
8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.
9. Report to and consult with the Arizona water resources advisory board at regular intervals.

10. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.
11. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.⁵
12. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.⁶
13. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.
14. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:
 - (a) The current status of the water supply in this state and any likely changes in that status.
 - (b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.
 - (c) The status of current water conservation programs in this state.
 - (d) The current state of each active management area and the level of progress toward management goals in each active management area.
 - (e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.
 - (f) The status of any pending or likely litigation regarding surface water adjudications or other water related litigation and the potential impacts on this state's water supplies.
 - (g) The status of Indian water rights settlements and related negotiations that affect this state.
 - (h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 35, eff. June 12, 1980. Amended by Laws 1986, Ch. 11, § 2, eff. April 4, 1986; Laws 1986, Ch. 154, § 1, eff. April 18, 1986; Laws 1986, Ch. 368, § 126; Laws 1986, Ch. 368, § 127, eff. July 1, 1987; [Laws 1990](#),

Ch. 181, § 2; Laws 1991, Ch. 19, § 1; Laws 1992, Ch. 3, § 1, eff. March 24, 1992; Laws 1992, Ch. 94, § 6; Laws 1992, Ch. 156, § 22; Laws 1992, Ch. 270, § 1; Laws 1992, Ch. 282, § 1; Laws 1992, Ch. 319, § 45; Laws 1994, Ch. 278, § 5; Laws 1994, Ch. 296, § 1, eff. April 25, 1994; Laws 1996, Ch. 308, § 1, eff. April 30, 1996; Laws 1997, Ch. 287, § 14, eff. April 29, 1997; Laws 1998, Ch. 57, § 67; Laws 2002, Ch. 287, § 10; Laws 2003, Ch. 248, § 1, eff. May 21, 2003; Laws 2012, Ch. 170, § 77; Laws 2017, Ch. 313, § 39, eff. Jan. 1, 2018.

Footnotes

- 1 Section 11-951 et seq.
- 2 Section 45-401 et seq.
- 3 Section 49-201 et seq.
- 4 Section 49-281 et seq.
- 5 Section 45-2101 et seq.
- 6 Section 45-2401 et seq.

A. R. S. § 45-105, AZ ST § 45-105

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 45. Waters
Chapter 2. Groundwater Code (Refs & Annos)
Article 10. Wells (Refs & Annos)

A.R.S. § 45-598

§ 45-598. New wells and replacement wells in new locations
in active management areas; rules; permit required

Currentness

A. The director shall adopt rules governing the location of new wells and replacement wells in new locations in active management areas to prevent unreasonably increasing damage to surrounding land or other water users from the concentration of wells.

B. A person entitled to withdraw groundwater in an active management area pursuant to article 5 or 6 of this chapter¹ may construct a new well or a replacement well in a new location if the location of the new well or the replacement well complies with the rules adopted by the director pursuant to subsection A of this section and if the person has applied for and received a permit from the director pursuant to § 45-599.

C. An applicant for a general industrial use permit pursuant to §§ 45-515 and 45-521 who proposes to construct a new well or a replacement well in a new location shall also apply for a permit pursuant to § 45-599.

D. A person who is entitled to withdraw groundwater in an active management area under article 5 or 6 of this chapter may withdraw groundwater under article 5 or 6 of this chapter from a well drilled to withdraw groundwater pursuant to a groundwater withdrawal permit issued under article 7 of this chapter² if the location of the well complies with the rules adopted by the director under subsection A of this section and if the person has applied for and received a permit from the director pursuant to § 45-599. A person entitled to withdraw groundwater in an active management area under a general industrial use permit issued under § 45-515 may withdraw groundwater under § 45-515 from a well used to withdraw groundwater pursuant to another category of groundwater withdrawal permit issued under article 7 of this chapter if the location of the well complies with the rules adopted by the director under subsection A of this section and if the person has applied for and received a permit from the director pursuant to § 45-599.

Credits

Added by Laws 1980, 4th S.S., Ch. 1, § 86, eff. June 1, 1980. Amended by Laws 1983, Ch. 306, § 14, eff. April 28, 1983; Laws 1985, Ch. 323, § 20, eff. May 10, 1985; Laws 1994, Ch. 296, § 18, eff. April 25, 1994; Laws 1995, Ch. 258, § 14.

[Notes of Decisions \(1\)](#)

Footnotes

[1](#) Sections 45-461 et seq., 45-491 et seq.

[2](#) Section 45-511 et seq.

A. R. S. § 45-598, AZ ST § 45-598

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

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Arizona Revised Statutes Annotated

Title 45. Waters

Chapter 3.1. Underground Water Storage, Savings and Replenishment (Refs & Annos)

Article 3. Water Storage Permits and Recovery Well Permits

A.R.S. § 45-834.01

§ 45-834.01. Recovery of stored water; recovery well permit;
emergency temporary recovery well permit; well construction

Currentness

A. A person who holds long-term storage credits or who may recover water on an annual basis may recover the water stored pursuant to a water storage permit only:

1. If the person seeking to recover stored water has applied for and received a recovery well permit under this article.

2. For water stored within an active management area, if one of the following applies:

(a) The proposed recovery well is located within the area of impact of the stored water, as determined by the director, and either the person recovering the water is the storer or the stored water to be recovered is Colorado river water. If the stored water to be recovered is effluent that is stored in a managed underground storage facility and if the proposed recovery well is not an already constructed well owned by the person recovering the water and is located within the exterior boundaries of the service area of a city, town, private water company or irrigation district, that city, town, private water company or irrigation district must be notified by the person recovering the stored water and must have the right to offer to recover the water stored on behalf of that person. If the city, town, private water company or irrigation district offers to recover the water on behalf of the person seeking recovery and the water that is offered for recovery is of comparable quality to the water that the person could recover, the person seeking to recover the water shall consider accepting the best offer from the city, town, private water company or irrigation district overlying the area of impact that has offered to recover the stored water.

(b) The proposed recovery well is located outside the area of impact of the stored water, as determined by the director, and all of the following apply:

(i) The proposed recovery well is located within the same active management area as storage.

(ii) The director determines that recovery at the proposed location is consistent with the management plan and achievement of the management goal for the active management area.

(iii) If the proposed recovery well is located within the exterior boundaries of the service area of a city, town, private water company or irrigation district, that city, town, private water company or irrigation district is the person seeking to recover the water or has consented to the location of the recovery well.

(iv) If the proposed recovery well is located outside, but within three miles of, the exterior boundaries of the service area of a city, town, private water company or irrigation district, the closest city, town, private water company or irrigation district has consented to the location of the recovery well.

(c) The proposed recovery well is located within the area of impact of the stored water, as determined by the director, the person recovering the water is not the storer, the stored water to be recovered is not Colorado river water and all of the conditions prescribed by subdivision (b), items (i) through (iv) of this paragraph are met.

3. For water stored outside of an active management area, if recovery will occur within the same irrigation non-expansion area, groundwater basin or groundwater sub-basin, as applicable, in which the water was stored.

B. Before recovering from any well water stored pursuant to a water storage permit, a person shall apply for and receive a recovery well permit from the director. The director shall issue the recovery well permit if the director determines that:

1. If the application is for a new well, as defined in § 45-591, or except as provided in paragraphs 2 and 3 of this subsection for an existing well, as defined in § 45-591, the proposed recovery of stored water will not unreasonably increase damage to surrounding land or other water users from the concentration of wells. The director shall make this determination pursuant to rules adopted by the director.

2. If the applicant is a city, town, private water company or irrigation district in an active management area and the application is for an existing well within the service area of the city, town, private water company or irrigation district, the applicant has a right to use the existing well.

3. If the applicant is a conservation district and the application is for an existing well within the conservation district and within the groundwater basin or sub-basin in which the stored water is located, the applicant has a right to use the existing well.

C. A city, town, private water company or irrigation district in an active management area may apply with a single application to the director to have all existing wells, as defined in § 45-591, that the applicant has the right to use within its service area listed as recovery wells on the recovery well permit, if those wells otherwise meet the requirements of this section.

D. If the applicant is a conservation district, the director may issue an emergency temporary recovery well permit without complying with § 45-871.01, subsection F if the director determines that all of the following apply:

1. The conservation district cannot reasonably continue to supply central Arizona project water directly to a city, town, private water company or irrigation district due to an unplanned failure of a portion of the central Arizona project delivery system.

2. The emergency temporary recovery well permit is necessary to allow the conservation district to provide immediate delivery of replacement water to the city, town, private water company or irrigation district.

3. The application is for an existing well as defined in § 45-591 that is within the groundwater basin or groundwater sub-basin in which the stored water is located, is within the conservation district and is within the service area of the city, town, private water company or irrigation district.

E. An emergency temporary recovery well permit issued pursuant to subsection D of this section may be issued for a period of up to ninety days and may be extended for additional ninety day periods if the director determines that the conditions prescribed in subsection D of this section continue to apply.

F. If the application for a recovery well permit is approved, the director shall issue a permit and the applicant may proceed to construct or use the well. If the application is rejected, the applicant shall not proceed to construct or use the well. A new well shall be completed within one year of receipt of the permit, unless the director in granting the permit approves a longer period to complete the well. If the well is not completed within one year or the longer period approved by the director, the applicant shall file a new application before proceeding with construction.

G. A recovery well permit shall include the following information:

1. The name and mailing address of the person to whom the permit is issued.
2. The legal description of the location of the existing well or proposed new well from which stored water may be recovered pursuant to the permit.
3. The purpose for which the stored water will be recovered.
4. The depth and diameter of the existing well or proposed new well from which stored water may be recovered pursuant to the permit.
5. The legal description of the land on which the stored water will be used.
6. The maximum pumping capacity of the existing well or proposed new well.
7. If the permit is for a proposed new well, the latest date for completing the proposed new well.
8. Any other information as the director may determine.

Credits

Added by [Laws 1994, Ch. 291, § 32](#). Amended by [Laws 1995, Ch. 258, § 23](#); [Laws 2000, Ch. 169, § 1](#); [Laws 2002, Ch. 133, § 11](#); [Laws 2004, Ch. 300, § 1](#).

A. R. S. § 45-834.01, AZ ST § 45-834.01

Current through legislation effective February 12, 2021 of the First Regular Session of the Fifty-Fifth Legislature (2021).

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TAB D

***Economic, Small Business and
Consumer Impact Statements***

TAB D1

**ARIZONA DEPARTMENT OF WATER RESOURCES
FEE RULE AMENDMENTS**

A.R.S. § 41-1055(B)

ECONOMIC, CONSUMER AND SMALL BUSINESS IMPACT STATEMENT

1. *An Identification of the Proposed Rulemaking.*

In 2010, the Arizona Department of Water Resources (“Department”) adopted rules increasing many of its existing fees and establishing several new fees for services performed in fiscal year 2010-2011 through an exempt rulemaking authorized by Laws 2010, 7th Special Session, Ch. 7, § 5. These rules (referred to herein as the FY2010-2011 Fee Rules) will repeal automatically on July 1, 2011, at which time the fee rules in effect prior to fiscal year 2010-2011 (referred to herein as the “Existing Fee Rules”) will become effective again. Through this rulemaking, the Department is repealing the Existing Fee Rules and replacing them with new fee rules (referred to herein as the “New Fee Rules”) that, with certain exceptions, are the same as to the FY2010-2011 Fee Rules.

This rulemaking revises existing fees and establishes several new fees for persons submitting applications and filings in the groundwater, surface water, dam safety, recharge, assured and adequate water supply, water exchange, bodies of water, water exportation and well drilling permit programs and the dam safety inspections program, under Title 45, Arizona Revised Statutes (for purposes of this document, “permitting programs” refers to programs administered by the Department to process applications and filings). This economic, small business and consumer impact statement contains an identification of the increased fees that political subdivisions and businesses that may be impacted will pay for permits and inspections, as well as the specific impacts to the Department and other state agencies from the new fees.

Since 1980, most of the Department’s permit programs and dam safety inspection program have operated from general fund revenues – with few changes to the fees since that time. Since 2003, the well administration and enforcement fund was initiated by the legislature for operation of the well permitting program. In 2005, the legislature authorized the assured and adequate water supply administration fund to partially fund the operation of that permitting program. In 2010, the legislature authorized the dam repair fund to partially fund the operation of the dam safety program. The Department has implemented permit efficiencies and process improvements that will significantly improve the processing times for all of its permitting functions. The Department estimates that the changes to its fees, if implemented based on the average permit actions issued in FY2008 and FY2009, would have recovered approximately \$3,148,003 for permits using the \$118.00 per hour rate and increased fixed fees. The actual estimated revenue under the Existing Fee Rules for the average number of applications in FY 2008 and FY 2009 was \$1,158,660, a difference of \$1,989,343.

The purpose of this rulemaking is not to change any specific conduct of the regulated community. The purpose of this rulemaking is to increase most of the Department’s fees and establish several new fees to allow the Department to come closer to recovering the costs to the Department for permitting and dam safety inspection services by charging \$118 per hour for

permit applications estimated to take an average of five or more hours to process, charging increased or new fixed rate fees for all other permit applications and filings for which the fees are not set in statute, and charging increased fees for dam safety permits and inspections. No changes are being made to fees that are set in statute.

The \$118.00 hourly fee rate has been calculated in the manner explained below. The expenses are based on all current permit staffing positions. Additionally, the Department has established annual performance measures relating to all of its permitting functions.

The Department estimated the hourly rate for water permitting staff based on the permitting work of a full-time employee (FTE) and makes the following assumptions:

HOURS

- Assumes an FTE works 2080 hours annually.
- NON-PROGRAM HOURS include:
 - hours related to employee SVHL (sick, vacation, holiday), calculated at the maximum available of 296 hours;
 - hours related to training, meetings and minor tasks estimated at 331 hours;
 - hours lost due to employee turnover – use a relatively low rate of 5% - 104 hours.
 - TOTAL NON-PROGRAM HOURS estimated at 731 hours annually.
- PROGRAM HOURS include both review hours of specific applications and making decisions thereon, and those not related to review hours of specific applications. Some of the Program Hours are therefore not billable.
 - TOTAL PROGRAM HOURS = 2080 – 731 = 1349 hours
 - Non-billable Program Hours include customer service time, inter-division and inter-agency coordination, permit administration, program development (rules and policies) and travel. This is estimated at 440 hours annually.
 - BILLABLE PROGRAM HOURS = 1349 – 440 = 909 hours

COSTS

- Salaries + employee related expenses (ERE) related to Billable Program Hours performed by an FTE.
 - ERE benefits rate of 40% is used.
 - Non-Program Hours in support of Billable Program Hours are included in costs. This is estimated at 493 hours.
 - Program staff includes Engineers, Hydrologists and the WRS Series at an average hour rate of \$24.68.
Cost = (909 + 493 hours) × \$24.68/hour × 1.4 = \$48,442
 - Management/ Supervisory hours in support of the FTE's work are included in costs, estimated at 200 hours. This includes working Assistant Directors, Managers, and Legal at an average hourly rate of \$40.00.
Cost = (200 hours) × \$40.00/hour × 1.4 = \$11,200
 - Administration Support hours in support of the FTE's work are included in costs, estimated at 200 hours. This includes Water Resource Technicians and Administrative Assistants at an average hourly rate of \$17.94.
Cost = (200 hours) × \$17.94/hour × 1.4 = \$5,023

- Add Indirect expenses (56.35% of personal services and ERE by federal formula) for rent, utilities, etc., estimated at \$36,464.
- Add Other Expenses such as travel, equipment, operating expenses (supplies, etc.) and professional services, estimated at \$6,250.
- Total Costs Related to Permit Process for 1 FTE= \$107,379

HOURLY RATE

- Divide the total costs related to the permitting work of an FTE (\$107,379) by Billable Program Hours (909). This provides the Hourly Rate for Permit Processing (\$118.00).

The fixed fees are based on either: (1) statutorily required fees (no changes to these fees are being made in this rulemaking), or (2) fees based on the estimated average hours assumed to process the application, up to a maximum of five hours. Any applications assumed to take five or more hours to process were captured in the hourly fee proposal.

Under the Existing Fee Rules, dam safety inspection fees are based on dam height and do not differentiate based on a dam's downstream hazard potential. In the New Fee Rules, the dam safety inspection fees for high and significant hazard potential dams are a graduated scale based on the length of the dam. Dam length is a better indicator of time necessary to conduct the inspection and complete the inspection report. The new dam safety inspection fees for low and very low hazard potential dams are a fixed value lower than those for high and significant hazard potential dams due to less time required for review of engineering standards and analyses, operational and maintenance plans and emergency action plans.

The Department estimates that the number of pending permit applications and projections for incoming work equates to more work hours than can be accomplished by the current staffing levels. Therefore, this analysis is based on the amount of work that can be accomplished based on the current number of authorized staff positions for water permitting services -19 technical staff (water resource specialists, engineers and hydrologists), 7 management /supervisor staff, and 4.5 support staff. The Department anticipates that the number of positions will not be increased for water permitting staff. Positions and activities related to permit-related inspections are included in this analysis although these hours and revenues are only a small percentage of the total.

Table I below compares the estimated fees for permit actions and dam safety inspections under the Existing Fee Rules to the estimated fees in the New Fee Rules. The table uses the assumptions for estimated review hours based on permitting staff estimates. These are only estimates as the Department has not historically tracked the hours for each permit type. With these changes, the Department is now tracking in detail the billable hours for each permit type including permits that are identified under the fixed fee rates in order to continue evaluating the necessity of an hourly rate or fixed rate. The estimated review hours and fees under the Existing Fee Rules are based on the estimated average number of review hours to complete a project for permits issued under the permitting programs during calendar years 2008 and 2009 using the Existing Fee Rules. The information in Table I further assumes that the applications are fairly complete. Note that a previously permitted facility will not necessarily experience any impact due to this rulemaking. This rulemaking impacts the costs associated with review and processing

of applications and filings submitted after the New Fee Rules become effective, including applications for renewal or modification of a permit issued prior to the effective date.

Table I. Comparison of Estimated Review Hours and Fees under Existing Fee Rules and New Fee Rules

Category /Permit Type	Est. Review Hours for Hourly Fees	2008 – 2009 Average Number of Applications or Requests	Fee under Existing Fee Rules	Fixed Fee under New Fee Rules	Est. Total Hourly Fee under New Fee Rules (\$118/hr)	% Change In Cost
WELLS						
Variance from Well Construction Requirements	5	556	\$0		\$590	***
Late Registration of Well		12	\$10	\$60		500%
Well Drillers License*		31	\$50	\$50		0%
Reissue or Renewal of Well Drillers License		286	\$10	\$50		400%
Amendment of Well Driller's License		6	\$0	\$50		***
Reactivation of Expired Well Drillers License		2	\$20	\$50		150%
Well Assignments - per well cost		52	\$10	\$30/well		Variable**
Well Capping*		20	\$300	\$300		0%
Notice of Intent to Abandon a Well (45-594)*		1,008	\$0	\$150		***
NOI to Drill Non-Exempt Well in same location in AMA, all wells in INA, wells >35gpm outside AMA/INA - (45-596, 597)*		50	\$150	\$150		0%
Notice of Intent to Drill Outside AMA or INA w/pump capacity <35 gpm for domestic use only (45-596)*		2,718	\$100	\$100		0%
Reissuance of Drill Card		30	\$10	\$120		1100%
Application for Permit to Drill Non-Exempt Well - Inside AMA (45-598 & 599)*		43	\$180	\$180		0%
GROUNDWATER RIGHTS & PERMITTING						
GW Withdrawal Permit (45-513, 514, 515, 516, 517, 518, 519, 519.01, 520, 527) Issuance, Renewal, Modification, change in location	20	59	\$200		\$2,360	1080%
Notice of Authority of Irrigate in an INA (45-437)	10	0	\$100		\$1,180	1080%
Restoration of Retired	5	0	\$50		\$590	1080%

Category /Permit Type	Est. Review Hours for Hourly Fees	2008 – 2009 Average Number of Applications or Requests	Fee under Existing Fee Rules	Fixed Fee under New Fee Rules	Est. Total Hourly Fee under New Fee Rules (\$118/hr)	% Change In Cost
IGFR (45-469(O))						
Contract by city, town or private water company to Supply Groundwater to another city, town or private water company (45-492(C))	5	1	\$0		\$590	***
Initial Notice of Intent to Establish New Service Area Right	5	2	\$0		\$590	***
Final Petition to Establishment New Service Area	5	2	\$0		\$590	***
Extension of Service Area to provide Disproportionate amount of Water to an Industrial or other large water user (45-493(A)(2))	5	0	\$0		\$590	***
Addition/Exclusion of Acres by Irrigation District (45-494.01)	8	0	\$0		\$944	***
Delivery of GW from an ID to a GIU permit holder (45-497(B))	5	0	\$0		\$590	***
Transp. of GW Withdrawn in McMullen Valley GW Basin to an AMA (45-552)	5	0	\$0		\$590	***
Transp. of GW Withdrawn in Harquahala INA to an initial AMA (45-554)	5	0	\$0		\$590	***
Transp. of GW Withdrawn in Big Chino Sub-Basin to an initial AMA (45-555)	5	0	\$0		\$590	***
Transp. Of GW away from the Yuma GW Basin (45-547)	5	1	\$0		\$590	***
Application for Emergency Transfer of GW from a GW Basin	5	0	\$0		\$590	***
Type 1 GFR associated w/ irrigation land retired after 6/12/1980 (45-469, 472) (Conveyance of IGFR to Type 1)	10	5	\$100		\$1,180	1080%
Ag Flex Account Transfer		15	\$100	\$250		150%
Conveyance of Notice of Irrigation Authority in an INA		11	\$35	\$500		1328%
Conveyances of GW Withdrawal permits		10	\$35	\$500		1328%
Late Application for Certificate of Grandfathered Right (45-463, 464, 465,		25	\$100	\$100		0%

Category /Permit Type	Est. Review Hours for Hourly Fees	2008 – 2009 Average Number of Applications or Requests	Fee under Existing Fee Rules	Fixed Fee under New Fee Rules	Est. Total Hourly Fee under New Fee Rules (\$118/hr)	% Change In Cost
476.01 & 476)*						
Conveyances/Re-Issuance of Certificate of Grandfathered Right		9	\$35	\$500		1328%
Reissuance of a Certificate of Grandfathered Right to reflect change in family circumstances or transfer to or from a trust		10	\$35	\$120		243%
Re-Issuance of a Certificate Grandfathered Right after a partial extinguishment of the Grandfathered Right		10	\$35	\$120		243%
Revised Certificated for new or additional points of withdrawal for T2 or deletion of point of withdrawal		34	\$35	\$250		614%
Approval of Development Plan for Retirement of IGFR (45-469)		6	\$0	\$500		***
Substitution of Flood Damaged Acres (INA 45-437.02 & AMA 45-465.01)	5	0	\$100		\$590	490%
Substitution for Impediments to Efficient Irrigation (INA 45-437.03 & AMA 45-465.02)	5	3	\$50		\$590	1080%
Substitution of Acres to be Irrigated w/ CAP water (45-452)	6	0	\$100		\$708	608%
UNDERGROUND STORAGE & RECOVERY						
Issuance, Renewal or Modification of an Underground Storage Facility Permit	334	13	\$1,250		\$25,000	1900%
Issuance, Renewal or Modification of a Groundwater Savings Facility Permit	94	1	\$850		\$11,092	1205%
Issuance, Renewal or Modification of a Water Storage Permit	25	28	\$350		\$2,950	743%
Recovery Well Application, including Emergency temporary recovery well permit	71	13	\$50 for first 10 wells + \$10 for each add. well		\$8,378	variable
Conveyance of Storage Facility Permit		1	\$300	\$500		67%
Conveyance of a Water Storage Permit		1	\$300	\$500		67%
Assignment of Long-		7	\$0	\$250		***

Category /Permit Type	Est. Review Hours for Hourly Fees	2008 – 2009 Average Number of Applications or Requests	Fee under Existing Fee Rules	Fixed Fee under New Fee Rules	Est. Total Hourly Fee under New Fee Rules (\$118/hr)	% Change In Cost
Term Storage Credits						
ASSURED & ADEQUATE WATER SUPPLY						
Physical Availability Determination	211	4	\$5,000		\$10,000	100%
Analysis of Assured or Adequate Water Supply	211	15	\$7,500		\$10,000	33%
Renewal of a Analysis of Assured or Adequate Water Supply	32	1	\$0		\$3,776	***
Issuance of a Certificate of Assured Water Supply	211	22	\$5,000		\$10,000	100%
Issuance or Modification of Designation of Assured Water Supply	300	8	\$10,000		\$35,000	250%
Issuance or Modification of Designation Adequate Water Supply	200	8	\$10,000		\$23,600	136%
Issuance of a Water Report	211	14	\$2,000		\$10,000	400%
Assignment of Type A CAWS	12	16	\$0		\$1,416	***
Assignment of Type B CAWS	18	9	\$1000		\$2,124	112%
Classification of Type A CAWS	10	3	\$1000		\$1,180	18%
Material Plat Change Review	8	1	\$250		\$944	277%
Re-Issuance of CAWS - 704G	24	38	\$0		\$2,832	***
Exemption from requirement to obtain CAWS - 704M	24	9	\$0		\$2,832	***
Extinguishment of GFR (45-576: AAWS Rule)		25	\$0	\$250		***
Conveyance of Extinguishment Credits		10	\$0	\$250		***
SURFACE WATER						
Application to Appropriate Public Water (45-152)	56	25	\$75 - \$125		\$6,608	5186%
Application for Certificate of Water Right (45-152)	32	6	\$50		\$3,776	7452%
Reservoir Permit, Primary or Secondary (45-161)	48	2	\$75 - \$125		\$5,664	4431%
Application for Change in Use of Water (45-156)	36	1	\$0		\$4,248	***
Application for Severance and Transfer – same farm	21	0	\$500		\$2,478	396%

Category /Permit Type	Est. Review Hours for Hourly Fees	2008 – 2009 Average Number of Applications or Requests	Fee under Existing Fee Rules	Fixed Fee under New Fee Rules	Est. Total Hourly Fee under New Fee Rules (\$118/hr)	% Change In Cost
unit/parcel						
Application for Severance and Transfer – different farm unit/parcel (45-172)	72	2	\$500		\$8,496	1599%
Exception to Limitation on Time of Completion of Construction (45-160)	8	3	\$0		\$944	***
Reissuance of Surface Water Permit or Certificate		0	\$10 - \$25	\$120		380%
Claim of Water Right for a Stockpond (45-273)*		7	\$10	\$10		0%
Filing Fee for Statement of Claim of Water Right*		0	\$5	\$5		0%
Assignment for application, permit, certificate or statement of claim		615	\$10	\$75		650%
Certification of water right for stockpond		7	\$30	\$120		300%
DAM SAFETY						
Approval of Plans for Construction, Enlargement, Repair, alteration or removal of Dam		12	Graduated fee based on project cost (0.5% to 2.0%)	2.0% of project cost		0% to 200%
Review of Dam Safety Inspection Report		10	\$0	\$750		***
Dam Safety Inspection Fee		100	\$100 + \$2 per foot of dam height	\$1,000 for LHP and VLHP; \$2000 to \$4200 for HHP and SHP, based on dam length		450% to 2000%
OTHER						
Filling a Body of Water w/ Poor Quality Water (45-132.C)	5	3	\$225		\$590	162%
Interim Water Use in a Body of Water (45-133)	5	1	\$80		\$590	638%
Temporary emergency permit to use sw or gw in a body of water (45-134)	5	0	\$50		\$590	1080%
Application for issuance of Water Exchange Permit (45-1041, 1045)	5	0	\$150		\$590	293%

Category /Permit Type	Est. Review Hours for Hourly Fees	2008 – 2009 Average Number of Applications or Requests	Fee under Existing Fee Rules	Fixed Fee under New Fee Rules	Est. Total Hourly Fee under New Fee Rules (\$118/hr)	% Change In Cost
Application for renewal/modification of Water Exchange Permit (45-1041, 1045)	5	0	\$100		\$500	400%
Notice of Water Exchange requiring Director Approval - disproportionate volumes	5	0	\$150		\$590	293%
Notice of Water Exchange - non-disproportionate volume – does not require approval pursuant to 45-1052(6)(b)			\$150	\$500		233%
Application to Transport Water Out of State (45-292)	200	1	\$500		\$23,600	4620%
License for Weather Control or Cloud Modification*		0	\$100	\$100		0%
Equipment License for Weather Control or Cloud Modification*		0	\$10	\$10		0%

* These fees were limited by fee caps in the current statutes.

** Variable increase based on number of wells which were not previously tracked

*** Cost did not increase; simply a cost for service is now being assessed

2. An Identification of the Persons who will be Directly Affected by, Bear the Costs of or Directly Benefit from the Rulemaking.

This rulemaking will directly affect persons who submit applications and filings to the Department and who own dams regulated by the Department, including individuals, governmental entities and small and large businesses that drill or use wells, divert surface water, use or transport groundwater, develop subdivisions, operate recharge facilities, conduct water exchanges, own bodies of water, or own or operate dams.

3. Estimated Costs and Benefits to the Arizona Department of Water Resources and other state agencies.

This rulemaking will increase the Department's water permitting and dam safety inspection service revenues to more closely match the budgeted costs for those services. For the current staffing levels for permitting staff, the Department estimates that approximately 30,195 hours will be associated with billable services for any one year. No additional increases in staffing will be required as a result of this rulemaking.

The Department estimates that the changes to the fees, if implemented for the average number of permit actions issued during calendar years 2008 and 2009, would have recovered approximately \$3,148,003 for permits using the \$118.00 per hour rate and increased fixed fees. The actual estimated annual revenue under the Existing Fee Rules for the average number of applications issued during calendar years 2008 and 2009 was \$1,158,660. If the Department does not adopt the New Fee Rules, there is an estimated annual loss of revenue of approximately \$1,989,343

beginning with fiscal year 2011-2012. It should be noted that the monies collected for well permitting will continue to be deposited in the well administration and enforcement fund established by A.R.S. § 45-606; the monies collected for assured and adequate water supply applications will continue to be deposited in the assured and adequate water supply administration fund established by A.R.S. § 45-580; monies collected from dam safety permits and dam safety inspections will continue to be deposited in the dam repair fund established by A.R.S. § 45-1212.01; and all other permit fees will be deposited in the water resources fund established by A.R.S. § 45-117.

The benefits of this rulemaking to the Department are that the funds listed above will more fully realize their legislative purpose, which is to fund the actual costs of the permitting and dam safety inspection programs previously funded in whole or in part by the state general fund. The estimated additional revenues may be earned if the fee increases in this rulemaking are adopted and the following assumptions are true:

1. The estimated number of applications are received for processing;
2. The estimated number of applications are processed and take the average number of hours to process;
3. The estimated number of dam safety inspections are performed;
4. All positions are staffed for the entire year (no vacancy savings, no turnover); and
5. Fees are paid on time for all billable hours and dam safety inspections performed.

A more probable scenario over the next few years is that the Department will experience some turnover, fewer applications will be received, and some portion of the fees will not be paid. Because of the uncertainty involved with estimating potential impacts, the Department used assumptions that provide the most favorable situation for the regulated community.

The Department derives additional benefits because fixed rate fees will be paid up front and hourly permit applications must pay an up-front cost of \$1,000 or \$2,000. Also, the Department anticipates improved cash flow through monthly billing. Expenses for implementation of monthly billing are minimal, and include increased postage and paper, although the Department is developing computerized improvements to its invoicing program that will reduce costs associated with staff time to develop and process invoices. Based on the improvements, the Department expects no increase in staffing time and therefore will significantly benefit from implementing a monthly billing process.

Other state agencies that are required to obtain permits for which the new fees will apply or that must comply with dam safety requirements include the Arizona Department of Transportation (ADOT), the Arizona State Land Department (AzSLD), the Arizona Department of Environmental Quality (ADEQ) and the Arizona Game and Fish Department (AzG&F). The ADOT obtains well permits, well abandonment authorizations, and groundwater withdrawal permits. The AzSLD obtains groundwater rights, surface water rights, and assured or adequate water supply determinations. The ADEQ obtains groundwater withdrawal permits. The AzG&F obtains surface water rights and is responsible for twenty-nine dams. These agencies will experience increased fees in the same manner as other consumers and businesses. There are no exemptions for other state agencies from obtaining these permits or paying the application or

filing fees. The Department does not believe that there will be significant impacts on public employment in Agencies of this State directly affected by this rulemaking.

The increased fees will allow the Department to process applications and filings and conduct dam safety inspections in a more timely manner, which benefits those state agencies seeking water permits and dam safety approvals and protects public health and safety.

4. Estimated Costs and Benefits to Political Subdivisions.

Table II below provides an overview of categories of permits that apply to the different political subdivisions. Political subdivisions in Arizona will experience increases in the permitting fees (see Table I for specific permits and the associated increased costs). The Department believes that the fees reflect the reasonable and fair cost of providing water permitting and dam safety inspection services and that the fixed rate fees for the less complex permits coupled with the simplified permitting process should reduce the impact to many applicants. The Department does not believe that there will be significant impacts on public employment in political subdivisions of this State directly affected by this rulemaking.

Table II – Permits issued to Political Subdivisions – FY 2010

PERMIT CATEGORY	POLITICAL SUBDIVISIONS
Wells	Cities, towns, irrigation districts, domestic water improvement districts, community facilities districts
Groundwater Rights & Permits	Cities, towns, irrigation districts, domestic water improvement districts, community facilities districts
Underground Storage & Recovery	Cities, towns, irrigation districts, domestic water improvement districts, community facilities districts, multi-county water conservation districts, groundwater replenishment districts
Assured & Adequate Water Supply	Cities, towns, domestic water improvement districts, community facilities districts
Surface Water	Cities, towns, irrigation districts, domestic water improvement districts, community facilities districts, multi-county water conservation districts
Dam Safety	Cities, towns, irrigation districts, domestic water improvement districts, community facilities districts, county flood control districts, multi-county water conservation districts
Other (Lakes, Water Exchanges, Water Exportation)	Cities, towns, irrigation districts, domestic water improvement districts, community facilities districts, multi-county water conservation districts

The increased fees will allow the Department to process applications and filings and conduct dam safety inspections in a more timely manner, which benefits those political subdivisions seeking water permits and dam safety approvals and protects public health and safety. Without these increases, the Department will not be able to retain its current staffing levels, which will increase processing times and result in significant delays in issuing permits and certificates.

5. Businesses Directly Affected By the Rulemaking.

Evaluation of the impacts to businesses depends on the category of permitting that is necessary to carry out their activities. Table III below provides a generalized overview of the types of businesses that typically require each category of permit issued by the Department.

Table III – Permits Necessary for Business Activities in Arizona

PERMIT CATEGORY	BUSINESS TYPE
Wells	Private Water Companies, Agricultural, Ranching/Animal Industry, Golf Courses, Power Plants, Rock Product Industries, Mining, Developers, Well Drillers
Groundwater Rights & Permits	Agricultural, Ranching/Animal Industry, Golf Courses, Power Plants, Rock Product Industries, Mining, Developers
Underground Storage & Recovery	Private Water Companies, Developers, Mining, Power Plants
Assured & Adequate Water Supply	Private Water Companies, Developers
Surface Water	Agricultural, Ranching, Golf Courses, Power Plants, Rock Product Industries, Mining, Developers
Dam Safety	Agricultural, Ranching, Mining, Power Plants
Other (Lakes, Water Exchanges, Water Exportation)	Developers, Mining, Power Plants

Businesses in Arizona will experience increases in the permitting and dam safety inspection fees (see Table I for specific permits and the associated increased costs). The Department believes that the fees reflect the reasonable and fair cost of providing water permitting and dam safety inspection services and that the fixed rate fees for the less complex permits coupled with the simplified permitting process should reduce the impact to many applicants. However, the Department does not believe that there will be significant impacts on private employment in businesses of this State directly affected by this rulemaking.

The increased fees will allow the Department to process applications and filings and conduct dam safety inspections in a more timely manner, which benefits those businesses seeking water permits and dam safety approvals and protects public health and safety. Without these increases, the Department will not be able to retain its current staffing levels, which will increase processing times and result in significant delays in issuing permits and certificates.

6. Impacts to Small Businesses.

Small businesses that are subject to this rulemaking include: well drillers and small ranches, farms, and small commercial businesses that are not served water by water utilities and require their own wells. The impacts to these businesses will be negligible in most cases. There are small fee increases for the licensing of well drillers; however, these increases will improve the Department's ability to protect public health and safety by providing for enforcement of properly drilled wells within the State. The small ranches, farms, and small commercial businesses that are not served water by water utilities and require their own wells will not see significant impacts as the well permitting fees are not being increased. There is however, an increase in the fee for transfer of ownership of these wells that may have a small impact on these small businesses.

The Department reviewed each of the proposed methods for reducing the impact on small businesses described in A.R.S. § 41-1055(B)(5)(c), below:

(i) Establish less costly compliance requirements for small businesses.

Individuals and small businesses in rural Arizona are disproportionate owners of low and very low hazard potential dams. The fee increases for low and very low hazard dams are less than those for high and significant hazard dams, thereby reducing their impact on small businesses. Efficiencies enacted in the permitting programs provide the primary means for reducing the impact of those fee increases on small businesses. In conjunction with efficiency improvements and in response to comments received from the small business community, the Department has lowered its initial proposed fees for assignments for surface water applications, certificates, permits and claims. The fee is for \$75 per assignment, which will reduce the impact on small businesses and individual landowners. The Department has also lowered its initial proposed fees for sever and transfer of a surface water right to land that is within the same parcel or farm unit as the current use and that does not include a change in the water source, use or ownership. The new proposal reduces the proposed maximum fee from \$25,000 to \$2,500, thereby lessening the impact to small business farming operations that after flood damage or some other event may need to move the place of beneficial use to another location on the same farm.

While the new fees do increase the costs to individuals and small businesses, without these increases, the Department will not be able to retain its current staffing levels, which will pose possible public health and safety risks. With further reductions in staffing the Department will not have resources to continue annual inspections of high and triennial inspections of significant hazard dams.

(ii) Establish less costly schedules or less stringent deadlines for compliance in the rulemaking for small businesses.

Not applicable

(iii) Exempt small businesses from any or all requirements of the rule.

The Department is not authorized by statute to exempt small businesses from permit and inspection fees. Additionally, exemptions for small businesses could cause a significant hardship on the Department. Because small businesses make up a significant percentage of the facilities

for which the Department provides the services, it would not be feasible for the Department to make exemptions from fees for small businesses and still generate sufficient revenues to cover the reasonable and necessary costs of the programs. For certain water use activities, small businesses pay fewer fees than large businesses because they do not require the same permits that are required for large businesses. For example, a small business in an active management area may be adequately served by an exempt well (a well with a pump capacity of 35 gallons per minute or less), which does not require the business to obtain a grandfathered groundwater right or groundwater withdrawal permit.

7. Estimated Costs and Benefits to Consumers and the Public.

From the consumer's perspective, if permitted entities bear additional costs or realize savings, these entities may pass the costs or savings on to the consumer and the public through products, services or water rates. There is no way to predict whether these costs or benefits will be passed on or what the costs or benefits may be for each permit.

For individual home owners that maintain their own well on their property, little or no impact will be felt as the fees for well permitting for small domestic wells is not changing. Private dam owners will experience increases in dam safety permitting and inspection fees. However, the Department believes that the fees reflect the reasonable and fair cost of providing dam safety permitting and inspection services.

The increased fees will allow the Department to process applications and dam safety inspections in a more timely manner, which benefits those persons seeking water permits and dam safety approvals and protects public health and safety. Without the increased fees these benefits will not be realized.

8. Estimated Costs and Benefits to State Revenues.

This rulemaking will have no impact on state general funding revenues. The estimated revenue generated from these fees will be directed to the four funds previously identified (the well administration and enforcement fund; the assured and adequate water supply administration fund; the dam repair fund; and the water resources fund) for the purpose of funding the Department's permitting programs. With the downturn in the economy, the expected income from these new fees will be far less than the estimated \$3,148,003 that could have been recovered by the Department during prior years, based on the average permitting activity during calendar years 2008 and 2009. However, by making these new fees permanent, the Department will be better positioned to recover permitting program costs in FY 2011-2012 and beyond and be better prepared to staff at appropriate levels when the permitting activity inevitably increases. Without the increase in fees, staffing levels will be lower than what is needed to perform the existing permitting activity and there will be no ability to increase staffing to meet any increases in permitting activities.

9. A Description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

No other less intrusive or less costly methods are available to the Department to achieve the purpose of the rulemaking. The Department's appropriation from the state general fund has been significantly reduced with the understanding that the Department would seek to recoup the cost

of its services directly from the entities that require the permits and dam safety inspections. Making no changes to the Department's fees will have significant affects on the ability to meet the permitting needs of entities in Arizona and may pose additional public health and safety risks, as described above.

TAB D2

**RULE MODIFICATIONS TO REDUCE THE DAM SAFETY INSPECTION
FEES FOR LOW AND VERY LOW HAZARD POTENTIAL DAMS**

A.R.S. § 41-1055(B)

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

The Arizona Department of Water Resources (Department) conducts dam safety inspections of low and very low hazard potential dams in the State of Arizona (State) once every five (5) years. The A.A.C. R12-15-105 amendment will reduce the dam safety inspection fee for each low and very low hazard dam that is inspected by the Department. The rule amendment will also reduce the dam safety inspection report review fee in the event that an owner of a low and very low hazard dam chooses to submit an inspection report in lieu of the Department's inspection.

The Department is amending this rule in response to feedback from owners of low and very low hazard dams that the current \$1,000.00 inspection fee is too high. The Department is also reducing the \$750.00 safety inspection report review fee to \$250.00, so that both the inspection fee and inspection report review fee are the same. Some low and very low hazard dam owners requested that the Department not inspect their dam because they did not want to pay the \$1,000.00 fee. By reducing the inspection fee and safety inspection report review fee for low and very low hazard potential dams, the Department also seeks to increase low and very low hazard potential dam owner compliance with inspection fee and safety inspection report review fee requirements. The lower fee will still recover reasonable costs because the inspections and review of safety inspection reports for low and very low hazard potential dams require less time and resources than higher hazard

dams. The rule modification will have an immediate positive financial impact for the owners of low and very low hazard potential dams. The rule modification does not change the dam safety inspection frequency for either high or significant hazard potential dams or low or very low hazard potential dams.

1. An Identification of the Rulemaking

The Department amends A.A.C. R12-15-105 as follows:

- Subsection (B) is being amended to reduce the dam safety inspection fee for low and very low hazard potential dams from \$1,000.00 per inspection to \$250.00 per inspection.
- Subsection (D) is being amended to make the \$750.00 dam safety inspection report review fee applicable only to high or significant hazard potential dam owners who submit an inspection report in lieu of the Department's inspection. The rule modification does not change this fee or the frequency of inspection for high or significant hazard potential dams. Additionally, subsection (D) is being amended to reduce the dam safety inspection report review fee from \$750.00 to \$250.00 in the event the owner of a low or very low hazard potential dam owner submits an inspection report in lieu of the Department's inspection.

2. Persons Who Will Be Directly Affected by, Bear the Costs of, or Directly Benefit from the Rulemaking

The low and very low hazard potential dams under the jurisdiction of the Department are mostly owned by farmers and ranchers. Many of these dam owners have communicated to the Department that the current \$1,000.00 inspection fee is too high. Low and very low hazard potential dam owners under the jurisdiction of the Department will directly benefit from the fee reduction with either a \$750.00 or \$500.00 savings every five-year inspection period, depending on whether the Department inspects their dam or they choose to submit an inspection report in lieu of a Department inspection.¹ The Department does not believe the fee reductions will have a negative impact on dam owners or the public in general.

3. Cost – Benefit Analysis

a. *Probable Benefits and Costs to Agencies*

- The reduction in dam safety inspection fees for low and very low hazard potential dams will result in reduced revenue for the Department. However, since the revenue to the Department from the inspection of low and very low hazard dams under the current rule is relatively small, the impact of the reduced revenue will be minimal. For example, in 2013, the Department inspected a total of 124 dams. Of these 124 dams 101 were high and significant hazard potential dams, and only 23 were low and very low hazard potential dams. The dam safety inspection fees for 2013 were \$252,726. Of this amount, only \$21,000.00 was collected for the inspection of low and very low hazard potential dams.

Assuming the same collection rate for low and very low hazard potential dams at the next

¹ R12-15-1219 requires that a dam safety inspection be conducted by the Department or a safety inspection report be submitted by the dam owner every five years for low and very low hazard potential dams.

inspection date, a \$250.00 inspection fee would reduce the amount collected by the Department by \$15,250.00. Although the reduction of the dam safety inspection fees and safety inspection report fees for low and very low hazard potential dams will result in decreased revenue for the Department, it is anticipated that the fee reductions will result in greater low and very low hazard potential dam owner compliance with the inspection requirements.

- The Department does not anticipate hiring new employees as a result of this rule change.
- Other agencies in the State that own low and very low hazard potential dams will see an immediate 75 percent reduction in inspection fees and a 67 percent reduction in inspection report review fees depending on whether the agency elects to have the Department conduct the inspection or submits a safety inspection report for the Department to review. The Department does not foresee added costs to other State agencies as a result of the rule modification.

b. *Probable Benefits and Costs to Political Subdivisions*

- Political subdivisions in the State that own low and very low hazard potential dams will see an immediate 75 percent reduction in inspection fees and a 67 percent reduction in inspection report review fees depending on whether the political subdivision elects to have the Department conduct the inspection or submits a safety inspection report for the Department to review. The Department does not foresee added costs to political subdivisions as a result of the rule modification.

c. *Probable Benefits and Costs to Business, Including Small Business*

- Businesses and individuals in the State that own low and very low hazard potential dams will see an immediate 75 percent reduction in inspection fees and a 67 percent reduction in inspection report review fees depending on whether the business or individual elects to have the Department conduct the inspection or submits a safety inspection report for the Department to review. The Department does not foresee added costs to businesses and individuals as a result of the rule modification.

4. Probable Impact on Private and Public Employment in Business, Agencies, and Political Subdivisions

The Department does not anticipate any impact on private or public employment as a result of the rule modification to reduce the inspection fees and safety inspection report review fees for low and very low hazard potential dams.

5. Probable Impact on Small Business

See Part 3(c) above.

6. State Revenues

As discussed in Part 3(a) above, the reduction in revenue resulting from the rule modifications will have minimal adverse impact on the revenue generated by the Department's Dam Safety Program.

7. Less Intrusive or Less Costly Alternative Methods of Achieving the Rulemaking

The Department believes that the rule modification is the most direct way to reduce the financial burden related to dam safety inspection fees and safety inspection report review fees for the owners of low and very low hazard potential dams. The Department recognizes that the same reduction in costs can be achieved over the long-term by reducing the frequency of inspections for low and very low hazard potential dams. However, the reduced frequency may have an adverse impact on the safety of these dams.

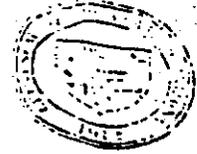
8. Description of Data on Which the Rule Modification is Based

- The data on the 2013 dam inspections and associated fees referred to in Part 3(a) was collected from the dam safety database created and maintained by the Department.

TAB D3

DEPARTMENT OF WATER RESOURCES

99 E. Virginia Avenue, Phoenix, Arizona 85004



BRUCE BABBITT, Governor
WESLEY E. STEINER, Director

MEMORANDUM

TO: Rose Mofford, Secretary of State

FROM: Department of Water Resources *Wesley E. Steiner*

DATE: May 17, 1983

RE: Proposed rules covering quasi-judicial hearing procedures

1. Summary of Proposed Action

The Department of Water Resources proposes new rules A.C.R.R. R12-15-161 through R12-15-180, establishing procedures for quasi-judicial or "contested case" administrative hearings required by statute to be held by the Department of Water Resources. The rules set forth how a case is commenced, who may be a party to a case, what types of documents may be filed, filing location and deadlines, how the prehearing conference and hearing may be conducted, and the process for requesting a rehearing or other review.

The purpose of the proposed rules is to set forth in a simple and straightforward manner all procedures necessary to present a case before the Department of Water Resources.

2. Statement of Impact on Small Business

These rules apply only when the Department holds a quasi-judicial hearing. The rules do not require ongoing reporting of any business activity and do not set performance or design standards for construction, maintenance or operation of any physical thing. The Department's purpose in writing a complete set of procedures for administrative hearings is to demystify the hearing process and make it understandable both to the law firm that does not have inside knowledge of Department practices and to the lay person who must know the general requirements in order to meaningfully participate in a Department hearing. In drafting these proposed rules, the Department assumed that most of the parties participating in Department hearings and their attorneys' law firms would fall into the statutory definition of small businesses. The thrust of these rules is to simplify the hearing process and make formal requirements less stringent.

Think Conservation!

Office of Director 255-1554

Administration 255-1550, Water Resources and Flood Control Planning 255-1566, Dam Safety 255-1541,

Flood Warning Office 255-1548, Water Rights Administration 255-1581, Hydrology 255-1586.

Since the administrative hearing functions as a substitute for the fact-finding duties of a Superior Court, the basic notions of due process and fundamental fairness are applicable to the Department's hearings. These concepts serve as a "bottom-line" regarding the extent to which procedural requirements may be reduced or eliminated. Hence, there are no particular exemptions for small businesses, other than R12-15-163(C) which allows corporations to be represented by a duly authorized officer or director instead of an attorney.

These regulations do require typewritten documents, and if there is more than one party, that copies of any documents filed by one party be mailed or delivered to any other parties. However, there are only two documents that a person is required to file: a request for review of a decision made without a hearing; and a request for rehearing or review of a decision after a hearing. There is also a general waiver provision that permits the director to waive these rules when "such waiver is not in conflict with law and in the interests of justice." The Department anticipates that this rule will be used to relax any rule if the requirements of the rule are burdensome to the parties in a particular case.

In summary, these rules are designed to make the hearing process reasonably simple for the benefit of any parties or firms appearing before the Department who may fall within the statutory definition of a small business. No particular exemptions have been created for small businesses because almost all non-governmental entities or law firms who appear before the Department are small businesses.

DEPARTMENT OF WATER RESOURCES

99 E. Virginia Avenue, Phoenix, Arizona 85004



BRUCE BABBITT, Governor
WESLEY E. STEINER, Director

May 17, 1983

Mr. William Jamieson, Jr.
Department of Administration
1700 West Washington
State Capitol, West Wing, Room 804
Phoenix, Arizona 85007

Dear Mr. Jamieson:

As required by the attachments to your memo dated August 11, 1982, I am forwarding with my approval six copies of the Department of Water Resources' proposed rules R12-15-161 through R12-15-180. To establish a time for appearance before the Council or if there are any questions on these rules, please contact Scott Larmore at 255-1507. The remainder of this letter is devoted to providing the information required by the guidelines dated August 10, 1982.

I. Purpose of the Proposed Rules

a. The purpose of the proposed rules is to set procedures for the quasi-judicial or "contested case" administrative hearings that are required or permitted by statute to be held by the Department of Water Resources. A list of the specific statutes providing for such hearings is attached as Exhibit A. The rules set forth how a case is commenced, who may be a party to a case, what types of documents may be filed, filing location and deadlines, how a hearing shall be conducted, and the process for requesting a rehearing or other review.

The rules are proposed pursuant to the statutory requirement found in the Groundwater Code. A.R.S. § 45-405 states: "The director shall, by regulation, provide an opportunity for rehearing or review of any decision of the director." Additionally, A.R.S. § 45-105(B)(1) states: "The director shall ... adopt and issue rules and regulations necessary to carry out the purposes of [Title 45]."

Think Conservation!

Office of Director 255-1554

Administration 255-1550, Water Resources and Flood Control Planning 255-1566, Dam Safety 255-1541,

Flood Warning Office 255-1548, Water Rights Administration 255-1581, Hydrology 255-1586.

The Department currently is handling each hearing on an ad hoc basis. Some hearings have been conducted in accordance with the procedural rules of the State Land Department, the Department's predecessor in responsibility for water matters. Other simple hearings have been conducted in accord with minimal procedures announced at the start of the hearing.

b. The rules set forth an orderly process for presenting, hearing and deciding a case before the Department of Water Resources. The Department, as an administrative agency whose decisions may be appealed to Superior Court pursuant to the Administrative Review Act, A.R.S. §§ 12-901 et seq., is charged with determining the facts in a case. In this regard, the Department functions as a substitute for a trial court. It is therefore important that Department hearings are conducted in such a manner as to give the parties due process of law.

In drafting these rules, the Department considered and rejected two alternatives: (1) promulgating no general procedural rules, and instead creating tailor-made rules for each separate type of hearing; or (2) promulgating a very rigorous, detailed set of procedural rules, akin to the Rules of Civil Procedure used for civil trials in Superior Court. The first alternative is similar to the Department's current practice of announcing procedures at the start of hearings. The State Land Department's procedural rules, which have been followed by the Department of Water Resources in other hearings, are representative of the second approach.

Regarding the first option, there are both costs and benefits vis-a-vis the adoption of tailor-made rules for each type of hearing. To be sure, with unlimited time and personnel, rules which are handcrafted to fit particular parties, issues and evidence may be more suitable in a given case than generalized rules. However, the drawbacks are many. Apart from the time and expense of such a procedure, the adoption of a myriad of special rules for each type of proceeding could have the effect of making practice before the Department an arcane art known only to a select few attorneys who could then charge for their "expert" knowledge.

The second alternative, that of adopting a facsimile of the Rules of Civil Procedure, would have the benefit of making the Department's hearing process familiar to practicing attorneys. However, many of the people involved in Department hearings do not have attorneys. Furthermore, although a Department hearing is analogous to a trial, under the Administrative Procedure Act, A.R.S. § 41-1010(A), the rules of evidence applicable to a court trial are not required for an administrative hearing. A Department hearing officer may conduct the proceedings in an informal manner.

An administrative hearing is designed to be a cheaper, speedier and hopefully an easier way to determine the facts of a case. Procedural rules for administrative hearings should be rigorous enough to guarantee a party due process, but not so inflexible as to require the same legal time and energy as a court trial. For example, in a recent complex Departmental hearing (conducted pursuant to rules which largely incorporated the Arizona Rules of Civil Procedure) 56 separate pleadings and motions were filed, 25 of which are permitted by the Rules of Civil Procedure but would not have been permitted by these proposed rules. Consequently, in order to preserve the flexibility that should characterize the administrative hearing process, the Department rejected the alternative of adopting rules similar to the Rules of Civil Procedure.

In summary, the purpose of the proposed rules is to set forth in a simple and straightforward manner all procedures necessary to present a case at a hearing before the Department of Water Resources.

II. Cost/Benefit Analysis

As these rules govern the procedural aspects of Department hearings, it is appropriate to delineate the relative costs and benefits in terms of (1) the Department itself, and (2) the parties or intervenors to the hearing. Other governmental agencies, for example, will be affected to the extent they participate as a party or intervenor in the hearing process. A chart showing the relative monetary costs and benefits is attached as Exhibit B.

III. Indirect Consequences

The indirect consequences of these rules can be simply stated. Departmental hearings will be simpler, shorter and more streamlined, without sacrificing the due process rights of the participants. Attorneys are not required. Cases may be consolidated. Prehearing conferences may be held to simplify and clarify contested issues, and certain interests may be allowed to participate on a limited basis only.

The impact on the Department will be a savings in money and staff resources. It may not be necessary to have Department attorneys present at every hearing, as is now the general practice. The movement away from the formal, stylized process engendered by the Rules of Civil Procedure is also in keeping with the Department's practice of using non-attorneys as hearing officers.

The proposed rules will also result in a savings in time and money for the participants in a hearing other than the Department. It is, however, possible that these less formal procedures will reduce the number of people intimidated by the hearing process and thereby result in more requests for hearings. To be sure, more hearings would mean higher costs for the Department. However, the benefit of greater public access to the administrative process offsets this cost. Additionally, each hearing will likely be shorter and less expensive for all concerned than a hearing conducted under more formal rules.

The legal sector (lawyers, support staff and court reporters) figure to be the biggest "losers" from the promulgation of these rules. Lawyers will not be required, hearings will not be overburdened with endless legal maneuvers and pleadings will be limited to those essential to ensure due process. The proposed rules, we believe, strike a well-reasoned balance between fairness and formality in the administrative hearing context.

IV. Impact on Small Business

a. In drafting these proposed rules, the Department assumed that most of the parties participating in Department hearing, their attorneys' law firms would fall into the statutory definition of a small business. In fact, as previously discussed, the entire thrust of these rules is to simplify the hearing process and make formal requirements less stringent. These rules apply only when the Department holds a quasi-judicial hearing. They do not require ongoing reporting of any business activity and do not set performance or design standards for construction, maintenance or operation of any physical thing. The Department's purpose in writing a complete set of procedures for administrative hearings is to demystify the hearing process and make it understandable both to the law firm that does not have inside knowledge of Department practices and to the lay person who must know the general requirements in order to meaningfully participate in a Department hearing.

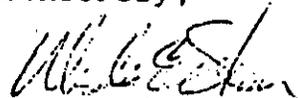
However, since the administrative hearing functions as a substitute for the fact-finding duties of a Superior Court, the basic notions of due process and fundamental fairness are applicable to the Department's hearings. These concepts serve as a "bottom-line" regarding the extent to which procedural requirements may be reduced or eliminated. Hence, there are no particular exemptions for small businesses, other than R12-15-163(C) which allows corporations to be represented by a duly authorized officer or director instead of an attorney.

William Jamieson, .
May 17, 1983
Page Five

These regulations do require typewritten documents, and if there is more than one party, that copies of any documents filed by one party be mailed or delivered to any other parties. However, there are only two documents that a person is required to file: a request for review of a decision made without a hearing; and a request for rehearing or review of a decision after a hearing. There is also a general waiver provision that permits the director to waive these rules when "such waiver is not in conflict with law and in the interests of justice." The Department anticipates that this rule may be used to relax any rule if the requirements of the rule are burdensome in a particular case.

In summary, these rules are designed to make the hearing process reasonably simple for the benefit of any parties or law firms appearing before the Department who may fall within the statutory definition of a small business. No particular exemptions have been created for small businesses because almost all non-governmental entities or law firms who appear before the Department are small businesses.

Sincerely,



Wesley E. Steiner
Director

Statutes Permitting or Requiring Quasi-Judicial
Hearings Before the Director of the
Department of Water Resources

<u>Statute</u>	<u>Topic</u>
<u>Groundwater</u>	
A.R.S. § 45-452(C)	Substitution of acres to receive CAP water
A.R.S. § 45-480(D)	Denial or diminution of Irrigation, Type I or Type II grandfathered right application
A.R.S. § 45-528	Revocation of groundwater withdrawal permit
A.R.S. § 45-574	Variance from irrigation water duty or conservation requirements
A.R.S. § 45-575	Administrative review of water duty and conservation requirements
A.R.S. § 45-578	Assured water supply applications
A.R.S. § 45-599	Application for well permit
A.R.S. § 45-634	Enforcement
A.R.S. § 41-1013	Denial of any license or permit where no statutory requirement for pre-denial hearing; covers revocation of well driller's license
<u>Surface Water</u>	
A.R.S. § 45-172(7)	Transfer and severance of appropriative rights
A.R.S. § 45-190	Issuance of order to show cause on reversion of appropriated waters to state for reappropriation
A.R.S. § 45-274	Protest to stockpond registration

DESCRIPTION OF DIRECT CONSEQUENCES

	Dollar Impact on Department*	Dollar Impact on Party*
1. Party to pay cost of transcript on appeal to Superior Court (as per the Administrative Procedure Act).		-\$1.50/page
2. Party to furnish duplicate copies of oversized exhibits.		-(\$5-\$100)
3. "Natural" persons may represent themselves.		+(\$500-\$5,000)
4. Cases involving similar issues of law and fact may be consolidated.	+(\$1,000-10,000)	+(\$1,000-10,000)
5. Prehearing conference may be used to simplify and reduce issues and evidence.	+(\$500-\$5,000)	+(\$500-\$5,000)
6. Copies of pleadings must be served on parties.		-Cost of postage and duplicating
7. Department must serve certain documents by certified mail.	-\$5.25/party	
8. Unless otherwise directed, pleadings must be filed in Phoenix office (mailing is permissible).		-Cost of postage v. cost of hand delivery in 3 DWR offices outside Phoenix
9. Pleadings must be typewritten.		-\$1.50/page

* "-" means increased cost/decreased revenue
 "+" means decreased cost/increased revenue

TAB D4



September 16, 1986

ARIZONA
DEPARTMENT
OF WATER
RESOURCES

Bruce Babbitt, Governor
Kathleen Ferris, Director

99 East Virginia Avenue
Phoenix, Arizona 85004

Ms. Betsy Bayless, Chairperson
Governor's Regulatory Review Council
Office of the Director
DEPARTMENT OF ADMINISTRATION
1700 W. Washington, Room 809
Phoenix, AZ 85007

Re: Proposed Amendment to A.C.R.R. R12-15-301 and Proposed Adoption of A.C.R.R. R12-15-310

Dear Ms. Bayless:

The Director of Water Resources proposes to amend A.C.R.R. R12-15-301 and to adopt A.C.R.R. R12-15-310. An original and six copies of the proposed rules are attached. This letter provides the information required in the Governor's Regulatory Review Council Guidelines dated August 10, 1982.

I. Purpose of the Proposed Rules

A. The Problem.

1. Rule R12-15-301.

The proposed amendments to Rule R12-15-301 are needed primarily to give notice that the Director of Water Resources will issue certificates of stockpond water right in the name of lessees, permittees or allottees on public lands in certain cases where the stockponds themselves are authorized improvements, while making it clear that the permanent water rights remain with the governmental entity owning the land. The existing rule does not allow issuance of the certificates to lessees on state trust land even when the stockpond is an authorized improvement and the lease provides that the water right can be issued to the lessee, by and for the State of Arizona. The existing rule also allows issuance of certificates to permittees or lessees on land administered by the Bureau of Land Management, thus severing ownership of the water right from ownership of the land. This severance of the water right from the land is contrary to Arizona water law.

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Furthermore, the land would be virtually valueless if the water right were severed from it.

The amendment is needed secondarily to clarify the rule and to eliminate unnecessary language which repeats statutory provisions.

2. Rule R12-15-310.

Proposed Rule R12-15-310 is needed because in some cases multiple applications have been made by or for the same applicant for rights to the same water. Issuing multiple certificates of water rights for these multiple applications would lead to duplication and confusion.

B. The Solution.

1. Rule R12-15-301.

Proposed Rule R12-15-301 will give notice that the Director will issue a certificate of water right in the name of a permittee, lessee or allottee where the stockpond itself is an authorized improvement, while leaving ownership of the permanent water right with the public entity owning the land. The amendment will also clarify Rule R12-15-301 and eliminate unnecessary language.

The alternative solution considered was leaving the rule as it was originally adopted and obtaining clarification of the rule through litigation rather than rule amendment. Amendment was selected over litigation because amendment is less expensive to the Director and to the regulated community. Amendment would also give broader notice of the meaning of the rule than would a court decision after litigation.

2. Rule R12-15-310.

Proposed Rule R12-15-310 will give notice that the Director will issue only one certificate of water right when multiple applications are made by or for the same applicant for rights to the same water. Issuing only one certificate will avoid the duplication and confusion which would result if the same applicant or his agent received multiple certificates of water right, each bearing a different priority date.

An alternative solution considered was issuing multiple certificates which would reference each other. The proposed rule was chosen as a solution because it would be less confusing to

the public and less expensive to administer.

II. Costs and Benefits of Direct Consequences

A. Rule R12-15-301.

The proposed rule would impact only the Department, the public agencies administering land, and present or future permittees, lessees or allottees. The direct costs and benefits are shown in Schedule A, attached.

B. Rule R12-15-310.

The proposed rule would impact only the Department and those parties, whether private or public, who are entitled to water rights. The costs and benefits are shown in Schedule B, attached.

III. Costs and Benefits of Indirect Consequences.

A. Rule R12-15-301.

The proposed rule would decrease costs for the Department because no certificates would be issued directly to permittees or lessees of the Bureau of Land Management. Therefore, if a permittee or lessee in whose name the certificate was issued lost his or her lease with the BLM but refused to relinquish the water right on BLM land, the Department would not have to go through forfeiture or abandonment proceedings pursuant to A.R.S. §§ 45-189 and 45-190 in order to establish that the former lessee or permittee no longer held the water right. The proposed rule would also reduce costs to the Department, the BLM or its new permittee or lessee because the BLM or its new permittee or lessee would not have to reapply for a water right with a new date of priority. Instead, under the proposed rule the Department could reissue the certificate to the new lessee or permittee as designated by the BLM.

Under the proposed rule certificates of stockpond water right may be issued to certain lessees on state trust lands as agents for the State of Arizona. Leases for these lands have provided for decades that lessees will acquire any water rights by and for the State of Arizona, so the lessees' rights will not be affected by this change except to acknowledge lessees' status as agents acquiring the water rights for the State of Arizona. Because the lessees will be named on the certificates, however, the certificates must be reissued if a lessee loses his or her

lease. The cost to the Department for reissuing a certificate in these circumstances will be approximately \$15. The State Land Department or its new lessee will pay \$5 pursuant to A.C.R.R. R12-15-151.1 for reissuance of a certificate.

The Department, the public agencies administering land and their present and future permittees, lessees or allottees will save money which might otherwise be expended in litigation to clarify the meaning of Rule 12-15-301. For example, a lessee of state trust lands whose lease states that the lessee may obtain a certificate in the lessee's name by and for the State of Arizona might challenge the Department if the Department refused to issue the certificate in any name except the State of Arizona, as provided by the existing Rule R12-15-301.A.2.

2. Rule R12-15-310

The Director is required to administer surface water law so that no applications to appropriate water are issued which will conflict with vested rights and no applications to sever and transfer water rights are approved which will affect vested rights. If two or more certificates of water right or stockpond water right are issued to or for the same applicant and for the same water, proper administration of the surface water law would be complicated, and the danger of errors would increase. A person seeking to appropriate water or to sever and transfer a water right might have his request denied because multiple certificates of water right or certificates of stockpond water right existed for the same water, making it appear that more water was appropriated than was actually the case.

Assignments of water right would also be more expensive and complicated if multiple certificates were issued for the right to the same water. With multiple certificates, assignments would cost the rightholder more in filing fees and the Department more in administrative expenses. In addition, the existence of multiple certificates for the right to the same water would make errors possible upon assignment, increasing the likelihood that some certificates would not be properly reissued.

IV. Small Business Impact

A. Rules R12-15-301 and R12-15-310.

The present and future permittees, lessees or allottees impacted by the proposed rules are predominantly small businesses. These present and future permittees, lessees or allottees

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are individuals, partnerships or corporations in the farming or ranching industry who lease public lands for all or part of their operations.

The proposed rules do not require ongoing reporting or book-keeping by permittees, lessees or allottees. The public agencies administering the land would notify the Department when there is a change in permittees, lessees or allottees.

B. Methods to Reduce Impact

None of the methods listed in the guidelines are feasible in meeting the statutory objectives which are the basis of the proposed rules. Since the proposed rules will require little or no action by the permittees, lessees or allottees, it is not feasible to reduce the action required.

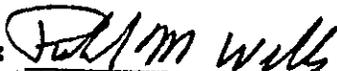
V. Filing of Rules

The original and six copies of the proposed rules are attached hereto. A Statement of Approval is also attached.

Please feel free to call Deputy Counsel Barbara A. Markham at 255-1529 if you have any questions concerning this matter or to establish a time for appearance before the Council.

Kathleen Ferris
Director of Water Resources

By:


Richard M. Wells
Chief Deputy Director

Description of Direct Consequences Rule R12-15-301	Dollar Impact on Department	Dollar Impact on Present & Future Permittees, Lessees or Allottees	Dollar Impact on Public Agencies Administering Lar
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1. Wording typed on certificates
would change.

\$0

\$0

\$0

Description of Direct Consequences*
 Rule R12-15-310

Dollar Impact on
 Department
 (+ = Savings;
 - = Cost)

Dollar Impact on Public
 Water Right Holder
 (+ = Savings;
 - = Cost)

Dollar Impact on
 State Water Right
 Holder (+ = Savin
 - = Cost)

One certificate of stockpond water right would not need to be issued if consolidated certificate of water right were issued	+ \$15/certificate, 7000 certificates	\$0	\$0
One certificate of water right would not need to be issued if consolidated certificate of stockpond water right were issued.	+ \$100/certificate, 40 certificates	+ \$25/certificate, 34 certificates	+ \$25/certificate, 6 certificates
Registry need show one certificate instead of two or more.	+ \$20/entry	\$0	\$0
Department must verify with applicant that multiple applications are for the same applicant and the same water.	- \$5/application, 7040 applications	- \$5/application, 7034 applications	- \$2/applications, 6 applications

Virtually all multiple applications which will be affected have already been filed with the Department.

ECONOMIC IMPACT STATEMENT
AND
STATEMENT OF EFFECT ON SMALL BUSINESSES

The proposed amendments to A.A.C. R12-15-301 would correct the numbering of statutes referred to in the rule which have been renumbered since adoption of this rule.

The proposed amendments to A.A.C. R12-15-302 would substitute reference to the "Department of Water Resources" with "Director of the Department of Water Resources" to achieve consistency with other rules.

The proposed amendments to A.A.C. R12-15-310, which is also being renumbered R12-15-303 to eliminate a gap in the numbering, would correct the numbering of statutes referred to in the rule which have been renumbered since adoption of this rule.

All of these proposed amendments are non-substantive and would have no impact on the economy or on small businesses.

TAB D5

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT WATER RESOURCES

ARTICLE OF 4. LICENSING TIME FRAMES

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

SUMMARY

The major impact of the rule will be on the Department itself. There will be no major changes in the way a license is processed within the Department. However, a tracking system utilizing commercial software will be implemented to assure that the time-frames identified for each license are met. Staff time will be allocated for training and to make minor changes in the licensing process. The budgetary impact on the Department is anticipated to be substantial in the first year and much less in the following years. In the long term, costs should be offset by increased efficiency and enhanced management oversight.

The Department expects that most license applicants will experience only small changes in the way they interact with the Department. Application review will not be changed significantly. More types of applications will be reviewed using a "team" approach for central management of tasks and coordination of communications to the applicant. Certain new statutory provisions may have unexpected impacts. Time limits will increase pressure to issue licensing decisions. A.R.S. §41-1075 provides that the agency may make only a single, comprehensive, written request for more information on an application during the substantive review time-frame. On occasion, these restrictions may preclude the Department from finding a solution through an iterative process with the applicant, as has

often worked in the past. It will be more important for applicants to submit thoroughly prepared applications. In general, applicants will be the recipients of increased efficiency and oversight.

The overall economic impact of the licensing time-frames rule on Department license applicants is difficult to identify monetarily. Costs of implementation will be offset by increases in efficiency and management oversight. Application fees will not change. Some applicants will realize an economic benefit in knowing when a licensing decision must be made.

A. Identification of persons who will be directly affected by, bear the costs of, or directly benefit from the time-frames rule

A description of persons who may be affected by the time-frame rule follows.

1. Surface Water Users: These persons include individuals, irrigation districts and other political subdivisions of the state who divert surface water for use or storage. All surface waters in the state are subject to prior appropriation. Persons seeking a water right and any request to change the use or change the point of diversion must be approved by the Department.

Surface water applicants are likely to benefit from increased efficiency and ease of tracking progress. Some will incur costs of more thorough preparation of applications.

2. Groundwater Users: These persons include individuals, irrigation districts, water companies, developers and other political subdivisions of the state who utilize groundwater as a source of supply, drill wells, or otherwise impact groundwater in storage. For example, individuals and entities seeking assured water supply certificates and designations, recharge permits, groundwater conveyance permits and water adequacy reports seek licenses through the groundwater program. About 76% of the Department's total rule package address groundwater issues.

While many applicants will benefit from certainty and timeliness of licensing decisions, some who require assistance with the process will have less flexibility and control.

3. Safety of Dams: These persons include individuals, irrigation and flood control districts, political subdivisions of the state, mining companies and other corporations and federal agencies who own or operate dams in Arizona.

Owners and operators will see positive and negative impacts. Timely decisions on dam construction and modification licenses will reward those applicants who have devoted time and resources to submit complete and fully documented material with their applications. Since the process requires extensive review of engineering drawings and complex mathematical calculations, errors require time-consuming revisions. It is possible that the Department may have to reject applications to meet the time-frame schedule. Dam owners and operators may incur greater up-front costs to avoid rejection of their applications in the future.

4. Other: These persons include individuals or entities that wish to apply for a license to fill a water impoundment with poor quality water or to utilize a body of water for a short period of time, request approval of construction extensions, weather modification, and other rarely used permits that are covered by statute. Applicants will benefit from knowing a date certain when the licensing decision will be made.

B. Cost-Benefit Analysis

This cost-benefit analysis addresses the identifiable costs associated with the implementation of the time-frame rules and the benefits that may be realized.

In general, individuals and entities outside of the implementing agency will realize the benefits of smoother and more consistent review of applications, more central oversight of the review process,

better tracking of progress, and in some cases, more timely licensing decisions. In some cases the benefit of knowing when a licensing decision must be made will be substantial.

For some applicants, the team management will result in delays of receiving notice of deficiencies. A.R.S. §41-1075, which provides that the agency must make all of its requests for additional information on an application in a comprehensive, written request during the administrative time-frame, and a single comprehensive request during the substantive review time-frame, will result in some cases in less flexibility and assistance to the applicant and more pressure to issue licensing decisions. It is likely that more applications will be denied. Successful applicants will bear the costs of more pre-application meetings and submitting more thorough, higher quality applications.

1. Implementing Agency

The costs to the Department include the time and staff needed to implement and maintain a tracking system to insure that the time-frames for each license application will be adhered to and met. The estimated costs of this program are as follows:

TABLE 1

Total Estimated Costs of the Tracking System

	ITEM	TOTAL COST
SOFTWARE ¹	50 @ \$450 EACH	\$ 22,500
TRAINING		
ITD Staff	1 @ \$1495	\$ 1,495
Department Staff	50 @ \$800 for 10 vs 50 @ \$1,390 for 12	\$ 4,000 to 5,792
IMPLEMENTATION		
ITD Staff	1/4 FTE	\$ 10,000
Department Staff ²	(768 HOURS X \$25/HR)	\$ 19,200
TOTAL		\$ 57,185 to 58,977

¹ MICROSOFT PROJECT MANAGEMENT 98

² 12 FTE's WORKING 2 HOURS PER WEEK FOR 8 MONTHS

TABLE 2

Annual Operation and Maintenance Costs

	ITEM	TOTAL COST
SOFTWARE UPGRADE ¹	50 X \$100	\$ 5,000
ITD SUPPORT	1/4 fte	\$ 10,000
TRAINING	5 X \$1495	\$ 7,475
TOTAL		\$ 22,475

¹ Software upgraded every 2 years at a cost of \$300 per license. Annual costs of \$100 per license.

2. Other Agencies Directly Impacted: The Department is involved in cooperative programs with other state, county, local and federal agencies. Rule implementation may affect some of these cooperative efforts and the agencies may incur additional costs. For example, the Department of Environmental Quality participates in the assured and adequate water supply programs, recharge permitting, underground storage facility permits, and any other license application that affects water quality. A request for approval of a water service area right requires coordination with the Arizona Corporation Commission. Close coordination will be required with all agencies that cooperate with the Department when the time-frames are implemented.

3. Political Subdivisions: Political subdivisions that operate water systems or otherwise control and divert water are not anticipated to incur any substantial cost increases when the time-frames statute is implemented. They will most likely benefit from the increases in efficiency that the Department expects to derive from this effort.

As applicants, political subdivisions will bear the costs of submitting higher quality applications or incurring a greater risk of denial.

4. Businesses: Private water companies, engineering and hydrologic consulting firms and land development companies are examples of small businesses that will likely incur increased costs and benefits associated with the time-frames implementation. Successful applicants will require additional pre-application conferences, better planning documents, site identification maps, more complete engineering plans and associated documentation prior to application submittal. In some cases, the higher quality applications that may be required will represent higher costs in time, money, and expertise.

In some cases, the requirement on the Department to coordinate communication to prevent multiple requests to the applicant for information may cause delays in advising applicants of deficiencies. In addition, statutory limits on the agency's requests for information will restrict the agency's customary iterative process on complex applications.

Applicants may receive license approval faster and more efficiently. Some will benefit from the certainty of knowing when the licensing decision must be made.

5. Private Persons and Consumers: Because individuals hold a large number of water rights and many of the dams constructed in the state are privately owned, individuals may be impacted by the time-frames implementation. The agency's inability to make additional requests for information may hinder some applicants by restricting the agency's flexibility to resolve issues through an iterative review process. Some applicants may bear the cost of consultants to assist in preparing the application.

Individuals would receive the benefits of certainty and more centralized management of the process.

C. Probable Impact On Private and Public Employment

1. Businesses: There is very little impact on private employment at businesses directly affected by time-frames implementation. The Department expects that any changes occurring in the application process will be minor and will not require monetary outlays for additional employees.

2. Agencies: The Department anticipates no impact on public employment in agencies impacted by the time-frames statute. Any changes in cooperative efforts with the Department will be procedural and will be handled administratively.

3. Political Subdivisions: There will be very little impact on political subdivisions affected by the time-frames statute. Political subdivisions delivering water or operating dams may have to be more diligent in thoroughly preparing applications. Additional staffing is expected to be minimal.

D. Probable Impact On Small Business

1. Identification of Small Businesses Subject To The Time-Frames Implementation:

Small businesses, such as private water companies, consulting firms, development companies, well drillers that are directly impacted by the time-frames statute implementation will not experience significant change in their interactions with the Department. Most will benefit from greater certainty of obtaining a licensing decision by a set date.

2. Administrative and Other Costs: Other than the costs associated with thorough preparation of applications, the Department anticipates no significant costs associated with the time-frames implementation.

3. Description of Methods The Agency May Use to Reduce The Impact On Small Businesses: The Department expects that time-frame rule implementation process will have no effect on small businesses in most cases.

E. Probable Effect On State Revenues: There will be no increase to the general fund from the implementation of the time-frame rule. Any penalties for not meeting time-frames will be paid out of the Department's budget.

F. Description Of Any Less Intrusive Or Less Costly Alternative Methods Of Achieving The Purpose of The Time-Frame Statute: The Department expects the implementation of the time-frame rule to have a minor cost to applicants. Most of the cost will be borne by the Department, primarily

associated with the development and maintenance of the tracking system. Most applicants will not experience negative or intrusive impacts.

The Department intends to continue to assist applicants with the licensing process. The Department works with applicants who need help preparing an application and applicants submitting complex applications that require help to resolve interrelated issues. The focus will continue to be to address the needs of the applicant while meeting the requirements of the statute and fulfilling the responsibilities of the agency.

TAB D6

ASSURED AND ADEQUATE WATER SUPPLY RULES

A.R.S. § 41-1055(B) and A.R.S. § 41-1035 ECONOMIC, CONSUMER, AND SMALL BUSINESS IMPACT STATEMENT

A. An Identification of the Proposed Rule Making

The Department of Water Resources ("Department") is modifying certain rules, repealing other rules, and adopting new rules under A.A.C. Title 12, Chapter 15, Article 7, all relating to the Assured and Adequate Water Supply (AAWS) program.

During the 2005 legislative session, HB 2174 was enacted by the Legislature and signed into law by the Governor. In consultation and collaboration with the public advisory committee prescribed in HB 2174, the Department has undertaken a comprehensive review of its AAWS rules and is proposing modified rules that are designed to streamline and make more efficient the AAWS program and combine and simplify certain types of fees for service, all designed to quicken, shorten, and simplify the application and review process, add clarity to and reduce confusion about AAWS program requirements and procedures, and thereby facilitate more timely completion of real estate development schedules and faster satisfaction of public demand for real estate.

Taken together, the Department estimates that the modified rules will result in economic benefits to consumers, political subdivisions, agencies and small and large business as follows:

- Repetitive processes will be eliminated, fewer items will be required to qualify, and fewer steps will be involved in the approval process, saving time and effort.
- Elapsed calendar days to complete some AAWS services will shorten, significant time will be saved.
- Added convenience factors will make it easier and less confusing for political subdivisions, businesses, and agencies to complete the application and review process.
- Certainty, clarity, and transparency in the rendering of AAWS services will improve.

During the 2001-05 period, the Department estimates that AAWS fees collected have covered less than 10% of actual AAWS program costs. Stakeholders agreed with the Department that higher fees were necessary to support an AAWS program that needed to be more efficient and effective in order to keep up with the tremendous growth occurring in Arizona. Following A.R.S. § 45-580, the Department proposes in this rulemaking to increase the fees it charges for the AAWS services it provides to the development, home builder and water provider communities, and through them, the general public, to more fully cover the costs and expenses of the Department in administering the AAWS program and to provide a means to add FTEs to a program struggling to keep pace. Specifically, the Department proposes to repeal the fee structure for the Adequate Water Supply Program that is set out in current rule R12-15-725 and also to repeal the fee structure for the Assured Water Supply Program that is set out in current

rule R12-15-714. Those fee structures will be replaced with the new and streamlined fee structure in proposed rule R12-15-730. By doing so, the Department expects that the total fees it collects from those affected by the AAWS Program will increase approximately nine-fold. The fees are a product of negotiations with stakeholders. The fee structure is based on the number of the estimated number of future applications that will be received by type and the estimate future costs of administering a streamlined and more efficient AAWS Program. The new fees will be used by the Department for the costs and expenses of administering the Program. Those AAWS services - certificates of assured water supply and water adequacy reports - that will most benefit from the streamlining are also apportioned most of the increased fee collections. The table below shows an abbreviated summary of the repealed fees and the entirety of the proposed new streamlined fees:

Fee Proposal

Service	Repealed	Proposed – R12-15-730
	(Abbreviated)	
Certificates	\$1000 cap. \$250 for the first 20 lots. \$0.50 for each lot thereafter.	\$3000 for the first 20 lots. \$3.00 for each lot thereafter. \$5000 cap.
Assignment	\$1000 cap. \$250 for the first 20 lots. \$0.50 for each lot thereafter.	For certificates issued after the effective date, none – combined into certificates fees. For certificates issued prior to the effective date, \$1000 cap. \$250 for first 20 lots. \$0.50 for each lot thereafter.
Reissuance of a certificate (issued before effective date of rules) pursuant to R12-15-704(G)		For certificates issued after the effective date, none – combined into certificates fees. For certificates issued prior to the effective date, \$1000 cap. \$250 for first 20 lots. \$0.50 for each lot thereafter.
DAWS	\$10,000 cap. \$500.00 for the first 500AF. \$0.50/AF for next 500 AF. \$0.25AF thereafter.	\$1000.00 for the first 1000AF. \$0.50/AF thereafter. \$10,000 cap.
DAWS (Modification)	\$500.00	\$500.00 for a “minor modification.” ¹ Otherwise, same as DAWS: \$1000.00 for the first 1000AF, \$0.50/AF thereafter. \$10,000 cap. Applied only to the incremental volume above the original designated volume.
DADE	\$8000.00 cap. \$400 for the first 1000AF. \$0.25/AF thereafter.	Same as DAWS.

DADE (Modification)		Same as DAWS modification.
Water Report	\$800.00 cap. \$200.00 for the first 20 lots. \$0.50 per lot thereafter.	\$900.00 for the first 20 lots. \$2.00 per lot thereafter. \$2000.00 cap.
Analysis of Assured Water Supply; Analysis of Water Adequacy	\$1000.00	\$7500.00
PAD	\$1000.00	\$5000.00
Type A reclassification ²		\$250 for first 20 lots. \$0.40 for each lot thereafter. \$1000.00 cap.
Material plat change review		\$250.00

1. A minor designation modification does not involve re-evaluation of physical, legal, or continuous availability or consistency with goal. The higher fee is applied to a designation modification – DAWS or DADE – that requires re-evaluation of physical, legal, or continuous availability, or goal consistency (goal consistency does not apply to adequacy designations).
2. Classification as a Type A Certificate issued before the effective date of the rules and not included in an assignment application.

A reissuance of a certificate pursuant to R12-15-704(G), a Type A certificate reclassification (for a certificate issued before the rules are effective and not included in an assignment application), or for a material plat change review are optional services offered to certificate holders and the Department anticipates that few applications will be submitted. In most cases, applicants would seek an assignment rather than a reissuance, so the economic impact will be *de minimis*. The reclassification and material plat change review are included in other application reviews at no additional cost and applicants will not often request these services separately. The fees for these services are relatively low and the economic impact will be *de minimis*.

B. A Brief Summary of the Information Included in the Economic, Consumer, and Small Business Impact Statement

Using a projected level of AAWS Program services, the Department estimates that the state will collect a grand annual total of approximately \$1.475 million using the fee structure proposed in R12-15-730. Using the fees set forth in current rules R12-15-714 and R12-15-725, the Department estimates that it would have collected approximately \$165,000 annually while rendering the same projected level of services. Persons applying for AAWS services will pay increased costs of approximately \$1.31 million annually.

The same persons will reap benefits from an AAWS Program that is streamlined, more efficient, quicker, shorter, clearer, simpler, and one that facilitates more timely completion of real estate development schedules and faster satisfaction of public demand for real estate. These benefits are not quantified, but their value is apparent to the development, home builder and water provider communities, who have agreed to pay these increased costs to streamline an AAWS program that needs to be more efficient and effective to keep up with the tremendous growth occurring in Arizona.

The following are public services currently provided by the AAWS program:

CAWS	Certificates of Assured Water Supply, <i>including new certificates, assignment of ownership, and conformance letters</i>
DADE	Designations of Water Adequacy, <i>including new and modifications</i>
DAWS	Designations of Assured Water Supply, <i>including new and modifications</i>
WAR	Water Adequacy Reports
AnAs	Analyses of Assured Water Supply
PAD	Physical Availability Determinations
AnAd	Analyses of Water Adequacy

B.1. Persons Directly Benefiting from the Proposed Rulemaking

The More efficient and effective AAWS program will benefit real estate developers, individual partnerships, corporations, large and small businesses involved in home building and community development, and water suppliers including political subdivisions, private water companies, and irrigation districts serving municipal water. AAWS rule streamlining is especially designed to shorten the time and administrative burden of real estate developers and home builders who apply for certificates of assured water supply. Certificates constituted about 70% of AAWS program services during the 2003-05 period. Revenue accumulated from the proposed fees will allow the Department to increase its staffing for the AAWS program so that it can better manage the tremendous growth Arizona is experiencing. The Department and other state agencies affected by the AAWS program, such as the Arizona Corporation Commission, the Arizona Department of Real Estate and the ADEQ also will benefit from a shortened, simplified, streamlined, and more efficient application and review process, involving fewer steps, less repetition, reduced numbers of applications, and less waiting time. The general public will benefit from swifter and more certain satisfaction of its demand for real estate, while enjoying the certainty that an assured or adequate water supply for 100 years has been identified, and in AMAs, that groundwater resources are being properly managed.

B.2. Persons Directly Bearing the Costs of the Proposed Rulemaking

Persons applying for AAWS services will pay increased costs. The table below shows numbers of AAWS services rendered over the 2001-05 period, and a projection for 2005-06.

Looking at the table, if each service rendered represented one real estate development, approximately 513 municipal water providers, private water companies, real estate developers, corporations, sub-dividers, and other similar persons statewide paid AAWS fees in 2004-05.

Table. Numbers of AAWS Services Rendered

AAWS SERVICE	FISCAL YEAR				
	2001-02	2002-03	2003-04	2004-05	2005-06 ¹
CAWS	112	149	302	355	251 ³
DADE	2	1	0	4	13 ²
DAWS	9	6	10	3	
WAR	91	67	73	114	125
AnAs	6	10	20	20	22
PAD	8	4	6	0	7
AnAd	1	2	4	17	19
TOTAL	229	239	415	513	437

1. Projected. The projections are further detailed, below.
2. All Designations taken together, e.g. DADE + DAWS.
3. Presently, Certificate changes of ownership are assessed fees and counted separately from new certificate applications. Under the proposed streamlining, these services are combined, resulting in a smaller number of projected certificate services.

B.3. Cost-Benefit Analysis

The streamlined AAWS rules will facilitate the completion of real estate development schedules in a more timely manner and reduce per-service processing times spent by multiple agencies. The AAWS rule streamlining is especially designed to shorten the time and administrative burden of applicants for certificates and water reports, typically real estate developers and homebuilders. The general public and those employed in the housing industry will benefit from swifter satisfaction of real estate demand. Following the directive in A.R.S. § 45-580, the Department proposes to increase its fee collections to a level roughly equal to about two-thirds of its actual costs to administer the AAWS program. Stakeholders have agreed to allow the Department the opportunity to identify its AAWS program costs over the next few years and review at some future time the adequacy of the fee levels proposed in this rulemaking. Persons using AAWS program services will pay increased fees per service. Total AAWS fees paid to the Department during a given year will also increase.

B.3.1. Agencies

The Department estimates its full-time equivalent staff (FTE) and associated costs to administer the AAWS program as follows:

AAWS PROGRAM FTEs AND COSTS				
	All ADWR 2004-05	All ADWR Projected	WMD & Hy Projected	WMD Only Projected
FTE's – Number	14.4	17	14	10
Program Cost	\$1,998,800	\$2,212,200	\$1,739,400	\$1,189,900

The 2004-05 figures represent actual Department costs associated with administering the AAWS program. The projections represent the Department's outlook for 2005-06 and beyond as of this writing.

Total fees collected for AAWS program services are expected to greatly increase under the new fee structure proposed in R-12-15-730. The Department estimates that the average amount of annual fees collected over the 2001-05 period would have increased by about eight times, from an average of \$106,575 to an average of \$830,033, an average annual increase of about \$723,500. With the new fees and the Department's projected demand for AAWS services, future fees collected would increase from about \$165,000 to about \$1,474,800 annually, an increase of about \$1,309,800 or ninefold. These increased revenues will allow the Department to manage more effectively the AAWS program, reduce the administrative burden to applicants and therefore keep pace with the growth of development. The AAWS program streamlined procedures will reduce both calendar and staff days required per service, thereby reducing the Department's administrative burden. The streamlined procedures are expected to reduce the number of staff and calendar-days typically required to render services at other state agencies, in some cases significantly.

B.3.2. Political Subdivisions

Cities, towns, private water companies, community water systems, and in some cases water districts and home owner associations typically secure their water supplies via Designations of Water Adequacy ("DADE" – outside of Active Management Areas) and Designations of Assured Water Supply ("DAWS" – inside of Active Management Areas). These water providers are located statewide throughout Arizona. In recent years, DADE and DAWS together have represented about two to five percent of annual AAWS services rendered and accounted for about four to seven percent of total annual AAWS fees collected.

The fees assessed to political subdivisions for both DADE and DAWS would have increased during recent years and are projected to increase with the proposed new fee structure. For example, during 2004-05, the Department actually collected \$6,200 from seven DADE/DAWS services, but would have collected \$16,680 under the proposed increased fees. The seven services in 2004-05 represent a recent low in DADE/DAWS activity. Based on knowledge it presently has, the Department estimates that it would collect \$66,300 from 13 DADE/DAWS services during 2005-06 with present fees, and that this total would increase to \$76,600 with the proposed fees.

On a per acre-foot basis, over the 2001-05 period, 35 designations totaled about 410,000 acre-feet, at an average total cost of about \$0.06 per acre-foot. If the proposed new fee structure had been in place during 2001-05, the average cost would have been about \$0.24 per acre-foot. Total fees collected from the 35 designations were about \$24,300, and would have risen to about \$97,000, a four-fold increase.

Designated providers will pay these costs as AAWS program services are rendered. However, since most of these providers are cities, towns, and similar municipal water providers, the general public will be the ultimate cost-bearer as the providers adjust rate structures and pass the higher costs through to the public via approved rate hikes.

For example, seven 2004/05 designations involved approximately 22,000 acre-feet of municipal water. Using the rule of thumb that one acre-foot is enough water to supply one to two average homes, about 22,000 to 44,000 households would have ultimately paid increased fees totaling about \$10,480 or an increase of about \$0.50 to \$1.00 per household for the water designated in 2004/05, if the proposed new fee structure had been in place.

Persons applying for new designations or to modify existing designations will benefit from the AAWS streamlining through shortened processing times, reduced backlog, and more focused attention of AAWS program staff. The streamlined rules are clearer and more transparent. Application, annual report, and special exemption reviews are all expected to speed up. Designation services are relatively few compared to certificates, and designations are often more complicated. In some past cases, this has resulted in relatively more attention to the large backlog of certificate applications. This unfortunate situation is expected to abate under the proposed rules. Faster designation processing is expected to benefit those political subdivisions who rely on real estate development fees to support other public services, as those political subdivisions will be able to more quickly satisfy the demand for real estate.

B.3.3. Business, Including Small Business

Outside of designated service areas, real estate developers, including general partnerships, limited liability corporations, general corporations, trusts, other large and small businesses, private individuals and any other persons who sell subdivision lots to home buyers or record plats statewide typically secure their water supplies via certificates inside an AMA and water reports outside an AMA. These same real estate developers or any Arizona landowner with a master plan might apply for an Analysis of Assured Water Supply ("AnAs," inside an AMA) or an Analysis of Water Adequacy (AnAd, outside an AMA).

In recent years, certificates and water reports together have represented almost 90% of AAWS services rendered and accounted for about 75% of total AAWS fees collected. Under both current and proposed rules, a small certificate or water report involves 20 lots or less.

In recent years, AnAs and AnAd together have represented about three to five percent of AAWS services rendered and accounted for about seven to fourteen percent of total AAWS fees collected.

B.3.3.1. Probable Costs to Business, Including Small Business

B.3.3.1.1. Certificates – CAWS

There were 32 new small and 219 new large certificate applications from businesses in 2004-05. If one lot equals one house, about 44,000 new houses will eventually be available for sale to housing consumers under certificates applied for in 2004-05.

The ability of the real estate developer to pass increased costs through to ultimate buyers depends on the parameters of the underlying demand for housing. The most likely scenario is that both housing buyers and real estate developers will share payment of certificate fees that would have increased during recent years and are projected to increase with the proposed new fee structure. For example, during 2004-05, the Department actually collected

\$105,000 from 355 certificate services, but would have collected about \$843,300 under the proposed increased fees. The 355 services in 2004-05 represent an all-time high in certificate activity. Under the proposed new fees, the Department estimates that it will collect about \$927,600 from 251 new certificate services during 2005-06, whereas, with present fees, this total would be just \$115,000.

During the 2001-05 period, small certificates have averaged 12 lots in size. This translates into a small certificate per-lot cost of $\$250/12 = \20.83 under the present fee structure vs. a small certificate per-lot cost of $\$3,000/12 = \250 under the new proposed fees. Over the same period, total small certificate fees paid would have increased by six to twelve times under the new fee structure as compared to the present fees.

Presently, large certificates are subject to both minimum fees and lot charges and also repetitively pay fees as ownership changes during processing. Recently, large certificates have averaged about 200 lots in size. Using that figure, the average per lot cost under the new rules would be $\$3,000/200 + \$3.00 = \$18.00$ per lot after the first 20 lots, as compared to $\$250/200 + \$0.50 = \$1.75$ per lot under the present rules. Total large certificate fees paid from 318 applications during 2004-05, for example, would have increased about eightfold, from a total of \$95,750 to a total of \$747,285. Only 219 new certificate services would have paid fees. Ninety-nine large certificate applications experienced a change of ownership during the processing and repetitive fees on them would have been eliminated under the proposed new fees.

B.3.3.1.2 Water Adequacy Reports

There were 34 small and 80 large water reports prepared for businesses in 2004-05. Supposing again that one lot equals one house, about 11,000 new houses will eventually be available for sale to housing consumers under water reports applied for in 2004-05.

Under the proposed new fee structure, water report fees would have increased during recent years and are projected to increase in the future. For example, during 2004-05, the Department actually collected \$27,100 from 114 water report services, but would have collected about \$120,275 under the proposed increased fees. The 114 services in 2004-05 represent an all-time high for water reports, and are projected to continue to increase. Under the proposed new fees, the Department estimates that it will collect about \$132,000 from 125 new water reports during 2005-06, whereas, with present fees, that total would be about \$29,800.

During the 2001-05 period, small water reports (those 20 lots or less in size) have averaged about 13 lots in size. This translates into a small water report per lot cost of $\$200/13 = \15.38 under the present fee structure vs. a small water report per lot cost of $\$900/13 = \69.23 under the new proposed fees. Over the same period, total small water report fees paid would have increased by about 4.5 times under the new fee structure as compared to the present fees.

The average size of large water reports varied between 93 and 130 lots over the 2001-05 period. For a 100-lot water report, the average per lot cost after the first 20 lots under the new rules would be $\$900/100 + \$2.00 = \$11.00$ per lot, as compared to $\$200/100 + \$0.50 = \$2.50$ per lot under the present rules. With the proposed new fees, total large water report fees paid during 2004-05, for example, would have increased about 4.4 times, from a total of \$20,300 to a total of \$89,674.

B.3.3.1.3 Analyses of Assured Water Supply and Water Adequacy

Under the proposed new fee structure, the cost for AnAs and AnAd would increase from \$1,000 to \$7,500 per analysis. The numbers of analyses have been steadily increasing in recent years, reaching a combined 37 in 2004. A 10% increase, to 41 analyses is projected by the Department. In 2004-05, the Department collected \$39,000 from the 37 analyses. With the new fee structure, it would have collected \$277,500, about a sevenfold increase.

B.3.3.2. Probable Benefits to Business, Including Small Business

The Department expects certificate services to continue to increase in coming years and is presently experiencing an historically large certificate backlog. Under the old rules, new applications, changes of certificate ownership, and partial certificate assignments were treated separately, with separate application and qualification processes and separately assessed fees. Each time one of these events occurred, that application moved back to the end of the service queue. Under the streamlined rules, fees for new, changed, and assigned certificate services will be combined into a single new application fee.

If there is a plat change during the time a water report is being processed, the streamlined procedures will shorten processing times by eliminating repetitive plat change reviews. The Department expects that the streamlined rules will shorten some certificate and water report processing times by four to twelve weeks while at the same time adding convenience and transparency and reducing public confusion.

Draft rules R12-15-703 and R12-15-712, pertaining to analyses of assured water supply and water adequacy allow the State Land Department to apply for an analysis of assured water supply.

The draft rules clarify the application procedure by identifying what information the applicant is required to provide in the application submitted to the Department, what the applicant must demonstrate in the application, and how the Director will evaluate those items in making her or his determination. They also clarify what the applicant must submit to prove land ownership and set forth who qualifies as an authorized signatory on the application.

The draft rules codify the long-standing Department policies on time limits for analyses and renewals. They set forth factors for consideration in the renewal. The Director is given added flexibility. The inclusion of specific renewal terms will assist developers in planning. In addition, the inclusion of a time limit and renewal terms will terminate those analyses that do not move forward with development, and free up additional water for other development. These measures provide greater certainty to the applicant, the Department and the public that the applicant who is "locking up" water is doing so with a viable plan for water delivery to the applicant's proposed subdivision.

B.3.4. Physical Availability Demonstrations – Probable Costs and Benefits

A water company regulated by the Arizona Corporation Commission or any member of the general public might apply for a Physical Availability Demonstration ("PAD"), which is an analytical report prepared by Department staff. The probable costs and benefits associated with these analytical reports apply equally to agencies, political subdivisions, and businesses, including small businesses.

During normal recent years, the Department has prepared six or seven PAD reports per year, representing some two to three percent of AAWS service numbers. Over the 2001-05 period, the Department collected a total of about \$18,000 in PAD fees. That total would have

increased by a factor of five under the proposed new fees, to about \$90,000. Persons requesting a PAD will benefit from the AAWS streamlining through shortened report preparation times, reduced backlog, and more focused attention of AAWS program hydrologists.

B.3.5. Employment

The Department thinks it highly unlikely that the proposed fee increases will have any appreciable impact on real estate development activity or consumer demand for real estate, and so will not appreciably impact employment in businesses or political subdivisions. The Department anticipates adding a small number of additional FTEs to the AAWS Program so that staffing levels will be more appropriate to the level of work.

B.3.6 State Revenues

If the proposed new fee structure had been in place during 2001-05, the state would have collected an annual average of about \$830,000. During 2001-05, the state did collect an annual average of about \$106,600, or about one-eighth of what it would have collected. The Department projects annual fee collections of about \$1.475 million under the proposed structure, about \$1.31 million more annually than the \$165,220 it would collect annually with present fees. The projections are based on application experience over the 2001-05 period, which is a realistic picture moving into the future, subject to the natural fluctuations in the real estate market. The stakeholders and the Department have agreed that the Department will reassess the fees during the next three years to ensure that the fees are appropriate.

B.3.7. Alternative Methods of Achieving the Proposed Rulemaking

The Department engaged in a long public dialogue with the regulated community as it rewrote the AAWS rules. Many comments were received and many alternatives were considered, some less intrusive or costly, some more. The present proposed rules emerged from the public participation process, in preference to other alternatives.

TAB D7

**PINAL AMA ASSURED WATER SUPPLY RULE MODIFICATIONS
TO DELAY REDUCTION OF EXTINGUISHMENT CREDIT ALLOCATION
FACTOR**

**A.R.S. § 41-1055(B)
ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

The Department of Water Resources (Department) received a request from a number of landowners in the Pinal Active Management Area (AMA) to modify the extinguishment credit calculation in the Assured Water Supply (AWS) rules for the Pinal AMA by temporarily delaying the first reduction in the allocation factors used to calculate extinguishment credits. The Department expects the rulemaking to have short-term economic benefits with minimal long-term impacts on groundwater supplies.

The 1980 Groundwater Management Act created four AMAs (the Phoenix, Pinal, Prescott and Tucson AMAs) where groundwater use is actively managed. In 1994, a fifth AMA (the Santa Cruz AMA), was created out of a portion of the Tucson AMA. Each AMA has a management goal and the Department is required by statute to adopt AWS rules to assist in the attainment of that goal. The Department manages the AWS program within the five AMAs pursuant to A.R.S. § 45-576. The AWS program requires new subdivisions¹ to demonstrate a 100-year water supply. One of the requirements of that demonstration is that the groundwater supply must be consistent with the management goal of the AMA. The management goal of the Pinal AMA is to preserve the existing agricultural economy as long as feasible, consistent with preserving long-term water supplies for future non-irrigation uses (i.e., primarily new subdivision development).
A.R.S. § 45-562(B).

¹ The AWS requirement applies to each new “subdivision” as defined by A.R.S. § 32-2101(55).

One method that may be used to demonstrate consistency with the management goal of the AMA is through the use of extinguishment credits. Extinguishment credits are issued by the Department to the owner of a grandfathered groundwater right (GFR)² when the owner voluntarily extinguishes the right. Extinguishment credits represent an annual volume of groundwater that can be withdrawn within the AMA consistent with the AMA's management goal.

Under A.A.C. R12-15-725(B), the volume of extinguishment credits issued for the extinguishment of a GFR is calculated by determining an annual volume of groundwater for the GFR,³ and then multiplying that volume by an allocation factor established for the year in which the right is extinguished. Currently, R12-15-725(B)(3) provides for an allocation factor of 100 for each year until calendar year 2014, when the allocation factor is reduced to 94. From 2015 through 2017, the allocation factor is reduced by six each year. From 2017 on, the allocation factor is reduced by two each year until it reaches zero in calendar year 2055. The purpose of the reduction in the allocation factor is to gradually reduce the amount of allowable groundwater pumping as development increases within the AMA to ensure that groundwater supplies in the AMA are not over-allocated. Any portion of a new development's water demand that cannot be met with

² The 1980 Groundwater Management Act created three types of grandfathered groundwater rights in AMAs based on groundwater uses in existence from 1975 to 1980: (1) Irrigation Grandfathered Rights (IGFRs) associated with lands irrigated for agricultural use; (2) type 1 non-irrigation grandfathered rights associated with irrigated lands retired for a non-irrigation use; and (3) type 2 non-irrigation grandfathered rights that are not associated with irrigated lands. A.R.S. § 45-462(D).

³ For Type 2 non-irrigation grandfathered rights, the volume is the number of acre-feet indicated on the certificate of right. A.A.C. R12-15-725(B)(1). For IGFRs and type 1 non-irrigation grandfathered rights, the volume is 1.5 acre-feet multiplied by the number of acres to which the right is appurtenant. A.A.C. R12-15-725(B)(2).

renewable supplies or allowable groundwater pumping must be replenished by the Central Arizona Groundwater Replenishment District (CAGRDR).

Prior to 2007, the amount of credits issued for the extinguishment of grandfathered groundwater rights in the Pinal AMA remained the same each year, with no reduction over time. In 2007, the Pinal AMA community felt that unless the allocation factor was reduced beginning in 2010, groundwater supplies within the AMA would become over-allocated due to rapidly increasing residential development. The community recognized at that time that this would ultimately negatively impact the available water supplies needed to support long-term sustainable growth.

In response to these concerns, in 2007 the Department amended the rule governing the calculation of extinguishment credits in the Pinal AMA, R12-15-725, to provide for a gradual reduction in the amount of credits given for the extinguishment of grandfathered groundwater rights, depending on when the extinguishment occurs. Under the rule as amended in 2007, the first reduction in the allocation factor for calculating extinguishment credits was to take effect on January 1, 2010, with gradual increases in the reduction each year thereafter until 2055, when no credits would be given for the extinguishment of a grandfathered right.

Shortly after the 2007 rule amendment, the Arizona real estate market began experiencing a significant downturn, and residential development in the Pinal AMA slowed dramatically. In 2009, Irrigation districts and landowners in the AMA expressed

concerns to the Department that some landowners within the districts may prematurely extinguish their IGFRs without developing their lands in a timely manner in order to maximize their extinguishment credits. Once those rights are extinguished, the lands can no longer be used for agricultural purposes,⁴ as the extinguishment processes causes the Irrigation Grandfathered Right (IGFR) to cease to exist.

The irrigation districts were concerned that such actions would result in an economic hardship for the remaining landowners who hold IGFRs (IGFR holders) within their districts because they would be required to pay a higher proportion of the fixed costs of the districts, as those costs would be divided among fewer remaining IGFR holders.

Although not the primary reason for the modification, the irrigation districts could also have seen an immediate increase to unit power costs for pumping groundwater as their electric providers may not be able to offset the loss in revenue that results from extinguished lands not using power for well pumps that were formerly used to supply irrigation water until those lands are developed sometime in the future. Additionally, there were concerns that the premature extinguishment of IGFRs would result in increased dust and weeds associated with the vacant lands and the loss of sales revenues for local businesses that supply agricultural services and products to the lands.

Consistent with the Pinal AMA management goal of preserving the agricultural economy for as long as feasible while ensuring water supply availability for future municipal and

⁴ The extinguishment removes the right to use groundwater on the appurtenant acres. In some locations irrigation districts may be able to deliver surface water to the farm. However, pursuant to federal contract requirements, most irrigation districts in the Pinal AMA are prevented from supplying Central Arizona Project water to lands without an IGFR.

industrial water uses, in 2009 the Department amended rule R12-15-725 to delay the effective date of the first reduction of the allocation factor for calculating extinguishment credits in the Pinal AMA until 2014. It was felt that by 2014, economic conditions in the AMA would improve sufficiently so that implementation of the reduction in extinguishment credits at that time would not have a significant negative impact on the local economy. Through the 2009 amendment, the allocation factors for calendar years 2010 through 2013 were increased to 100, and the allocation factors for calendar years 2014 through 2016 were increased to 94, 88 and 82, respectively. No changes were made to the allocation factors for calendar years 2017 and thereafter.

Earlier this year, a number of landowners in the Pinal AMA requested the Department to again delay the reduction in the allocation factors used to calculate extinguishment credits in the AMA because economic conditions in the area have not improved as much as expected when rule R12-15-725 was amended in 2009. After considering this request, the Department has determined that it is appropriate to adopt a rule temporarily delaying by five years each annual reduction in the allocation factor. The new rule will automatically repeal effective September 15, 2014, at which time the current reduction schedule will become effective again. This temporary delay in the reduction schedule will allow water users and other interested parties in the Pinal AMA to work together to examine conditions within the AMA and offer alternatives for meeting the Pinal AMA's management goal, which could include making the 5-year delay permanent through another rulemaking proceeding or another alternative solution.

The rule modification is expected to contribute to the realization of some short-term economic benefits. The Department expects that the modification will result in reduced costs to some persons, political subdivisions, and businesses over the short term, but will also result in slightly less replenishment under the AWS Rules in the long term. Due to the current slow pace of development and the short duration of the delay in the reduction in extinguishment credits, the Department expects the impact of the use of this unreplenished groundwater to be relatively minimal when compared to the total estimated volume in storage for AWS purposes. The Department expects this modification to assist the local community with the prolonged economic downturn.

The Department believes the proposed modification strikes an appropriate balance between preserving both the existing agricultural economy in the short term and the long-term sustainability of water supplies for future development. By temporarily delaying the extinguishment credit value decrease, the agricultural economy will be preserved and agricultural lands will not immediately be removed from production. This delay will allow water users in the AMA to explore the possibility of alternative long-term solutions to achieving the AMA's management goal.

1. An Identification of the Rulemaking

This rulemaking affects the Pinal AMA only. The Department is amending A.A.C. R12-15-725 by deleting subsection (B), which contains the methodology for calculating extinguishment credits in the Pinal AMA. The Department is adopting two new rules

governing the calculation of extinguishment credits in the Pinal AMA, A.A.C. R12-15-725.01 and R12-15-725.02. Subsection (A) of R12-15-725.01 contains the same language that is now in R12-15-725(B), except that the table of allocation factors has been changed to delay each annual reduction in the allocation factor by five years. Consequently, the first year in which there is a reduction in the allocation factor is 2019, rather than in 2014, and the last year in which there is an allocation factor is 2059, rather than 2054. Subsection (B) of R12-15-725.01 provides that the section automatically expires effective September 15, 2014.

R12-15-725.02 contains the methodology for calculating extinguishment credits in the Pinal AMA beginning on September 15, 2014. The language in this rule is the same as the language that is now in rule R12-15-725(B), except that the table of allocation factors has been changed by delaying the first reduction in the allocation factor until September 15, 2014. Beginning September 15, 2014, the allocation factors are identical to the allocation factors currently in rule R12-15-725(B). This means that the first reduction in the allocation factor will become effective on September 15, 2014.

The Department is making this rule modification to temporarily avoid negative economic impacts that may occur due to the prolonged economic downturn under the current schedule beginning January 1, 2014 when the first reduction in the allocation factor is scheduled to take place. Additionally, this temporary delay in the reduction schedule allows water users and other interested parties in the Pinal AMA to explore alternative long-term solutions before the existing reduction schedule resumes September 15, 2014.

As explained previously, under the current allocation factor reduction schedule, some owners of agricultural lands within irrigation districts in the AMA will likely prematurely extinguish their IGFRs and retire their lands from agricultural production in order to maximize their extinguishment credits. This will have a short-term negative economic impact on IGFR holders within the irrigation districts that continue farming because they will be required to pay a higher portion of their district's costs. Other persons within the AMA may also experience a negative economic impact as a result of the lands prematurely going out of agricultural production. The Department believes that temporarily delaying the first reduction in the allocation factor until September 15, 2014 is consistent with the portion of the Pinal AMA management goal that provides for the preservation of the agricultural economy in the AMA for as long as feasible. Resuming the current reduction schedule September 15, 2014 is consistent with the remaining portion of the goal, which is to preserve long-term water supplies for future urbanization (non-irrigation uses).

2. Persons Who Will Be Directly Affected by, Bear the Costs of, or Directly Benefit from the Rulemaking

Persons who will be directly affected by, bear the costs of, or directly benefit from this AWS rule modification for the Pinal AMA include: (1) state agencies such as the Department and the Arizona State Land Department (ASLD); (2) political subdivisions, including counties, cities, and towns that seek economic development or provide

municipal water, as well as the CAGR⁵; (3) GFR holders within the Pinal AMA, both public (e.g., the City of Mesa) and private (farmers, irrigation districts and real estate developers); and (4) residents of the Pinal AMA. The temporary delay in extinguishment credit reductions for GFRs extinguished from January 1, 2014 through September 15, 2014 will decrease the replenishment obligation for the CAGR⁵ for subdivisions to which those additional extinguishment credits are eventually pledged. Consumers purchasing houses in those subdivisions would therefore pay a lower CAGR⁵ assessment than they would pay under the existing rule. In some cases, the same group of persons may experience an increase in water costs resulting from groundwater pumping at increased depths due to reduced replenishment of groundwater supplies. The right to pump groundwater pursuant to GFRs will not be affected by this rulemaking. This rulemaking would only affect the amount of extinguishment credits the right holder would receive upon voluntary extinguishment of the GFR between January 1, 2014 and September 15, 2014.

a. *Persons Directly Benefiting from the Rulemaking*

- Subdivision developers. Those who develop and build subdivisions that are newly created will spend less to obtain an assured water supply determination since those with GFRs can more easily avoid the up-front costs associated with CAGR⁵ membership.
- New Homeowners. Persons who purchase new homes in subdivisions with AWS determinations based on extinguishment credits created between January 1, 2014 and September 15, 2014. Those persons who purchase homes in these subdivisions may see

⁵ The CAGR⁵ is a division of the Central Arizona Water Conservation District, which is a multi-county water conservation district and a political subdivision. See Arizona Constitution, Art. 13, § 7; A.R.S. § 48-3702.

a reduction in the initial purchase price as well as lower property tax assessments if the developers are able to avoid enrolling those lands in the CAGRDR by utilizing extinguishment credits. Even if the developer enrolls the lands in the CAGRDR, the purchasers of the homes likely will see lower property tax assessments because the replenishment obligation will be reduced.

- Agribusiness and suppliers of associated goods and services such as seed, fertilizer and equipment. Persons directly and indirectly associated with agribusiness are less likely to experience a reduction in business due to premature removal of lands from agricultural production.
- CAGRDR. The CAGRDR may see a reduction in new members during the next year, possibly lowering administrative costs and providing for additional capacity under their current Plan of Operations.
- IGFR holders. IGFR holders who would prematurely extinguish their IGFRs under the current rule, but who will retain their IGFRs and continue farming under the rule amendment, will benefit by maintaining the lower tax rates applicable to agricultural land uses. Additionally, IGFR holders will benefit from an increased volume of extinguishment credits if they decide to extinguish prior to September 15, 2014.

b. *Persons Directly Bearing the Costs of the Rulemaking*

-
- Groundwater users, including GFR holders, municipal providers and residential customers. Although the total amount of additional unreplenished groundwater withdrawn as a result of the rule modification is expected to be minimal, the decrease in groundwater replenishment within the AMA may lead to slightly lower depth-to-water levels. Therefore, groundwater users may experience slightly higher costs in the long

term associated with pumping from greater depths. Such cost increases may include higher costs for deepening wells, increased pump maintenance, higher electricity costs and additional water quality issues. This increased cost would most likely be passed on to commercial and residential customers in the form of higher water rates. Some of this cost may be slightly offset by the use of a larger number of extinguishment credits, reducing the need for those water users or water providers to pay for replenishment. The Department believes that any increases in costs will be minimal because of the short duration of the delay in the reduction in the allocation factor used to calculate extinguishment credits.

3. Cost – Benefit Analysis

The statutory management goal of the Pinal AMA is twofold: to preserve the existing agricultural economy as long as feasible, while preserving long-term water supplies for future non-irrigation uses. Premature retirement of agricultural lands, as opposed to the natural progression of lands ceasing production as they develop, is contrary to this goal, and has the potential to cause short-term economic hardship to the remaining agricultural right holders. The Department has constructed this rule modification to encourage continued agricultural activity and allow interested parties in the Pinal AMA time to explore alternative solutions to the allocation reduction schedule by temporarily delaying the first reduction in the allocation factor used to calculate extinguishment credits. At the same time, by resuming the allocation factor reduction schedule beginning on September

15, 2014, long-term sustainability of non-irrigation water supplies will be preserved for use when housing development increases in the AMA.

There will be a positive impact to some homebuyers who purchase houses within subdivisions to which extinguishment credits have been pledged. Since those subdivisions will likely avoid enrollment in the CAGR, no fees or assessments of the CAGR will be levied. At the time of CAGR enrollment, the CAGR charges an enrollment and activation fee to developers. This cost is usually passed on to homebuyers. The 2013/2014 enrollment fee is \$198.00 per housing unit, and the activation fee is \$196.00 per housing unit, for a total cost expected to be passed to the homebuyer of \$394.00. This one-time cost is usually rolled into the purchase price of the home. A homeowner with a home enrolled in the CAGR will also experience an annual charge for replenishment activities based upon the reported water usage of the home. This fee is charged by the CAGR and is included in the annual county property tax assessment. While it is impossible to predict the exact annual usage for each household, we can estimate potential costs using county-wide averages. Using the Department's single-family water usage demand model for the Pinal AMA and the average persons per household (pphu) for Pinal County, the average single-family home would use approximately 0.34 acre-feet per year. Again, using the CAGR 2013/2014 rate schedule, a replenishment fee rate of \$495.00 per acre-foot is to be charged. This equates to an additional charge of \$168.30 per year for each lot for the CAGR's groundwater replenishment activity. Note that this cost will likely increase in the future, not because of this reduction, but because competition for renewable water supplies will increase as

development in the AMA increases. It is not possible to accurately predict what this increase may ultimately be, but the unofficial,⁶ anticipated rate for the Pinal AMA for 2014/2015 is \$562.00 per acre-foot, which equates to a per-house charge of \$191.08 per year using the same parameters outlined above. Therefore, a homebuyer may save \$394.00 in one-time costs, plus an estimated \$191.08 per year, due to the increased extinguishment credits and associated decreased replenishment obligation.

While the rule modification may allow some increase in unreplenished groundwater use in the short-term, the Department expects this volume to be relatively low compared to the estimated groundwater in storage above regulatory depth limits.⁷ Over the last three years since the effective date of the current rule zero new extinguishment credits have been created in the AMA. Although it is impossible to predict how many extinguishment credits will be created if the new temporarily delayed reduction schedule in R12-15-725.01 and R12-15-725.02 is implemented, the Department expects that little to no extinguishment credits will be created in the nine and a half month period from January 1, 2014 to September 15, 2014. Therefore, the Department expects that R12-15-725.01 and R12-15-725.02 will have a minimal impact to the aquifer in the AMA.

While the Department expects the extinguishment activity to increase eventually, it does not expect such activity to reach the historic peaks of 2006-2007. However, if

⁶ The projected unofficial CAGRDR replenishment fee published by the CAGRDR is advisory only until the CAGRDR governing board officially adopts the replenishment, enrollment, and activation fees.

⁷ The rules limit the depth to water for groundwater supplies that may be used to support AWS determinations in the Pinal AMA to 1,100 feet below land surface. A.A.C. R12-15-716(B)(2).

extinguishment activity were to increase or a reduction in credit calculation is not initiated under the currently proposed schedule, groundwater overdraft conditions could be encountered as originally projected in the original Pinal AMA rule modification in 2007 during the peak of the housing boom.

a. *Probable Benefits and Costs to Agencies*

- The Department believes the rule proposal will assist its ability to serve the people of Arizona by supporting the Pinal AMA's water management goal of preserving the existing agricultural economy, and by limiting the delay to only nine and a half months, the Department is still able to preserve future water supplies for non-irrigation uses.
- The ASLD may experience a short-term benefit through September 15, 2014 as the volume of potential extinguishment credits associated with its approximately 24,000 acres of Pinal AMA lands that have appurtenant IGFRs⁸ will not decrease during that time under the modification. However, the value of extinguishment credits is tied to their relative scarcity and potential need to meet consistency with management goal requirements under the AWS rules. This value may increase in the future as the rate for extinguishment credit creation decreases.

b. *Probable Benefits and Costs to Political Subdivisions*

- CAGR D will likely collect less fees and assessments from housing units within new subdivisions in the AMA that receive AWS determinations using extinguishment credits issued from January 1, 2014 to September 15, 2014, but will likely assume less replenishment obligation for those subdivisions. CAGR D's administrative costs may be lower in the short-term if applications, enrollments, and water deliveries decrease.

⁸ The IGFRs appurtenant to ASLD land are owned by ASLD.

CAGR D may have more capacity to enroll subdivisions in the remainder of their three-county service area as a result of reduced replenishment obligations for new subdivisions in the Pinal AMA.

- Although the Department believes the incremental volume of unreplenished groundwater consumed as a result of the rule modification to be minimal, any county, city, or town seeking sustained, long-term development may face slightly increased costs associated with demonstrating a physically available groundwater supply as the depth-to-water declines due to reduced replenishment of AMA aquifers with renewable supplies.
- Political subdivisions may avoid a reduction in sales tax revenue if agribusiness and associated support industries remain active without premature retirement of agricultural lands, but will conversely forgo the incremental property tax revenue associated with the higher assessment rates for non-agricultural lands.
- Although the Department believes the incremental volume of unreplenished groundwater consumed as a result of the rule amendment to be minimal, municipal water providers that pump groundwater may experience slightly increased long-term costs associated with water level declines, including higher costs for deepening wells, increased pump maintenance, higher energy costs and additional water quality issues due to reduced replenishment under the AWS Rules.

c. *Probable Benefits and Costs to Business, Including Small Business*

- Businesses, including small businesses, that directly develop or are linked to the development of subdivisions will benefit over the short-term from greater certainty that development can proceed with reduced costs for meeting the consistency with management goal requirement of the Pinal AMA AWS Rules.

- Owners of approximately 1,900 active IGFRs encompassing approximately 260,000 active irrigation acres will benefit over the short-term as they will not experience the impact of premature extinguishment of IGFRs and the likely increase in irrigation district assessments.
- Although the Department believes the incremental volume of unreplenished groundwater consumed as a result of the rule amendment to be minimal, owners of land in the Pinal AMA that seek to develop in the future may face slightly increased costs associated with difficulty in later years in demonstrating a physically available groundwater supply as the depth-to-water declines due to reduced replenishment with renewable supplies.
- Although the Department believes the incremental volume of unreplenished groundwater consumed as a result of the rule amendment to be minimal, groundwater pumpers, including exempt well owners, municipal providers, irrigation districts, farmers, and industrial water users, including dairies and power generation facilities, may experience slightly increased costs associated with deeper pumping as the depth-to-water declines due to reduced replenishment under the AWS rules.
- The Department believes that none of the methods listed in A.R.S. § 41-1035 are feasible or have the potential to reduce the impact of the rule modification on small businesses in Arizona.

d. *Probable Benefits and Costs to Households*

Homeowners, lessees, and renters will see short-term and long-term costs and benefits. In the short term, housing prices may be slightly lower in subdivisions that obtain AWS determinations using extinguishment credits issued during the nine and a half month

period affected by the rule modification, as these homes may not be subject to costs associated with enrollment in the CAGR. In the long term, homeowners, lessees, and renters may see an increase in water costs associated with increased costs of withdrawing groundwater from lower depths as the depth-to-water declines due to reduced replenishment. However, the Department believes the incremental volume of unreplenished groundwater consumed as a result of the rule modification will be minimal. Homeowners in subdivisions that receive AWS determinations using extinguishment credits issued during the nine and a half month delay may see a decrease or elimination of CAGR annual assessments because developers will have a greater ability to rely upon extinguishment credits instead of CAGR membership.

4. Probable Impact on Private and Public Employment in Business, Agencies, and Political Subdivisions

The Department does not anticipate a measurable impact on employment as a result of an increase in the allocation factor at the scale being proposed. Short-term impacts may be positive for Agribusiness, including suppliers of associated goods and services such as seed, fertilizer and equipment, as the modification delays the retirement of agricultural lands.

5. Probable Impact on Small Business

See Part 3(c) above.

6. State Revenues

Absent this rulemaking, the State would likely see increased property tax revenues due to the higher rate for non-agricultural uses and decreased income and sales tax revenues related to discontinuing agricultural production when IGFRs are prematurely extinguished prior to January 1, 2014. As a result of this rulemaking, some landowners will likely continue current agricultural uses, so that State income, property and sales tax revenues will not change. No new fees or charges are proposed. The Department does not presently anticipate a need to increase staff as a consequence of adopting the rulemaking.

7. Less Intrusive or Less Costly Alternative Methods of Achieving the Rulemaking

Because of the uncertainties associated with the housing market and the economic factors that IGFR holders must consider when deciding whether to extinguish their IGFRs, it is not possible to obtain adequate data regarding the specific monetary impacts of each alternative discussed below. For that reason, the Department provides qualitative descriptions of each alternative's impacts.

Permanent Five-Year Delay

One potential alternative to achieve the purposes of this rulemaking is to make the allocation factor schedule changes contained in R12-15-725.01 permanent, which would

mean that the allocation factor would remain at 100 through 2018, with its first decrease (to 94) in calendar year 2019. Under that alternative, the allocation factor would reach zero in calendar year 2059, rather than calendar year 2055, as in the current rule and R12-15-725.02. While this permanent five-year delay of the allocation factor reduction schedule might result in a greater delay in the extinguishment of some IGFRs, such a delay would also increase the volume of unreplenished groundwater use and the resulting decline in depth-to-water, which would eventually increase the costs to IGFR holders, homeowners, developers, water users, and water providers. Therefore, while such an alternative may be less costly for one group in the short-term, the overall costs to other groups may be much greater.

Eliminate Allocation Factor Reductions

Some persons have suggested that the Department eliminate the allocation factor reductions entirely so that the amount of credits issued for the extinguishment of grandfathered groundwater rights in the AMA remained at 100% each year regardless of when the extinguishment occurred. This alternative might result in a greater delay in the extinguishment of some IGFRs and might create higher values for those lands once IGFRs are eventually extinguished. However, this alternative would certainly increase the volume of unreplenished groundwater use and result in declines in depth-to-water as development in the area increases. Such declines in groundwater levels will increase groundwater pumping costs for all water users in the AMA, including IGFR holders. This alternative also has the potential to eliminate the value of certain IGFR lands as

developers may find that the volume of unreplenished groundwater exceeded available supplies under the assured water supply requirements. In such a situation, developers may not be able to demonstrate physical availability of groundwater regardless of the amount of extinguishment credits that may be available. Further, this alternative is inconsistent with the statutory management goal of the AMA; to allow development of non-irrigation uses and to preserve existing agricultural economies in the AMA for as long as feasible, consistent with the necessity to preserve future water supplies for non-irrigation uses.

Maintain the Existing Allocation Factor Reduction Schedule

Maintaining the existing allocation factor reduction schedule may reduce costs to water users in the Pinal AMA in the long-term, if extinguishments occur during the period from January 1, 2014 to September 15, 2014; resulting in less unreplenished groundwater use in the AMA. However, this alternative would not provide a temporary delay to allow IGFR holders in the AMA time to explore alternatives for meeting the AMA's management goal and provide recommendations to the Department before the first reduction in the extinguishment credit allocation factor.

Providing a Longer Temporary Delay

Some IGFR holders in the AMA have suggested that the Department make the temporary delay granted by R12-15-725.01 and R12-15-725.02 longer to allow IGFR holders in the

AMA more time to explore alternative solutions and provide recommendations to the Department. An extended temporary delay might result in a greater delay in the extinguishment of some IGFRs. However, this could also increase the volume of unreplenished groundwater use and resulting depth-to-water decline. Such a decline has the potential to increase the costs of groundwater pumping for all water users in the AMA. The temporary delay, until September 15, 2014, provides concerned IGFR holders in the AMA sufficient time to explore and propose alternatives to the Department while also ensuring that the agricultural economy is preserved in the AMA for as long as feasible consistent with the necessity to preserve future water supplies for non-irrigation uses.

8. Description of Data on Which the Rule Modification is Based

- CAGR D Fee Schedule
- ADWR Census Data
- Department data regarding the number of extinguishment credits that have been created in the Pinal AMA from 2011-2013

TAB D8

**PINAL AMA ASSURED WATER SUPPLY RULE MODIFICATION
EXTINGUISHMENT CREDIT**

A.R.S. § 41-1055(B)

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

I. Introduction

The 1980 Groundwater Management Act created four Active Management Areas (AMAs), the Phoenix, Pinal, Prescott and Tucson AMAs, where groundwater use is actively managed. In 1994, a fifth AMA (the Santa Cruz AMA), was created from a portion of the Tucson AMA. Each AMA has a management goal and the Department is required by statute to adopt Assured Water Supply (AWS) rules to assist in the attainment of that goal. The management goal of the Pinal AMA, where a predominately agricultural economy exists, is to allow development of non-irrigation uses and to preserve existing agricultural economies for as long as feasible, consistent with the necessity to preserve future water supplies for non-irrigation users. A.R.S. § 45-562(B).

The Department manages the AWS program within the five AMAs pursuant to A.R.S. § 45-576. Developers of new subdivisions¹ within an AMA must either obtain a certificate of AWS from the Department or obtain a commitment of water service from a municipal water provider designated by the Department as having an AWS prior to the sale of any lots. A.R.S. § 45-576(A). One of several requirements to obtain a certificate or designation of AWS is to demonstrate that any groundwater use is consistent with the management goal of the AMA.

One of the methods for demonstrating consistency with the management goal for groundwater use in the Pinal AMA is through the use of extinguishment credits. Under the

¹ The AWS requirement applies to each new “subdivision” as defined by A.R.S. § 32-2101(56).

Department's AWS Rules, when a grandfathered groundwater right (GFR) is extinguished, the Department issues extinguishment credits that can be used to demonstrate that a specified volume of groundwater use by the development or water provider will be consistent with the management goal of the AMA. Extinguishment credits are initially issued to the holder of the grandfathered right that is extinguished. Extinguishment credits can be transferred to another entity and/or pledged to an AWS determination. Extinguishment of a grandfathered right is a permanent action that results in loss of the right to withdraw groundwater for use and/or loss of the right to irrigate land² if an Irrigation Grandfathered Right (IGFR) is extinguished.

Another method of demonstrating that groundwater use is consistent with the management goal of the AMA is through the use of a groundwater allowance established in the Department's AWS Rules. Under the current rules, an applicant for a certificate of AWS receives a certain volume of groundwater allowance. Like extinguishment credits, a groundwater allowance represents a volume of groundwater that can be withdrawn and used to serve a subdivision consistent with the management goal.

Prior to 2007, the amount of extinguishment credits issued for the extinguishment of GFRs in the Pinal AMA was an annual volume that remained the same each year, regardless of when the right was extinguished. In 2007, the Department amended the rule governing the calculation of extinguishment credits in the Pinal AMA, R12-15-725, to provide for a gradual reduction in the amount of credits given for the extinguishment of GFRs, depending on the year the extinguishment occurred. Under the rule as amended, the first reduction in the allocation factor for calculating

² The extinguishment removes the right to use groundwater on the appurtenant acres. In some locations, irrigation districts may be able to deliver surface water to the farm. However, pursuant to federal contract requirements, most irrigation districts in the Pinal AMA are prevented from supplying Central Arizona Project water to lands without an IGFR.

extinguishment credits was to take effect on January 1, 2010, with additional reductions each year thereafter until 2054, when no credits would be given for the extinguishment of a GFR.

One of the major reasons for the 2007 amendment was that residential development in the Pinal AMA was increasing rapidly, and the rate of development was projected to continue. Some of the residential development was anticipated to result in the extinguishment of IGFRs for extinguishment credits. There was a concern that extinguishment of IGFRs under the rule in effect at that time, in combination with rapid development, could have resulted in an increase in the volume of groundwater withdrawn that was not replenished. The 2007 amendment was designed to address this concern.

Shortly after the 2007 rule amendment, the Arizona real estate market experienced a significant downturn and residential development in the Pinal AMA slowed dramatically. In 2009, the perspective changed and landowners and irrigation districts in the Pinal AMA expressed concerns to the Department that implementation of the reduction in extinguishment credits as scheduled could result in owners of farm land in the AMA prematurely extinguishing their IGFRs before the first reduction in credits was to take effect on January 1, 2010. It was feared that this would exacerbate the effects of the economic recession in the area by prematurely taking lands out of agricultural production resulting in increased water and power costs for those lands that continued to be farmed.

Consistent with the Pinal AMA management goal, the Department amended rule R12-15-725 in 2009 to delay the effective date of the first reduction of the allocation factor for calculating extinguishment credits in the Pinal AMA until 2014. It was felt that by 2014, economic conditions

in the AMA would have improved sufficiently so that implementation of the reduction in extinguishment credits would not have a significant negative impact on the local economy.

In 2013, a group of stakeholders in the Pinal AMA again requested that the Department delay the reduction in the allocation factor used to calculate extinguishment credits in the Pinal AMA because economic conditions in the area had not improved as anticipated when rule R12-15-725 was amended in 2009. In response, the Department again amended the Pinal AMA AWS rules to temporarily delay the first reduction in the allocation factor until September 15, 2014. This was accomplished through the adoption of two new rules, R12-15-725.01 and R12-15-725.02.

The combined effect of the adoption of R12-15-725.01 and R12-15-725.02 was that the first reduction in the allocation factor was delayed until September 15, 2014, when the reduction schedule adopted in 2009 was to become effective again. The temporary delay in the reduction schedule was designed to allow water users and other interested parties in the Pinal AMA time to work together to examine conditions within the AMA and consider alternatives for meeting the Pinal AMA's management goal.

In 2014, a group of stakeholders in the Pinal AMA again requested that the Department delay the first reduction in the Pinal AMA extinguishment credit calculation allocation factor. The stakeholders requested a delay until January 1, 2019 so that they could explore alternative solutions to extinguishment credit reductions in the AMA and make recommendations before the first extinguishment credit reduction would become effective in 2019. In response, the Department again amended the Pinal AMA AWS rules in 2014 to postpone the first allocation factor reduction until January 1, 2019.

Following the Department's amendment of the Pinal AMA AWS rules in 2014, a group of stakeholders in the Pinal AMA held several meetings to consider changes to both the extinguishment credit rule and the rule providing for a groundwater allowance for new certificates of AWS. Earlier this year, Stephen Q. Miller, Chairman of the Pinal AMA stakeholders group, requested that the Department amend the Pinal AMA AWS rules to: (1) modify the method of calculating extinguishment credits in the Pinal AMA, (2) limit the amount of groundwater that may be made consistent with the Pinal AMA management goal with the use of extinguishment credits for new certificates of AWS, and (3) eliminate the groundwater allowance for new certificates of AWS. After considering this request, the Department agreed that the requested rule amendments should be made. These amendments will serve to: (1) eliminate the concerns of IGFR holders that the current rule may result in IGFR holders extinguishing their grandfathered groundwater rights prematurely, and (2) potentially reduce the volume of unreplenished groundwater that will be withdrawn to support future subdivisions.

II. The economic, small business and consumer impact statement

A. An identification of the proposed rule making

This rulemaking affects the Pinal AMA only. Proposed rule changes are identified below chronologically by rule number. They are identified by roman numeral and brief description in Table 1 to facilitate ease of discussion through the rest of this document.

I) The Department is amending rule R12-15-722(C) to limit, for certificates of AWS, the total volume of groundwater use that can be made consistent with the management goal of the AMA through the use of extinguishment credits created after January 1, 2019. Under the proposed amendment, in years six through 10 of the 100 year timeframe of the certificate of AWS, only 75 percent of the total groundwater use may be made consistent with the management goal through

the use of extinguishment credits created after January 1, 2019. The percentage declines over time as follows: 50 percent for years 11 through 15; 25 percent for years 16 through 20; and zero percent for years 21 and after. Therefore, 21 years after the certificate of AWS is issued, extinguishment credits created after January 1, 2019 may not be used to make groundwater use by the subdivision consistent with the AMA's management goal.

II) The Department is amending rule R12-15-722(E)(2) to provide that extinguishment credits created on or after January 1, 2019 and pledged to a designation of AWS may only be included in the designation for those years in which the credits may be used pursuant to amended rule R12-15-725(B). Additionally, this rule is being amended to provide that the limitations in R12-15-722(C)(2) do not apply to extinguishment credits originally pledged to a certificate of AWS and subsequently used to support a municipal provider's designation of AWS.

III) The Department is amending R12-15-723(D)(5) to make a conforming change by deleting the language in subsection (D)(5) that states that GFRs cannot be extinguished in the Pinal AMA in the first calendar year in which the allocation factor for the extinguishment of a GFR is zero. Because the Department is eliminating the current declining allocation factor, under the rule changes, GFRs can be extinguished in perpetuity.

IV) The Department is amending the groundwater allowance calculation for certificates of AWS in R12-15-725 by eliminating the groundwater allowance for certificate applications filed on or after January 1, 2019. Currently, the rule provides for a groundwater allowance for certificate applications until January 1, 2025. New subsection (A)(1)(a) provides that for certificate applications in the Pinal AMA filed before January 1, 2019, the groundwater allowance is

calculated by multiplying the annual estimated water demand of the subdivision by 10 (this is the current formula). New subsection (A)(1)(b) provides that for certificate applications filed on or after January 1, 2019, the groundwater allowance is zero.

V) The Department is adding a new subsection (B) to R12-15-725. With the proposed repeal of R12-15-725.01 below, the result is a single rule that contains both the groundwater allowance calculation and the extinguishment credit calculation. Under the new subsection (B) the initial extinguishment credits issued for all extinguishments, regardless of when they occur, will be calculated in the same manner. Additionally, for extinguishments occurring on or after January 1, 2019, the extinguishment credits must be used according to a schedule included in the new subsection, with automatic reductions made to any unused extinguishment credits remaining in excess of the schedule. If 25 percent of the extinguishment credits issued after January 1, 2019 are not used in each five-year period after extinguishment, the total amount of extinguishment credits will be reduced so that in the fifth year only 75 percent of the original amount of extinguishment credits remain; 50 percent in the 10th year; 25 percent in the 15th year; and zero percent in the 20th year.

VI) The Department proposes to repeal rule R12-15-725.01, which contains the current extinguishment credit calculation for the Pinal AMA.

Table 1. Identification of Proposed Rule Changes and Brief Description

Identifier	Rule Change	Brief Description
I	R12-15-722(C)	For certificates of AWS in the Pinal AMA, limits the total volume of groundwater that can be made consistent with the management goal of the AMA through the use of extinguishment credits created on or after January 1, 2019
II	R12-15-722(E)(2)	Makes the reductions to any unused extinguishment credits created on or after January 1, 2019 in R12-15-725(B) applicable to designations of AWS in the Pinal AMA Clarifies that extinguishment credit use for extinguishment credits created after January 1, 2019 shall not be limited by R12-15-722(C).
III	R12-15-723(D)(5)	Conforming change
IV	R12-15-725 new (A)(1)(a) and (A)(1)(b)	No groundwater allowance for new certificates of AWS
V	R12-15-725 new (B)	V(a) Initial extinguishment credit calculation V(b) Any unused extinguishment credits created on or after January 1, 2019 are reduced over time
VI	R12-15-725.01	Repeal current extinguishment credit calculation

B. An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking

Persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking include: (1) the Arizona State Land Department (ASLD) as a holder of IGFRs in the Pinal AMA for almost 25,000 irrigation acres with a water allotment of almost 61,000 acre-feet; (2) political subdivisions of the state, including Pinal, Maricopa and Pima counties, cities and

towns in the Pinal AMA and the Central Arizona Groundwater Replenishment District (CAGRDR)³; (3) holders of GFRs within the Pinal AMA; (4) entities that seek to develop new subdivisions within the Pinal AMA; (5) homeowners within the Pinal AMA; and (6) the general citizenry of the Pinal AMA. Due to the nature of the proposed rule changes, the nature of the impact and the entities that may be impacted by each change may differ. See Table 2 for identification of impacted entities by rule change as identified in Table 1.

Table 2. Identification of Entities and Impacts of Proposed Rule Changes

Rule Identifier	Entity Impacted	Nature of Impact
I	Developers of new subdivisions in the Pinal AMA	Affected by rule change May bear costs of rule change
	Homeowners in the Pinal AMA	Affected by rule change May bear costs of rule change
	CAGRDR	Affected by rule change
II	Cities, towns and private water companies in the Pinal AMA that are designated as having an AWS or that will apply for a designation of AWS	May bear costs of rule change
	CAGRDR	Affected by rule change
III	None	
IV	Developers of new subdivisions in the Pinal AMA	Affected by rule change May bear costs of rule change
	Homeowners in Pinal AMA	Affected by rule change May bear costs of rule change

³ The CAGRDR is the general term utilized to describe the replenishment authorities and responsibilities of the Central Arizona Water Conservation District, which is a multi-county water conservation district and a political subdivision of the state of Arizona. See Arizona Constitution, Art. 13, § 7; A.R.S. § 48-3702.

	CAGR	Affected by rule change
	General citizenry in Pinal AMA	Affected by rule change
V(a)	GFR Holders in Pinal AMA	Directly benefit from rule change
	ASLD as a GFR Holder in Pinal AMA	Directly benefit from rule change
	Other Political Subdivisions in Pinal AMA as GFR Holders ^a	Directly benefit from rule change
	Pinal, Maricopa and Pima Counties	Affected by rule change
	General citizenry of Pinal AMA	Affected by rule change
V(b)	Developers of new subdivisions in the Pinal AMA	Affected by rule change May bear costs of rule change
	Homeowners in Pinal AMA	Affected by rule change May bear costs of rule change
	CAGR	Affected by rule change
	General citizenry of Pinal AMA	Affected by rule change
VI	None	

^a There are more than 40 GFRs held by political subdivisions of the state in the Pinal AMA for over 9,700 acres of irrigation and a water allotment of 16,500 acre-feet.

C. Cost benefit analysis

a. *Costs and benefits to the implementing agency and other agencies*

Arizona Department of Water Resources

Based on current staffing levels in programs and the nature of the administrative changes that will occur as a result of the rule amendments, the Department does not anticipate that any new full-time employees will be necessary.

Arizona State Land Department

The Arizona State Land Department (ASLD) is a GFR holder in the Pinal AMA. ASLD holds 100 different IGFRs in the Pinal AMA that represent almost 25,000 irrigation acres with a total annual groundwater allotment of almost 61,000 acre-feet. As an IGFR holder in the Pinal AMA, the ASLD will directly benefit from V(a) (described in Table 1) because it will presumably continue to utilize the IGFRs past 2018, either directly or through lease, until a time that it determines is desirable to extinguish the right without any reduction in the initial amount of extinguishment credits it receives for extinguishing the IGFRs.

There are no other state agencies that will be affected by the rule amendments.

b. Costs and benefits to political subdivisions of this state

CAGR D

A potential effect of I, II, IV and V(b) (described in Table 1) is that there may be an increased need for CAGR D replenishment for new development. If that occurs, the results may be: (1) that the CAGR D may be required to secure additional water supplies for additional replenishment obligations, and (2) the CAGR D will levy additional fees, dues, taxes and assessments. It is difficult to complete a cost benefit analysis related to these affects because of uncertainty regarding the nature and quantity of the supply and the timing of the development that will result in the replenishment need. The below information is provided to illustrate this concept.

In the CAGR D 2017 Annual Operations Report, six water supply acquisition activities were identified as occurring within that year. Four involved the purchase and sale

of Long-Term Storage Credits, one was a proposed agreement for the lease of 4th Priority Colorado River water and one was a proposed agreement for the purchase and sale of real property located in Mohave County. The volumes and costs of those transactions is summarized in Table 3.

Table 3. Cost and Volume of CAGR D Water Supply Acquisition - 2017

Activity	Cost	Volume
Lease of 4 th Priority Water	\$30,000 plus \$1,700 per acre-foot	Up to 1,070 acre-feet per year for 25 years
Property Purchase	\$34 million	5,508 acre-feet of allocation associated with property
Purchase of LTSC	\$187.00 per credit	250 credits
Purchase of LTSC	\$250.00 per credit	50,000 credits

The CAGR D 2017 Annual Operations Report also includes a discussion regarding the comparison between actual enrollment and the enrollment that was projected for 2017 in the 2015 CAGR D Plan of Operation. Enrollment levels drive the need for additional water supplies and are the basis for assessment of fees. The report notes that economic recovery in the CAGR D service area housing market has not yet occurred to the level projected by the Associations of Governments. The result is that actual enrollment in 2017 was less than one-third of the enrollment that was projected. So, even absent a rule change, the rate of enrollment is difficult to predict.

As previously stated, enrollment is the basis for assessment of fees. Additionally, CAGR D fees are not static and may change each year. The most currently available fee schedule identifies a firm rate for 2018-2019, provisional rate for 2019-2020, and advisory rates through 2023-2024. The rate schedule is approved on an annual basis.

There are four fees that are levied by the CAGR: (1) enrollment fee; (2) activation fee; (3) annual assessment; and (4) annual membership dues. Enrollment and activation fees are one-time fees that are paid upon entry into the CAGR or on subdivisions for which a public report has not been issued. For 2018-2019, the enrollment and activation fees for the Pinal AMA are \$284 and \$820, respectively, and these fees are often included within the price of new homes as they are per unit fees. The assessment and membership dues are annual payments made by homeowners and municipal water providers. The 2018-2019 assessment fee is \$694 per acre-foot of water used within the home. Membership dues differ for member lands and member service areas. For member lands, each lot is assessed \$15.35 per lot and for member service areas, the charge is \$76.53 per acre-foot. All fees show an increase through 2023-2024.

Counties

The counties that are located all, or in part, within the Pinal AMA are Pinal, Maricopa and Pima. These counties may be affected by the proposed rule changes in two ways: (1) the county as a holder of GFRs; and (2) the county as a property taxing entity.

Pinal County and special taxing districts in the county, such as the Pinal County Community College District and the Pinal County Flood Control District, hold GFRs in the Pinal AMA. Collectively, county entities hold 10 different GFRs that represent approximately 436 irrigation acres with a total groundwater allotment of almost 1,850 acre-feet. As GFR holders, these county entities will directly benefit from V(a) (described in Table 1) because they will be able to continue to utilize their GFRs past 2018, either directly or through lease, until a time that they determine is desirable to extinguish the right

without any reduction in the initial amount of extinguishment credits they receive for extinguishing the rights.

As property tax levying entities, counties may be affected by V(a) (described in Table 1) as land may remain in the agricultural classification for a longer period of time. It is difficult to complete a cost benefit analysis of this impact because it is unknown how long IGFR holders will continue to utilize their rights and delay extinguishment. Additionally, it is difficult to assume what land use category land will move into when it is no longer classified as agricultural land. Information is provided below to illustrate the tax differential between agricultural and residential land classifications.

Agricultural real property is defined in A.R.S. § 42-12151 to capture the many agricultural industries across the state, including the following: (1) cropland in the aggregate of at least twenty gross acres; (2) an aggregate ten or more gross acres of permanent crops, and; (3) grazing lands with a minimum carrying capacity of forty animal units. The county assessor determines the qualifying agricultural property within the county, following guidance from the Arizona Department of Revenue. All property tax is calculated by multiplying the assessed value by the property tax rate and dividing by 100. The degree of property tax on real property varies greatly between agricultural real property and non-agricultural real property because the calculation of these two components is different.

The assessed value of non-agricultural land is determined by multiplying either the Full Cash Value or Limited Property Value by the assessment ratio, depending on whether primary or secondary tax is being calculated. The assessed value of agricultural land is

calculated using the income approach to value. *See* A.R.S. § 42-13101. This valuation method calculates an assessed value based on the income of the property instead of the market value, which is then multiplied by the assessment ratio. The market price of agricultural land increases as residential development occurs closer to it. In areas like the Pinal AMA where there is urban or market influence on farm values, the income approach valuation method results in a much lower assessed value than the result of a cash value or market-based valuation.

An example was prepared to illustrate the difference in land value for an area near Arizona City, in Pinal County (see Table 4). In this example, residential land within Arizona City was compared to land in various development stages south and west of the property. The example illustrates that the assessed values of several agricultural properties near the residential developments are significantly lower than non-agricultural properties and will consequently generate less property tax for the counties.

Table 4. Comparison of Property Values for Example Lands in Pinal County

Land Type	Average Full Cash Value	Average Limited Property Value	Average Size (acres)	Average of Full Cash Assessed Value (\$/acre)	Average of Limited Property Assessed Value (\$/acre)
Residential	\$117,621	\$76,081	0.33	\$383,700	\$242,300
Subdivided, not yet built	\$8,542	\$5,788	3.35	\$2,500	\$1,700
Vacant Land, not qualifying agricultural land	\$352,229	\$190,518	214	\$1,600	\$940
Agricultural Land	\$174,862	\$106,606	161	\$1,800	\$1,100
Agricultural Land	\$272,870	\$171,246	322	\$850	\$530
Agricultural Land	\$449,920	\$255,604	645	\$700	\$400

Political subdivisions of the state as grandfathered right holders

Other political subdivisions of the state that hold GFRs in the Pinal AMA will directly benefit from V(a) (described in Table 1) because they will be able to continue to utilize their GFRs past 2018, either directly or through lease, until a time that they determine is desirable to extinguish the right without any reduction in the initial amount of extinguishment credits they receive for extinguishing the rights.

Cities and towns in the Pinal AMA that are currently or may be designated as having an AWS

Cities and towns in the Pinal AMA that are currently designated as having an AWS or that will apply for a future designation of AWS may be affected By II (as described in Table 1) as there may be an increased need for CAGRDR replenishment for new development. An applicant for a designation of AWS must show consistency with the AMA management goal for 100 years. If the designation will include post-2018 extinguishment credits, those credits can only be utilized to demonstrate consistency with the AMA management goal for 20 years and not the entire 100 years. Therefore, the provider will be required to utilize pre-2018 extinguishment credits and/or enroll in the CAGRDR. See discussion regarding CAGRDR impacts above.

c. Costs and benefits to businesses

There is no definition for “businesses” in Chapter 6 of Title 41, so the Department concluded that “businesses” would also include “small businesses” as defined by A.R.S. § 41-1001. There are two categories of businesses that the Department has identified as

possibly affected by these rule amendments. Most, if not all, of these businesses are likely small businesses.

GFR Holders

Holders of GFRs will directly benefit from V(a) (described in Table 1) because they may continue to utilize their GFRs past 2018, either directly or through lease, until a time that they determine is desirable to extinguish the rights, without any reduction in the initial amount of extinguishment credits they receive for extinguishing the rights. Consequently, the Department anticipates that the amended rule will maintain the agricultural economy in the Pinal AMA for a longer period of time than under the existing rule. In addition to this direct benefit to GFR holders, they also receive the benefit of maintaining the agricultural land classification which results in a lower property tax liability as discussed in Section II(C)(b).

An indirect economic benefit to extending the agricultural economy is related to the economies of “off-farm businesses.” “Off-farm businesses” include suppliers of associated goods and services such as seed, fertilizer, hardware and farm equipment and also include warehouses, storage and real estate and others. The Department anticipates that the amended rule will indirectly benefit these businesses by maintaining the agricultural economy in the Pinal AMA for a longer period of time than under the existing rule.

It is difficult to complete a comprehensive cost benefit analysis of maintenance of the agricultural economy in the Pinal AMA. There are economic statistics available that show that in 2012, there were 938 farms in Pinal County and that number had increased 19

percent since 2007. Additionally, the Department identified that the market value for crop sales in Pinal County in 2012 exceeded \$315 million, there were 3,316 farm workers hired and that agricultural employment accounted for 5.6 percent of employees within the county. However, there have been no detailed studies done that project the market value for crop sales into the future or that evaluate the economic value of the off-farm businesses. A fairly comprehensive analysis was completed for agriculture in the Yuma area, but none could be found for Pinal area agriculture. In attempts to obtain quantitative data, the Department contacted numerous entities including: (1) the United States Department of Agriculture, Arizona State Field Office; (2) the Director of Economic Development for Pinal County; (3) the University of Arizona Cooperative Extension; and (4) the Arizona Department of Agriculture.

Developers of New Subdivisions

Developers of new subdivisions in the Pinal AMA are identified in Table 2 as being affected by I, IV and V(b) (as described in Table 1). These rule amendments limit the use of extinguishment credits created on or after January 1, 2019 and eliminate the groundwater allowance for new certificates of AWS. Extinguishment credits and the groundwater allowance represent groundwater that can be legally withdrawn without incurring any replenishment obligation. Limiting the use of new extinguishment credits and eliminating the groundwater allowance may have a negative economic impact on some developers of new subdivisions in the Pinal AMA because they may be required to purchase more extinguishment credits or enroll their subdivisions in the CAGR and incur the CAGR enrollment fees as discussed in Section II(C)(b). However, the developers will likely pass

those costs on to the homeowners that will ultimately purchase the developed lots or parcels.

Again, it is difficult to complete a cost benefit analysis on this as it is unknown how the developers will deal with any additional costs. The end result, either for the developer or the homeowner, is an increase in need for replenishment. For information regarding uncertainty regarding replenishment, see discussion regarding the CAGR in Section II(C)(b).

D. General description of the probable impact on private and public employment in businesses, agencies and political subdivisions

a. *Employment by businesses*

The Department anticipates that the amended rule will maintain the current level of farm employment in the Pinal AMA for a longer period of time than under the existing rule. An in-direct economic benefit to extending the agricultural economy is related to the economies of off-farm businesses. Off-farm businesses include suppliers of associated goods and services such as seed, fertilizer, hardware and farm equipment and also include warehouses, storage, real estate and others. The Department also anticipates that the amended rule will maintain the current level of employment by off-farm businesses in the Pinal AMA for a longer period of time than under the existing rule. As discussed previously, in 2012 there were 3,316 farm workers hired in Pinal County and agricultural employment accounted for 5.6 percent of employees within the county.

b. Employment by state agencies

The Department does not anticipate any impact on employment within state agencies.

c. Employment by political subdivision

The Department does not anticipate any impact on employment within political subdivisions of the state.

E. Statement regarding probable impact on small businesses

The Department has completed an evaluation of the probable impact on small businesses. However, it should be noted that the Department's rule amendments are directly or indirectly related to extinguishment of water rights and demonstration of AWS requirements. Therefore, the rule amendments will affect only a discrete number of small businesses.

a. An identification of the small businesses subject to the proposed rulemaking

It is difficult to specifically identify every small business that may be affected by the rule amendments. There are almost 2,200 GFRs within the Pinal AMA covering more than 250,000 irrigated acres and authorizing the withdrawal of over 670,000 acre-feet of groundwater for irrigation, non-irrigation and mineral extraction. While many of these GFRs are held by private individuals, many are held by entities that meet the definition of small business for this evaluation. *See* A.R.S. § 41-1001. These include small farms, irrigation districts, golf courses, and industrial water users such dairies, feedlots, greenhouses and egg farms, and others. For this economic analysis, these entities have been categorized collectively as GFR Holders in Table 2.

Another component of small business that the Department has identified are those entities that specialize in commercial and residential land development. For this economic

analysis, these entities are categorized collectively as developers of new subdivisions in Table 2.

b. The administrative and other costs required for compliance

The Department does not anticipate that the rule amendments will result in any additional administrative or other costs to the small business identified.

c. A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses; reasons

Table 5. Agency Consideration of Methods to Reduce Impacts

Method	Considered by ADWR	Reason
A.R.S. § 41-1035(1)	No	Rule does not impose new compliance or reporting requirements Existing reporting requirements are contained in A.R.S. § 45-632 and A.A.C. R12-15-715
A.R.S. § 41-1035(2)	No	See above
A.R.S. § 41-1035(3)	No	See above
A.R.S. § 41-1035(4)	No	See above
A.R.S. § 41-1035(5)	No	See above

d. Probable cost and benefit to private persons and consumers directly affected

The Department has identified two groups of private persons and consumers who may be directly affected by the rule amendments. For reasons listed elsewhere in this document, it is difficult to provide a quantitative cost benefit analysis of the impact to these entities, therefore, a qualitative explanation is provided.

Homeowners

Individuals that purchase homes in the Pinal AMA after January 1, 2019 will be affected by I, IV, and V(b) (as described in Table 1). The nature of the impact differs by rule amendment but the general impact involves the costs and benefits associated with replenishment requirements and enrollment in the CAGR. The Department anticipates

that any costs incurred by developers of new subdivision in the Pinal AMA will be passed on to homeowners. The nature and uncertainty of these costs are discussed in Sections II(C)(b) and (c) and Section III. The Department anticipates that I and IV (as described in in Table 1) may result in additional CAGR D fees to homeowners in the Pinal AMA. However, in certain instances, V(b) (as described in Table 1) may actually result in reduced CAGR D fees in cases where future homeowners (after 2050) purchase homes in subdivision with AWS determinations based wholly or in part on extinguishment credits that would have been created in the later years of the current rule allocation factor table. Additionally, I (described in Table 1), is written to avoid abrupt increases in CAGR D replenishment fees.

General Citizenry of the Pinal AMA

The general affect of the rule amendments to non-GFR, non-homebuying citizens of the Pinal AMA is related to the impact on the groundwater within the AMA. The likely effect of IV and V(b) (as described in Table 1) is a positive affect related to the groundwater within the AMA. These two rule amendments may result in a decrease in the volume of groundwater that is pumped and not replenished. As previously noted, it is difficult to quantify the magnitude of the impact because the timing, location and magnitude of future development in the Pinal AMA is not known and is difficult to predict (see discussion regarding CAGR D enrollment). In the short term, new development may occur pursuant to already issued certificates of AWS resulting in no net benefit. Or, new development may occur pursuant to the rule amendments with overall groundwater use increases in other water use sectors, again resulting in no net benefit.

The approximate magnitude of the impact of IV (as described in Table 1) can be established by evaluating the current groundwater allowance volumes included in already issued certificates of AWS. The total volume of groundwater allowance included in certificates of AWS in the Pinal AMA that were issued after 1994 is over 69,500 acre-feet-per year.

Rule amendment V(a) (as described in Table 1) may have a negative effect on groundwater availability because it may encourage longer term continued use of the GFR and may yield a higher number of extinguishment credits when it is ultimately extinguished than under the current rule. This impact may be somewhat offset as the groundwater pumping associated with GFRs prior to extinguishment is subject to A.R.S. §45-611. The groundwater withdrawal fees collected in the Pinal AMA under that statute can be utilized for administration and enforcement of the groundwater code, augmentation of the water supply, conservation assistance to water users, monitoring, assessment, and for purchasing and retiring GFRs.

F. Statement of the probable effect on state revenues

As discussed in Section II(C)(b), the rule amendments could encourage or prolong the agricultural economy in the Pinal AMA for a longer period of time than under the existing rule. Maintenance of the agricultural economy and the associated off-farm business associated with the agricultural water use could provide the state a benefit through the collection of state sales taxes on agricultural and related products and gas taxes associated with operation of farm related machinery. The Department anticipates that this effect will be minimal.

There are no additional or reduced costs to state agencies associated with these rule amendments.

G. Less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking activity

None

H. Description of data on which rule is based

The Department does not have any data on which these rule amendments are based. As discussed in the Introduction, these rule amendments, and similar rule amendments that have occurred previously, were done at the request of impacted stakeholders within the Pinal AMA. The most recent rule amendments were advocated for by a group of GFR holders within the AMA. GFR information is summarized in Table 6 below.

Table 6. Summary of GFR Type, Number and Volume as of October 19, 2018

GFR Type	Irrigation Acres	Allotment Volume (acre-feet)	Number
Irrigation	259,890	632,084	1,997
Type 1		28,997	92
Type 2 Mineral		1,567	4
Type 2 Non-mineral		9,445	103
TOTAL	259,890	672,091	2,196

GFR holders have asserted to the Department that the rule amendments will allow them to continue utilizing their GFRs and not extinguish prematurely. Table 7 summarizes the pattern of extinguishment in the Pinal AMA.

Table 7. Extinguishment of GFRS in the Pinal AMA

Year	Extinguishments (#)
2007	47
2008	4

2009	0
2010	0
2011	0
2012	0
2013	0
2014	1
2015	0
2016	1
2017	0
2018	5

The data in Table 7 appears to support the assertion that some GFR holders felt compelled to extinguish their rights under the requirements of the current rule, however, the Department does not request information regarding the reason for extinguishment when it occurs. There was a rule amendment in 2007 that may have contributed to the extinguishment of 47 rights. There were no or few extinguishments between 2009 and 2017. However, in 2018 there were five as the 2019 deadline in the current rule was approaching.

III. Explanation of the limitations of the data and methods employed to obtain data; characterization in qualitative terms

There are a number of components that are integral to an analysis of the affect of the rule amendments that cannot be quantified.

GFR Extinguishment

The Department has historic data regarding the number of GFRs and the years in which all or parts of those GFRs were extinguished (see Tables 6 and 7). However, the Department cannot

predict how or whether extinguishments will occur in the future. There are many factors that would influence a GFR holder's decision to extinguish or continue withdrawing groundwater for the authorized use and influence the timing of doing so. These can include, but are not limited to:

- (1) The strength of the agricultural economy, in general, and the demand for Pinal AMA crops;
- (2) The strength of the development economy and/or housing market;
- (3) Weather, drought, availability of water supplies, including Colorado River water delivered through the Central Arizona Project canal;
- (4) The cost of energy to pump or deliver water;
- (5) On-farm or other business infrastructure costs;
- (6) Agricultural pest outbreaks;
- (7) Personal preference for maintaining the farming practice

As the Department is unable to make predictions regarding these influencing factors, the Department is unable to quantitatively predict when GFRs will be extinguished.

CAGR Related Components

The Department has obtained information regarding existing CAGR fees and enrollment levels as discussed in Section II(C)(b) but cannot predict what the quantitative impact of the rule changes on the fees will be. In general, it would be reasonable to assume that an increased need for CAGR enrollment would result in an increase in CAGR revenues through fees but it would also result in a need for additional water supplies to meet the replenishment obligation. The future availability and cost of those supplies cannot be predicted. A review of the 2017 water acquisition activities (see Table 3) shows a highly variable cost on a per acre-foot basis. In the future, as water supplies become more scarce, those per acre-foot costs will likely increase dramatically.

Impact to Pinal AMA Groundwater

The Department is also unable to quantify the impact to the groundwater within the Pinal AMA. It is reasonable to assume that actions that increase the replenishment obligation for pumped groundwater will benefit the aquifer. However, as previously discussed, the magnitude and timing of this is unknown and cannot be predicted. This component is directly related to the factors listed above that influence the extinguishment of GFRs. Additionally, although some GFRs are extinguished, other GFRs may be more fully utilized because of market factors or decreased availability of CAP supplies due to shortages on the Colorado River. The Department does not believe it is possible to realistically quantitatively model the level of these impacts.

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TAB D9

August 16, 1989



Ms. Catherine Eden, Chairperson
Governor's Regulatory Review Council
c/o Executive Budget Office
State Capitol, West Wing, Room 602
1700 West Washington
Phoenix, AZ 85007

ARIZONA
DEPARTMENT
OF WATER
RESOURCES

Rose Mofford, Governor
N. W. Plummer
Director

15 South 15th Avenue
Phoenix, Arizona 85007

Re: Amendment of Department of Water Resources' rules
regulating well construction and licensing of well
drillers, A.A.C. R12-15-801 through R12-15-821, and
adoption of proposed R12-15-822, capping of open wells

Dear Ms. Eden:

The Director of Water Resources ("Director") proposes to amend rules regulating well construction and the licensing of well drillers, and to adopt a rule establishing construction standards for the capping of open wells. Specifically, existing Rules R12-15-801 through R12-15-803 are to be amended. Existing Rule R12-15-804 is to be amended and made a part of R12-15-803. Existing Rule R12-15-805 is to be repealed, and new R12-15-804 and R12-15-805 are to be adopted. Existing Rules R12-15-806 through R12-15-808, R12-15-810 through R12-15-812, and R12-15-814 through R12-15-821 are to be amended. A new Rule R12-15-822, governing the capping of open wells, is to be adopted.

This letter contains the information required to be submitted to the Governor's Regulatory Review Council by statute, rule and the Council's Guidelines dated October, 1988.

I. DESCRIPTION OF PROPOSED RULES; PURPOSE; ACCOMPLISHMENTS.

In 1980, the Legislature enacted a comprehensive Groundwater Code which included a provision requiring the Director to adopt rules establishing construction standards for new wells and replacement wells and the deepening and abandonment of existing wells, A.R.S. § 45-594.A, and a provision requiring the Director to adopt rules establishing qualifications and a reasonable fee for licenses for well drillers and procedures for the evaluation and licensing of applications, A.R.S. § 45-595.C. On March 5, 1984, the Director adopted the existing rules governing well construction and licensing of well drillers, A.A.C. R12-15-801 through R12-15-821, ("existing rules"), in accordance with such statutory directives.

After reviewing the existing rules as part of its five year review of all of its rules, the Department of Water Resources ("Department") determined that many of the existing rules should be amended to improve their clarity and understandability and to increase their effectiveness in achieving their objectives. Also, A.R.S. § 45-594 was amended after the existing rules were adopted to provide that the Director shall adopt rules establishing construction standards for the capping of open wells. The enclosed rules contain such proposed amendments as well as a proposed rule governing the capping of open wells.

During the past 18 months, the Department has held informal workshops on the proposed rule amendments for members of the regulated community, including well drilling contractors and consulting engineers. The Department received a number of comments on the existing rules and the proposed rule amendments from persons attending the workshops, and has taken those comments into consideration in drafting the final version of the proposed amendments.

In addition, the Department has furnished the Arizona Department of Environmental Quality (ADEQ) with drafts of the proposed rule amendments and has been in contact with that agency regarding rules involving groundwater quality. Representatives of the Department met with representatives of ADEQ in April of this year to discuss the Department's jurisdiction over vadose zone wells. As a result of that meeting, the Department is proposing to amend Rule R12-15-802 to exclude vadose zone wells from the application of the Department's rules when such wells are regulated by ADEQ.

The following is a brief description of the purpose of each rule change and what each change is intended to accomplish.

Rule R12-15-801.

I.A. This Rule includes definitions of terms used throughout the existing rules, the amendments thereto and the proposed Rule R12-15-822. The amendment to this Rule adds definitions for the terms "bentonite", "cap", "open well", "perforation", "piezometer", "pitless adaptor", "vadose zone well", "vault" and "well modification". These additions are needed to clarify the meaning of words and terms used in the remainder of the rules, including proposed Rule R12-15-822.

The definition of "mineralized water" in existing R12-15-801.15 (new R12-15-801.17) is to be amended to increase slightly the minimum concentration of fluoride allowed in non-mineralized water from between 1.4 - 2.4 milligrams per liter (depending on air temperature) to 4.0 milligrams (not

dependent on air temperature). This change was made to conform the Rule with Arizona Department of Environmental Quality (ADEQ) standards.

- I.B. The amendments and additions described above will serve to simplify interpretation of the rules for the public.

Rule R12-15-802.

- I.A. This Rule avoids duplicating regulation by the Department of Environmental Quality and improves clarity and understandability.
- I.B. The rules are made inapplicable to vadose zone wells under the jurisdiction of the Department of Environmental Quality.

Rule R12-15-803.

- I.A. Existing R12-15-804 is to be made a part of R12-15-803, and is to be amended to require a person, other than a single well licensee or employee of a well drilling contractor, to secure a well driller's license in order to abandon a well. Further, the Rule is to be amended to require a qualifying party of a well drilling contractor to provide direct supervision of the contractor's employees when abandoning a well. Additionally, minor amendments are made to improve clarity and grammar.
- I.B. The amendments will result in increased protection of aquifers from groundwater contamination.

Rule R12-15-804.

- I.A. As discussed above, existing R12-15-804 is to be incorporated in R12-15-803 by these amendments. Existing R12-15-805 is to be repealed and a new R12-15-804 and R12-15-805 are to be adopted. This will result in a separate rule for the application requirements for well driller's licenses, R12-15-804, and a separate rule for the examination requirements, R12-15-805, for the purpose of clarity and understandability. Further, the new R12-15-804 is to be amended to require the submission of additional information in an application for a well driller's license, including the names of all partners if the applicant is a partnership, the names of all directors and officers if the applicant is a corporation, and the address or location of the applicant's place of business.

The Rule will also be amended to provide that the applicant

may not obtain a well driller's license if the applicant or a qualifying party of the applicant lacks good character and reputation. The Rule will further be amended to increase the years of experience necessary to obtain a well driller's license from 2 years to 3 years.

- I.B. It is necessary to separate the application section from the examination section of the well driller's license requirements to provide a more clear and understandable rule for each set of requirements. It is necessary to require submission of additional information in an application for a well driller's license in order to allow the Department to more effectively screen applicants. The additional information will also aid in enforcement proceedings by providing the Department with identity and location information concerning business entities and individuals that may be responsible for the actions of a licensed driller.

The addition of the requirement that the applicant and qualifying party show good character and reputation is needed to ensure that only responsible individuals are licensed to drill or abandon wells. The amendment increasing necessary years of experience to obtain a license is needed to ensure that only drillers with appropriate experience be allowed to supervise drilling and abandonment of wells. Two years experience has proven to be inadequate for such responsibility.

Rule R12-15-805.

- I.A. This Rule will contain only the portion of existing R12-15-805 dealing with examinations for well driller's licenses. Existing Rule R12-15-805, subsections C through H, are repealed in their entirety and replaced by language that is similar in substance, but changed to specify additional subjects that will be covered in separate sections of the examination and how examinations will be offered and graded.
- I.B. The amendments to the portion of R12-15-805 dealing with examinations are necessary in order to make the Rule more clear and understandable to the public.

Rule R12-15-806.

- I.A. This Rule is to be amended to conform the language with the language of new Rule R12-15-805.
- I.B. The amendments to this Rule are necessary to make the

meaning of the Rule more understandable to the public.

Rule R12-15-807.

- I.A. This Rule is to be amended to allow a person to obtain a single well license for abandoning a well. Single well licenses are currently available only for drilling a well. Further, amendments are proposed to increase clarity and understandability.
- I.B. Because of the proposed amendments requiring a license to abandon a well, this amendment is necessary to allow an individual who is not a well drilling contractor to obtain a single well license to abandon a well.

Rule R12-15-808.

- I.A. This Rule is to be amended only for the purpose of substituting the word "Director" for "Department" as the person or entity that may revoke, suspend or place on probation a well driller license.
- I.B. This amendment is needed to conform the language of this Rule with other rules of the Department.

Rule R12-15-810.

- I.A. This Rule is to be amended to eliminate masculine references and to specify the persons and places to which the Rule applies.
- I.B. The amendment is necessary to make the meaning of the Rule more understandable to the public.

Rule R12-15-811.

- I.A. This Rule is to be amended in the following manner:
 - (1) Subsection A is to be amended to require that only steel or thermoplastic casing may be used in the construction of a well, and that such casing meet certain standard specifications of the American Society for Testing and Materials. Steel casing must be in new or like new condition, free from pits or breaks.
 - (2) Subsection B is to be amended to require hand dug wells to be sealed at the surface with a watertight, tamper-resistant cover to prevent surface contaminants from entering the well, and to require that all wells, except exploration wells and wells in vaults, be constructed with

a concrete slab of at least 6 inches thickness extending at least 2 feet from the surface casing of the well and sloping away from the well.

(3) Subsection C is to be amended to increase the minimum diameter of a required access port from 1/2 inch to 3/4 inch, and to require that all access ports be watertight.

(4) Subsection F is to be amended to require that drilling fluids and cuttings from a well be contained at the drilling site during drilling in excavated or portable pits.

(5) A new subsection H is to be added to allow a monitor well to be screened up to 10 feet above the highest seasonal static fluid for the purpose of monitoring contaminants on the water surface, and to require that monitor wells be identified as such on the vault cover or at the top of the steel casing.

(6) A new subsection I is to be added to permit the construction of wells below grade in a vault, in areas of traffic or rights of way.

(7) Several changes are to be made throughout the Rule to increase clarity and understandability.

I.B. A brief explanation of the need for each amendment to the Rule, by subsection, and what each amendment will likely accomplish is as follows:

(1) The amendments to subsection A are necessary to ensure that casing of sufficient strength and quality to withstand the extreme temperature variations and soil conditions in Arizona are used in the construction of wells. Experience has shown that steel and thermoplastic casing meeting the standard specifications of the American Society for Testing and Materials are normally used by well drillers in Arizona and are known to be acceptable in this state. The amendments to the Rule allow the Director to grant a variance to use other materials upon a showing that they are sufficient for the particular purpose.

(2) The amendments to subsection B are necessary to ensure that hand dug wells are sufficiently sealed to protect the aquifer from surface contamination. The requirement that all wells, except exploration wells or vaulted wells, be constructed with a concrete slab at the surface is necessary to allow drainage of surface water away from the casing of the well, which may act as a vertical conduit to

the aquifer for surface contaminants.

(3) The amendments to subsection C are necessary to allow sufficient access to a well for the purpose of monitoring possible contamination of the aquifer and to ensure that access ports do not allow the introduction of surface contaminants into the well.

(4) The amendments to subsection F are necessary to ensure that contaminants contained in drilling fluids and cuttings from construction of a well are contained in a manner to prevent their introduction into the aquifer through the open borehole.

(5) A new subsection H is necessary to allow proper use of a monitor well to monitor contaminants on the water surface. This amendment relieves monitor wells from the prohibition in subsection A of this Rule against any openings or perforations in a well casing above the water level of the well. Identification of monitor wells on the vault cover of the well is necessary to allow the Department to more effectively identify monitor wells for enforcement purposes.

(6) The addition of a new subsection I expressly creates an exception to the requirement in subsection A of this Rule that a well casing extend one foot above ground level. It is necessary to allow wells to be constructed below grade in a vault in areas of traffic or rights-of-way in order to protect such wells from damage and to eliminate traffic hazards that would otherwise be created.

(7) All other amendments to be made throughout the Rule are necessary to increase the likelihood of compliance with the Rule.

Rule R12-15-812

I.A. This Rule is to be amended to include a 30 day limit to either complete the sealing of a leaking artesian well or to abandon the well. The existing Rule does not include a time limitation. In addition, the Rule is to be amended to increase clarity and understandability.

I.B. The addition of a 30 day time limit for completion of sealing a leaking artesian well is necessary to ensure timely repair or abandonment of a source of unnecessary groundwater waste. All other amendments in this Rule are necessary to increase the likelihood of compliance with the Rule.

Rule R12-15-814

- I.A. This Rule is to be amended to change the time when wells from which water is to be used for human consumption or culinary purposes must be disinfected, from "before first use" to "before removing the drill rig from the well site." Further, the Rule is to be amended to require the driller of the well to perform the disinfection. In addition, the Rule is to be amended to include a table showing minimum concentrations of chlorine per 100 feet of water necessary to properly disinfect a well. Finally, other amendments are made for the purpose of increasing clarity and understandability.
- I.B. These amendments are necessary to ensure that disinfection of potable water supply wells is performed by licensed well drillers with knowledge of the well construction rules, and that the disinfection is done in a timely manner, before the drill rig is removed from the site. Further, it is necessary to include a table showing minimum concentrations of chlorine required to properly disinfect a well in order to ensure that proper disinfection is accomplished by the responsible party. Finally, all other amendments are necessary to increase the likelihood of compliance with the Rule.

Rule R12-15-815

- I.A. This rule is to be amended to require that a drill rig not be removed from a well construction site until the well meets well construction standards and is either capped or equipped with a pump, or is properly abandoned. The existing Rule allows a rig to be removed for up to two weeks prior to meeting these requirements. Other amendments are made to increase clarity and understandability.
- I.B. These amendments are necessary to ensure that the well driller does not leave a well under construction unattended in a condition that may pose a danger to persons coming into contact with the well or that may allow contaminants to enter the aquifer. All other amendments are necessary to increase the likelihood of compliance with the Rule.

R12-15-816

- I.A. This Rule is to be amended to require that wells be abandoned only by licensed well drillers; to require that the owner of a well file a notice of intent to abandon the well, and that the well driller possess an abandonment card

issued by the Director before commencing abandonment of the well, unless the well is abandoned in the course of drilling a new well; and to require the well driller to file a well abandonment completion report with the Director within 30 days after the well is abandoned. Further, the Rule is to be amended to expand the list of materials that may be used as fill for abandoning a well.

- I.B. The rule amendment expanding the list of fill materials for abandoning a well are necessary to allow abandonment of a well with materials the Department has determined to be sufficient to protect the aquifer from surface contamination. The remainder of the amendments to the Rule are necessary to ensure that only persons having knowledge of the well construction rules abandon wells, and to provide the Department with the means to effectively protect the environment by monitoring and regulating well abandonment activities.

Rule R12-15-817

- I.A. The amendments require that the new well capping provisions of R12-15-222 apply also to exploration wells. Rule amendments are also proposed for the purpose of increasing clarity and understandability of the Rule.
- I.B. The rule amendments are necessary to increase the likelihood of compliance with the Rule.

Rule R12-15-818

- I.A. This Rule is to be amended to increase the minimum distance a well may be located from a sewage disposal area, a hazardous waste disposal unit or a hazardous material storage area from 100 feet to 1200 feet, and to list additional potential sources of contamination and minimum distances a well must be located from those potential sources of contamination. Further, the Rule is to be amended to increase clarity and understandability.
- I.B. These rule amendments are necessary to protect the state's groundwater from the potential sources of contamination listed in the amended Rule. Further, all other amendments are necessary to increase the likelihood of compliance with the Rule.

Rule R12-15-819

- I.A. This Rule is amended to substitute "Arizona Department of Environmental Quality" for its predecessor, the Arizona

Department of Health Services.

- I.B. This amendment is necessary to reflect the correct name of the successor agency involved in regulation of groundwater pollution.

Rule R12-15-820

- I.A. This Rule is to be amended to expand the conditions under which the Director may grant requests for variance from the strict application of the rules, and the persons to whom he may grant variances. The current R12-15-820 allows variances "during the drilling of a well", and only "from the minimum well construction standards" provisions of the rules. The amendment would allow a request for variance to be made at any time, and from any provision of the rules. Further, the current Rule allows only a well driller to request a variance. The amendment would also allow a well owner to make the request. The Rule is also to be amended to specify the time when a variance becomes effective.
- I.B. These amendments are necessary to make variances available in more situations in order to achieve more equitable application of these rules.

Rule R12-15-821

- I.A. This amendment will conform wording contained in the Rule to the proposed amendments contained in R12-15-818.
- I.B. This amendment is necessary to increase clarity and understandability of the Rule.

Rule R12-15-822

- I.A. A new R12-15-822 is to be adopted requiring the capping of open wells. The Rule requires that the owner of an open well either install a cap on the well or abandon the well. The Rule provides that the cap must be made tamper-resistant by welding it to the top of the casing of the well. "Cap" is to be defined in R12-15-801 to mean "a tamper-resistant watertight steel plate of at least $\frac{1}{4}$ inch thickness on the top of all inside and outside casings of a well." R12-15-822 will further require the owner of a well to file a Notice of Well Capping with the Director within five days after capping a well.
- I.B. This new Rule has been adopted and certified by the Attorney General as an emergency measure pursuant to A.R.S. § 41-1026. The Rule is necessary to implement and enforce

the provisions of A.R.S. § 45-594.C regarding the capping of open wells. The adoption of this Rule as a permanent measure will result in the capping of additional thousands of open wells in the State of Arizona which pose a significant risk to public health and safety.

II. COSTS AND BENEFITS OF ENFORCEMENT AND IMPLEMENTATION:

In describing costs and benefits of enforcement and implementation of the proposed rule amendments, the rules have been separated into two sub-groups: (a) rules associated with licensing and authority to drill or abandon wells (R12-15-803 through R12-15-808, R12-15-810 and R12-15-816) and (b) rules associated with well construction standards (R12-15-811, R12-15-812, and R12-15-814 through R12-15-822).

In this economic impact statement "minimal" means less than \$1,000; "moderate" means between \$1,000 and \$5,000; and "substantial" means more than \$5,000. The impacts described below are on an individual, rather than cumulative, basis.

II.A. Licensing and Authority to Drill or Abandon Wells:

<u>Description of Group Affected</u>	<u>Description of Effect</u>	<u>Increased Costs/Decreased Revenues</u>	<u>Decreased Costs/Increased Revenues</u>
1. Department of Water Resources	The amendments adding licensing and filing requirements for abandonment of wells will aid the Department in monitoring and regulating the abandonment of wells.	Moderate effect due to increased processing, investigating, and enforcement activities.	Minimal effect from collection of licensing and filing fees.
	The amendments adding requirements for well driller applications will assist the Department in administration and enforcement of the Groundwater Code.	Minimal effect, resulting from increased processing.	Minimal effect, resulting from increased availability of information needed for enforcement purposes.

<u>Description of Group Affected</u>	<u>Description of Effect</u>	<u>Increased Costs/Decreased Revenues</u>	<u>Decreased Costs/Increased Revenues</u>
2. Other state agencies and political subdivisions -	Other state agencies, counties, cities and irrigation districts that abandon wells will be required to comply with the additional licensing and filing requirements.	Minimal to moderate, resulting from increased processing costs, and possible need to hire licensed well driller to abandon wells if not already doing so. Possible slight cost increase for well abandonment due to increased processing burden for well drillers which may be passed on to well owner.	Moderate, resulting from proper abandonment of wells by responsible parties and additional protection of groundwater marketed by the entity.
3. Private persons -	Licensed well drilling contractors will experience increased demand for abandonment services. Persons abandoning wells will face additional filing requirements. A single well license will be needed by unlicensed persons desiring to abandon their own wells.	Minimal effect on licensed well drilling contractors due to need to respond to increased demand for abandonment of wells. Minimal effect on persons abandoning wells due to filing requirements. Minimal effect on persons desiring to abandon their own wells due to requirement for single well license.	Moderate to substantial effect on licensed well drilling contractors from increased business due to abandonment license requirement. Minimal effect on single well licensees, who will be more likely to properly abandon their wells due to knowledge gained from examination process.
	The additional application re-	Moderate effect on well driller	Minimal effect on well dr...

<u>Description of Group Affected</u>	<u>Description of Effect</u>	<u>Increased Costs/Decreased Revenues</u>	<u>Decreased Costs/Increased Revenues</u>
	quirements in the amendments may result in less persons available to serve as qualifying parties for well driller license applicants.	license applicants by requiring more experienced qualifying parties. Moderate effect on persons desiring to serve as qualifying parties who lack three years experience.	resulting from more experienced and responsible qualifying party who will supervise well drilling activities.
4. Consumers or users of any product or service -	The amendments relating to licensing or filing requirements for abandonment of wells will require well owners to either hire a licensed well driller or obtain a single well license. Further, additional filing fees and administrative costs may be passed on to the consumer.	Minimal to moderate effect on well owners, resulting from licensing requirements and additional filing fees and costs passed on by the well driller.	Minimal to moderate effect on well owners, resulting from construction and abandonment of wells being performed by more experienced knowledgeable and responsible well drillers.

II.B. Well Construction Standards

<u>Description of Group Affected</u>	<u>Description of Effect</u>	<u>Increased Costs/Decreased Revenues</u>	<u>Decreased Costs/Increased Revenues</u>
1. Department of Water Resources	The amendment expanding the conditions under which a variance may be granted will increase the number of applications for	Minimal effect, resulting from additional variance processing. Further, there may be a reduction in	Minimal effect, resulting from reduction in time spent monitoring and enforcing compliance with

<u>Description of Group Affected</u>	<u>Description of Effect</u>	<u>Increased Costs/Decreased Revenues</u>	<u>Decreased Costs/Increased Revenues</u>
	variances to be processed.	fines collected for violations, where variances have been granted.	the rules, where variances have been granted.
	The amendments imposing additional requirements for the construction and capping of wells will result in increased monitoring and enforcement activities.	Moderate effect resulting from additional discovery, monitoring, investigation and enforcement activities.	Minimal effect, resulting from increased collection of fines.
2. Other state agencies and political subdivisions.	Other state agencies, counties, cities and irrigation districts that construct and own wells will be required to comply with more rigorous construction standards and will be required to cap any open wells. Such entities will benefit from amendments relating to monitor well construction and vaulting below grade wells, as well as greater availability of variances.	Minimal to moderate effect, resulting from increased costs of complying with additional construction standards and increased capping of open wells.	Minimal effect, resulting from less restrictive standards monitor well perforations and allowing construction of wells below grade in traffic areas without the need for variances. Minimal effect due to the possibility of more variances from strict application of the rules. Further, minimal effect resulting from increased protection of groundwater

<u>Description of Group Affected</u>	<u>Description of Effect</u>	<u>Increased Costs/Decreased Revenues</u>	<u>Decreased Costs/Increased Revenues</u>
3. Private persons	Licensed well drilling contractors and single well licensees will be required to meet more stringent well construction standards. Well owners will be required to cap their open wells. The public will benefit from increased protection of the groundwater supply, and from the capping of dangerous open wells.	Minimal effect on well drillers and single well licensees due to increased costs of complying with more rigorous standards. Minimal effect (approximately \$250 per well) on well owners required to cap their open wells.	marketed by the entity. Minimal to moderate effect on well drillers due to increased demand for capping of open wells by well drillers. Substantial effect on public resulting from increased protection of the groundwater supply and capping of dangerous open wells. Moderate to substantial effect on well owners, resulting from decreased potential for liability to third parties injured by well owners' dangerous open wells.
4. Consumers or users of any product or service	Increased costs to well owners resulting from well drilling contractors passing on costs of complying with more rigorous well construction standards. Greater availabil-	Minimal effect, resulting from increased costs of complying with more stringent standards passed on to consumers by well drillers.	Minimal to moderate effect on well owners due to higher quality wells that will last longer, greater protection of the water supply withdrawn from the

Description of Group Affected	Description of Effect	Increased Costs/Decreased Revenues	Decrease Costs/Increased Revenues
	ity of variances for well owners.		wells and greater availability of variances.

III. ALTERNATIVES

A. Licensing and Authority to Drill or Abandon Wells

In arriving at the proposed rule amendments relating to licensing and authority to drill or abandon wells, the Department considered a number of alternative methods for achieving the purposes of the proposed amendments. Listed below are several of the alternatives and the reasons they were rejected.

An alternative considered by the Department to the requirement that a well be abandoned only by a licensed well driller was to allow an unlicensed person to abandon a well upon notification to the Department of the time when the well would be abandoned so that the Department could monitor the abandonment. Although such an alternative would possibly achieve the same result as the licensing requirement, the cost to the Department of supervising the abandonment of wells by unlicensed persons makes such an alternative unfeasible. The only realistic means of ensuring that wells are properly abandoned in a manner that will protect the aquifer from contamination is to require that they be abandoned only by persons who have been licensed by the Department to perform such work.

The purpose of requiring a well owner to file a notice of intention to abandon a well prior to abandonment is to provide the Department with an opportunity to monitor the abandonment work, and to withhold its authorization for abandonment of the well if the well driller listed to perform the abandonment work is unlicensed. An alternative to this requirement is to allow the well owner to give verbal notice of the proposed abandonment to the Department. However, experience has shown that written notices are more desirable for record keeping purposes and for clarity of communication.

An alternative to the requirement that a well driller possess an authorization card before commencing abandonment of a well which was considered was to allow the driller to commence abandonment upon verbal authorization from the Department. However, such an alternative would hinder the Department's enforcement efforts because it could not readily discover whether a well driller engaged in abandoning a well was licensed and had authority to abandon that particular well. Further, past experience has shown

that written authorization is more desirable for record keeping purposes and for clarity of communication.

An alternative to the requirement that a qualifying party of an applicant for a well driller's license possess good character and reputation, and have three years experience rather than two years, is to require that qualifying parties be bonded. However, well drilling contractors are currently required to be bonded by the Arizona Registrar of Contractors, and bonding tends to allow resolution of a problem after it occurs rather than avoid problems before they happen. Further, the Department believes that the proposed amendment is the most effective means to ensure that wells are constructed and abandoned only by responsible and experienced persons.

B. Well Construction Standards

In arriving at the proposed amendments to the various well construction standards contained in the rules, the Department considered a number of alternatives to achieve the following goals: (1) protection of the aquifer from contamination; (2) prevention of groundwater waste; (3) use of materials in well construction that will withstand the extreme climatic and soil conditions that occur in Arizona; (4) use of materials and methods in well construction that are the least expensive to accomplish the other goals; and (5) allowance for variances from the rules where special conditions exist and the purpose of the rules can still be achieved. Listed below are various alternatives considered by the Department, and the reasons they were rejected.

An alternative to the proposed requirement in R12-15-811 that only steel or thermoplastic casing meeting certain specifications be used in the construction of wells is to allow any casing of a specified thickness to be used. However, experience has shown that in general, only steel and thermoplastic casing meeting the standard specifications referred to in the Rule are of sufficient texture to allow adherence of a cement grout surface seal, and are of sufficient strength to prevent the borehole from caving in and to withstand the extreme temperatures and soil conditions that are present in this state. The Department will consider a variance from this requirement upon a showing that another type of casing will serve those purposes.

An alternative to the requirement that a well drilling rig not be removed from the well site until the well is either fully constructed and sealed with a cap or equipped with a pump, or properly abandoned, is to permit a drilling rig to be removed from the well site for a shorter period of time than the two weeks currently allowed. However, experience has shown that removal of a drilling rig from a well site prior to completion of construction or abandonment of a well for any length of time is undesirable.

There is a potential for leaving the well unattended in a hazardous condition or failing to return to the well site within a reasonable time to complete construction or abandonment of the well because of intervening problems. The Department will consider a variance from the requirement if special circumstances exist.

In developing the standards for the capping of open wells contained in proposed Rule R12-15-822, the Department considered a number of alternatives to the requirement that a cap be made tamper-resistant by welding it to the top of the casing by the electric arc method of welding, including bolting the cap to the top of the casing. However, the Department determined that welding the cap to the casing was the only method to adequately ensure that the cap would be both watertight and tamper-resistant.

All other alternatives considered by the Department to the remainder of the rule amendments were rejected for the reason that they did not meet the above-mentioned goals of the Department as adequately as the proposed amendments. However, the expanded variance provisions contained in the proposed amendment to Rule R12-15-820 will allow the Director to relieve persons from the strict application of the amended rules upon a showing that the method of well construction proposed by the applicant meets the objectives of the amended rules, and that extraordinary conditions exist.

IV. IMPACT OF THE PROPOSED RULE AMENDMENTS ON SMALL BUSINESS:

A. Types of Small Businesses Subject to Proposed Rule Amendments and Procedures Required for Compliance

The Department has identified two types of small businesses which will be subject to the rule amendments: (1) well drilling contractors, and (2) well owners qualifying as small businesses, including farms, sand and gravel companies, dairies, feed lots, and private golf courses.

The proposed rule amendments will impose additional licensing and reporting requirements on well drilling contractors, including those qualifying as small business. The proposed amendments to Rules R12-15-804 and R12-15-816 will require that wells be abandoned only by licensed well drillers. The proposed amendment to Rule R12-15-804 will require an applicant for a well driller's license to submit additional information to the Director, including: (1) the names of all partners if the applicant is a partnership; (2) the names of all directors and officers if the applicant is a corporation; and (3) the address or location of the applicant's place of business. The amendments to Rule R12-15-816 will require a well drilling contractor to possess an abandonment card issued by the Director before commencing abandonment of a well, unless the well is abandoned in the course of drilling a new

well, and to file a Well Abandonment Completion Report within 30 days after a well has been abandoned. The proposed amendment to Rule R12-15-820 will allow a well drilling contractor to request a variance from the strict application of any provision of the rules, and at any time, rather than only from the minimum well construction standards and only during the course of drilling a well.

The proposed rules will also impose additional licensing and reporting requirements on well owners, including those qualifying as small businesses. The proposed amendment to Rule R12-15-816 will require well owners to hire a licensed well driller, or obtain a single well license, in order to abandon a well. The proposed amendments to Rule R12-15-816 will require well owners to file a Notice of Intent to Abandon prior to abandoning a well. Proposed Rule R12-15-822 will require well owners to file a Notice of Well Capping within five days after capping an open well. The proposed amendment to Rule R12-15-820 will permit well owners to request variances from the strict application of the rules. Currently, only well drillers are permitted to request variances.

B. Methods to Reduce Impact

In developing the proposed rule amendments, the Department considered each of the methods listed in A.R.S. § 41-1053.B to reduce the impact of the rules on small businesses, but concluded that none of the methods were feasible in meeting the statutory objectives which are the basis of the proposed amendments. However, the proposed amendment to Rule 12-15-820 expands the conditions upon which a variance from the strict application of the rules may be obtained by a small business. Furthermore, a number of the proposed rule amendments will make the rules more clear and understandable to small businesses, including the repeal of R12-15-805 and the adoption of two separate rules, R12-15-804 and R12-15-805, which separate and clarify the rules relating to application and examination procedures for well driller's licenses.

Sincerely,



N. W. Plummer
Director

DEPARTMENT OF WATER RESOURCES

99 E. Virginia Avenue, Phoenix, Arizona 85004



BRUCE BABBITT, Governor
WESLEY E. STEINER, Director

August 17, 1983

Mr. William Jamieson, Jr.
Department of Administration
1700 West Washington
State Capitol, West Wing, Room 804
Phoenix, Arizona 85007

Dear Mr. Jamieson:

I am forwarding with my approval six copies of the Department of Water Resources' proposed rules R12-15-830, entitled "Well Spacing and Well Impact," and R12-15-840, entitled "Replacement Wells in the Same Location," respectively. If there are any questions on these rules, please contact Scott Larmore or Betsy Rieke at 255-1507. For your convenience, each of these rules will be discussed and analyzed separately.

R12-15-830 "Well Spacing and Well Impact"

I. Purpose of the Proposed Rule

- A. A.R.S. § 45-598 of the Groundwater Management Act of 1980 states that:

"the director shall adopt rules and regulations governing the location of new wells and replacement wells in new locations in active management area to prevent unreasonably increasing damage to surrounding land or other water users from the concentration of wells."

The purpose of R12-15-830 ("R830") is to implement that statutory provision. A.R.S. § 45-603 requires the Director, in developing this rule, "to consider, among other things, water quality, cones of depression, and land subsidence. Further statutory authorization for R830 is found in A.R.S. § 45-105(B)(1), which states that the "director shall ... adopt and issue rules and regulations necessary to carry out the purposes of [Title 45]."

Think Conservation!

Office of Director 255-1554

Administration 255-1550, Water Resources and Flood Control Planning 255-1566, Dam Safety 255-1541,

The problem to which A.R.S. § 45-598 and R830 are directed, is the potential for land subsidence, migration of poor quality groundwater, and unreasonable lowering of water levels in neighboring wells, which may result from the "cone of depression" caused by the operation of a proposed well in a given location. It is important to note that the statute is phrased in terms of preventing "unreasonably increasing damage." This is in recognition of the hydrological fact that every new well will have some theoretical effect on every existing well drawing from the same aquifer. Thus, to preclude all impacts would be to virtually preclude the drilling of all new wells. For that reason, it is only "unreasonable impacts" which are to be guarded against. Proposed R830 sets forth the procedures and relevant considerations by which the Department will make such a determination.

The statute and proposed rule do not apply to wells which are located outside of active management areas, or which qualify either as replacement wells in the same location pursuant to A.R.S. § 45-597, or "exempt wells" (i.e. pumping capacity of less than 35 g.p.m.) pursuant to A.R.S. § 45-454.

B. As proposed by R830, the process of determining whether a proposed new well would cause unreasonably increasing damage to surrounding land or water users, would begin (for larger wells) with the applicant's submittal of a hydrological study. (Applications for wells having a pumping capacity of under 500 gallons per minute would not have to include a separate study.) After review and analysis of the hydrological characteristics of the area, the Department would determine which existing wells of record, if any, would suffer an additional water-level drawdown (over and above existing rates of decline) in excess of ten feet in the first five years of the proposed well's operation. If no wells were so affected, the impact on surrounding water users would be deemed "reasonable."

However, if one or more existing wells were projected to suffer additional drawdowns in excess of ten feet over five years, the Director would weigh and balance a number of factors in making his determination of "reasonableness." Among these factors are:

- (1) The depth to groundwater at the proposed well location;
- (2) The existing rate of decline in groundwater levels at the proposed well location;
- (3) The number of wells of record so affected;
- (4) The historical and proposed frequency and magnitude of use of any well of record so affected;
- (5) The current cost of pumping of any well of record so affected;

- (6) Any other significant economic impact on any well of record so affected, which is associated with the projected decline in water levels from the operation of the proposed well;
- (7) If the application is for a replacement well in a new location, the degree of impact that the original well imposed on wells of record so affected;
- (8) Any efforts by the applicant to mitigate the projected damage to any well of record so affected;
- (9) The feasibility of the applicant amending the specific location or pumping requirements of his proposed well to lessen the degree of impact on any well of record so affected.

If the Director, after considering the above-enumerated factors, determines that one or more existing wells would indeed be "unreasonably damaged," the application is denied, unless the applicant secures the informed consent of all "unreasonably damaged" well owners. However, if the application is denied because of problems with land subsidence or migration of poor quality water, the simple consent of the neighboring well owners will not cause the application to be approved. This is because these problems create lasting "damage" to the land and to the aquifer in general; thus it would be inappropriate for the then existing local water-users to sanction such a consequence.

By utilizing the procedure outlined above, the Department hopes to strike a balance between the legitimate needs of the person seeking permission to drill the new well, and the legitimate fears and concerns of the neighboring well owners.

An alternative approach which was considered was to have the Department "weigh and balance" all proposed impacts, no matter how minimal, on existing wells. However, since the theoretical impacts of a given well are virtually limitless, the Department would have no way of knowing where to stop its search, in terms of looking at existing wells located at ever increasing distances from the proposed well. Proposed R830 would "stop the search" at such point as the projected impacts fell below the threshold figure of ten feet of additional drawdown over a five-year period. This figure, although purposely set conservatively low, provides a fixed point of reference for both the Department and the regulated community, and saves a great deal of administrative time and effort which might otherwise be spent analyzing and investigating clearly "reasonable" impacts. Another approach considered was to avoid the weighing and balancing process altogether, and simply hold that any projected impact in excess of a given standard would be deemed "unreasonable." Although such an approach would have obviously made the determination very simple to make, it was rejected as making no allowance for the substantial difference in circumstances which one finds from well to well.

The approach taken by R830 regarding the determination of "unreasonable impact" will be both equitable and efficient, as it considers, on a well by well basis, each projected impact which exceeds a clearly stated minimum threshold.

II. Direct Consequences

<u>Designation of Consequences</u>	<u>Increased Cost/Decreased Revenue</u>	<u>Decreased Cost/ Increased Revenue</u>
A.1 Applications for wells of less than 500 g.p.m. need not include a separate hydrological study. Such studies are not as complex as those for large or multiple wells, but will require some staff time.	\$50-\$100	
A.2 DWR required to notify applicant regarding existing wells determined to be unreasonably impacted. Mailing expenses-staff time.	\$5-\$50	
A.3 DWR analysis of various factors regarding impact on a given well. Staff time-possible mailings to well owners.	\$50-\$500	
A.4 The Department has, since 6/12/80, been required by statute to consider well spacing when acting on applications for well permits. This has been on a case-by-case basis, with the approach very similar to that of the proposed rule. Thus, no changes in internal operating procedures will be required.		

B/C.1 Applicant* submittal of hydrological study (on large and multiple wells) will save DWR staff time.

\$300,000

B/C.2 Possible applicant hydrological studies, if needed, regarding land subsidence or poor quality water.

\$1000-\$2500

D. The consumer will suffer no direct consequences from R830/R840.

III. Indirect Consequences

A. Insofar as the Department is required by statute to make a determination of projected unreasonable damage, the indirect consequences of R830 itself are only in the particular approach taken. As discussed earlier, R830 provides a procedure which will be less burdensome than looking at all theoretical impacts, no matter how minimal; however the rule will be more burdensome than an approach which did not, under any circumstances, consider the individual facts attendant to a given situation.

B/C. Cities and private water companies are the entities which do the majority of the new, non-exempt well drilling. Expenses such as hydrological studies, which are incurred by such water providers, are often passed on to the consumer himself in the form of higher utility rates. However, one must bear in mind that it is the consumer himself who has an interest in being protected from land subsidence, the migration of poor quality water, and drastic drawdown effects.

D. The incentives created by A.R.S. § 45-598 and R830 are for the applicant to choose a well location and pumping regime which will not unreasonably impact on the surrounding land and water users. Insofar as the applicant's efforts to mitigate damage are a factor in the Department's decision, and because the consent of the unreasonably damaged well owners may in some circumstances be required for application approval, R830 provides incentives for the applicant and his neighbors to arrive at their own accommodations of each others' respective interests.

*Public and private entities will suffer no consequences from R830/840 other than in their role as an applicant for a permit to drill a new well.

IV. Impact on Small Businesses

Small businesses will be subject to R830/840 as they seek Department approval for the drilling of new wells. The largest number of such small businesses are likely to be small private water companies.

It is not appropriate to allow a small business to cause greater damage to surrounding land and water users than a "large" business; hence the standards in the proposed rules are the same. However, the application process for small businesses, insofar as they are more likely to drill wells of under 500 g.p.m. pumping capacity, is considerably easier, since such applicants are not generally required to submit their own hydrological studies of well impact.

Proposed R12-15-840

"Replacement Wells in the Same Location"

I. Purpose of the Proposed Rule

A.R.S. § 45-597 states:

"The director shall by rule or regulation define what constitutes a replacement well, including the distance from the original well site that is deemed to be the same location for a replacement well."

Under the Groundwater Code, "replacement wells" in the same location are treated less stringently than "new wells," in terms of the application process. The major difference is that the director does not consider well impact (pursuant to A.R.S. §§ 45-598 and R12-15-830) if the applicant wants to merely replace an existing well and existing withdrawals (i.e., if the status quo is maintained there can be no "unreasonably increasing damage.")

B. Proposed Rule R12-15-840 ("Rule 840) defines the "same location" as anywhere within six hundred and sixty feet of the original well. A square of these dimensions defines a 10 acre parcel of land (i.e. a quarter-quarter-quarter section), which is the standard unit of location for Department well application and permit purposes. Because the existing well which is being replaced often has some limited capacity remaining, R840 allows the replacement well to be used in conjunction with the original well if the total withdrawals do not exceed the "original" withdrawals from the original well.

II. R840 is definitional only, and imposes no direct monetary costs or benefits.

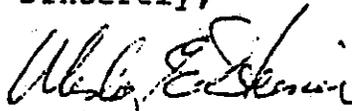
III.

A. The definition of "replacement well in the same location" contained in R840 is consistent with the Department's practice of recent years, and will necessitate no change in internal operation procedures.

B,C,D. See discussion under R830. The indirect consequences of R830 and R840 are the same, insofar as the "consequences" of not falling under the definition of "replacement well in the same location," is for the applicant to be subject to the well spacing considerations of R830.

IV. See discussion under R830.

Sincerely,


Wesley E. Steiner
Director

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

A.R.S. § 45-605(E) requires the adoption of rules for review of notices and applications for new or replacement wells to determine the risk of vertical cross-contamination from groundwater contamination. The rules are designed to enable the Department to properly address well owner notification procedures under the statutory mandate provided in A.R.S. § 45-605(A) for well inspections.

7. **A reference to any study that the agency relies on in its evaluation of or justification for the final rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

Not applicable.

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

Not applicable.

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

The major impact of the well inspection and notification rules for vertical cross-contamination will be on the Department itself. There will be no major changes in the way a notice of intent form or well permit application is processed administratively within the Department. Direct budgetary considerations associated with the adopted rules are not considered substantial due to the overlapping of existing administrative functions pertaining to other types of water quality reviews within the Department. Staff time has already been allocated and funded separately under A.R.S. § 45-618, which includes funding for all well inspection, evaluation, and notification activities performed in response to the A.R.S. § 45-605 mandates. The Department does not expect staff workloads to increase substantially under R12-15-850 and R12-15-851 because a similar review process for evaluation and notification has already been established for other types of groundwater permit applications processed by the Department.

If the Department chooses to conduct well investigations for vertical cross-contamination pursuant to R12-15-852, staff time allocations may increase temporarily to

compile lists of potentially impacted well owners within selected areas of investigation. These costs are already budgeted through A.R.S. § 45-618.

Well applicants subject to notification under R12-15-850 will gain improved access to information about risks of vertical cross-contamination. In some cases, a well applicant may be requested to submit a well design diagram so that the Department can accurately determine the potential risk of vertical cross-contamination to a proposed or existing well. Once approval to drill a well has been granted by the Department, greater coordination with contracted well drillers will also be needed to ensure that the Department is properly notified under R12-15-851. In regards to the evaluation of well applications, the Department already has existing rules, R12-15-812 and R12-15-821, which enable it to attach special well construction requirements to an application, in addition to the minimum well construction requirements, in order to avoid vertical cross-contamination. The new rules do not constitute any additional regulatory burden that is placed on well owners or applicants which extend beyond these authorities. Well evaluation and notification procedures established pursuant to the new rules are intended to inform well applicants and existing well owners about potential risks of groundwater contamination and prevent wells from being constructed that could cause a threat to public health. The evaluation process may also provide well owners with some measure of protection against future liability stemming from the prevention of unintended vertical cross-contamination of aquifers.

Well owners who are not identified as responsible parties under A.R.S., Title 49, Chapter 2, Article 5, (Water Quality Assurance Revolving Fund program) who meet the requirements of A.R.S. § 45-605 and A.R.S. § 49-282.04, and who cooperate with the investigation and remedial activities of the Department and the ADEQ in accordance with A.R.S. § 45-605(C) and A.R.S. § 49-282.04(C), are eligible to receive (may request) a covenant not to sue from the Director of the Arizona Department of Environmental Quality pursuant to A.R.S. § 49-282.04(C).

Well inspections will greatly assist well owners in identifying wells which are conduits for vertical cross-contamination and may provide state-funded remedies to

correct well deficiencies and protect the public and individual well owner's health by mitigating exposure to contaminated groundwater.

10. **A description of changes between the proposed rules, including supplemental notices, and final rules:**

Minor grammatical and stylistic changes were made at the request of GRRRC staff. Four substantive changes were made in response to public commentary and suggestions from GRRRC and ADWR staff.

A substantive change was made after consultation with GRRRC staff to amend R12-15-850(B). Language was modified to eliminate Director discretion in establishing requirements for well evaluations that are consistent with R12-15-811, R12-15-812 and R12-15-821 by making this action mandatory. The rules that are referenced are flexible and do not limit the Department's previous ability to evaluate wells or develop specific requirements to prevent vertical cross-contamination. Furthermore, the minimum well construction requirements listed in R12-15-811 are acceptable in many cases without having to invoke additional measures under R12-15-812 and R12-15-821 to prevent vertical cross-contamination. As a result, the Department has adopted a recommended change in language which states that the Department shall establish site-specific requirements that are consistent with R12-15-812 and R12-15-821 in cases where the requirements of R12-15-811 are deemed insufficient to prevent the risk of vertical cross-contamination.

Another substantive change was made to R12-15-851. Under the original language, the responsibility for notifying the Department, upon receipt of a drilling card and prior to the drilling of a well within a site listed on the registry under A.R.S. § 49-287.01, was shared by both the well owner and authorized well driller. Based on a public comment, this shared obligation, where both parties were obligated to notify the Department, was determined to be unnecessary and duplicative. The Department's response is to keep any obligations contained within R12-15-851 under the jurisdiction of the well applicant who has filed a notice of intent to drill with the Department.

R12-15-851 was also amended to delete the reference to lessees of property on which a well is to be drilled or deepened based on consultation internally and with GRRC staff. Lessees of property were originally considered in cases where a well owner and property owner are separate parties. Because this rule only applies to the well owner who has received approval to drill a well, the obligation does not apply to the property lessee or owner. The omission of any reference to a lessee of property avoids unintended confusion about who is specifically responsible for requirements under R12-15-851.

The reference to standard forms under R12-15-851 was deleted based on internal commentary. The instrument for informing well owners of the requirements in this section are addressed through the mailing of the notification letter referenced in R12-15-850(A). Where applicable, the letter provided to well owners and authorized well drilling contractors under R12-15-850(A) shall contain a specific reference to the requirements of R12-15-851 in cases where it is applicable. The language in R12-15-851 was modified to reflect this and to avoid any misunderstanding. The change does affect the well owner's responsibility, where applicable, to notify the Department prior to the commencement of drilling.

11. **A summary of principal comments and the agency response to them:**

The only public comment received was a letter from the El Paso Natural Gas Company, which suggested that the responsibilities under R12-15-851, to notify the Department prior to the commencement of drilling activity, be placed exclusively on the authorized well drilling contractor. Although the public suggestion was to place the responsibility on the well driller, the directives under A.R.S. § 45-605 and A.R.S. § 45-596, which relate to the processing and review of well applications, pertain to the well owner or applicant, and not to the well driller. The changes made are reflected in the previous question.

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

Not applicable.

13. **Incorporations by reference and their location in the rules:**

Not applicable.

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

No.

15. The full text of the rule follows:

PROPOSED RULES
ARIZONA ADMINISTRATIVE CODE
TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS

<u>Section</u>	<u>Title</u>
R12-15-850.	Evaluation of Notices of Intention to Drill; Notification of Registered Site Locations; Vertical Cross-Contamination Evaluation
R12-15-851.	Notification of Well Drilling Commencement
R12-15-852.	Notice of Well Inspection; Opportunity to Comment

ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS

R12-15-850. Evaluation of Notices of Intention to Drill; Notification of Registered Site Locations; Vertical Cross-Contamination Evaluation

A. The Director shall, upon receipt of a complete and correct notice of intention to drill form required under A.R.S. § 45-596, or upon receipt of an application for a permit under A.R.S. §§ 45-597 through 45-599, identify whether the proposed well will be drilled within a groundwater basin or subbasin in which there exists a site listed on the registry established under A.R.S. § 49-287.01(D). If the proposed well is situated within such a groundwater basin or subbasin, the Director shall notify the applicant and the authorized well drilling contractor in writing of the existence of the site and shall enclose a map indicating the boundaries of all listed sites within the groundwater basin or subbasin. The notification letter shall include the name, address, and telephone number of a Department contact person, along with a reference to the provision in R12-15-851 that requires the applicant to notify the Department in advance of the date drilling of the well will commence. The Department shall also specify in the notification letter whether the applicant is subject to the requirements of R12-15-851.

B. The Director shall, upon receipt of a complete and correct notice of intention to drill form required under A.R.S. § 45-596, or upon receipt of an application for a permit under A.R.S. §§ 45-597 through 45-599, identify whether the proposed well will be drilled within an area where existing or anticipated future groundwater contamination presents a risk of vertical cross-contamination, as defined in A.R.S. § 49-281(15). If the Director determines that the proposed well will be drilled in such an area, and if the Director finds that the requirements of R12-15-811

are insufficient to prevent the risk of vertical cross-contamination, the Director shall establish site-specific requirements pursuant to R12-15-812 and R12-15-821.

R12-15-851. Notification of Well Drilling Commencement

A well owner who has been issued a drilling card for a notice of intent to drill authorizing the drilling of a well located within a site listed on the registry established under A.R.S. § 49-287.01, shall provide written notice to the Director indicating the date drilling will commence. The well owner shall coordinate with the contracted well driller to ensure that the Department receives proper notification under this Section. This notification shall consist of a letter or facsimile transmission received by the Department at least 2 business days before drilling commences at the well site. The Department shall use notification letters required by R12-15-850(A) to inform well owners whether they are subject to the requirements of this Section.

R12-15-852. Notice of Well Inspection; Opportunity to Comment

A. At least 30 days before the beginning of a well inspection under A.R.S. § 45-605(A), the Director shall notify in writing all potentially affected well owners of record within a community involvement area established under A.R.S. § 49-289.02 or within other areas that the Director has selected for inspection of wells that may be contributing to vertical cross-contamination. The notices shall include a map of the community involvement area, remedial site, or a subsection of either, that the Department intends to inspect, indicating the location of affected wells of record. The notice shall indicate the approximate date the inspection will start, the approximate duration of the inspection, an access agreement defining what specific activities will occur during a well

inspection, and the name, address, and telephone number of a Department contact person.

B. Once the Director has given notice of a well inspection under A.R.S. § 45-605(A), potentially affected well owners have 30 days from the date the letter is postmarked to comment on the proposed inspection. The Director, upon receiving a written request, may extend the comment period for a maximum of 30 additional days.

GOVERNOR'S REGULATORY REVIEW COUNCIL
1400 W. Washington - Suite #270
Phoenix, AZ 85007, (602) 542-2058

Meeting Date: NOVEMBER 2, 1999

Agenda Item: E-9

(Return to Office Coordinator by: October 14, 1999)

GRRC ECONOMIST'S ANALYSIS OF ECONOMIC IMPACT STATEMENT FROM:

Agency: DEPARTMENT OF WATER RESOURCES (AR-99-1107)
Title 12, Chapter 15, Article 8, Well Construction and Licensing of Well Drillers
New Sections: R12-15-850 through R12-15-852

1. Does the economic, small business and consumer impact statement contain the information, data and analysis prescribed by A. R. S §§ 41-1035, 1052, and 1055? [A.R.S. 41-1052(C)(1)]

Yes No See attached comments

2. Is the economic, small business and consumer impact statement generally accurate? [A.R.S. 41-1052(C)(2)]

Yes No See attached comments

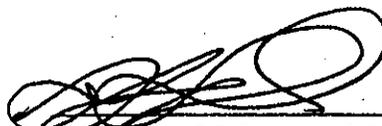
3. Do the probable benefits of the rule outweigh the probable costs of the rule? [A.R.S. 41-1052(C)(3)]

Yes No See attached comments

4. Is the rule likely to be controversial?

Yes No See attached comments

For staff conclusions and suggestions, see "conclusions" section of staff comments attached.


_____, Economist
Allen Malanowski



DEPARTMENT OF ADMINISTRATION
GOVERNOR'S REGULATORY REVIEW COUNCIL

MEMORANDUM

TO: Members of Governor's Regulatory Review Council

FROM: Allen Malanowski, Economist

SUBJECT: Department of Water Resources (AR-99-1107)
Title 12, Chapter 15, Article 8, Well Construction and Licensing of Well Drillers

New Sections: R12-15-850 through R12-15-852
Economic, small business, and consumer impact statement comments.

DATE OF COUNCIL MEETING: November 2, 1999

I reviewed the economic, small business, and consumer impact statement (hereafter referred to as EIS) and make the following comments. These comments are made to assist the Council in its review and may be used as the Council determines.

GRRC staff comments:

The department's new rules which are required by A.R.S. §45-605(E) provide review of notices and applications for new or replacement wells to identify whether a well will be located where existing or anticipated future groundwater contamination presents a risk of vertical cross-contamination by the well. The rules require that a new or replacement well in this type of location be designed and constructed to prevent vertical cross-contamination within an aquifer. Although the new rules are specific regarding vertical cross-contamination, they do not constitute a regulatory burden greater than that which currently exists.

The economic, small business, and consumer impact statement contains the information necessary for compliance with A.R.S. §§ 41-1035, 1052 and 1055.

1. Increased Revenue / Decreased Costs:

There will be no increased revenues. Land owners and well drillers that benefit from guidance by the department and avoid drilling a bad well will avoid the expense of remediating a well that contaminates an aquifer. There are no other

direct decreased costs.

2. Decreased Revenue / Increased Costs:

There should be no decreased revenues. The incremental cost of implementing the rulemaking will not be substantial because it will be folded into the department's costs for general well inspection and notification (more than \$86,840 in personnel expenses per year). The department's other types of water quality reviews substantially overlap the new rules. The department will be using existing personnel to fulfill the requirements of the new rules. The costs to well drillers and owners may be substantial if the department's review indicates that special measures are necessary to prevent cross-contamination of aquifers. The review may delay issuance of a permit to drill a well in an area subject to intensive scrutiny because of potential pollution to groundwater.

3. Do the probable benefits outweigh the probable costs?:

The benefits from keeping the rules consistent with statutes and protecting uncontaminated groundwater outweigh the cost of the rulemaking.

4. Small business impact reduction analysis:

The rulemaking has no reducible impact on small business or consumers. The rules provide the least intrusive method to achieve a reasonable level of confidence in the safety of aquifers from contamination, while keeping the regulatory burden minimal to the average well driller.

5. General Comments:

The department believes that most of the wells that will be subject to possible modification, increased scrutiny, and inspection will be remediation and monitoring wells that are part of an ongoing groundwater monitoring or remediation project. The department believes that the majority of water production wells will be outside potential contamination areas, and will require little or no additional scrutiny for cross-contamination outside of the regular application process conducted by the department.

6. Conclusion:

After analysis for compliance with A.R.S. §§ 41-1035, 1052(C)(1-3), and 1055, staff recommends that these rules be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
1400 W. Washington - Suite #270
Phoenix, AZ 85007, (602) 542-2058

Meeting Date: November 2, 1999

Agenda Item: E-9

(Return to Office Coordinator By: October 14, 1999)

GRRC ATTORNEY'S ANALYSIS OF RULE PACKAGE FROM:

Agency: DEPARTMENT OF WATER RESOURCES (AR-99-1107)
Title 12, Chapter 15, Article 8, Well Construction and Licensing of Well Drillers
New Sections: R12-15-850 through R12-15-852

1. Is the rule clear, concise and understandable? [A.R.S. 41-1052(C)(4)]
 Yes No See attached comments
2. Is the rule legal, consistent with legislative intent, and within the agency's statutory authority? [A.R.S. 41-1052(C)(5)]
 Yes No See attached comments
3. Has the agency adequately addressed the comments on the proposed rule and any supplemental proposals? [A.R.S. 41-1052(C)(6)]
 Yes No See attached comments
4. Is the adopted rule substantially different from the proposed rule and any supplemental notices when considered as a whole? [A.R.S. 41-1052(C)(7)]
 Yes No See attached comments
5. Is the rule likely to be controversial?
 Yes No See attached comments
6. Does the rule contain a fee increase?
 Yes No See attached comments

For staff conclusions and suggestions, see the "conclusion" section of staff comments attached.


Attorney
SCOTT COOLEY



DEPARTMENT OF ADMINISTRATION
GOVERNOR'S REGULATORY REVIEW COUNCIL

MEMORANDUM

TO: Members of the Governor's Regulatory Review Council

FROM: Scott Cooley

DATE: September 29, 1999

SUBJECT: Rule package for the November 2, 1999 meeting:
Department of Water Resources (AR-99-1107)
Title 12, Chapter 15, Article 8, Well Construction and Licensing of Well Drillers

New Sections: R12-15-850 through R12-15-852

Staff makes the following comments to facilitate the Council's review of the rules submitted for approval:

The Department of Water Resources (Department) has general control and supervision over the appropriation and distribution of surface water and ground water under Title 45. The director of the Department is under a duty to adopt rules requiring the review of notices and applications regarding new or replacement wells to identify whether a well will be located where existing or anticipated future groundwater contamination presents a risk of vertical cross-contamination by the well. A.R.S. § 45-605(E)(1994 & Supp. 1998). The rules must require that a new or replacement well in this type of location be designed and constructed in a manner to prevent vertical cross-contamination within an aquifer. *Id.*

Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?

The Department cites appropriate statutory authority for the rules reviewed. The Department's director is required to exercise and perform all powers and duties vested in or imposed upon the Department and adopt and issue rules necessary to

carry out the purposes of Title 45. A.R.S. § 45-105(B)(1)(1994 & Supp. 1998). The director is also required to make rules relating to vertical cross-contamination, as discussed above. A.R.S. § 45-605(E)(1994 & Supp. 1998). The new rules fall within this statutory authority.

Are the rules clear, concise, and understandable?

The rules promulgated by the Department are generally clear, concise, and understandable. The rules use words that are commonly understood in a grammatically correct manner.

Did the agency adequately address comments on the proposed rules?

There was 1 comment on the rulemaking. El Paso Natural Gas Company suggested that the well drilling contractor be given the responsibility of notifying the Department prior to the commencement of drilling activity. The Department did not make the requested change, indicating that A.R.S. § 45-605 and A.R.S. § 45-596 pertain to well owners or applicants rather than well drilling contractors.

Are the rules a substantial change, considered as a whole, from the proposed rules?

1. Proposed Rules Understandable?

In section 5 of the preamble to the Notice of Proposed Rulemaking, the Department provides an adequate explanation for the rules. The reasons stated for the rules in the Notice of Proposed Rulemaking are identical to those stated in the Notice of Final Rulemaking. Having reviewed the Notice of Proposed Rulemaking in the Register, persons affected by the rulemaking should have understood that the proposed rules would affect their interests.

2. Subject Matter?

The Department has made minor changes but there is no substantial difference between the text of the proposed rules and the text of the final rules. The subject matter of the rules, vertical cross-contamination, remains the same.

3. Effect?

Section 9 of the Notice of Final Rulemaking provides a summary of the economic, small business, and consumer impact. This summary of effects is identical to the preliminary summary presented in the Notice of Proposed Rulemaking. The effects of the proposed rules are not substantially different from the effects of the final rules. For additional information, please consult the staff economist's analysis of the rules.

Conclusion:

On the basis of the information provided by the Department, this analyst recommends that the rules be approved, subject to any changes the Council requests at the meeting, provided the changes are made before submission to the Secretary of State.

TAB D10

ARIZONA DEPARTMENT OF WATER RESOURCES

500 N. 3rd. Street, Phoenix, Arizona 85004
Telephone (602) 417-2420
Fax (602) 417-2401



FIFE SYMINGTON
Governor

RITA P. PEARSON
Director

October 12, 1994

J. Elliott Hibbs, Director
Department of Administration
1700 West Washington Street
State Capitol, West Wing, Room 801
Phoenix, Arizona 85007

Dear Mr. Hibbs:

The Director of Water Resources ("the Director") proposes to adopt amendments to A.A.C. R12-15-901, et seq., the Water Measurement Rules. This letter contains the economic impact statement, the statement of impact on small business, and the statutory authority for adopting the rules.

A. ECONOMIC IMPACT STATEMENT

1. Description, purpose and need for the proposed rules

Amendments to the existing water measurement rules are needed to reconcile the rules with legislative changes that have been enacted since the original rules were adopted in 1982. The current rules refer only to entities withdrawing groundwater from non-exempt wells. There have been major statutory changes, such the enactment of water storage provisions, that require measuring requirements for other water sources. The municipal and industrial sectors are now regulated by management plans. The measurement rules need to extend to those water use sectors. Finally, the original rules reference the Department's Engineering Bulletin 1. Under the Administrative Procedures Act (A.R.S. 541-1028), rules may not incorporate a document by reference. The standards should be embodied in the rules.

The specific amendments are summarized below:

R12-15-901: The definitional section adds the key terms "approved measuring device" and "approved measuring method". The definitions are tied together: an approved measuring device must be used with an approved measuring method. The connection between the two concepts is meant to demonstrate that regulating both devices and methods is necessary to achieve accurate water measurement. The section also adds the term "responsible party" to describe any water user who is required by statute, rule or permit to use an approved measuring device

and method.

R12-15-902: This rule addresses who must install and use an approved measuring device.

R12-15-903: This rule describes the types of measuring devices that may be used. The rule states that any measuring device that meets accuracy requirements and is installed, maintained and used in accordance with manufacturer's recommendations is an approved measuring device. The rule also describes the five different types of measuring methods that may be used with an approved measuring device.

R12-15-904: This rule requires that responsible parties shall report annually regarding the measuring device, method and water use information required by Title 45. Irrigation districts shall record and retain specified information for three years after the annual report year.

R12-15-905: This rule requires measuring devices to be accurate within 10 percent of the actual flow rate. All measuring devices must be installed or constructed and maintained to allow the director to readily check their accuracy.

R12-15-906: This rule sets requirements for repair and replacement of defective measuring devices. Responsible parties must report meter malfunctions and estimate the water used during the breakdown.

R12-15-907: This rule governs water use reports by individual irrigation grandfathered rights which receive water from a common distribution system. The rule describes two methods for estimating the amount of water used.

R12-15-908: This rule specifies that the responsible party shall be liable for the accuracy of the installation, use or accuracy of measuring even if it was done by an agent.

R12-15-909: This rule allows for alternative water measuring devices, methods, and reporting that have been pre-approved by the Director. The rule also exempts municipal providers from reporting some individual service connections.

2. What the rules likely will accomplish

These proposed rules require a responsible party to measure all types of water delivered or used. It allows any type of metering device to be used, if the device meets a ± 10 percent accuracy requirement and the device is installed and used in

accordance with the manufacturer's recommendations. The rules specify five different methods that may be used with specific measuring device types that will allow accurate calculations of water use. The proposed rules allow a responsible party who receives irrigation water deliveries from a common distribution system to estimate water use on the individual irrigation grandfathered right. In addition, the rules set forth a mechanism for a responsible party to seek approval from the Director to use alternative measuring devices, methods or reporting formats. Finally, the proposed rules provide certain reporting exemptions.

By requiring that all types of water be accurately measured and reported, the Department will be able to better evaluate and manage water supplies. Secondly, by describing the water measurement methods and devices that may be used, the rules simplify the requirements. In addition, by specifying how water use may be estimated, the rules provide guidelines for farmers sharing delivery systems. In accepting alternative measuring methods, devices and reporting formats, the rules accommodate practices that are already being used. The package as a whole increases the accuracy of record keeping, the benefits of water management planning and the effectiveness of enforcement.

3. Classes affected and impacts

Persons who will be affected by the rules, directly or indirectly, and who will bear the costs and receive the benefits of the rules include cities, towns, private water companies, irrigation districts, grandfathered groundwater right holders, permit holders and individual industrial water users.

The proposed rules make water measurement requirements both simpler and more flexible for those working with them. On the one hand, by describing the water measurement devices and methods that may be used instead of referring the reader to Engineering Bulletin I, the rules simplify and clarify the requirements for those directly affected by them. On the other hand, the mechanisms for seeking approval for alternative measuring devices, methods and reporting formats make the rules more flexible for those who are already using reliable devices, methods or reporting. Additional flexibility is provided by an exemption from certain reporting requirements for municipal providers. Finally, the proposed rules clarify requirements by reconciling the water measurement regulations with legislation, management plans and rules that have been enacted since 1982.

These rules enable the Department to obtain better and more comprehensive data on water supplies and uses for future water resource planning. This information will benefit all persons within Active Management Areas and Irrigation Non-expansion Areas and promote the effective management of all water supplies by accurately measuring the amount of groundwater, surface water and effluent used. The proposed rules also benefit the public by applying predictable standards to recently enacted legislation and future legislation. Finally, all persons in Arizona will benefit from the rules indirectly, as the rules will assist the Department in enforcing important

water management programs.

4. Alternatives considered

The Department contemplated modifying the rules by striking references to Engineering Bulletin 1 and adding additional measuring and reporting requirements. Soon it became apparent that it would be more efficient to reconcile the numerous amendments in one revision. The rules incorporate the changes required by legislation enacted in recent years, management plan requirements and rules. They are also intended to apply to future changes to Title 45.

5. Costs and benefits of enforcement and implementation

In accounting for the costs and revenues within this statement, "minimal" means less than \$2,000; "moderate" means between \$2,000 and \$10,000; and "substantial" means more than \$10,000. The impacts described below are on an individual, rather than cumulative, basis.

<u>Designation of Consequence</u>	<u>Increased Cost/ Decreased Revenue</u>	<u>Decreased Cost/ Increased Revenue</u>
a. Department of Water Resources		
Incorporating 1983-93 Legislative water programs	Moderate (cost of staff time in amending rule package)	Minimal
Adding unknown future water programs	Minimal (rules drafted to apply to future water programs)	Moderate (compared to cost of amending rules each Legislative session)
b. Other State Agencies or Political Subdivisions - same as private persons (see below)		
c. Private persons		
Participation in the water measurement rules	Minimal	Minimal
d. Consumers or Users of Any Product or Service		
Requirements for	Minimal (more	Minimal

metering devices
and reporting
requirements are
more comprehensive

products meet
rule requirements)

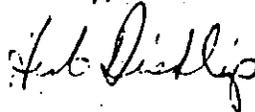
B. IMPACT ON SMALL BUSINESS

Small businesses subject to these proposed rules are likely to be small farms, private water companies and some irrigation districts. Although these rules are more comprehensive than the water measuring rules they replace, in all cases the affected small businesses already are measuring their water uses and reporting the required information on yearly reports pursuant to existing requirements under Title 45, management plans and the annual report rules.

C. The Director has general authority to promulgate rules pursuant to A.R.S. § 45-105.B.1. The Director has authority to adopt rules setting forth requirements and specifications for water measuring devices under A.R.S. § 45-604.D.

If there are any questions on these proposed rule amendments, please contact Martha McConnell Bush at 542-1507.

Sincerely,

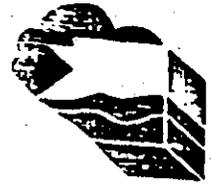


Herb Dishlip
Deputy Director for Water Management

Enclosures - original and 10 copies of:

1. Form R101
2. Text of the rules
3. Statutory authority for the rules

TAB D11



February 14, 1990

ARIZONA
DEPARTMENT
OF WATER
RESOURCES

Rose Mofford, Governor
N. W. Plummer
Director

15 South 15th Avenue
Phoenix, Arizona 85007

Ms. Catherine Eden, Chairperson
Governor's Regulatory Review Council
c/o Executive Budget Office
State Capitol, West Wing, Room 602
1700 West Washington
Phoenix, AZ 85007

Re: Proposed Adoption of A.A.C. R12-15-1001 through
R12-15-1015

Dear Ms. Eden:

The Director of Water Resources ("Director") proposes to adopt A.A.C. R12-15-1001 through R12-15-1015. Existing Rule R12-15-1001 is to be repealed. This letter provides the information required to be submitted to the Governor's Regulatory Review Council ("GRRC") by statute, rule, and the Council's guidelines dated October, 1988.

I. DESCRIPTION OF PROPOSED RULES; ACCOMPLISHMENTS

As part of the effort to reduce the groundwater overdraft in active management areas ("AMA"s), the Groundwater Code requires the accounting and annual reporting of water use information by water deliverers and users. This information is used both to monitor compliance with individual groundwater allocations and to monitor overall water demands of the AMAs. Additionally, A.R.S. § 45-467.B requires the Director to establish rules for the maintenance of an operating flexibility account for each farm in an AMA.

While the statutes provide basic concepts for the monitoring of water use and calculation of flexibility accounts, more specific guidelines are necessary to effectively implement these provisions. The proposed rules primarily enhance and support the requirements of A.R.S. §§ 45-467, 45-468, 45-482, 45-614, 45-632, 45-633 and 45-815. In general, these rules are expected to improve the accuracy of reported water use data and to set forth consistent procedures for

calculating flexibility account balances for irrigation water users within AMAs.

Substantially similar rules were proposed to be adopted by the Director in 1988. Those rules were approved by GRRC on June 7, 1988. Certification of the proposed rules was denied by the Attorney General, however, for the reason that they were not submitted for certification within 120 days after the close of the record on the proposed rule adoption.

The following is a brief description of each proposed rule, its purpose and what it is intended to accomplish. Changes made to the proposed rules since they were approved by GRRC on June 7, 1988 are noted.

R12-15-1001

I. A. This rule includes definitions of terms used throughout proposed rules R12-15-1002 through R12-15-1015. The definitions are needed to clarify concepts presented in these rules. Changes made in the definitions since the rules were approved by GRRC on June 7, 1988 include:

- (1) Incorporation by reference of the definitions contained in A.R.S. §§ 45-101 and 45-402.
- (2) Definitions of "Department", "Director" and "effluent" have been deleted because they are defined in the statutes.
- (3) Definitions of "groundwater delivered directly", "maximum annual surface water available" and "user of an irrigation grandfathered right" have been deleted because those terms are no longer used in the rules.
- (4) The term "normal flow right" has been changed to "normal flow" and the term is now defined as water delivered or used pursuant to a right to appropriate an unstored, natural flow of surface water, rather than the amount of surface water made available for the irrigation of a farm pursuant to a right to appropriate such water.
- (5) The definition of "spill water" has been changed to include all water deliberately released from a water storage facility for dam safety and flood control

purposes, as well as water which is released in uncontrolled spills, rather than only water released to avoid overflow of the facility. Also, the definition has been changed to require that the water must either be released pursuant to written criteria approved by the Director or be specifically determined by the Director to be spill water.

- (6) The definition of "tailwater" has been changed to include water which has been used for the irrigation of a farm and then delivered to an irrigation district in accordance with R12-15-1010, rather than delivered only to another farm.
- (7) The definition of "water deliverer" has been changed to mean a city, town, private water company or irrigation district delivering a combination of groundwater and any other type of water, rather than only groundwater and surface water.

I. B. Defining the various terms used in the text of the rules will simplify interpretation of annual reporting and flexibility accounting requirements.

Rule R12-15-1002

- I. A. R12-15-1002 allows a person who is required to file an annual account or annual report to use an alternate form, if approved by the Director. The rule also allows persons who must file both annual accounts and annual reports to combine the two into a single report.
- I. B. Many water providers are required by statute to file both an annual account and an annual report. Certain items to be reported are common to both submittals. This rule will simplify the report process, especially where these common items are combined.

R12-15-1003

- I. A. This rule sets forth criteria for determining the acceptable level of accuracy of the annual account or annual report. Reported amounts must be within ten percent of actual amounts. The rule as previously approved by GRRC also included a provision which set forth the time when annual accounts and annual reports must be filed. This provision was deleted because the filing deadlines are contained in the Groundwater Code.

- I. B. Many annual reports filed between 1984 and 1989 have contained significant inconsistencies due to inadequate water measurement, incorrect meter readings, map errors and incorrect form usage. This rule is intended to encourage users to file accurate annual accounts and annual reports by specifying the level at which they fail to comply with the reporting requirements.

R12-15-1004

- I. A. This rule specifies that the person required by law to file an annual report is liable for fines, penalties and other sanctions resulting from the filing or contents of the annual report notwithstanding that the report was filed for the person by an irrigation district or by another person. The rule also establishes a rebuttable presumption that an annual report purportedly filed on behalf of a responsible party by an irrigation district or by another person was filed with the responsible party's knowledge, consent and authorization if the responsible party has not filed an annual report for the calendar year.
- I. B. The Groundwater Code identifies the responsible parties required to file annual accounts or annual reports, and indicates that the report may be filed on behalf of the responsible party by irrigation districts or other persons. This rule will simplify administrative proceedings against persons who fail to file annual accounts or annual reports, and against persons for whom the Department has received incomplete or inaccurate information.

Rule R12-15-1005

- I. A. Management plans adopted by the Director pursuant to A.R.S. §§ 45-564 through 569 contain monitoring and reporting requirements for water deliverers and holders of irrigation grandfathered rights. This rule clearly associates those requirements with the annual account and annual reporting requirements.
- I. B. While the management plans already require the submittal of specific information not identified in the Groundwater Code in the annual report, this rule gives notice to persons preparing an annual report or annual account that a management plan may contain reporting requirements applicable to them.

Rule R12-15-1006

- I. A. A.R.S. § 45-815 contains reporting requirements for holders of underground storage and recovery project permits. This rule promotes sound water management and simplifies enforcement by requiring the holders of such permits to account for the amounts and types of recovered water delivered to persons other than customers of cities, towns, private water companies and irrigation districts.
- I. B. The Groundwater Code requires accounting of water by source when it is being stored, but requires the reporting of recovered water only as a total. The reporting of deliveries of recovered water by source is critical in determining the balance of operating flexibility accounts for irrigation customers. In requiring the accounting of recovered water by source, the rule provides a means for recovery project permit holders to choose the type of water to be recovered based on the status of their storage account.

Rule R12-15-1007

- I. A. A.R.S. § 45-468 requires, among other things, the reporting of surface water and groundwater delivered to each "class of user." Because that term is undefined in the Groundwater Code, this rule identifies user classifications, primarily based on management plan user categories. This rule has been amended slightly since it was previously approved by GRC to include dairies as a class of user, and to delete residential users of potable water and non-potable water as classes of users.
- I. B. By specifying user classifications, this rule will provide for the acquisition of data in a consistent format.

Rule R12-15-1008

- I. A. This rule specifies the information necessary to calculate the operating flexibility account established in A.R.S. § 45-467 for persons using water for irrigation purposes. This information must be included in the responsible party's annual account or annual report. Subsection A of the rule has been amended slightly since it was approved by GRC for consistency with statutory language, and to conform the effluent reporting requirements with the Arizona Supreme Court's recent holding that effluent is neither groundwater nor surface water. Subsection A now also requires that a responsible party report the amount of tailwater delivered in accordance with R12-15-1010.A, and the farm or irrigation

district to which the tailwater was delivered. This amendment was necessary because of the amendment to R12-15-1010. Subsection B of this rule has been amended to require water deliverers to also report the quantity of spill water delivered to each farm.

- I. B. Calculation of the operating flexibility account requires the breakdown of surface water and groundwater into numerous sub-categories, and the reporting of other supplemental data. By listing the required information in this rule, consistent handling of flexibility accounts is ensured.

Rule R12-15-1009

- I. A. This rule describes the method for determining credits to a flexibility account. Generally, if the total amount of water used by a farm for irrigation purposes in a calendar year is less than the farm's maximum annual groundwater allotment under the management plan, the difference is registered as a credit to the farm's flexibility account. If the farm is within the service area of a water deliverer, however, the rule provides that the credit shall be reduced to the extent that the farm did not use its full pro-rata share of the total amount of decreed or appropriative surface water, other than normal flow and spill water, available from the water provider. The rule sets forth guidelines to calculate a farm's pro rata share of such water. This rule is similar in substance to rules previously approved by GRRC, except that spill water is no longer included in determining the amount of surface water available to a farm.
- I. B. When a farm with both surface water and groundwater supplies available to it uses less than its maximum annual groundwater allotment, A.R.S. § 45-467.B.2 provides that "the amount of water not used which would have been groundwater shall be registered as a credit to the account." The statute offers no clarification as to how this amount is to be determined. This rule establishes a firm method for determining credits to a flexibility account when available surface water goes unused. The method for determining a farm's pro rata share of available surface water, other than normal flow and spill water, provides a consistent and equitable factor for use in determining credits.

Rule R12-15-1010

- I. A. Tailwater is water which, after having been used to irrigate a farm, accumulates on the lower end of a field on the farm

and is available for irrigation use on another farm. Though tailwater is not referred to in the Groundwater Code, it is a viable source of water to many farms. This rule provides that tailwater which is delivered to and used by another farm or an irrigation district will not be considered as having been used for the irrigation of the originating farm, provided that the tailwater has been measured, recorded and delivered pursuant to a written plan approved by the Director. The person who delivers tailwater in accordance with those requirements, and the person who receives and uses such tailwater, are required to account and report for the tailwater as if it were comprised of the same mixture of water, and in the same proportions, as the waters which comprise the total amount of water for irrigation use on the farm on which the tailwater originated.

The rule as previously approved by GRRC provided only that a person who uses tailwater for irrigation purposes may reduce, by the amount of tailwater used, any debit which would have been registered to the person's operating flexibility account for the year. This provision is retained with regard to tailwater which is not delivered and accounted for in the manner described above.

- B. This rule is necessary to clarify the role of tailwater in the flexibility accounting process. The rule should also encourage the use of tailwater over groundwater.

Rule 12-15-1011

- I. A. The groundwater allocations for irrigation users became effective two years after adoption of the First Management Plans. This rule sets the beginning balance of a person's flexibility account at zero as of the first day of the first year in which the person is required to comply with the groundwater allocations. The rule specifies that the Department shall annually notify irrigation users of their flexibility account balances, and provides for an appeal of the statement of flexibility account.

- I. B. This rule is necessary to establish the starting point for the flexibility accounts, and to assure that users are adequately informed of the status of their accounts. Issuance of the statement of account will aid users in maintaining compliance with their groundwater allotments, and will allow calculations and reporting errors to be more readily identified.

Rule R12-15-1012

- I. A. This rule prevents any use of the flexibility accounting procedures in determining the legality of water used and accounted for under these rules.
- I. B. The process of determining flexibility account balances is heavily dependent upon reported information. As this information cannot be verified by the Department for all users each year, it will be difficult to identify violations associated with the use of certain types of water. This rule is intended to prevent the flexibility accounting provisions from adversely affecting administrative or other actions taken against persons using water illegally.

Rule R12-15-1013.

- I. A. A.R.S. § 45-633.D allows the Department to audit the records of persons required to file annual reports and annual accounts. This rule requires that supporting records be kept for the three previous calendar years.
- I. B. The Department has discovered that a large number of water users have demonstrated a lack of sufficient information to support amounts reported in annual reports and annual accounts. Enforcement of this rule should improve recordkeeping habits of water users and should result in an overall increase in the accuracy of reported data.

Rule R12-15-1014.

- I. A. This rule establishes guidelines for determining when an annual account, annual report, extension request or withdrawal fee is timely filed. The rule also allows a water user thirty days from the filing deadline to resubmit an annual report or annual account which the Department has previously determined is incomplete. Finally, provision is made for the granting of a thirty day extension of the first day of accrual of the penalties associated with the late payment of fees and the late filing of annual reports, and of the civil penalties the Director may recommend that a court impose for such violations.
- I. B. Experience with the reporting process over the past five years has emphasized the need to enhance statutory language associated with deadlines. Also, strict enforcement of the statutorily mandated deadlines has led to potential hardship

situations. This rule will give water users an opportunity to file accurate reports within thirty days of the deadline without penalty. Implementation of this rule should lead to more accurate reports.

Rule R12-15-1015.

- I. A. The Groundwater Code requires both buyers and sellers of groundwater rights to notify the Department when conveyances occur. This rule sets forth a thirty day period following the date of conveyance in which the Department must be notified, and allows the parties to use a single form. The rule also provides that an accounting of water used between January 1 and the date of conveyance must be included with the notice. Waivers may be obtained by buyers in cases where the information is not available. However, persons who fail to submit the water use data, including those obtaining waivers, must either accept the Department's determination of water use in the period, or prove that another amount is correct.
- I. B. Persons who purchase water rights mid-year file annual reports of water withdrawn and used on the property for an entire year. However, by the time the buyer attempts to file the report, records of water used during the seller's term of ownership may be virtually impossible to obtain. By requiring both the buyer and seller to submit a notice of conveyance including water use in the prior calendar year, the information can be documented while the seller is still available.

II. COSTS AND BENEFITS OF ENFORCEMENT AND IMPLEMENTATION

In describing costs and benefits of enforcement and implementation, the rules have been separated into two sub-groups: a) provisions associated with the filing of annual accounts and annual reports (R12-15-1001 through 1006, and R12-15-1013 through 1015), and b) rules pertaining to the operating flexibility account (R12-15-1001, and R12-15-1007 through 1012).

In accounting for costs and revenues within this statement, "minimal" means less than \$2,000; "moderate" means between \$2,000 and \$10,000; and "substantial" means more than \$10,000. The impacts described below are on an individual, rather than cumulative, basis.

The economic impacts described below are unchanged from those contained in the Department's economic impact statement submitted in support of the proposed rules approved by GRRC on June 7, 1988. The Department has determined that the changes made in the

proposed rules since that date will not result in any additional economic impacts.

II.A. Annual Report and Annual Account Rules

<u>Description of Group Affected</u>	<u>Description of Effect</u>	<u>Increased Costs/Decreased Revenues</u>	<u>Decreased Costs/Increased Revenues</u>
A. Department of Water Resources	Simplifies administration and enforcement of Ground-water Code provisions.	Minimal to moderate, resulting from data input and processing requirements for individual reports.	Moderate savings in data review and computer entry expenses will result from the elimination of duplicate reports.
B. Other state agency or political subdivision	Some irrigation districts are required by statute to file an annual accounting. In addition, an irrigation district is permitted by statute to file an annual report on behalf of a farmer.	Minimal, resulting from data gathering and filing of annual reports.	Minimal, from elimination of duplicate reports.
C. Private Persons	Delivering entities will need to file only one report. Recovery permit holders will need to account for the types of water recovered. Persons buying and	Minimal. Possible slight cost increase to entities recovering water for accounting modifications. Slight cost to buyers and sellers of water rights and to delivering	Moderate savings to delivering entities who would be allowed to consolidate reporting requirements; possible decrease in withdrawal fees and civil penalties to

II.A. Annual Report and Annual Account Rules

<u>Description of Group Affected</u>	<u>Description of Effect</u>	<u>Increased Costs/Decreased Revenues</u>	<u>Decreased Costs/Increased Revenues</u>
D. Consumers or users of any product or services	selling rights must account for pre-conveyance water use.	entity for water measurement and accounting activities.	conveying parties if water is being accounted for correctly. Minimal increased revenues to well measuring services, resulting from mid-year conveyance reporting requirements.
	Non-irrigation water customers of cities and private water companies have no direct responsibilities under these rules.	Very minimal to residential users, resulting from the city or utility passing through added reporting costs.	Minimal savings to farmers, resulting from irrigation district filing on their behalf.

II.B. Operating Flexibility Account Rules

<u>Description of Group Affected</u>	<u>Description of Effect</u>	<u>Increased Costs/Decreased Revenues</u>	<u>Decreased Costs/Increased Revenues</u>
A. Department of Water Resources	Simplifies administration and enforcement of Groundwater Code.	Minimal, to moderate, resulting from increased data entry costs.	Minimal, resulting from efficient process for calculating operating flexibility accounts for irrigators.
B. Other state agencies and political subdivisions	Water deliverers must keep records for each farm and for the service area by specific type of water delivered.	Minimal - most irrigation water deliverers serving a number of different types of water already account for the breakdown by farm.	Minimal decreased costs, resulting from efforts to match reporting requirements in rules to existing reporting practices by irrigation districts.
C. Private persons	Encourages use of surface water when supplies are available, thus protecting the groundwater supply. Reporting of water use may be somewhat more complex.	Minimal, since other statutes and rules already require measurement, and most of required information will be available through the irrigation district.	Minimal increased revenues to private services which fill out necessary forms on behalf of the farmer.
D. Consumers or users of any product or service	No direct requirements. Consumers of agricultural	See Description of Effect. Also, to the extent, if any,	Greater precision in calculating flex account

II.B. Operating Flexibility Account Rules

<u>Description of Group Affected</u>	<u>Description of Effect</u>	<u>Increased Costs/Decreased Revenues</u>	<u>Decreased Costs/Increased Revenues</u>
	products may see minimal increased costs from farmers' pass-through of added reporting costs.	the added reporting costs result in a decrease in farming activity, makers of farm implements may see decreased revenues.	may give irrigators more flexibility in their farming practices, resulting in lower prices for farm goods.

III. ALTERNATIVES

A. Annual Report and Annual Account Rules

An alternative considered for dealing with duplicate reporting requirements involved the development of a rigorous program of report reviews and record audits to better coordinate the duplicate information. This process would unnecessarily increase administrative workloads, and would yield no substantial advantage over the proposed rules.

In reference to the recovered water delivery requirements, the Department reviewed the option of handling the breakdown of all recovered and delivered water according to the composition of the storage account. While this would eliminate the need for permit holders to account for deliveries by source, it would not allow for any variance if a person wished to recover, for example, more stored surface water than the person's pro-rata share. For this reason, this option was rejected.

Alternatives for listing "classes of users" included a more simplified list of two or three bulk delivery categories. This option would have been somewhat less costly and less intrusive to the delivering entity. However, it was felt that a more detailed breakdown was necessary to aid in the development of future management plan requirements and the overall water management effort.

In considering the handling of late annual reports and fees, a primary alternative would have required all reports and fees to be physically received by the Department no later than March 31. Anything filed after that date, regardless of postmark, would be late, and an extension of the deadline would not be provided for, regardless of an individual's circumstances. To avoid late fees, any report submitted prior to March 31 would need to be complete and accurate. This alternative was rejected as being excessively stringent without providing any additional benefits over the proposed rule.

Numerous alternatives for handling water right conveyance notifications were considered. In reference to the notification period, thirty days from the date of sale was chosen over a previously suggested fifteen days. It was felt that the fifteen day proposal was insufficient to allow for collection of appropriate data to be submitted.

Earlier proposals also named the buyer as the party responsible for determining the amount of water withdrawn or used by the seller prior to the date of sale. This alternative was considered unfair to a buyer who had no knowledge of water use on the property during a period for which he was not a responsible party.

A provision requiring a seller to file an annual report for his portion of the year's water use was considered and rejected. Enforcement problems presented by this option were significant, involving the need to locate and obtain reports and late penalties from non-filers who had sold a water right up to fifteen months prior to the reporting deadline.

Specific measurement and accounting criteria were also considered for inclusion in the conveyance notification rule. The provisions were rejected as unnecessarily complex and largely unenforceable.

B. Operating Flexibility Account Rules

The primary intent of the flexibility accounting provisions is to interpret the language contained A.R.S. § 45-467.D.2 which provides for the registering of credits for the amount of water not used which "would have been groundwater." As the Groundwater Code makes little or no distinction between various types of surface water, a number of alternative interpretations were considered.

Proposed Rule R12-15-1009 provides for the determination of an amount of decreed or appropriative surface water, other than normal flow and spill water, available to persons receiving water from water deliverers based on their surface water right acres and the total amount of such water delivered by the water provider. Credits to the flexibility account do not accrue for the amount of decreed or appropriative surface water, other than normal flow and spill water, that was available to the farm but not used by it.

An alternative method involved a definition of "available" which was based on the amount of surface water actually received by the farm. Under this alternative, water that was not received by the farm would not have been considered "available". This option was rejected because it would have lead to credits for surface water that may have actually been available (e.g. in reservoirs) but not needed by the user. This appeared to be contrary to the intent of A.R.S. § 45-467.D.2.

A second alternative involved the charging of other sources, such as central Arizona project water, that were available but unused. This method was dismissed due to difficulties involved in determining actual volumes available.

The proposed rules approved by GRRC on June 5, 1988 provided that a person using tailwater for irrigation purposes may reduce any debit which would have been registered to the person's operating flexibility account during the calendar year by the amount of tailwater used during the year. The rules did not exempt tailwater from being counted as water used by the originating farm. In response to public comment, and in the interest of fairness to the originating farm, tailwater is no longer to be counted as water used by the originating farm if it is delivered to another farm or an irrigation district in the manner described in R12-15-1010.A, and is accounted for in the manner prescribed in R12-15-1010.B.

R12-15-1011.A establishes a farm's operating flexibility account with a beginning balance of zero on the first day of the first year in which the person entitled to withdraw groundwater pursuant to the irrigation grandfathered right is required to comply with the first irrigation water duty. An alternative to this provision which was considered would have established the account with a balance of zero on the first day of the first year following the adoption of these rules. However, farmers in all active management areas have been taking action to comply with irrigation water duties since the effective date of their water duties, and many have accrued credits pursuant to the formula prescribed in A.R.S. § 45-467. To wipe out those credits would be manifestly unfair, and would be contrary to the legislature's intent.

IV. IMPACT OF THE PROPOSED RULES ON SMALL BUSINESS

A. Types of Small Businesses and Additional Requirements

Small farms are the predominant small businesses affected by the proposed rules. Affected businesses not associated with farming include small private water companies and a wide variety of commercial and industrial users who obtain water from private wells.

The proposed rules will require some additional accounting and reporting not specified by the Groundwater Code. For irrigation water deliverers, this includes the accounting and

reporting of bulk deliveries by source, bulk deliveries to user classes and the number of surface water right acres within their service area. For irrigation water users, this includes accounting for all sources of water supplying the farm. However, water use by farms receiving water from irrigation distribution systems will, in most cases, be accounted for by the provider. Additional accounting and reporting requirements for small businesses not associated with farms are minimal. All users, however, will be required to maintain supporting records for at least three years.

B. Methods to Reduce Impact

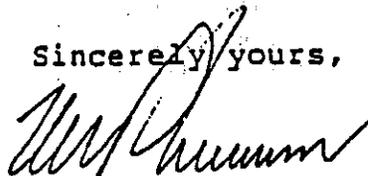
Methods used to reduce the impact on small businesses include the following from the October, 1988 guidelines:

1. Establish less stringent compliance or reporting requirements in the rules for small businesses;
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses; and
3. Consolidate or simplify compliance and reporting requirements for small businesses.

Irrigation water providers required to file both an annual account and an annual report are allowed to file the required information in a single report. This will result in a reduction in paperwork for such providers. The provision contained in R12-15-1014.E which allows a person the opportunity to receive a 30-day extension of the first day of accrual of the late penalties associated with late payment of fees and late filing of annual reports will result in less stringent deadlines for farms and providers of irrigation water.

Other reporting requirements are statutorily mandated and make no allowance for the relative size of the water user or deliverer.

Sincerely yours,



N.W. Plummer
Director

NWP:KCS:rmn
Attachments

TAB D12

ARIZONA DEPARTMENT OF WATER RESOURCES

15 South 15th Avenue, Phoenix, Arizona 85007

Telephone (602) 542-1553

Fax (602) 542-3383

July 8, 1993



FIFE SYMINGTON
Governor

RITA P. PEARSON
Director

Mr. Elliot Hibbs, GRRC Chairman
Department of Administration
c/o Strategic Planning & Budget Office
1700 West Washington, 5th Floor
Phoenix, AZ 85007

JUL 12 1993

DEPARTMENT OF WATER RESOURCES
OFFICE OF THE DIRECTOR

Dear Mr. Hibbs:

I am forwarding with my approval 10 copies of the Department of Water Resources' proposed amendments to R12-15-1101, entitled "Inspections", and R12-15-1102, entitled "Audits." This letter provides the economic impact statement and impact on small business analysis required by A.R.S. § 41-1053.

A. ECONOMIC IMPACT STATEMENT

1. Description, purpose and need for proposed rule and likely accomplishments

These amendments require the Director to follow the procedure already established in the Inspection and Audit Rules, R12-15-1101 and R12-15-1102, when conducting inspections and audits pursuant to the recently adopted statutes governing annual storage and recovery projects, water exchanges and aquifer replenishment projects, as well as any statute that may be adopted which contains language mandating the Director to adopt rules to implement its inspection and audit provisions. The purpose of the rules is to incorporate new programs authorized by the Legislature into the established procedures for inspections and audits.

The specific amendments are summarized below:

R1101.A.5 adds Title 45 facilities and programs that became effective after the adoption of the original Inspection and Audit Rules to the types of facilities which may be subject to inspection.

R1101.F. and G. eliminate the reference to specific chapters of the Water Code.

R1102.B. adds all audits authorized by amendments to Title 45 which became effective after the adoption of the original Inspection and Audit Rules to the types of audits which are subject to the rules.

A.R.S. §§ 45-633 (aquifer replenishment), 45-893 (annual storage and recovery), and 45-1061 (water exchanges), authorize the Director, under certain circumstances, to conduct inspections of property and audits of records related to the operation of annual storage and recovery projects, water exchanges and aquifer replenishment projects. A.R.S. §§ 45-893(B), 45-1061(B) and 45-633(B) mandate that "[t]he director shall adopt rules for conducting inspections, examining records and obtaining warrants pursuant to this section." Further statutory authorization for R12-15-1101.A.5 and R12-15-1102.B is found in A.R.S. § 45-105(B) (1), which states that the "director shall ... adopt and issue rules and regulations necessary to carry out the purposes of [Title 45]."

These proposed rules are needed to implement the statutory mandate and to avoid piecemeal amendment of the rules for newly created water programs. The proposed rules are likely to accomplish the application of procedures by which the Director may fully monitor compliance with Title 45.

2. Classes affected and impacts

Persons who will be affected by the rules, directly or indirectly, and that will bear the costs and receive the benefits of the rules include holders of annual storage and recovery permits and aquifer replenishment permits and their lessees, and participants in water exchanges. If future legislation authorizes water programs which mandate the adoption of rules governing inspections and audits, participants in those water programs will also be affected. In addition, all persons in Arizona will benefit from the rules indirectly, as the rules will assist the Department in enforcing important water management laws.

These rules do not have a large quantitative impact on persons affected because the rules deal with procedures for conducting inspections and audits, rather than the substantive requirement that inspections and audits take place. The rules have a positive qualitative impact on classes of people directly affected by the rules by making the statutorily required inspections and audits as efficient and convenient as possible. Applying established procedures to new programs enhances water management efforts by its predictability and uniformity.

3. Alternatives considered

When it first realized the need to amend the Inspection and Audit Rules, the Department contemplated adding only A.R.S. §§ 45-893 and 45-1091, Annual Storage and Recovery Projects and Water Exchanges, which were adopted in the 1992 Legislative Session. Later, we realized that the Aquifer Replenishment Project program adopted in the 1991 Legislative Session also had inspection and audit provisions that required adoption of rules.

We expect that modifications made in the 1993 Legislative Session to the Aquifer Replenishment program may also result in provisions mandating the adoption of rules to implement additional inspection and audit provisions now found in Title 48. Rather than employ a piecemeal approach, amending the Inspection and Audit Rules on an "as needed" basis, the Department foresaw the need to include all newly created Title 45 water programs in the amendments to the Inspection and Audit Rules. This avoids lag time between the effective date of the new law and the effective date of the amendment to the Inspection and Audit Rules. It also benefits the public by applying predictable standards to new laws.

4. Costs and benefits of enforcement and implementation

In accounting for costs and revenues within this statement, "minimal" means less than \$2,000; "moderate" means between \$2,000 and \$10,000; and "substantial" means more than \$10,000. The impacts described below are on an individual, rather than cumulative, basis.

<u>Designation of Consequence</u>	<u>Increased Cost/ Decreased Revenue</u>	<u>Decreased cost/ Increased Revenue</u>
a. Department of Water Resources		
Adding 1991-93 Legislative water programs	Minimal (cost of notice and inspection)	Moderate (compared to adopting a new set of rules)
Adding unknown future water programs	Minimal (cost of notice and inspection)	Moderate (compared to cost of amending rules each Legislative session)
b. Other State Agencies or Political Subdivisions - same as private persons (see below)		
c. Private Persons		
Participation in inspection	Minimal (cost of time)	Minimal (compared to choosing not to participate)
Participation in audit	Minimal (cost of time)	Minimal (based on suggestions which improve efficiency)
d. Consumers or Users of Any Product or Service		
No direct requirements	Minimal (resulting from pass-through of labor costs)	Minimal (resulting from pass-through of labor costs)

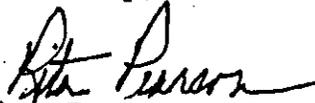
B. IMPACT ON SMALL BUSINESS

Small businesses subject to these proposed rules are likely to be small farms, private water companies and real estate development firms. The only efforts that such parties will need to make to comply with these rules is to have someone present at the time of inspection (if they so choose), and to gather and present documents requested in a notice of audit. While record-keeping is required to prepare for an audit, that requirement is imposed by the statutes regarding audits, and not by these rules.

Rules R1101 and R1102 deal primarily with agency notice requirements. Therefore, there is little impact on small businesses to be "reduced". However, it is likely that the allowances in the rules for inspections by appointment, for changing the site of the scheduled audit, and for authorizing representatives to appear at audit will prove beneficial to those small businesses which are involved in regulated water use. None of the methods identified in A.R.S. § 41-1053.B(3) for reducing further impacts on small businesses is feasible.

If there are any questions on these proposed rule amendments, please contact Cindy L.H. Roos at 542-1507.

Sincerely,



Rita Pearson
Director

Enclosures - original and 10 copies of:

1. Form R101
2. Informative summary
3. Text of the rules
4. Statutory authority for the rules

R1101AL1

ARIZONA DEPARTMENT OF WATER RESOURCES

15 South 15th Avenue, Phoenix, Arizona 85007
Telephone (602) 542-1553
Fax (602) 256-0506



FIFE SYMINGTON
Governor

ELIZABETH ANN RIEKE
Director

September 17, 1991

Gerard W. Tobin, Director
Department of Administration
c/o Strategic Planning and Budgeting Office
1700 West Washington Street, 5th Floor
Phoenix, Arizona 85007

Re: Proposed Inspection and Audit Rules
R12-15-1101 and R12-15-1102

Dear Mr. Tobin:

I am forwarding with my approval 10 copies of the Department of Water Resources' proposed rules R12-15-1101, entitled "Inspections", and R12-15-1102, entitled "Audits". This letter provides the economic impact statement and impact on small business analysis required by A.R.S. § 41-1053.

A. ECONOMIC IMPACT STATEMENT

1. Need for Proposed Rules and Likely Accomplishments

A.R.S. §§ 45-633, 45-816 and 45-865 of the Arizona Revised Statutes authorize the Director, under certain circumstances, to conduct inspections of property and audits of records relating to the use of wells or groundwater and the operation of underground or indirect storage and recovery projects. A.R.S. §§ 45-633(B), 45-816(B) and 45-865(B) mandate that "[t]he director shall adopt rules for conducting inspections, examining records and obtaining warrants pursuant to this section." The Lakes Act contains similar language regarding inspections of bodies of water in A.R.S. § 45-135(B). Further statutory authorization for R12-15-1101 ("R1101") and R12-15-1102 ("R1102") is found in A.R.S. § 45-105(B)(1), which states that the "director shall ... adopt and issue rules and regulations necessary to carry out the purposes of [Title 45]."

These proposed rules are needed to implement the statutory mandate. What the proposed rules are likely to accomplish is the establishment of procedures by which the Director may monitor compliance with the Groundwater Code, Lakes Act and underground and indirect storage and recovery laws.

2. Brief Description of Proposed Rules and Their Purposes

These proposed rules establish procedures to implement this Department's inspection and auditing responsibilities. The statutes referenced earlier, A.R.S. §§ 45-135(B), 45-633, 45-816 and 45-865, set the parameters and goals for such activities. For that reason, the proposed rules are not lengthy and simply flesh out the administrative procedures with respect to the content and mailing of notices, time periods, reports and those circumstances which may require the Department to seek the issuance of a search warrant. As proposed in the rules, 5 days notice of an inspection or 14 days notice of an audit would be required except when consent to a shorter period of notice is given or when the Director believes that such notice would frustrate the enforcement of the water laws. The latter exception is specifically allowed for by statute. The proposed rules give an opportunity to comment on the report of an inspection or audit to a person who is aggrieved.

R1101(A) describes the types of facilities that may be subject to inspection.

R1101(B) provides for five days notice of inspection and a statement of the purpose for the inspection.

R1101(C) expresses the Department's desire to minimize disruptions caused by an inspection.

R1101(D) provides for a second notice when the property is secured before the Department obtains a search warrant.

R1101(E) authorizes the Director to obtain a search warrant when necessary.

R1101(F) exempts certain inspections from the notice requirement when notice would frustrate enforcement of the water laws.

R1101(G) requires a report of inspection be sent to the subject of the inspection and allows an opportunity for comment.

R1101(H) allows certain persons to waive the notice provisions of the Rule.

R1102(A) recognizes that persons subject to an audit may wish to designate a representative to appear at the audit.

R1102(B) applies the audit rules to audits conducted pursuant to the Groundwater Code and to the underground and indirect storage and recovery laws.

R1102(C) requires the Department to give 14 days notice of an audit and requires the notice to state the date, time and place and which documents must be produced. Upon request, the Director may allow the audit to be held away from the Department's offices.

R1102(D) compels attendance at an audit and production of documents.

R1102(E) requires a report of audit be sent to the subject of the audit and allows an opportunity for comment.

R1102(F) allows the subject of an audit to waive the notice provisions of the Rule.

3. Classes Affected and Impacts

Persons who will be affected by the rules, directly or indirectly, and that will bear the costs and receive the benefits of the rules include groundwater rightholders and permittees and their lessees, owners of lakes regulated by the Lakes Act and their lessees, holders of permits for underground and indirect storage and recovery projects and their lessees, public and private water companies, irrigation districts and well owners. In addition, all persons in Arizona will benefit from the rules indirectly, as the rules will assist the Department in enforcing important water management laws.

These rules do not have a large quantitative impact on persons affected, because the rules deal with procedures for conducting inspections and audits, rather than with the substantive requirement that inspections and audits take place. The rules have a positive qualitative impact on classes of people directly affected by the rules by making the statutorily required inspections and audits as efficient and convenient as possible. For example, the rules allow inspections to be rescheduled to accommodate attendance by a representative, and require a second notice before the Department may get a search warrant when the property is locked. The rules also require the Department to minimize disruptions caused by inspections. The audit rules accommodate water users by allowing them to request that the place of audit be changed and by allowing representatives to appear. The only affirmative action required by the water user is to appear at the audit and produce documents.

4. Alternatives Considered

The issue of reasonable notice received the most attention during development of the proposed rules, including consideration of alternatives. Indeed, the Department's first order of business in formulating these rules was to solicit ideas from the

regulated community on the form of notice to be given. This was done in September of 1982. Suggestions received and considered included advertisements in local papers, media announcements, the scheduling of inspections at pre-set periods, letters to owners and phone calls.

In deciding upon the approach which was eventually taken, the Department attempted to balance the factors of cost (postage, public notices), administrative time (arranging appointments, setting up schedules), administrative efficiency (field auditing a given area, rather than a piecemeal approach), and the burden on the public (having to rearrange schedules to meet with the Department personnel). We also considered the experience of the Department to date, and that of its predecessor agencies, the Arizona Water Commission and the State Land Department.

The Department considered between 3 and 15 days as the standard for notice of inspection. We chose a shorter time period of 5 days because time is sometimes a critical factor when enforcement is an issue. We have found that even shorter notice is sufficient to alert the person to an inspection.

In scheduling audits, the staff at the AMAs has found 14 days sufficient notice to gather the documents to be produced at an audit. Previously, the Department had given 30 days notice of audit, but that proved to be too long: the notices were often lost and the date forgotten. A shorter lead time has worked much better.

In some cases, rightholders have sent employees to the audits and this has worked out when the appropriate person appears. The rules therefore allow representatives who are authorized to act on behalf of the subject of the audit to appear at the audit. By allowing the opportunity to follow up with comments, in many cases further compliance action, such as enforcement under A.R.S. § 45-634, may be avoided. Most audits are resolved by filing amended annual reports or by giving instructions for future compliance.

In making accommodations for the particular concerns of the user, the Department believes that these proposed rules represent a reasonable and cooperative approach to an essential component of the overall groundwater management and conservation programs.

Audit and inspection rules were originally proposed February 15, 1984, but the process was terminated March 26, 1987. Those presented now incorporate the Department's experience in conducting inspection and audits in the past ten years.

5. Costs and Benefits of Enforcement and Implementation

In accounting for costs and revenues within this statement, "minimal" means less than \$1,000; "moderate" means between \$1,000 and \$10,000; and "substantial" means more than \$10,000. The impacts described below are on an individual, rather than cumulative, basis.

a. Department of Water Resources

<u>Designation of Consequence</u>	<u>Increased Cost/ Decreased Revenue</u>	<u>Decreased Cost/ Increased Revenue</u>
Notice of inspection given by first class letter	Minimal (compared to giving notice by publication in newspaper)	Minimal (compared to giving notice by certified mail)
Owner may request an escorted inspection.	Minimal	Minimal
Re-notice required if facilities secured against entry	Minimal	Moderate (if re-notice eliminates need for search warrant)
Inspectee may file written comments to inspection and audit report	Minimal-resulting from cost to review and file	Minimal (if comments eliminate need to re-inspect)
Audits may be held at location other than Department offices	Minimal (if request is granted)	Minimal

b. Other State Agencies or Political Subdivisions - same as private persons (see below)

c. Private Persons

Owner may request an escorted inspection.	Minimal-resulting from labor time	Minimal (depending on inconvenience of a general notice period only)
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Inspectee and auditee have only 30 days in which to file written comments to inspection and audit reports

Minimal-resulting from labor time

Minimal (if comments eliminate need to re-audit)

Auditee may request that audit be held outside of Department offices

Minimal

Minimal to moderate (if request is granted)

d. Consumers or Users of Any Product of Service

No direct requirements

Minimal-resulting from pass-through of labor costs

Minimal-resulting from improved efficiency

B. IMPACT ON SMALL BUSINESS

Small businesses subject to these proposed rules are likely to be small private water companies and small farms. The only efforts that such parties will need to make to comply with these rules is to have someone present at the time of inspection (if they so choose), and to gather and present documents requested in a notice of audit. While record keeping is required to prepare for an audit, that requirement is imposed by the statutes regarding audits, and not by these rules.

As proposed, rules R1101 and R1102 deal primarily with agency notice requirements. Therefore, there is little impact on small businesses to be "reduced". However, it is likely that the allowances in the rules for inspections by appointment, for changing the site of the scheduled audit, and for authorizing representatives to appear at audit will prove beneficial to those small businesses which are involved in regulated water use. None of the methods identified in A.R.S. § 41-1053.B(3) for further reducing the impacts on small businesses is feasible.

If there are any questions on these rules, please contact
Cindy Roos at 542-1529.

Sincerely,



Elizabeth Ann Rieke
Director

CLHR/EAR/sm

Enclosures-Original and 10 copies of:

1. Form R101
2. Informative summary
3. Text of the rule
4. Statutory authority for the rule.

CONTEMPORARY ECONOMIC IMPACT REVIEW

After reviewing the Department's original economic impact statement, and examining the impact that the rules have actually had on the public, the Department has concluded that the actual effect of the rules has been approximately the same as predicted in the original economic impact statement.

TAB D13

TITLE 12. NATURAL RESOURCES
CHAPTER 15, DEPARTMENT OF WATER RESOURCES
ARTICLE 12. DAM SAFETY PROCEEDURES
ECONOMIC, SMALL BUSINESS, AND CONSUMER
IMPACT STATEMENT

The Arizona Revised Statutes A.R.S. §§ 45 – 105(B) and 45 – 1202(C) require the Director of Water Resources to adopt rules and issue general orders to effectuate A.R.S. Title 45, Chapter 6, Article 1. The major purpose of the rules for dam safety procedures is to clearly define the requirements of the law and functions of the Dam Safety Section of the Department. There will be no major changes in the Department's administration of the dam safety program. However, the rules will improve communication by making detailed information easily available and clarifying requirements and procedures. The enhanced availability of information will benefit the public, the regulated community, and the Department.

A. Identification of persons who will be directly affected by, bear the costs of, or directly benefit from the proposed dam safety rules

A description of persons who may be affected by the proposed dam safety rules follows.

1. The General Public: The rules for dam safety procedures will potentially affect the approximately 500,000 members of the general public who now live or will live in the future within the area that would be inundated by the failure of a dam regulated by the Department. These people rely on safe dams for flood protection, water supply, electricity production, wastewater treatment, recreation, and water for crops and livestock. Most give little or no thought to the safety of the dam located upstream. They rely on appropriate care being taken by

the dam owner to avoid failures, and by the regulatory agencies who oversee dams. The rules provide enhanced protection to the general public by specifying the legal requirements and means of enforcement.

2. Dam owners: Dam owners are the persons who own, operate, maintain, and construct dams. There are approximately 125 dam owners of 217 dams regulated by the rules. Dams subject to State jurisdiction are listed below by owner type, number of dams, and percent of total number of dams:

<u>Owner</u>	<u>Number of dams</u>	<u>Percent of total</u>
State Government	30	13.8%
County Government	29	13.4%
City Government	<u>37</u>	<u>17.1%</u>
Sub-total (Government)	96	44.3%
Private Individuals	14	6.4%
Irrigation or local Flood Control District	36	16.6%
Private Corporations	<u>71</u>	<u>32.7%</u>
Total	217	100%

This is the group of persons directly responsible for the operation and maintenance of existing dams under the jurisdiction of the Department. However, the rules do not require that changes be made to existing dams unless they are unsafe or a planned major repair will make a retrofit cost-effective.

Owners of new dams may incur increased costs due to design requirements that apply to dams proposed for construction. However, the Department anticipates the impact of the rules will be minor because the rules do not reflect a significant change in policy.

3. Dam designers: Dam designers are persons who perform a portion of their work in the field of dam design. They are employed by dam owners to prepare designs for new dams and repairs in conformance with the applicable rules governing dam safety. Dam designers will benefit from the rules from the easy availability of detailed information relating to a variety of design issues and the references found in the rules to additional available resources. Their work will be more efficient and will more closely comply with the requirements of the Department.

4. Dam contractors: Dam contractors are employed by dam owners to complete construction of dams in compliance with the approved plans and specifications, and consistent with applicable rules governing dam safety. There are approximately 10 contracting firms in Arizona that construct or repair dams. The rules will have little effect on this group except that they may be able to work more efficiently because the improved process of application review may result in clearer plans and specifications. In addition, improved communication throughout the application process will speed the Department's approval process prior to the start of construction and make construction schedules easier to plan.

5. State and Federal natural resource management and protection agencies: Natural resource management and protection agencies, such as the Arizona Game and Fish Department and the United States Fish and Wildlife Service, have responsibilities for protection of the natural

resources within the state. The definition of intangible losses specifies that the Department will rely on these agencies to "identify and evaluate" intangible losses that could result from a dam failure or the uncontrolled release of the liquid stored in a reservoir. The evaluation prepared by natural resource management and protection agencies will be used by the Department to determine downstream hazard potential classifications. Despite the key role the natural resource management and protection agencies play in assisting the Department in determining the downstream hazard potential classification, the Department expects that these agencies will experience small impact in their workload. The Department receives few proposals to build new dams per year. The site chosen for a new dam is rarely in a location that would potentially cause intangible property losses. In addition, natural resource management and protection agencies are currently notified of all applications for dam construction and frequently advise the Department of issues within their jurisdiction. The major change made by the rules is that the Department will now consult the agencies to ask for their evaluations of any potential intangible losses as the Department determines the hazard potential classification.

B. Cost-Benefit Analysis

1. Identify the probable costs to the Department and/or other agencies directly affected by the rules.

The Department: The Department expects the rules will have the following minimal impacts on the Department itself because the rules codify requirements currently in place.

a. Clearly delineated requirements. The rules will make the Department's task of oversight easier by more clearly delineating requirements. At present, the Department's professional staff spends significant time and effort describing the requirements, renewing

requests for required information, and responding to questions.

b. Pre-application meetings. The rules require owners of a proposed dam to meet with Department staff in a pre-application meeting. The Department's experience teaches that owners and designers who meet with Department staff in the early stages of design later submit better, more complete applications and designs. The Department expects to save 3 FTE weeks per new application, which is the equivalent of approximately \$ 18,000 per year in staff time on application reviews. The Department intends to devote the savings in staff resources to the increased inspections required by the rules.

c. Inspection frequency. The rules require each dam to be inspected according to a frequency standard equivalent to national recommendations. The new standard will require the Department to increase inspections made annually from 80 in 1999 to 120 in the year 2001. This increase will cost the department about \$44,000. The rules also provide that owners with qualified engineers may, but will not be required to, inspect their own dams. The Department plans to exercise quality control by inspecting 10 to 20 % of the dams inspected by privately retained engineers. The Department estimates that a maximum of about 10 dams will be inspected by the owner's own engineer under the new provision. The Department would realize a savings of \$10,000 of the anticipated increased costs of additional inspections, leaving a net increase of \$34,000. Fees for the inspections conducted by privately retained engineers would be lost from the dam repair fund in the amount of \$1,600 a year.

d. Enforcement. The rules clarify the process for enforcement and how it fits with the regulatory reform requirements of Title 41. The rules also provide that a notice of a safety deficiency becomes final and incorporated into the dam's license if it is not appealed.

Enforceable requirements will be clearer, enabling the Department to spend less time on administrative matters that are not directly related to dam safety.

e. Mailing and printing. The Department expects the remaining costs of implementing the rules to be limited to printing and mailing costs.

2. Identify the probable costs to political subdivisions (cities, counties) of the state directly affected by the rules.

a. Dam owners. Some dam owners are political subdivisions. The impacts on dam owners will be both positive and negative. The Department expects the overall impact will be positive.

Pre-application meetings. The requirement of pre-application meetings will be an additional expense to some dam owners. However, the Department expects these costs will be offset by the savings in a more efficient design and application process. Owners who already take advantage of the opportunity to meet with Department staff prior to the design process are already realizing these savings, and will see less of an impact.

Very Low Hazard Potential Classification. The rules create a new classification of dams with streamlined application requirements and short deadlines for approval. The new classification benefits owners of these dams by lowering costs. The savings to dam owners could range from \$10,000 to \$100,000, depending on the size and complexity of the proposed dam. Large mining corporations are likely to benefit most from this classification. The savings could be as much as \$100,000 due to simplified application requirements and savings of time in application review. The Department expects to receive applications for about one or two small, very low hazard potential dams annually. The Department estimates that large very low hazard,

potential dams will be constructed once every three to five years.

Inspection of existing dams. An increase in the frequency of inspections will result in receipt of additional inspection fees. Some 50 dams that are currently inspected every three years will be inspected annually. Fees average \$160 per inspection, but do not cover the staff resources needed to conduct the inspection. The Department expects that few owners will choose to hire their own engineers to make inspections. Those who conduct their own inspections will not pay an inspection fee to the Department. More frequent inspections will benefit dam owners, since inspections will find deficiencies sooner, when they are less expensive to repair and less likely to result in an expensive failure.

Maintenance. The rules define ordinary maintenance and allow the owner to submit a letter for approval by the Department of standard dam safety maintenance work. This change will be a savings to owners, who will be able to accomplish this type of maintenance in a more timely manner without incurring the costs of filing an application for the Department's approval.

Proof of financial capability. The rules provide examples of how an applicant may show financial capability to construct and maintain a proposed dam. The Department does not anticipate that this requirement will present an additional cost for most dam owners.

b. Political subdivisions as zoning entities. The rules place limits on development that may potentially be damaged by failure of a dam. The inflow design flood standard will have the effect of preventing construction of homes within a reservoir. As developers seek other sites to build, they may cross political boundaries, with a corresponding change in tax revenues and potential population. It is impossible to predict the economic impacts on a particular political entity. However, there are two major benefits flowing from the clearer

limitations on construction. The most important is heightened protection of the public from flooding. The second is political. Political subdivisions may not have the technical expertise to implement a flood protection strategy in the arena of development pressure and competition with other political subdivisions. The rules set out a clear standard in State law, which allows the political subdivision to rely on the Department, rather than making hard and perhaps uninformed decisions.

C. **Identify the probable costs to businesses directly affected by the rules.**

1. **Owners-** The probable costs of the rules to owners of dams that are large businesses are the same as those for political subdivisions, discussed at (B)(2)(a) above. The impacts to small business are discussed below, at (E).
2. **Designers and Contractors.** Businesses that design or construct dams will benefit from the specificity of the rules. Designers will be able to identify the Department's requirements more readily. This will allow them to more accurately estimate the cost of designing a dam, which will benefit their business and the owners who hire them.
3. **Business located downstream.** Businesses located downstream from dams will enjoy increased protection from failure or malfunction of the upstream dam due to enhanced compliance with the Department's requirements and increased enforceability stemming from clearer rules and enforcement procedures.
4. **Probable Impact on Private and Public Development.** The rules require owners to demonstrate that new dam construction will not increase flooding compared to pre-construction conditions. The required demonstration focuses on two areas, the downstream channel and the area within the reservoir. This safety requirement may place limits on development in some

areas that have not received similar oversight in the past. The owner will be required to mitigate any potential increase in flooding by easement, restrictions, flood warning or other means. The costs of mitigation or loss of potential development is speculative.

D. Probable Impact on Private and Public Employment

The Department anticipates a slight increase in private employment as a result of the rules. Dam owners intending to modify or enlarge a dam may retain an engineer to conduct an inspection that conforms to the rule for safety inspection reports. Annually, the Department receives approximately six applications to modify or enlarge a dam. The Department expects the employment increase to be slight because a dam owner planning to modify or enlarge a dam will require the services of an engineer to perform an assessment and prepare the design. If the dam owner also requests that a safety inspection report be prepared, it would be a small part of the engineering work underway for the modification or enlargement.

E. Probable Impact on Small Businesses

1. An identification of small businesses subject to the rules. Fifty-four dams, or 25% of the dams currently within the jurisdiction of the Department, are small businesses. These include 14 dams owned by private individuals, 23 dams owned by irrigation districts, 13 dams owned by local flood control districts, and 4 dams owned by small business corporations. Of the 75% not owned by small businesses, 44.3% are owned by government and 30.7% by large corporations.

Small business owners of dams

<u>Type of owner</u>	<u>Number of dams owned</u>
Private individuals	14

Irrigation districts	23
Local flood control districts	13
Small corporations	<u>4</u>
	54 (25% of total)

2. Costs to comply.

a. Financial capability. The rules require all applicants to provide evidence of financial capability to construct, operate, and maintain a dam. For a small business owner who has to prepare the documentation for this purpose, the requirement will slightly increase the initial costs of constructing a dam. The rules assist in the process by providing examples of how the financial showing may be made. The benefit of the rule is to provide additional protection against the risk that an owner with insufficient funds would leave a dam partially completed or inadequately maintained. By requiring a showing of financial capability of all applicants, the rule also protects the Department from the problems of inconsistent enforcement of the statutory provision.

b. Inspections. The rules allow owners to hire their own engineers to perform inspections. While this may provide a savings to those owners who already employ qualified engineers, it is unlikely that most small businesses would have qualified engineers on staff or that they could hire an engineer who would inspect a dam for less than the fee charged by the Department. A.A.C. R12-15-151 provides that inspection fees are calculated at \$100.00 plus \$2 per foot of height of the dam. An owner of a 25-foot dam would be charged an inspection fee of \$150.00. Inspections by qualified private-sector engineers would cost at least \$2,000.00.

c. Flood protection. Owners of new dams will be required to provide

some protection from flooding of homes or other property within the reservoir and in the spillway channel. This potential cost would be small for most small business dam owners, but could be substantial for dams located in the path of development.

d. Very low hazard potential dams. The rules add a new classification of dams, the very low hazard potential dams. An owner who can demonstrate that the flood resulting from a potential failure of the dam would not extend beyond property controlled by the owner plus the floodplain is eligible for streamlined application requirements, an abbreviated approval process, and little additional oversight by the Department. This classification of dams will greatly reduce costs to the owner, while still providing appropriate protection to the general public. This classification will benefit small business owners, especially in remote areas.

e. Clearer delineation of requirements. The small business owner will benefit by the detailed information on application, design, and safety requirements published in the rules. There will be a savings of costs attributable to a lack of knowledge about the requirements.

3. A description of ways to reduce the impact of the Rules on small businesses.

a. The rules make few major changes in the dam safety program. The Department does not anticipate major impacts on small businesses from the rules because most aspects of the dam safety program have not changed.

b. Standards for existing dams. Small businesses owners of existing dams will benefit from the fact that the rules do not require existing dams to retrofit to comply with the new design standards. As long as a dam remains safe, the Department will not require it to undertake structural changes. If major repairs or alterations are planned by the owner and it

would be cost-effective to upgrade the dam's safety at that time, it may be required.

c. Assistance from Department staff. The Department's practice of assisting applicants in complying with dam safety requirements will continue. The staff makes time for multiple meetings and site visits in the pre-design stages of planning a dam, and makes a priority of maintaining close contact with the owner, engineer, and contractor of a dam during construction activities. The availability of Department staff will be of particular help to small businesses.

4. The probable cost and benefit to private persons and consumers who are directly affected by the rules. The impacts of the rules will be minimal because the dam safety program is not changing in major ways. The impacts of the few major changes will be highly variable because of the differences in dam sites, designs, and downstream conditions. Most of the content of the rules is already addressed by current practice of the dam safety program, but was not codified before development of the rules. The issues addressed in the rules, such as classification of dams, oversight of maintenance, enforcement, flood protection, and inspections will continue to be important areas of work for dam owners, designers, contractors, and agencies.

F. Probable Effect on State Revenues

The increase in the number of dam inspections will result in more dam inspection fees deposited into the dam repair fund, which is used for loans and grants to dam owners for the repair of unsafe dams.

G. Less Intrusive or Costly Alternatives

The Department has a responsibility to the public to provide oversight in the least

intrusive and least costly manner possible. The rules improve the Department's ability to do that by minimizing the regulatory focus on dams that present little risk of danger to human life and property. The rules will allow the Department to devote more of its resources to dams presenting the highest risk.

Throughout the rulemaking process, the Department has provided draft copies of the rules to the regulated community and requested their comments. The Department has made changes to the rules throughout the process. The Department developed some of the sections of the rules in response to comments submitted on early drafts. Sections that were added at the request of dam owners include provisions regarding pre-application conferences, the very low hazard potential classification of dams, and the process allowing a request for approval of a routine repair of a dam to be submitted by letter. In many cases, the less intrusive and less costly alternatives were developed by working with dam owners during the rulemaking process.

These rules define the requirements of law and functions of the Safety of Dams Section of the Department. There will be no major changes in the Department's administration of the dam safety program. However, the rules will improve communication by making detailed information easily available and clarifying requirements and procedures. The enhanced availability of information will benefit the public, the regulated community, and the Department.

TAB D14

WELL SPACING RULES

A.R.S. § 41-1055(B) and A.R.S. § 41-1035 ECONOMIC, CONSUMER, AND SMALL BUSINESS IMPACT STATEMENT (EIS)

1. An Identification of the Proposed Rule Making

In this rulemaking proceeding, the Arizona Department of Water Resources ("ADWR") is replacing two temporary rules, R12-15-830 and R12-15-840, in effect since 1983, with permanent rules R12-15-1301 through R12-15-1308. Both the temporary rules and the permanent rules address statutory mandates requiring the Director to adopt rules to prevent unreasonably increasing damage to surrounding land or other water users from a concentration of wells and a rule defining what constitutes a replacement well in approximately the same location. The permanent rules can be categorized under five subheadings: definitions of terms used in the rules (R12-15-1301); a rule containing well spacing criteria for proposed new wells and replacement wells in new locations within AMAs for which a well permit is required under A.R.S. § 45-599 (R12-15-1302); rules containing well spacing criteria for certain proposed recovery wells (R12-15-1303); rules containing well spacing criteria for certain wells used for groundwater transportation and water exchanges (R12-15-1304 through R12-15-1307); and a rule containing criteria that must be met for a proposed well to qualify as a replacement well in approximately the same location (R12-15-1308).

The chart below will help to illustrate how the permanent rules compare to the temporary rules, and is organized under the five subheadings identified above.

Rule definitions

<u>Temporary Rule</u>	<u>Permanent Rule</u>
R12-15-830(J) Defines just two terms: <ul style="list-style-type: none">- "Well of record"- "Additional drawdown"	R12-15-1301 Defines "well of record" and "additional drawdown," as well as 14 additional terms; links several definitions to statute.

The definition of 'Well of record' is changed to exclude wells that would not be unreasonably damaged by withdrawals from a proposed well, such as wells used for dewatering, drainage and hydrologic testing. Taken together, the definitions will add clarity for regulated persons who seek to construct new or replacement wells, transport groundwater, recover stored water, or engage in water exchanges.

Rule containing well spacing criteria for proposed new wells and replacement wells in new locations in AMAs for which a well permit is required under A.R. S. § 45-599

<p><u>Temporary Rule</u> R12-15-830(A) to (I)</p>	<p><u>Permanent Rule</u> R12-15-1302</p>
<p><i>Principal provisions</i></p> <ul style="list-style-type: none"> - Drawdown: Approve if $\leq 10'$ in 5 years. May deny if $> 10'$ but $\leq 25'$ in 5 years. Shall deny if $> 25'$ in 5 years. - Hydrologic impact study: Required if > 500gpm or multiple wells. Applicant pays. - Water quality/land subsidence: Shall reject if "unreasonable and adverse impact." Director may require study - Replacement wells in new locations: Approve if impact on neighboring wells \leq historical impact from original well - Other factors (830E): If between 10 to 25 feet of additional drawdown at well of record, Director may consider list of 9 factors in determining if impact is unreasonable - Waivers: If drawdown $> 10'$ in 5 years, drill if impacted well owners consent. No waiver allowed for migration of contaminated water. - Owner of impacted well cannot be located: Proposed well may not be drilled 	<p><i>Principal provisions</i></p> <ul style="list-style-type: none"> - Drawdown: Approve if $\leq 10'$ in 5 yrs. Shall deny if $> 10'$ in 5 yrs. - Hydrologic impact study: Director may require or applicant may submit. Applicant pays. - Water quality/land subsidence: Clarifies circumstances under which Director "shall not approve." Director may require study <i>or</i> applicant may submit study - Replacement wells in new locations: Approve if impacts from proposed well are offset by reduced pumping from original well(s) - Other factors: None. - Waivers: Identical waiver provision for drawdown $> 10'$ in 5 years. Waiver also allowed for migration of contaminated water. - Owner of impacted well cannot be located: Proposed well may be drilled.

Other minor provisions of the temporary rules carry over essentially unchanged into the permanent rules.

Rule containing well spacing criteria for certain proposed recovery wells

<p><u>Temporary Rule</u> R12-15-830(A) to (I)</p> <p><i>Principal provisions</i> - None.</p>	<p><u>Permanent Rule</u> R12-15-1303</p> <p><i>Principal provisions</i></p> <ul style="list-style-type: none"> - Drawdown: Same as 1302. - Hydrologic impact study: Required in all cases, applicant pays. - Water quality/land subsidence: Same as 1302. - Replacement wells in new locations: Same as 1302. - Recharge facility provision: If well is located in area of impact of stored water, can offset impact with on-site recharge. - Waivers: Same as 1302 - Owner of impacted well cannot be located: Same as 1302
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Rules containing well spacing criteria for certain wells used for groundwater transportation and water exchanges

<p><u>Temporary Rule</u> R12-15-830(A) to (I)</p> <p><i>Principal provisions</i> - None.</p>	<p><u>Permanent Rule</u> R12-15-1304 through -1307, inclusive</p> <p><i>Principal provisions</i></p> <ul style="list-style-type: none"> - Drawdown: Same as 1302. - Hydrologic impact study: Same as 1302. - Water quality/land subsidence: Same as 1302. - Replacement wells in new locations: Same as 1302 - Waivers: Same as 1302 - Owner of impacted well cannot be located: Same as 1302
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After the temporary rules were adopted in 1983, statutory provisions were enacted requiring certain recovery wells, certain wells used for water exchanges and certain wells used for groundwater transportation to comply with well spacing criteria. These statutes are now addressed in rules R12-15-1303 through 1307.

Rule containing criteria for replacement wells in approximately the same location

<u>Temporary Rule</u>	<u>Permanent Rule</u>
<p>R12-15-840</p> <p><i>Principal provisions</i></p> <ul style="list-style-type: none"> - Location Within 660' of original well. - Drawdown, subsidence and water quality impacts Not addressed. - Hydrologic impact study Not required. - Maximum annual withdrawal volumes Not more than largest historical withdrawals from original well in any year 	<p>R12-15-1308</p> <p><i>Principal provisions</i></p> <ul style="list-style-type: none"> - Location Within 660' of original well. - Drawdown, subsidence and water quality impacts Not addressed. - Hydrologic impact study Not required. - Maximum annual withdrawal volumes Maximum annual capacity of original well(s) Determine by 100% duty cycle; <i>or</i> the maximum permitted volume of the original well (if a permit was issued).

Other provisions in R12-15-1308(A) require a Notice of Intent to be filed within 90 days if the original well is abandoned and contain criteria for replacement wells in the same location in the Little Colorado river plateau groundwater basin. Temporary rule 840(2) – ‘conjunctive use of wells’ – and 840(3) – ‘Director may impose conditions’ – carry over essentially unchanged into the permanent rule as R12-15-1308(B) and 1308(D), respectively. R12-15-1308(C) provides additional flexibility to owners seeking to replace wells in approximately the same location, by allowing one well to be drilled when replacing two or more original wells, subject to allowed maximum annual volumes.

Overall, ADWR believes the permanent rules are very similar to the temporary rules they replace. The new rules add clarity and certainty, remove sources of confusion and uncertain interpretation, codify some existing ADWR policies and slightly modify certain provisions in the temporary rules. The director will continue to deny authority to construct a well if the director determines it will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells.

The temporary rules and the permanent rules recognize three categories of unreasonably increasing damage: additional drawdown of water levels at neighboring wells of record; additional regional land subsidence; and migration of contaminated groundwater. The provision in the permanent rules regarding additional regional land subsidence is nearly identical to the provision in the temporary rule. The provision in the permanent rules regarding migration of contaminated groundwater is similar to the provision in the temporary rule, but provides greater clarity on when an application will be denied on this basis. The language is consistent with current ADWR policy. The provision in the

permanent rules regarding additional drawdown of water levels at neighboring wells of record is also similar to the provision in the temporary rules, with one exception. Under the temporary rules, if the probable additional drawdown is between 10 and 25 feet during the first five years of operation of the proposed well, ADWR will consider nine specified factors in determining whether to grant the application. The permanent rules eliminate the nine factors and simply require ADWR to deny the application unless an exception applies.

The temporary rules provide that the director shall issue a well permit to an applicant even though the probable impact of the withdrawals from the proposed well on one or more wells of record will exceed the maximum allowable additional drawdown if the applicant submits a signed consent form from the owner of each impacted well of record consenting to the withdrawals from the proposed well. The permanent rules retain this provision and extend its application to cases where withdrawals from the proposed well will likely cause unreasonably increasing damage to a well of record from the migration of contaminated groundwater. The permanent rules also allow an applicant to obtain a well permit despite unreasonable impacts on a well of record if the applicant submits sufficient evidence that the address of the owner of the well of record as shown in ADWR's well records is inaccurate, and that the applicant made a reasonable attempt to locate the owner of the well of record, but was unable to do so.

The provision in the temporary rule requiring an applicant for a well permit to submit a hydrological study if the proposed pumping capacity exceeds 500 gpm or if the application is for multiple wells has been removed for most applicants, thereby relieving them from the economic burden of submitting such a study unless required by the Director. Only applicants for recovery well permits are required by the rules to submit a hydrological study with the application. For replacement wells in new locations, allowance is newly given in the permanent rules for the Director to consider the collective effects of the reduction of pumping from the original well and the new withdrawals from proposed well if the applicant demonstrates those effects.

Regarding replacement wells in approximately the same location, both the temporary rule and the permanent rule limit the location of such wells to an area within 660 feet of the original well. The primary difference between the rules is that the permanent rule allows a replacement well in approximately the same location to annually withdraw up to the maximum annual capacity of the original well or, if a well permit or recovery well permit was issued for the original well, up to the permitted annual volume of the original well, while the temporary rule limits annual withdrawals to the largest historical withdrawals from the original well in any year. This change will allow more water to be withdrawn from a replacement well in approximately the same location in most cases, yet will prevent such a well from withdrawing more water than could have been withdrawn from the original well.

2. Persons Who Will Be Directly Affected By, Bear the Costs of or Directly Benefit from the Proposed Rule Making

Rules R 12-15-1301 through 1308 will directly affect most persons seeking to drill non-exempt wells in AMAs. The rules will also affect persons applying for recovery well permits statewide; persons using certain wells in the Little Colorado river plateau groundwater basin to withdraw groundwater for transportation out of the basin; persons using certain wells to withdraw groundwater for transportation into an AMA; and persons, other than cities, towns, private water companies and irrigation districts, using wells to withdraw groundwater in AMAs for water exchanges. The rules do not apply to persons drilling wells outside of AMAs (except for recovery wells and certain wells used to withdraw groundwater for transportation out of the groundwater basin); persons drilling exempt wells (generally, non-irrigation wells with a maximum pumping capacity of 35 gpm or less) within AMAs; persons drilling wells pursuant to groundwater withdrawal permits within AMAs, except general industrial user permits; and cities, towns, private water companies and irrigation districts applying for recovery well permits for wells drilled before June 12, 1980 within their service areas. The rules also do not apply to wells that will withdraw only surface water.

Examples of persons who will be subject to the rules, depending on the type of well to be constructed or used by the person, include private individuals, groups of individuals, partnerships, or associations; industries, including manufacturing, power plants, mines, golf courses, cattle feedlots, dairies, sand and gravel operations, and other industrial water users; businesses large and small, including farms, resorts, private water companies and homebuilders; political subdivisions including the state, cities, municipalities, towns, and irrigation districts; and Federal and state agencies.

Between 1983 and 2005, inclusive, ADWR estimates that approximately 1,156 wells were drilled under temporary rule R12-15-830, including both new wells and replacement wells in new locations. Between 1983 and 2005, inclusive, ADWR estimates that approximately 286 replacement wells in approximately the same location were drilled under temporary rule R12-15-840. Between 1983 and 2005, inclusive, ADWR estimates that approximately 212 recovery wells were drilled. A recovery well may also be permitted to withdraw groundwater, so that there is an overlap between the number of recovery wells, new wells, and replacement wells.

Persons directly benefiting from the proposed rule making

Persons directly benefiting from the permanent rules include land owners and owners and users of existing wells, who, without permanent well spacing rules, would not be protected from unreasonably increasing damage from the concentration of wells. Owners of existing wells include cities, towns, private water companies, irrigation districts, industries, farmers and owners of exempt wells.

Rules R12-15-1301, 1302 and 1308 will directly benefit persons within AMAs applying for well permits under A.R.S. § 45-599, primarily cities, towns, private water companies,

irrigation districts, farmers and certain industries, because it will eliminate sources of confusion in the temporary rules and thereby add more certainty. Rules R12-15-1301 and R12-15-1303 through 1308 will benefit persons applying for recovery well permits statewide, persons transporting groundwater away from the Little Colorado river plateau groundwater basin, persons transporting groundwater into AMAs and persons, other than cities, towns, private water companies and irrigation districts, withdrawing water from wells within AMAs for water exchanges. Statutes enacted after the temporary rules were adopted require such persons to comply with well spacing criteria in certain cases. Adoption of the rules will provide certainty and eliminate confusion for these persons regarding the criteria that must be met.

Persons subject to well spacing rules will benefit from the following changes made to the well spacing criteria in the temporary rules:

- The new maximum annual volume limits for replacement wells in approximately the same location allow persons replacing wells to annually withdraw up to the volume of water the original well could have withdrawn during a year, rather than the largest historical withdrawals from the original well in any year. This will allow well owners to better use their investments in their wells.
- For replacement wells in new locations, the Director is required to take into account the collective effects of reducing or terminating withdrawals from the well being replaced together with the proposed well, if the applicant demonstrates those effects.
- When owners of impacted wells cannot be located, the Director shall not find "unreasonably increasing damage" with respect to those wells.

Persons directly bearing the costs of the proposed rule making

There are no new fees or costs associated with the permanent rules. The current fee structure carries over unchanged. Except for certain recovery wells, applicants will no longer be required to submit a hydrologic impact study unless the Director determines that such a study will assist the Director in making a determination as to whether the proposed well meets the criteria in the rules. Therefore, most applicants will no longer have to pay for such a study. These studies, in most cases, cost between \$2,000 and \$5,000.

In AMAs, persons desiring to drill new wells or to replace existing wells in new locations will bear the same permitting costs as under the temporary rules. Persons withdrawing water under statutory authorities not existing in 1983 are newly subject to rules R12-15-1303 through 1307. However, the Department has been applying the criteria in the temporary rules in these cases for some time. In this sense, new costs are not expected.

3. Cost - Benefit Analysis

Throughout this analysis, the Department treats the temporary rules as existing rules and bases economic impact from the new rules on changes from the existing rules. The Department estimates that economic impacts are minimal, and that any small direct

incremental benefits – associated, for example, with added clarity, new maximum annual volume limits for replacement wells in approximately the same location, the ability of applicants for replacement wells in new locations to demonstrate the collective effects of the reduction of pumping from the well to be replaced and the new withdrawals from the proposed well, and the ability to drill a well when the record owners of impacted wells cannot be located – will generally outweigh even smaller incremental costs, if any.

a. The Probable costs and benefits to the implementing agency and other agencies

Agencies drilling wells, e.g. ADOT, will benefit from clearer and more uniform and consistent definitions and rules. Clearer detail is provided as to when the Director “shall not approve” if a well of record is unreasonably impacted from contaminated groundwater. For new wells or replacement wells in new locations, confusion is reduced by eliminating a list of nine seldom used factors to be considered when determining whether an additional drawdown of between 10 and 25 feet is an unreasonable impact. Additionally, in most cases, agencies applying to construct new wells or replacement wells in new locations will no longer be required to submit a hydrological study for wells with a pumping capacity of 500 gmp or greater or for multiple wells. Under the new rules, a hydrological study is required only for applications to drill certain recovery wells, although the director may require any applicant to submit such a study if the director determines that the study will assist the director in determining the impacts of the withdrawals from the proposed well. An agency drilling a replacement well in approximately the same location will benefit from the new maximum annual withdrawal limits, which allow the well owner to annually withdraw the amount that could have been withdrawn from the original well, not the largest amount that was actually withdrawn from the original well in any year.

The Department estimates that it will incur no new appreciable direct costs or realize any benefits from the transition from temporary to permanent rules. Agencies that drill wells will incur the same costs and benefits as other well owners.

b. The probable costs and benefits to political subdivisions

Political subdivisions that own wells or land will benefit from the new rules in the same manner as other well owners and landowners: their wells and land will be protected from unreasonably increasing damage resulting from additional drawdown of groundwater levels, land subsidence and migration of contaminated groundwater. These potential negative impacts can lead to physical damage to structures, lowered property values and water treatment costs.

Political subdivisions drilling wells will benefit from clearer and more uniform and consistent definitions and rules. Additionally, in most cases, political subdivisions applying to construct new wells or replacement wells in new

locations will no longer be required to submit a hydrological study for wells with a pumping capacity of 500 gmp or greater or for multiple wells. Under the new rules, a hydrological study is required only for applications to drill certain recovery wells, although the director may require any applicant to submit such a study if the director determines that the study will assist the director in determining the impacts of the proposed withdrawals from the well. Political subdivisions drilling replacement wells in approximately the same location will benefit from the new maximum annual withdrawal limits.

Political subdivisions that drill wells will likely incur costs to comply with rules R12-15-1302 through 1307, but the costs are predicted to be reasonable and no different than costs under temporary rule R12-15-830. The fee to file an application for a well permit is \$150.00, and the fee for the permit is \$50.00. The fee to file an application for a recovery well permit is \$50.00 per well for the first 10 wells and \$10.00 per well for any additional wells. The fee for a recovery well permit is \$50.00 per well for the first 10 wells, and \$10.00 per well for any additional wells. For recovery well permits, the applicant must also pay the cost of publishing notice of the application in a newspaper. Applicants who are required to conduct a hydrological study, or who voluntarily submit such a study, usually pay costs ranging between \$2,000 and \$5,000, in most cases. Such studies are performed by hydrological consultants or, depending upon the applicant's capabilities, the applicant's in-house staff.

Rule R12-15-1308 defines a replacement well in approximately the same location as a well drilled no greater than 660 feet from an original well being replaced and that will not annually withdraw an amount of water in excess of the amount that could have been withdrawn from the original well. Under both the temporary rule and the permanent rule, a political subdivision with a proposed well qualifying as a replacement well in approximately the same location avoids the costs associated with filing an application for a well permit, but does pay a \$150 notice-of-intent fee. A hydrological study is not required.

c. The probable costs and benefits to businesses, including small businesses Businesses, large or small, that own wells or land will benefit from the new rules in the same way as other well owners or landowners: their wells and land will be protected from unreasonably increasing damage caused by the concentration of wells. Without the rules, businesses that own wells or land could be unreasonably damaged as a result of additional drawdown of groundwater levels, land subsidence or migration of contaminated groundwater to their wells. These potential negative impacts can lead to physical damage to structures, lowered property values and water treatment costs.

Business drilling wells will benefit from clearer and more uniform and consistent definitions and rules. Businesses applying to construct new wells or replacement wells in new locations are no longer required to prepare a hydrological study for

wells with a maximum capacity of 500 gpm or greater or for multiple wells, unless the proposed well is a recovery well. However, the director may require any applicant to submit a hydrological study. Businesses drilling replacement wells in approximately the same location will benefit from the new maximum annual withdrawal limits.

Businesses that drill wells will likely incur costs to comply with rule R12-15-1302 through 1307, but the costs are predicted to be reasonable and no different than costs under temporary rule R12-15-830. The fee to file an application for a well permit is \$150.00, and the fee for the permit is \$50.00. The fee to file an application for a recovery well permit is \$50.00 per well for the first 10 wells and \$10.00 per well for any additional wells. The fee for a recovery well permit is \$50.00 per well for the first 10 wells, and \$10.00 per well for any additional wells. For recovery well permits, the applicant must also pay the cost of publishing notice of the application in a newspaper. Applicants who are required to conduct a hydrological study, or who voluntarily submit such a study, usually pay costs ranging between \$2,000 and \$5,000, in most cases. Such studies are performed by hydrological consultants or, depending upon the applicant's capabilities, the applicant's in-house staff.

A business with a proposed well qualifying as a replacement well at approximately the same location under R12-15-1308 avoids most costs associated with filing permit applications. Applicants for replacement wells in approximately the same location are required only to file a notice of intent and pay a \$150 fee. A hydrological study is not required.

Small Business - A.R.S. § 41-1055(B)(5) and A.R.S. § 41-1035

A.R.S. § 41-1055(B)(5)(a). *Small Business Subject to the Proposed Rule Making*

AND

A.R.S. § 41-1055(B)(5)(b). *The Administrative and Other Costs Required for Compliance with the Proposed Rule Making*

AND

A.R.S. § 41-1055(B)(5)(c) and A.R.S. § 41-1035(3) and -1035(4). *Methods the Department May Use To Reduce the Impact on Small Business*

Concerning these three statutory requirements: small businesses are impacted by the permanent rules to the same extent as large business, political subdivisions and other water users. Small businesses, whether owning or seeking to drill wells, need to be protected from, and need to be prevented from causing, unreasonably increasing damage to the same extent as other entities. The drawdown criteria in rules R12-15-1302 through 1307 are applicable to businesses of all sizes. It would not be legally permissible or fair to exempt small business applicants from these requirements because unreasonably increasing damage can be caused by wells owned by anyone, including small businesses.

4. The probable impact on private and public employment in business, agencies, and political subdivisions

Under the temporary rules, private hydrologic consultants prepare many of the hydrologic studies that will no longer be required for new wells or replacement wells in new locations under the permanent rules. For most such wells, the Department will now prepare these studies; however, the applicant still may choose to have his or her own study prepared by a consultant. The change may have a small effect on the employment of private hydrologic consultants. Otherwise, as a result of the adoption of the permanent rules, the Department anticipates no discernable new employment effects, whether private or public.

5. The probable impact on small business

This subsection of the EIS is covered above, as a part of the discussion under A.R.S. § 41-1055(B)(3)(c).

6. The probable effect on state revenues

No difference between the existing temporary rules and the permanent rules.

7. Less intrusive or less costly alternative methods of achieving the proposed rulemaking

The Department engaged in a long public dialogue with the regulated community while preparing the permanent rules. Many alternatives were considered, some less intrusive or costly, some more. The present rules emerged from the public participation process, in preference to other alternatives.

TAB D15

TECHNICAL AMENDMENTS TO ADWR RULES

A.R.S. § 41-1055(B) and A.R.S. § 41-1035

ECONOMIC, CONSUMER, AND SMALL BUSINESS IMPACT STATEMENT

The Department of Water Resources (“Department”) proposes to make technical amendments to a number of its rules under A.A.C. Title 12, Chapter 15.

1. An Identification of the Proposed Rule Making

Technical amendments are being proposed to rules within the following Articles:

Article 1 – R12-15-151, "Fee Schedule"

Article 2 – R12-15-207, "Correction of Clerical Mistakes"

Article 2 – R12-15-224, "Ex Parte Communications"

Article 8 – R12-15-805, "Examination for a Well Drilling License"

Article 8 – R12-15-810, "Authorization to Drill"

Article 8 – R12-15-816, "Abandonment"

Article 8 – R12-15-822, "Capping of Open Wells"

Article 12 – R12-15-1210, "Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Low Hazard Potential Dam"

The proposed technical rule changes conform older rules to newer statutes, alter outdated rules already superseded in statute, correct organizational names mentioned in rule but which now have changed, and provide for greater clarity, consistency, and specificity while reducing confusion among the regulated public.

ARS 45-152 requires persons intending to acquire the right to the beneficial use of water to apply to the Director, ADWR, for a permit to make an appropriation of the water. The proposed change to R12-15-1210 corrects an earlier oversight. The proposed change requires persons applying to construct or to register low hazard potential dams to show proof of a right to impound and appropriate surface water. There are four classes of hazard potential dams. In accordance with § ARS 45-152, persons applying to construct the other three classes of dams are currently required to show such proof. A proposed change to R12-15-1210(A) will add the same requirement to low hazard potential dam applications.

2. Persons Who Will Be Directly Affected By, Bear the Costs of or Directly Benefit from the Proposed Rule Making

The Department anticipates very small or no costs from the proposed changes. Added clarity and reduced confusion generally benefits the public.

3. Cost – Benefit Analysis

ARTICLE 1 – FEES

<p><u>Description of Change:</u> 1. R12-15-151. Fee Schedule. Delete R12-15-151(B)(4)(a) and (b)</p>	<p><u>Why the Change?</u> These older rules set fees now prescribed in statute. As the statute supersedes the rules and the Department has been charging the fees set in the newer statute for some time the rules can be deleted.</p> <p><u>Who is impacted?</u> This change is not expected to impact any person.</p> <p><u>Nature and Magnitude of the Expected Impact</u> None.</p>
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ARTICLE 2 – PROCEDURAL RULES

<p><u>Description of Changes:</u> 1. R12-15-207 and R12-15-224. Correction of Clerical Mistakes and Ex Parte Communications. Both changes eliminate reference in rule to a "Hearing Officer." Non-substantive grammatical changes are also made, and typographical errors are corrected.</p>	<p><u>Why the Changes?</u> The Department is no longer allowed to use a hearing officer to conduct administrative hearings, A.R.S. § 41-1092.01(E) and (F). Deleting references to a hearing officer from these two older rules conforms them to more recent statute.</p> <p><u>Who is impacted?</u> These proposed changes are not expected to impact any person.</p> <p><u>Nature and Magnitude of the Expected Impact</u> None.</p>
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ARTICLE 8 – WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS

<p><u>Description of Changes:</u> 1. R12-15-805. Examination for a Well Drilling License. Changes an organizational name mentioned in rule, from "National Water Well Association" to "National Ground Water Association."</p>	<p><u>Why the Change?</u> After Rule R12-15-805 was adopted, the subject organization changed its name.</p> <p><u>Who is impacted?</u> The name change is not expected to impact any person.</p> <p><u>Nature and Magnitude of the Expected Impact</u> – None.</p>
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<p>2. R12-15-810. Authorization to Drill. Delete R12-15-810(A), governing notification processes to well drilling contractors and licensees.</p>	<p><u>Why the Change?</u> R12-15-810(A) is outdated. It governs the process by which drill cards and notices of drill card issuance are mailed to well drillers or single well licensees. That process is now covered by A.R.S. § 41- 596.</p> <p><u>Who is impacted?</u> No impacts are expected, as the Department has been following the process prescribed in A.R.S. § 41- 596 since 2002.</p> <p><u>Nature and Magnitude of the Expected Impact</u> – None.</p>
<p>3. R12-15-816(H). Well Abandonment. The proposed change requires that a surface seal be installed in the top 20 feet of an abandoned well, whether or not the well casing has been removed.</p>	<p><u>Why the Change?</u> The proposed change corrects an oversight that occurred when R12-15-816(H) was drafted, by requiring the same specifications for surface seals whether the casing from the top 20 feet of an abandoned well is or is not removed.</p> <p><u>Who is impacted?</u> Persons installing surface seals on abandoned wells. Well contractors.</p> <p><u>Nature and Magnitude of the Expected Impact</u> – The Department expects minimal or no impacts from correcting this oversight. The proposed change requires cement grout plugs to be installed on the top 20, not the top 10, feet of abandoned still-cased wells. Doing so requires little additional cost or effort on the part of the contractor, many of whom may already be plugging the top 20 feet, whether or not the abandoned well remains cased.</p>
<p>4. R12-15-822. Capping of Open Wells. Re-label 822(D) to 822(C).</p>	<p><u>Why the Change?</u> Correct a typographical error. The third section of R12-15-833 should be labeled (C), not (D).</p> <p><u>Who is impacted?</u> This change is not expected to impact any person.</p> <p><u>Nature and Magnitude of the Expected Impact</u> None.</p>

ARTICLE 12 – DAM SAFETY PROCEDURES

<p><u>Description of Changes:</u> 1. R12-15-1210(A). Application to Construct a Low Hazard Potential Dam. The proposed rule change adds applications for low hazard potential dams to the classes of dams that must show proof of a right to impound and appropriate surface water. The change applies to new applications as well as unregistered low hazard potential dams.</p>	<p><u>Why the Changes?</u> This proposed change corrects an earlier oversight: Persons applying to construct High, Significant, and Very Low Hazard Potential Dams are already required to show proof of a right to impound and appropriate surface water. A proposed change to R12-15-1210(A) will add the same requirement to low hazard potential dam applications.</p> <p><u>Who is impacted?</u> In effect, anyone statewide applying for a license to construct a low hazard potential dam that retains appropriable water. Recent examples include ranchers, and those who construct or operate power, water purification, or waste water treatment plants. Also, persons who operate and apply to register currently unregistered low hazard potential dams.</p> <p><u>Nature and Magnitude of the Expected Impact</u> Very minimal or no economic impact is expected. ARS § 45-532 already requires a permit. Since 2000, as a part of the licensing process, the Department has routinely required proof of a right to impound and appropriate surface water for all newly constructed and newly registered dams.</p>
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Low Hazard Potential Dams – Between 2000 and 2006, on average, the Department licensed less than one application annually to construct a new low hazard potential dam. During the same period, on average, the Department issued licenses to operate four unregistered low hazard potential dams per year. At this writing, there are twenty-one unregistered low hazard potential dams going through the registration and licensing process. Eleven of these have already demonstrated the required proof and six of the dams do not impound appropriable water. Most of the unregistered dams are between ten and eighty years old.

Examples of persons with registration applications in-process include the Town of Gila Bend, Rancho Allegre Cattle Co., Cities of Sierra Vista and Mesa, Pima County Wastewater Management, Equatorial Mining Ltd., and JJJ Corporation – Oro Ranch.

a. The probable costs and benefits to the implementing agency and other agencies
The Department will better serve the people of Arizona. The Department expects no cost impacts from the proposed technical changes, and expects that it and the public will benefit through greater clarity, consistency, and specificity and reduced confusion.

b. The probable costs and benefits to political subdivisions

The Department expects greater clarity and reduced confusion to benefit political subdivisions.

c. The probable costs and benefits to businesses, including small businesses

As above. Concerning **Small Business** (A.R.S. § 41-1055(B)(5) and A.R.S. § 41-1035), no impacts are expected. Requirements to show proof of a right to impound and appropriate surface water are the same regardless of the size of the business.

d. The probable costs and benefits to private persons and consumers who are directly affected by the proposed rule making

None are expected from these technical amendments.

4. The probable impact on private and public employment in business, agencies, and political subdivisions

No employment impact is expected from these technical amendments.

5. The probable impact on small business

See the discussion under Section 3.c, "the probable costs and benefits to businesses, including small businesses," above.

6. The probable effect on state revenues

None is expected.

7. Less intrusive or less costly alternative methods of achieving the proposed rulemaking

The Department expects no cost impacts from the proposed technical changes. It expects the proposed rule modifications to benefit the public through greater clarity, consistency, and specificity and reduced confusion.

INDUSTRIAL COMMISSION OF ARIZONA

Title 20, Chapter 5, Article 11, Self-Insurance for Individual Employers



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: May 4, 2021

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

FROM: Council Staff

DATE: April 9, 2021

SUBJECT: INDUSTRIAL COMMISSION OF ARIZONA
Title 20, Chapter 5, Article 11, Self-Insurance for Individual Employers

Summary:

This Five-Year Review Report (5YRR) from the Industrial Commission of Arizona (Commission) relates to all rules in Title 20, Chapter 5, Article 11 relating to individual self-insured employers. Specifically, the Commission states Article 11 sets forth the framework for individual self-insured employers, including the requirements for new applications and renewals and the Commission's authorization process. The Commission states the overarching objectives of Article 11 are to: (1) establish a procedural framework for the Commission's Administration Division to authorize self-insurance for the purpose of payment and administration of workers' compensation claims for individual self-insured employers; (2) reduce regulatory burden imposed on individual self-insured employers; and (3) further the objectives of A.R.S. § 23-961, which include safeguarding the solvency of self-insurance programs, guaranteeing that injured workers received workers' compensation benefits, and facilitation of competition, loss control, and employer-tailored safety programs.

The previous 5YRR for these rules, approved by the Council in September 2015 proposed revisions to Article 11 to be completed by December 2016. However, the Commission indicates significant staffing turnover and other higher priority rulemaking within the agency prevented the revisions from being timely completed. The Commission now states the proposed

revisions in the prior 5YRRs will be made moot by the current proposed course of action described below.

Proposed Action

The Commission indicates it is actively in the process of drafting a new article – Article 14 – to consolidate and clarify existing rules regarding the Commission’s self-insurance program. The Commission states, the drafting of Article 14 involves a detailed review of overlapping rules within the three existing self-insurance articles and soliciting feedback from affected stakeholders to ensure accuracy and clarity. The Commission intends to fully repeal Articles 2, 7, and 11 during the Article 14 rulemaking process. The Commission anticipates submitting the rules to the Council by November 2021. The Commission states repealing Articles 2, 7, and 11 and replacing them with one cohesive article that contains all rules related to the Commission’s self-insurance program will resolve inconsistencies and duplications described in this report.

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

Yes. The Commission cites both general and specific statutory authority for these rules.

2. Summary of the agency’s economic impact comparison and identification of stakeholders:

The Commission has authority over processing workers’ compensation claims, including compensation for self-insured employers, and other labor related issues. The Commission has determined that the economic impact of the rules do not differ significantly from what was determined by the economic, small business, and consumer impact statement (EIS) from the most recent rulemaking in 2005.

The stakeholders include: the Commission, employers who apply to self-insure through the Commission’s regulations, and third party administrators or service companies who administer self-employed worker’s compensation claims.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Commission has determined that the rules impose the least burden or costs on regulated persons or entities. The Commission has noted that although small businesses bear minimal costs, these costs are outweighed by increased safety to small businesses and consumers. Additionally, small businesses having fewer work-place injuries may lead to lower premiums for business. These savings for business can subsequently lead to savings for business consumers.

4. Has the agency received any written criticisms of the rules over the last five years?

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

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Except for inconsistencies outlined below, the Commission states that the rules reviewed are clear, concise and understandable. However, the Commission believes that having three separate, nonsequential Articles related to self-insurance can create confusion for employers and self-insurance pools.

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

Except as noted below, the Commission states the rules reviewed are consistent with state statutes and other Commission rules. However, the Commission indicates the addition of Article 11 in 2005 created the following inconsistent and duplicative rules:

- **R20-5-1102** is inconsistent with **R20-5-224** (inconsistent written request requirements).
- **R20-5-1105** is inconsistent with **R20-5-209** (inconsistent duration of Resolution of Authorization).
- **R20-5-1105** is inconsistent with **R20-5-210** (inconsistent duration of Resolution of Authorization).
- **R20-5-1106** is inconsistent with **R20-5-223** (time frames are inconsistent).
- **R20-5-1116** is inconsistent with **R20-5-215** (Fixed Premium Plans are inconsistent for self-insurance pools and self-insured individual employers).
- **R20-5-1117** is inconsistent with **R20-5-216** (Ex-medical Plans should be identical for self-insurance pools and individual employers).
- **R20-5-1118** is inconsistent with **R20-5-217** (Guaranteed Cost Plans should be identical for self-insurance pools and individual employers).
- **R20-5-1119** is inconsistent with **R20-5-218** (Retrospective-Rating Plans should be identical for self-insurance pools and individual employers).
- **R20-5-1120** is inconsistent with **R20-5-219** (payment of taxes should be identical for self-insurance pools and self-insured individual employers).
- **R20-5-1122** is inconsistent with **R20-5-221** (book and record review should be identical for self-insurance pools and self-insured individual employers).
- **R20-5-1129** is inconsistent with **R20-5-735** (time frames are inconsistent).
- **R20-5-1133** is inconsistent with **R20-5-739**, (different grounds for revocation and inconsistent time frame to request a hearing).
- **R20-5-1107**, **R20-5-1111**, and **R20-5-1121** are outdated, as the State Compensation Fund ceased to exist in 2013.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Commission indicates that the rules reviewed are effective in achieving their respective objectives. The Commission states this determination is based on the Commission's experience using the rules and the existence of 82 employers that are currently self-insured under Article 11. The Commission indicates participants in the self-insurance program are appreciative of the opportunity to self-insure and are complimentary of the Commission's self-insurance program.

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

The Commission states the rules reviewed are enforced as written, except to the extent that the State Compensation Fund is referenced in **R20-5-1107**, **R20-5-1111**, and **R20-5-1121**. As noted above, the State Compensation Fund ceased to exist in 2013. The Commission indicates it is not aware of any problems with enforcement.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

Not applicable. The rules in Article 11 implement state law, specifically A.R.S. § 23-961. There is no corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. There have been no rules adopted in Article 11 after July 29, 2010, which require the issuance of a regulatory permit, license or agency authorization.

11. Conclusion

The Commission indicates that the rules are generally clear, concise, understandable, consistent, and enforced except that there are some inconsistencies between Article 11 and Article 2 and the Commission believes that having three separate, nonsequential Articles related to self-insurance (Articles 2, 7, and 11) can create confusion for employers and self-insurance pools.

The Commission indicates it is actively in the process of drafting a new article – Article 14 – to consolidate and clarify existing rules regarding the Commission's self-insurance program. The Commission states, the drafting of Article 14 involves a detailed review of overlapping rules within the three existing self-insurance articles and soliciting feedback from affected stakeholders to ensure accuracy and clarity. The Commission intends to fully repeal Articles 2, 7, and 11 during the Article 14 rulemaking process. The Commission anticipates submitting the rules to the Council by November 2021. The Commission states repealing Articles 2, 7, and 11 and replacing them with one cohesive article that contains all rules related to

the Commission's self-insurance program will resolve inconsistencies and duplications described in this report.

Council staff recommends approval of this report.

**THE INDUSTRIAL COMMISSION OF ARIZONA
OFFICE OF THE DIRECTOR**



**DALE L. SCHULTZ, CHAIRMAN
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February 26, 2021

Nicole Sornsin, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Sent via e-mail to grrc@azdoa.gov

Re: A.A.C. Title 20, Chapter 5, Article 11, Five-year Review Report

Dear Ms. Sornsin:

The Industrial Commission of Arizona (the "Commission") submits for approval by the Governor's Regulatory Review Council (the "Council") the attached Five-year Review Report on 20 A.A.C. 5, Article 11. The Commission has timely filed this report on or before Friday, February 26, 2021, after receiving a one-year extension from the Council.

An electronic copy of this cover letter, the Report, the rules being reviewed, and the general and specific statutes authorizing the rules, are concurrently submitted by e-mail to Krishna Jhaveri. The Commission believes that the Report complies with the requirements of A.R.S. § 41-1056.

The Commission has reviewed all rules in Article 11, and, with this letter, I certify that the Commission is in compliance with A.R.S. § 41-1091. Should you have any questions concerning the report, please contact Chief Counsel Gaetano Testini at (602) 542-5905.

Sincerely,

James Ashley
Director

Enclosures

FIVE-YEAR-REVIEW REPORT

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 11. SELF-INSURANCE FOR INDIVIDUAL EMPLOYERS

FIVE-YEAR-REVIEW REPORT

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 11. SELF-INSURANCE FOR INDIVIDUAL EMPLOYERS

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3.	RULES REVIEWED	Attached
4.	GENERAL AND SPECIFIC STATUTES	Attached
5.	ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT	Attached

FIVE-YEAR-REVIEW SUMMARY

The Industrial Commission of Arizona (the “Commission”) was created in 1925 as a result of legislation implementing the constitutional provisions establishing a workers’ compensation system. From 1925 to 1969, the workers’ compensation system consisted of the State Compensation Fund, which was then a part of the Commission, and self-insured employers which generally comprised the mining and the railroad companies. In 1969, the workers’ compensation system reorganized and expanded to include private insurance companies. The State Compensation Fund was split off from the Commission and established as a separate agency responsible for providing workers’ compensation insurance coverage. The Commission retained both its responsibility as the file of record and its authority over the processing of workers’ compensation claims. Since that time, the role of the Commission has grown to include other labor-related issues such as occupational safety and health, youth employment laws, resolution of wage-related disputes, minimum wage, vocational rehabilitation, workers’ compensation coverage for claimants of uninsured employers, and self-insured employers.

Certification Regarding Compliance with A.R.S. § 41-1091

In the cover letter for this report, the Commission’s Director certifies that the Commission has complied with A.R.S. § 41-1091 by posting directories of its currently applicable rules and substantive policy statements on the Commission’s website, as required by A.R.S. § 41-1091.01(1) & (2).

About Article 11

Until 1997, Arizona law mandated that employers “secure workers’ compensation to their employees” by either: (1) acquiring insurance from a carrier licensed to write workers’ compensation insurance in the state or (2) obtaining authorization from the Industrial Commission of Arizona (Commission) to self-insure. *See* A.R.S. § 23-961(A). In 1997, the Arizona Legislature added “self-insurance pools” as a third mechanism for securing workers’ compensation. *See* A.R.S. §§ 23-961(A), 23-961.01. Specifically, A.R.S. § 23-961.01(A) permits two or more employers who are engaged in similar industries to

form a workers' compensation pool to provide for the direct payment and administration of workers' compensation claims.

Arizona's self-insurance rules are currently contained in three separate articles of the Arizona Administrative Code – Articles 2, 7, and 11. Rules pertaining solely to individual self-insured employers are contained in Article 11, which is the subject of this Five-Year-Review. Article 11 became effective on April 4, 2005, and was last reviewed in a Five-Year-Review report on September 1, 2015.

The Commission is actively in the process of drafting a new article – Article 14 – to consolidate and clarify existing rules regarding the Commission's self-insurance program. The drafting of Article 14 involves a detailed review of overlapping rules within the three existing articles and soliciting feedback from affected stakeholders to ensure accuracy and clarity. The Commission intends to fully repeal Articles 2, 7, and 11 during the Article 14 rulemaking process.

FIVE-YEAR-REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 11. SELF-INSURANCE FOR INDIVIDUAL EMPLOYERS

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

The rules in Article 11 have general and specific authorization under A.R.S. §§ 23-107(A)(1); 23-108.03(B)(1); 23-961(G), and 23-961.01(F).

Pursuant to A.R.S. § 23-107(A)(1), the Commission “has full power, jurisdiction, and authority to formulate and adopt rules . . . for effecting the purposes of [A.R.S. Title 23, Chapter 1, Article 1].” A.R.S. § 23-108.03(B)(1) provides that “[a]ny powers and duties prescribed by law to the commission in [A.R.S. Title 23, Chapters 1, 2 and 6]” may, with certain exceptions (including rulemaking), “be delegated . . . to the director or any of its department heads or assistants.”

A.R.S. § 23-961(G) provides that every “self-insured employer, including workers’ compensation pools, on or before March 31 of each year shall pay a tax of not more than three percent of the premiums that would have been paid . . . during the preceding calendar year.” A.R.S. § 23-1065(A) provides that the Commission may direct payment into the state treasury of not to exceed one percent of the premiums received by private insurance carriers during the immediately preceding calendar year. Finally, under A.R.S. § 23-1065(F), the Commission is permitted to levy an additional assessment of up to a half percent of the premiums, if the apportionment annual reserved liabilities exceed six million dollars. Under A.R.S. § 23-961(G), the Commission has authority to “adopt rules that specify the premium plans and methods to be used for the calculation of rates and premiums and that shall be the basis for the taxes assessed to self-insured employers.”

A.R.S. § 23-961.01(F) provides the Commission with broad authority to “adopt rules necessary for . . . guaranteeing that injured workers receive workers’ compensation benefits as required under [Title 23, Chapter 6].” A.R.S. § 23-961.01(F) further specifies that the rules must “include at a minimum, matters pertaining to classification and rating, loss reserves, investments, financial security including minimum and combined premiums, combined net worth and other indicia necessary for protection from insolvency, specific and aggregate excess insurance, group homogeneity and assessments necessary for participation in and administration of the workers’ compensation system.”

2. Objective of the rules, including the purposes for the existence of the rules.

Article 11 sets forth the framework for individual self-insured employers, including the requirements for new applications and renewals and the Commission’s authorization process. The Commission’s overarching objectives regarding Article 11, in no particular order with respect to priority, are to: (1) establish a procedural framework for the Commission’s Administration Division to authorize self-insurance for the purpose of payment and administration of workers’ compensation claims for individual self-insured employers; (2) reduce regulatory burden imposed on individual self-insured employers; and (3) further the objectives of A.R.S. § 23-961, which include safeguarding the solvency of self-insurance programs, guaranteeing that injured workers received workers’ compensation benefits, and facilitation of competition, loss control, and an employer-tailored safety programs.

R20-5-1101. Definitions

R20-5-1101. Defines relevant terms used in Article 11 and the statutes governing self-insurance (to the extent terms are not already clearly defined by statute).

R20-5-1102. Computation of Time

R20-5-1102. Provides the process for computing time for events in Article 11.

- R20-5-1103. Forms
- R20-5-1103. Addresses the approval and certificate of authority that is necessary before an employer pool may act as a self-insurer.
- R20-5-1104. Commission Approval to Act as Self-insurer
- R20-5-1104. Addresses the approval and certificate of authority that is necessary before an employer pool may act as a self-insurer.
- R20-5-1105. Resolution of Authorization
- R20-5-1105. This rule is to confirm that if the Commission grants authorization to self-insure, it will issue a Resolution of Authorization which will be reviewed and renewed annually by the Commission. The rule also confirms that the Resolution of Authorization will continue in effect until either the Commission takes action under the Article or the self-insured terminates its authorization under R20-5-1136.
- R20-5-1106. Time-frames
- R20-5-1106. Sets time frames the Commission uses in reviewing initial and renewal applications for authority to self-insure, establishing reasonable time parameters for these application processes.
- R20-5-1107. Initial Application under A.R.S. § 23-961
- R20-5-1107. Establishes the required documentation necessary for the Commission to analyze an initial application for self-insurance authority.
- R20-5-1108. Self-insurance Renewal
- R20-5-1108. Establishes the required documentation necessary to process an application for renewal of self-insurance authority.
- R20-5-1109. Security Deposit; Excess Insurance Policy

- R20-5-1109. Establishes the required security amount and the Commission's process for approving a credit for excess insurance against the security amount.
- R20-5-1110. Posting of Guaranty Bond; Bond Amount; Effective Date
- R20-5-1110. Sets forth the requirements for a self-insured employer to obtain and maintain a guaranty bond instead of other security.
- R20-5-1111. Posting of Other Bonds or Treasury Notes of the United States Instead of Guaranty Bond; Registration; Deposit
- R20-5-1111. Sets forth the requirements for a self-insured employer to obtain bonds or treasury notes of the United States as an alternative security to a guaranty bond. The rule also provides the procedure the Commission follows with these alternative securities if one or more of the self-insurer's claims are assigned to the special fund under A.R.S. § 23-966.
- R20-5-1112. Letter of Credit or Local Government Investment Pool Funds (LGIP)
- R20-5-1112. Sets forth the requirements for a self-insured employer to obtain letters of credit or local government investment pool fund as an alternative security to a guaranty bond.
- R20-5-1113. Substitution of Securities
- R20-5-1113. Sets forth the procedure for substituting a new security in exchange of a self-insurer's security deposit.
- R20-5-1114. Exemption from Requirement to Post Security
- R20-5-1114. Sets forth the requirements and procedures to be exempt from posting security. The rule also confirms that the Commission will give a self-insurer requesting an exemption from the requirement to post security written notice approving or denying the request and the opportunity to request a hearing within 10 days. The rule also sets forth the

consequences for a self-insured who fails to comply with the conditions of exemption.

R20-5-1115. Rating Plans Available for a Self-insurer

R20-5-1115. Sets forth the rating plans available to self-insurers for the purpose of calculating taxes required under A. R.S. §§ 23-961 and -1065.

R20-5-1116. Fixed-Premium Plan; Formula; Eligibility; Necessary Information for Plan

R20-5-1116. Establishes the formula for calculation and procedure for using a fixed-premium plan in determining the amount of taxes to be paid under A.R.S. §§ 23-961 and -1065.

R20-5-1117. Ex-medical Plan; Formula; Eligibility; Necessary Information for Plan

R20-5-1117. Establishes the formula for calculation and procedure for using an ex-medical plan in determining the amount of taxes to be paid under A.R.S. §§ 23-961 and -1065.

R20-5-1118. Guaranteed-Cost Plan; Formula; Eligibility; Necessary Information for Plan

R20-5-1118. Establishes the formula for calculation and procedure for using a guaranteed-cost plan in determining the amount of taxes to be paid under A.R.S. §§ 23-961 and -1065.

R20-5-1119. Retrospective-Rating Plan; Formula; Eligibility; Necessary Information for Plan

R20-5-1119. Establishes the formula for calculation and procedure for using a retrospective-rating plan in determining the amount of taxes to be paid under A.R.S. §§ 23-961 and -1065.

- R20-5-1120. Completion of Reports in Support of Tax Rating Plan; Calculation and Payment of Taxes Owed by Self-insurer under A.R.S. §§ 23-961 and 23-1065
- R20-5-1120. Sets forth the procedure under which tax payments required by A.R.S. §§ 23-961 and -1065 are processed by the Commission and establishes a penalty in the event the self-insured entity fails to pay its annual taxes.
- R20-5-1121. Basis for Definitions, Classifications, Rating Procedures, and Plans
- R20-5-1121. Establishes that the Commission's Accounting Division uses the same rating organization used by the State Compensation Fund under A.R.S. Title 20, Ch. 2, Art. 4 in calculating the net taxable premium under A.R.S. §§ 23-961 and -1065.
- R20-5-1122. Report, Book, Record, and Data Review by the Commission
- R20-5-1122. Provides that the reports, books and records of the self-insured entity are subject to review by the Commission and that it is the duty of the self-insured to ensure that the information is clear, valid and understandable.
- R20-5-1123. Audit and Cost of Audit
- R20-5-1123. Provides that the Commission may perform or have performed, an audit of the payroll, loss payment and loss reserve records for any self-insurer, at the cost of the self-insurer.
- R20-5-1124. Requirement to Provide Information to the Commission
- R20-5-1124. Requires a self-insurer to provide information described in Article 11 to the Commission.
- R20-5-1125. Notice to Commission of Location of Self-insurer's Claims Files
- R20-5-1125. Requires a self-insurer to give notice to the Claims Manager of the Commission of the location of the self-insurer's open and closed workers' compensation claims files and to give written notice to the Claims

Manager of the Commission at least thirty days in advance of moving its workers' compensation claim files.

R20-5-1126. Processing of Workers' Compensation Claims by a Self-insured Employer

R20-5-1126. Sets forth the requirements for a self-insurer to process its own workers' compensation claims.

R20-5-1127. Review of Initial Application and Request for Renewal to Self-insure

R20-5-1127. Establishes the required documentation necessary to process an initial and renewal applications for self-insurance authority.

R20-5-1128. Decision by the Commission on Initial Application or Request for Renewal of Authorization to Self-insure

R20-5-1128. Establishes the factors that the Commission reviews in determining whether to approve or deny initial and renewal applications for self-insurance authority.

R20-5-1129. Right to Request a Hearing

R20-5-1129. Establishes the right of the applicant to a hearing from any findings and order of the Commission. The rule also sets forth the process and relevant time frames for requesting a hearing.

R20-5-1130. Hearing Rights and Procedures

R20-5-1130. Establishes the burden of proof and procedures to be followed in any hearing before the Commission relating to this Article.

R20-5-1131. Decision Upon Hearing by the Commission

R20-5-1131. Establishes the standards to be followed by the Commission at a hearing concerning the application for self-insurance authority or revocation of authority to self-insure. The rule also sets forth the Commission's duty to

issue a written decision and the finality of the decision absent a request for review.

R20-5-1132. Request for Review

R20-5-1132. Establishes the time limitations and grounds to be considered in a review of a Commission decision under this Article.

R20-5-1133. Revocation of Authorization to Self-insure

R20-5-1133. Provides the grounds to be considered for revocation of authority to self-insure, the relevant time frames to request a hearing and the governing rules for hearing rights and procedures.

R20-5-1134. Notice of Bankruptcy, Change in Ownership Status, or Change in Business Address

R20-5-1134. Sets forth the requirements of a self-insurer to notify the Commission in writing within 24 hours of any bankruptcy filing under federal law or insolvency proceeding under any state's laws, change of ownership status or change of business address.

R20-5-1135. Plan of Action for Retaining Self-Insurance Authority in the Event of Insolvency or Bankruptcy

R20-5-1135. Sets forth the procedure that an insolvent or bankrupt self-insurer seeking to reorganize must follow in order to retain its authority to self-insure.

R20-5-1136. Notice of Termination of Authorization to Self-Insure by Self-Insurer

R20-5-1136. Provides the procedure that a self-insurer seeking to terminate their self-insurer status must follow.

3. Effectiveness of the rules in achieving their objectives, including a summary of any available data supporting the conclusion reached.

The rules reviewed are effective in achieving their respective objectives. This determination is based on the Commission's experience using the rules and the existence of 82 employers that are currently self-insured under Article 11. Participants in the self-insurance program are appreciative of the opportunity to self-insure and are complimentary of the Commission's self-insurance program.

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.

Except as noted below, the rules reviewed are consistent with state statutes and other Commission rules. The addition of Article 11 in 2005 created the following inconsistent and duplicative rules:

R20-5-1102 is inconsistent with R20-5-224 (inconsistent written request requirements).

R20-5-1105 is inconsistent with R20-5-209 (inconsistent duration of Resolution of Authorization).

R20-5-1105 is inconsistent with R20-5-210 (inconsistent duration of Resolution of Authorization).

R20-5-1106 is inconsistent with R20-5-223 (time frames are inconsistent).

R20-5-1116 is inconsistent with R20-5-215 (Fixed Premium Plans are inconsistent for self-insurance pools and self-insured individual employers).

R20-5-1117 is inconsistent with R20-5-216 (Ex-medical Plans should be identical for self-insurance pools and individual employers).

R20-5-1118 is inconsistent with R20-5-217 (Guaranteed Cost Plans should be identical for self-insurance pools and individual employers).

R20-5-1119 is inconsistent with R20-5-218 (Retrospective-Rating Plans should be identical for self-insurance pools and individual employers).

R20-5-1120 is inconsistent with R20-5-219 (payment of taxes should be identical for self-insurance pools and self-insured individual employers).

R20-5-1122 is inconsistent with R20-5-221 (book and record review should be identical for self-insurance pools and self-insured individual employers).

R20-5-1129 is inconsistent with R20-5-735 (time frames are inconsistent).

R20-5-1133 is inconsistent with R20-5-739, (different grounds for revocation and inconsistent time frame to request a hearing).

R20-5-1107, R20-5-1111, and R20-5-1121 are outdated, as the State Compensation Fund ceased to exist in 2013.

The listing of statutes and rules used in determining consistency is as follows: Arizona Revised Statutes, Title 23, Chapter 6; A.A.C. Title 20, Ch. 5, Articles 2, 7, and 11.

There are no corresponding federal statutes or rules specific to self-insurance by individual employers.

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

The rules reviewed are enforced as written, except to the extent that State Compensation Fund is referenced in R20-5-1107, R20-5-1111, and R20-5-1121. The Commission is not aware of any problems with enforcement.

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

Except as noted in Section 4 (above), the rules reviewed are clear, concise and understandable. However, the Commission believes that having three separate, nonsequential Articles related to self-insurance can create confusion for employers and self-insurance pools.

7. Written criticisms of the rules received by the agency within the five years immediately preceding the five-year review report.

There have been no written criticisms of the rules received by the agency within the last 5 years.

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.**

The most recent Economic, Small Business, and Consumer Impact Statement is from 2005 and is attached as Exhibit 3. The Commission does not believe that the current estimated economic, small business, and consumer impact of the rules is substantially different from that set out in the 2005 Economic, Small Business, and Consumer Impact Statement.

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.**

No business competitiveness analysis has been submitted to the Commission regarding Article 11.

10. **If applicable, whether the agency completed the course of action indicated in the agency's previous five-year-review report.**

The previous Five-Year-Review Report proposed revisions to Article 11 to be completed by December 2016. However, significant staffing turnover and other higher priority rulemaking within the agency prevented the revisions from being timely completed. The proposed revisions in prior Five-Year Review Reports will be made moot after the creation of Article 14 and the repeal of Article 11.

11. A determination after analysis that probable benefits outweigh probable costs and that the rules impose the least burden and costs on persons regulated.

The probable benefits of the rules in Article 11 outweigh the probable costs. In addition, the Commission believes that the rules impose the least burden and costs on regulated persons/entities. This determination is based on the Commission's experience using the rules and the existence of 82 employers that are currently self-insured under Article 11.

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

The rules in Article 11 implement state law, specifically A.R.S. § 23-961. There is no corresponding federal law.

13. For rules adopted 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.

There have been no rules adopted in Article 11 after July 29, 2010, which require the issuance of a regulatory permit, license or agency authorization.

14. Proposed course of action.

The Commission is actively in the process of drafting a new article – Article 14 – to consolidate and clarify existing rules regarding the Commission's self-insurance program. The drafting of Article 14 involves a detailed review of overlapping rules within the three existing self-insurance articles and soliciting feedback from affected stakeholders to ensure accuracy and clarity. The Commission intends to fully repeal Articles 2, 7, and 11

during the Article 14 rulemaking process. The Commission anticipates submitting the rules to the Council by November 2021. Repealing Articles 2, 7, and 11 and replacing them with one cohesive article that contains all rules related to the Commission's self-insurance program will resolve inconsistencies and duplications described in Sections 4 and 6, above.

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515, effective May 14, 2021 (Supp. 21-1).

R20-5-1007. Notice of Right of Review

A determination issued under A.R.S. § 23-357 shall include a notice informing the parties of their right to seek review under A.R.S. § 23-358 and § 12-901 et seq.

Historical Note

Adopted effective January 26, 1988 (Supp. 88-1). R20-5-1007 recodified from R4-13-1007 (Supp. 95-1). Former R20-5-1007 renumbered to R20-5-1008; new R20-5-1007 renumbered from R20-5-1006 and amended by final rulemaking at 12 A.A.R. 1416, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking 27 A.A.R. 515, effective May 14, 2021 (Supp. 21-1).

R20-5-1008. Payment of Claim

- A. The Department shall send any payment of a wage claim received by the Department to the claimant by certified mail, return receipt requested, unless the claimant elects to pick up the check in person at the Department.
- B. If the Department discovers that payment of a wage claim is alleged to have been made directly to the claimant, the Department shall verify the payment by serving the claimant with notice that payment of the wage claim is alleged to have been made directly to the claimant. If the claimant confirms that payment of the wage claim was made directly to the claimant or does not respond to the Department's notice within 14 days of the date of service of the Department's notice, the Department shall deem the claim to have been paid and shall dismiss the wage claim.
- C. Payment of a partial amount of a wage claim does not preclude the Department from completing its investigation of the balance of the claim.
- D. In the case of a determination and directive for payment issued by the Department under A.R.S. § 23-357, the Department shall, if the employer agrees and with the written consent of the claimant, enter into a payment agreement with the employer for payment of the amount of wages found to be owed the claimant.

Historical Note

New R20-5-1008 renumbered from R20-5-1007; Section amended by final rulemaking at 12 A.A.R. 1416, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking 27 A.A.R. 515, effective May 14, 2021 (Supp. 21-1).

R20-5-1009. Service of Determinations, Notices, and Other Documents

- A. A determination, notice, or other document required by this Article or other law to be served upon a party, shall be made upon the party, or, if represented by legal counsel, the party's legal counsel. Service upon legal counsel is considered service upon the party.
- B. Service may be made and is deemed complete by:
 1. Depositing the document in regular or certified mail, addressed to the party served at the address shown in the records of the Department, or by personal delivery upon the party.
 2. With a party's consent, transmission by e-mail to the e-mail address shown in the records of the Department.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1416, effective June 4, 2006 (Supp. 06-2). Amended by final rulemaking 27 A.A.R. 515, effective May 14, 2021 (Supp. 21-1).

ARTICLE 11. SELF-INSURANCE FOR INDIVIDUAL EMPLOYERS**R20-5-1101. Definitions**

In addition to the definitions provided in A.R.S. § 23-901, the following definitions apply to this Article:

"Act" means the Arizona Workers' Compensation Act, A.R.S. § 23-901 et seq.

"Affiliate" or "affiliate relationship" means a person or entity that has the power to control, directly or indirectly, through one or more intermediaries, another person or entity.

"Anniversary date" means the date beginning one year from the initial effective date of the Authorization to Self-insure.

"Applicant" means an individual employer filing an initial application for authority to self-insure under A.R.S. § 23-961.

"Authorized signature" means the signature of an officer of the self-insurer.

"Cash-flow ratio" means a numerical relationship that reflects an ability to meet current financial obligations out of cash flow and is calculated by dividing funds provided by operations of a business by current liabilities.

"Chief counsel" means the chief counsel for the Industrial Commission of Arizona.

"Claim" means a worker's compensation claim.

"Claims Division," means the Claims Division of the Industrial Commission of Arizona.

"Classification code" means a number assigned by an approved rating organization that classifies employees by type of job performed.

"Control" means the possession, direct or indirect, of power to direct or cause the direction of, the management and policies of a person or entity, whether through the ownership of voting securities, by contract, or otherwise.

"Current ratio" means a numerical relationship that reflects an ability to pay current obligations and is calculated by dividing current assets by current liabilities.

"Debt-status ratio" means a numerical relationship that reflects the proportion of funds supplied internally relative to the funds contributed by creditors and is calculated by dividing net worth by total liabilities.

"Division" means the Accounting Division of the Industrial Commission of Arizona.

"Ex-medical plan" means a method of determining the premium upon which taxes are calculated that provides for rate revisions based upon the self-insurer operating a medical facility with a program for providing medical, surgical, or hospital services to a majority of the self-insurer's employees and that complies with the requirements of A.R.S. § 23-1070. Neither losses nor incurred loss reserves are used in this plan.

"Excess insurance carrier" means an insurance carrier authorized to issue policies of excess insurance coverage to a self-insured employer.

"Experience modification rate" means a ratio comparing actual losses to expected losses based on a formula determined by an approved rating organization and which includes three years of loss information.

"Fixed premium plan" means a method of determining the premium upon which taxes are calculated in which neither losses

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nor incurred loss reserves are used for calculation. The only discount is for premium size.

“Fully-funded risk management fund” means a fund that maintains a positive equity balance that is sufficient to cover all of the fund’s actuarial losses.

“Guaranteed cost plan” means a method of determining the premium upon which taxes are calculated that provides for a direct relationship, on an annual basis, of the premium for tax purposes and the experience modification rate developed to reflect the loss payment and incurred loss experience of the self-insured employer.

“Individual employer” means an employer under the Act that is applying for authority to self-insure, or is approved to self-insure, that is not an entity described in A.R.S. § 23-961.01; § 11-952.01; or § 41-621.01.

“Parent company” means one that owns sufficient stock in a subsidiary company to have voting control of the subsidiary company, as “control” is defined in this Article.

“Profitability ratio” means a numerical relationship that represents the return on assets and the efficiency of assets and is calculated by dividing profit before taxes by total assets, multiplied by 100 expressed as a percentage.

“Public entity” means an individual employer that is a state, county, municipality, school district, or any other entity with taxing authority.

“Quick ratio” means a numerical relationship that represents the degree to which liabilities are covered by the most liquid current assets and is calculated by dividing cash and equivalents, plus receivables, by current liabilities.

“Rating organization,” means an entity that meets the requirements of A.R.S. § 20-363, and is approved by the Arizona Department of Insurance to establish rates, codes, and formulas used to calculate worker compensation premiums.

“Resolution of Authorization” means a document issued by the Commission that grants authority to self-insure for purposes of workers’ compensation.

“Retrospective rating plan” means a method of determining the premium upon which taxes are calculated that provides for the relationship between the premium for tax purposes, the experience modification rate developed to reflect the loss payment and incurred loss experience of the self-insured employer, and the actual incurred losses for the tax year.

“Securities” or “security” means a guaranty bond, a bond of the United States or its agencies, United States’ Treasury Notes, a letter of credit, or Local Government Investment Pool (LGIP) funds, or appropriate documents renewing or continuing any of these.

“Self-insurer” or “self-insured” means an individual employer that the Commission authorizes to self-insure for workers’ compensation insurance under A.R.S. § 23-961.

“Working capital ratio” means a numerical relationship that measures the sufficiency of working capital to support sales and is calculated by dividing working capital by sales. Working capital is calculated by subtracting current liabilities from current assets.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

- A. In computing any period of time prescribed or allowed by this Article, the day of the act or event from which the designated period of time begins to run is not included. The last day of the period computed is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays are excluded in the computation.
- B. Except as otherwise provided by law, the Division may extend time limits prescribed by this Article for good cause. Any request for an extension of a time limit shall be submitted to the Division in writing at least 10 days before the expiration of the time limit for which an extension is sought.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1103. Forms

The following forms are available upon request from the Division or from the Commission’s Internet site at www.ica.state.az.us, and include the following information for each:

- A. Initial application for authority to self-insure:
1. Legal name of the applicant and requested effective date for authority to self-insure;
 2. Mailing address and telephone number of applicant’s principal Arizona office and home office;
 3. Name of state under which applicant is incorporated, if applicant is a corporation;
 4. Name of parent company, if applicant is a subsidiary;
 5. Name, address, and status of partners (general, special, and limited), if applicant is a partnership;
 6. Length of time in business in Arizona and elsewhere, if applicable;
 7. Nature or type of business in Arizona;
 8. Arizona payroll data;
 9. Current workers’ compensation insurance data, including current expiration date;
 10. Statement of reasons for rejection or cancellation if an application for worker’s compensation insurance submitted by applicant has ever been rejected or a policy of workers’ compensation insurance held by the applicant has ever been cancelled;
 11. Listing of states where self-insurance was denied, if any, and where the applicant is currently self-insured;
 12. Arizona claims history and data for three years preceding application date;
 13. Arizona loss history and experience modification rates for three years preceding application date;
 14. Name of excess insurance carrier;
 15. Name, address, and telephone number of third-party administrator or individual responsible for processing Arizona workers’ compensation claims;
 16. Name and address of Arizona agent upon whom legal notice may be served;
 17. Selection of tax plan;
 18. Name, address, telephone and facsimile number, and e-mail address of person responsible for completing the premium tax information;
 19. Name, address, and telephone number of claims office where Arizona workers’ compensation claims will be processed;
 20. Name, address, telephone and facsimile number, and e-mail address of the primary and secondary points of contact for the application and self-insurance process;

R20-5-1102. Computation of Time

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21. Statement that all information and assertions contained in the application and the documents accompanying the application are factually correct and true; and
 22. Listing of required attachments.
- B. Workers' compensation liability form:**
1. Name of self-insurer;
 2. Selection and calculation of required securities and excess insurance, which includes calculation and reporting the following:
 - a. For all claims reported in the current calendar year, the number of open claims, total incurred liability, both medical and compensation, less the amount paid on these claims to equal the remaining liability or amount owing on these claims;
 - b. For all open claims incurred in prior years and remaining open in the current year, the number of open claims, the total incurred liability, both medical and compensation, less the amount paid on these claims to equal the remaining liability or amount owing on these claims;
 - c. The total remaining liability on all open claims less any reimbursement for excess insurance ceded to equal the net remaining liability owing on all claims; and
 - d. The amount calculated in subsection (B)(2)(c) multiplied by 125%;
 3. Name of excess insurance carrier that provides reimbursement to self-insurer; and
 4. A statement by the Chief Financial Officer or Chief Executive Officer attesting to the truthfulness of the information contained in the Workers' Compensation Liability Form;
- C. Self-insurance workers' compensation guaranty bond:**
1. Name of self-insurer;
 2. Name of the surety insurance company;
 3. Description of the bond, bond number, amount, and conditions of obligation;
 4. Statement regarding the responsibility for fees and costs associated with the collection of the bond and the responsibility for payment of any award or judgment against the surety; and
 5. Request for authorized signatures and titles of self-insurer, surety, and agent or attorney-in-fact, and a notarized power of attorney, and date of signing.
- D. Parent company guaranty:**
1. Name and state of incorporation of parent company;
 2. Name of self-insured subsidiary to be included in the guaranty;
 3. Statement that the parent company will assume the workers' compensation liabilities of the subsidiary if the subsidiary is unable to honor these liabilities, which guarantee is for the benefit of and may be enforced by any and all employees of subsidiary; and
 4. Corporate seal.
- E. Self-insured payroll report:**
1. Name of self-insured;
 2. Tax plan selection;
 3. Period covered by report;
 4. Payroll description (classification codes, methods, and types of pay);
 5. Amount paid for period covered by the report;
 6. Statement that all information contained in the report is correct; and
 7. Request for authorized signature, date, title, and telephone number of person signing the form.
- F. Self-insured medical report:**
1. Name of self-insured;
 2. Period covered by report;
 3. Amount paid relating to treatment of industrial injuries, including payment of medical personnel employed by the self-insurer and medical providers providing outside services;
 4. Compensation paid to worker's compensation claimants;
 5. Insurance premiums paid;
 6. Total expenditures for workers' compensation and occupational disease claims;
 7. Statement that all information contained in the report is correct; and
 8. Request for authorized signature, date, title, and telephone number of person signing the form.
- G. Self-insured hospital report:**
1. Name of self-insurer;
 2. Period covered by report;
 3. Amount paid for operational expenses, including payroll, employee benefits, surgeon and physician fees, pharmacy costs, miscellaneous supplies and services, utilities, depreciation, licenses, and taxes;
 4. Amount of revenue, including charges for inpatient and outpatient care, miscellaneous revenue, employee-paid premiums, and employer-paid premiums;
 5. Reconciliation of cash account, including cash balance, total cash available, investments, operating expenses, disbursements, and net cash balance;
 6. Statement that all information contained in the report is correct; and
 7. Request for authorized signature, date, title, and telephone number of person signing the form.
- H. Self-insured injury report:**
1. Name of self-insurer;
 2. Period covered by report;
 3. Description of individual claims for the current year and three preceding years requiring payment greater than \$5,000.00 for each claim, including name of claimant, date of injury, nature of injury, accumulated amount paid, and the amount of any expenses incurred but not paid;
 4. The total amount paid, and the amount of any expenses incurred but not paid, for the current year and three preceding years for all claims requiring a total payment less than \$5,000.00 for each claim;
 5. Statement that all information contained in the report is correct; and
 6. Request for authorized signature, date, title, and telephone number of person signing the form.
- I. Quarterly tax payment:**
1. Name and address of the self-insurer;
 2. Designation of the applicable quarter;
 3. Amount of annual tax paid in the previous calendar year; amount of the quarterly tax paid adjusted for any change in the tax rate for the applicable quarter;
 4. Statement that all information contained in the form is correct; and
 5. Request for authorized signature, date, title, and telephone number of person signing the form.
- J. Notice of self-insurer's termination of self-insurance:**
1. Name, address, and telephone number of self-insurer and all Arizona subsidiaries covered under the authority to self-insure, including if applicable:
 - a. Names and addresses of all Arizona operations or locations covered by self-insurance authority;
 - b. Names and addresses of all partners, if self-insurer is a partnership; and

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- c. Current and former names of self-insurer if the self-insurer has undergone a name change since the most recent effective date of the authority to self-insure;
2. Effective date of termination of authority to self-insure;
 3. Name and address of workers' compensation insurance carrier providing coverage after the effective date of termination;
 4. For the new coverage; effective date of workers' compensation coverage;
 5. Statement that all information contained in the form is correct; and
 6. Request for authorized signature, date, title, and telephone number of person signing the form.
- K. Self-provider of medical benefits:**
1. Indication of whether the self-insurer is, or is not, directing medical care for all of its employees;
 2. If the self-insurer is directing medical care for its employees, the self-insurer shall:
 - (a) Attach a copy of all contracts between the self-insurer and the medical providers; or
 - (b) Submit a list of names and addresses of all medical providers with whom the self-insurer contracts; and
 - (c) The effective date of the agreements between the employer and medical provider; and
 3. Authorized signature, date, and title of person signing the form.
- Historical Note**
- New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).
- R20-5-1104. Commission Approval to Act as Self-insurer**
An employer does not have authority to act as a self-insurer under A.R.S. § 23-961 unless:
1. The Commission authorizes the employer to be self-insured; and
 2. Except as provided in R20-5-1114, the employer posts security in an amount as required under this Article.
- Historical Note**
- New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).
- R20-5-1105. Resolution of Authorization**
The Commission shall issue a Resolution of Authorization to an applicant that meets the requirements of this Article. The Commission shall annually review and renew a Resolution of Authorization to self-insure. The authority to self-insure is valid and continues in effect until the Commission takes action under this Article or the self-insured terminates its authorization to self-insure under R20-5-1136.
- Historical Note**
- New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).
- R20-5-1106. Time-frames**
- A. Administrative completeness review.**
1. Initial application.
 - a. The Division shall review an initial application for authority to self-insure within 20 days of receipt of the application to determine whether the application contains the information required by A.R.S. § 23-961 and this Article.
 - b. The Division shall inform the applicant by written notice if the application is incomplete. The Division shall include in its written notice to the applicant, a list of the missing information necessary to comply with this Article.
 2. The Division shall deem the application withdrawn if the applicant fails to post security as required under this Article or fails to file a completed application within 10 days of being notified by the Division that the application is incomplete, unless the applicant obtains an extension to provide the missing information under subsection (D).
 2. Request for renewal.
 - a. The Division shall review a request for renewal within 10 days of receipt of the request to determine whether the request contains the information in A.R.S. § 23-961 and this Article.
 - b. The Division shall inform a self-insurer by written notice if the request for renewal is incomplete. The Division shall include in its written notice to the self-insurer, a list of the missing information necessary to comply with this Article, and the right to request an extension under subsection (D).
- B. Substantive review.**
1. Initial application. Within 70 days after the Division determines an initial application complete, the Commission shall determine whether the initial application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall issue either a Resolution of Authorization granting authority to self-insure, or an order denying authority to self-insure.
 2. Request for renewal. Within 60 days after the Division receives all the required information under this Article, the Commission shall determine whether a request for renewal for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall renew the self-insurer's authority to self-insure, or issue an order denying or revoking authority to self-insure.
- C. Overall time-frame.**
1. Initial application. The overall time-frame is 90 days, unless extended under A.R.S. § 41-1072 et seq.
 2. Request for renewal. The overall time-frame is 70 days, unless extended under A.R.S. § 41-1072 et seq.
- D. If an applicant or self-insurer cannot timely submit to the Division information to complete an initial application or a request for renewal, the applicant or self-insurer may obtain an extension to submit the missing information by filing a written request with the Division. The written request for extension shall be filed no later than 10 days after receipt of the deficiency notice from the Division. The written request for an extension shall state the reasons the applicant or self-insurer is unable to meet the deadline. If an extension will enable the applicant or self-insurer to assemble and submit the missing information, the Division shall grant an extension of not more than 30 days and provide written notice of the extension to the applicant or self-insurer.**
- Historical Note**
- New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).
- R20-5-1107. Initial Application under A.R.S. § 23-961**
- A.** A public entity may file an initial application for authority to self-insure under A.R.S. § 23-961 if the public entity:
1. Provides an annual payroll in Arizona of at least \$2,000,000; and
 2. Has total assets of at least \$50,000,000.
- B.** An individual employer that is not a public entity may file an initial application for authority to self-insure under A.R.S. § 23-961 if the employer:
1. Is engaged in business in Arizona and has been for at least five years before the date of the initial application;

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2. Provides an annual payroll in Arizona of at least \$2,000,000, including the combined payrolls of all subsidiary companies that will be under the self-insurance authorization;
 3. Meets either of the following thresholds:
 - a. Has assets of at least \$50,000,000; or
 - b. Has \$10,000,000 in net worth and a cash flow ratio of at least .25.
 - C. The applicant for authority to self-insure shall complete and file with the Division a typewritten application form approved by the Division. An application is considered filed when it is received at the Division.
 - D. The authorized representative of the applicant shall sign and date the initial application.
 - E. The authorized representative signing the initial application shall verify, in writing, that the information submitted with the application is correct.
 - F. The Division shall deem an initial application for authority to self-insure complete if an applicant that is not a subsidiary company provides the following information with the initial application:
 1. A statement from the board of directors or governing body:
 - a. Authorizing the filing of the application, and
 - b. Designating the person given authority to sign the application on behalf of the applicant;
 2. A statement classifying the applicant's Arizona employees using the workers' compensation classification codes of the approved rating organization used by the Arizona State Compensation Fund;
 3. A copy of the applicable hospital or medical agreement or a detailed statement of the arrangements between the employer and the medical provider, if medical care is directed under A.R.S. § 23-1070;
 4. If the applicant is not a public entity, a copy of the applicant's audited financial statements or internally-reviewed and signed financial statements for the most current and prior two fiscal years, including any notes to the financial statements;
 5. If the applicant is a public entity, a copy of the applicant's audited financial statement for the most current and prior fiscal year; and
 6. If the applicant is a public entity that qualifies for exemption under R20-5-1114(A), the certified statement required under R20-5-1114(B).
 - G. The Division shall deem an initial application for authority to self-insure complete if an applicant that is a subsidiary company provides the following information with the initial application:
 1. The information required in Section (F);
 2. A completed Parent Company Guaranty form signed by the authorized representative of the subsidiary's parent company;
 3. A certified copy of the resolution of the parent company's board of directors authorizing a designated officer to complete, sign, and file the Parent Company Guaranty form; and
 4. A copy of the parent company's audited financial statements for the most current and prior two fiscal years, including any notes to the financial statements.
- A. A self-insurer that is required to post security under this Article shall request renewal of authorization to self-insure with the Division 30 days before the self-insurer's anniversary date, by filing a Workers' Compensation Liability form. The Commission shall deem the request for renewal complete if the self-insurer provides the following:
 1. A copy of the self-insurer's most recent audited annual financial statement or internally reviewed and signed financial statement or annual report. A parent company shall submit a copy of its most recent audited annual financial statement or annual report;
 2. If the self-insured company is a subsidiary, a completed Parent Company Guaranty form signed and dated by the authorized representative of the parent company, or if the parent company of the subsidiary is different from the last filing approved by the Commission, a certified copy of the parent company board of director's resolution authorizing a designated officer to complete, sign, and file the Parent Company Guaranty form;
 3. Per claim data to support the summary information on the Workers' Compensation Liability form. The self-insurer shall provide this information in the same format as in R20-5-1103(B)(2)(a) and (b);
 4. Deposit of security as shown on the completed Worker's Compensation Liability form no later than the self-insurer's anniversary date subject to R20-5-1127 and R20-5-1128;
 5. A certificate of excess insurance or a continuing certificate of existing excess insurance if the self-insurer takes a credit for excess insurance under R20-5-1109;
 6. If medical care is directed under A.R.S. § 23-1070, a copy of the current medical or hospital medical agreement, or detailed statement of the arrangements, if not previously provided;
 7. A statement of the total number of full-time and part-time Arizona employees;
 8. If the Division determines that the self-insurer's denial rate exceeds 12% of claims filed, a statement from the self-insurer identifying the reason for each denial of a workers' compensation claim;
 9. If the Division determines that the self-insurer's experience modification rate is greater than 1.10, a statement from the self-insurer identifying the reasons for that level of losses;
 10. Name of the third-party administrator;
 11. Principal location of the self-insurer in Arizona;
 12. A description of the self-insurer's current business in Arizona and a description of any changes in the nature of business in Arizona in the past year;
 13. List of any subsidiary company located in Arizona; and
 14. Primary and secondary points of contact, including addresses, telephone numbers, facsimile numbers, and e-mail information.
 - B. A self-insurer that is exempt from the requirement to post security, shall request renewal of authorization to self-insure by filing an annual statement described under R20-5-1114(B) no later than the employer's anniversary date. The Commission shall deem the request for renewal complete if the self-insurer provides the following:
 1. Information required under subsections (A)(1), (A)(7) through (A)(10) and (A)(14); and
 2. A certified statement that contains the information described in R20-5-1114 (A) and (B).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1108. Self-insurance Renewal**Historical Note**

New Section made by final rulemaking at 11 A.A.R.

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1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1109. Security Deposit; Excess Insurance Policy

- A. Except as provided in R20-5-1114, an applicant authorized to self-insure under this Article shall post security in the amount of at least \$100,000.00 under A.R.S. § 23-961. The self-insurer shall not reduce or offset this minimum amount by any credit for excess insurance.
- B. Except as provided in R20-5-1114, and subject to the minimum security requirement of A.R.S. § 23-961, a self-insurer filing a request to renew its authority to self-insure under R20-5-1108 shall post security in an amount equal to 125% of its total estimated future liability, or in an amount determined by the Division under R20-5-1127.
- C. Subject to review by the Commission, the self-insurer shall determine its total estimated liability by using the Workers' Compensation Liability form.
- D. The Commission shall approve a credit for excess insurance against the amount of security required under this Article only if the following criteria are met:
1. The self-insurer satisfies the minimum-security requirement of A.R.S. § 23-961,
 2. The self-insurer does not reduce or offset the minimum-security amount by an excess insurance,
 3. The self-insurer calculates the credit on the Workers' Compensation Liability form,
 4. The excess insurance policy contains a 60-day notice of termination,
 5. The excess insurer does not have an affiliate relationship with the self-insurer,
 6. The excess insurance policy provides that the insolvency of the self-insurer does not relieve the excess insurer of liability under the policy, and
 7. The excess insurer posts a deposit under A.R.S. § 23-961(D).
- E. If an excess insurance provider gives the self-insurer notice of its intent to terminate the policy, the self-insurer shall immediately:
1. Provide written notice of the notice of termination to the Division, and
 2. Deposit security as shown on the Worker's Compensation Liability form without credit for the excess insurance.

Historical Note

New Section made by final rulemaking at 11 A.A.R.
1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1110. Posting of Guaranty Bond; Bond Amount; Effective Date

- A. A self-insurer shall ensure that a guaranty bond or rider for the guaranty bond filed with the Division bears the same effective date as the effective date of the Resolution of Authorization to self-insure.
- B. The Commission shall permit the self-insurer to post a guaranty bond or rider of the guaranty bond instead of other security if:
1. The insurance carrier providing the guaranty bond or rider submits the bond or rider to the Division on a form approved for use by the Division;
 2. The guaranty bond is continuous in form;
 3. The penal sum of the guaranty bond or rider equals the amount the self-insured must post as security under this Article;
 4. The company issuing the guaranty bond or rider is authorized and licensed to transact the business of surety insurance in Arizona;
 5. An authorized agent of the surety executes the guaranty bond or rider;

6. The bond is signed and dated by an authorized representative of the self-insurer;
 7. The surety issuing the bond or rider does not have an affiliate relationship with the applicant or self-insurer; and
 8. The surety issuing the guaranty bond or rider has a rating with A.M. Best of at least A-.
- C. A guaranty bond or rider is subject to annual change based on unpaid liabilities as reported by the self-insurer on the Workers' Compensation Liability form.

Historical Note

New Section made by final rulemaking at 11 A.A.R.
1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1111. Posting of Other Bonds or Treasury Notes of the United States Instead of Guaranty Bond; Registration; Deposit

- A. Instead of providing a guaranty bond under R20-5-1110, a self-insurer may deposit with the Commission for transmittal through the Arizona State Treasurer to the Treasurer's designated bank, bonds or treasury notes of the United States of America if the bonds or treasury notes are guaranteed as to principal and interest by the United States of America or by any agency or instrumentality of the United States of America.
- B. The self-insurer shall ensure that bonds or treasury notes of the United States of America deposited with Commission under this subsection are registered to: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws." The self-insured shall ensure that any contract between the self-insured and the custodial bank provides that the bonds or treasury notes are held for: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws."
- C. If one or more of the self-insurer's claims are assigned to the state compensation fund under A.R.S. § 23-966, the Commission shall:
1. Collect or order collection of the principal, or market value of the security, whichever is greater, as it becomes due;
 2. Sell or order the sale of the security or any part of the security; or
 3. Apply or order the application of the proceeds to the payment of any unpaid obligations of the self-insurer, as determined by the Commission, in the event of the default in the payment of its obligations.
- D. The self-insurer may arrange for interest on bonds or treasury notes of the United States of America deposited under this subsection to be paid to the self-insurer.
- E. Bonds or treasury notes deposited according to this Article by a self-insurer shall be in an amount not less than the security deposit amount required under R20-5-1109.

Historical Note

New Section made by final rulemaking at 11 A.A.R.
1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1112. Letter of Credit or Local Government Investment Pool Funds (LGIP)

- A. Letter of Credit:
1. A self-insurer may satisfy the provision of R20-5-1110 by filing a letter of credit.
 2. The self-insurer shall ensure that the letter of credit is registered to: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws."
 3. The self-insurer shall ensure that the letter of credit is issued by a federal or Arizona chartered bank with an

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Arizona branch office or correspondent bank in Arizona upon which demand may be made and from which funds will be immediately payable on demand.

4. The letter of credit is acceptable only if:
 - a. The letter includes the name and address of the self-insurer, including all Arizona subsidiaries;
 - b. Is for a period of one year from the effective date;
 - c. Includes a provision that the letter of credit automatically extends for consecutive periods of one year, unless the issuing bank provides written notice to the Division 30 days before the expiration of any one-year term that the issuing bank will not renew the letter of credit for the additional period;
 - d. Includes a provision that the written notice required in subsection (A)(4)(d) may be delivered to the Division or sent to the Division by United States Mail, certified mail return receipt requested;
 - e. The letter of credit states the amount available under the letter of credit; and
 - f. The self-insurer ensures that the letter of credit includes a statement that the sum available under the letter of credit shall be paid to the Industrial Commission of Arizona upon receipt by the issuing bank of a signed statement by an official of the Commission stating the following:
 - i. The self-insurer has failed to comply with its workers' compensation obligations; or
 - ii. The self-insurer has failed to renew or substitute acceptable security for its workers' compensation liability 15 days before the expiration of the letter of credit.
- B. Local Government Investment Pool Funds (LGIP):**
1. Instead of posting a guaranty bond, letter of credit, or United States of America bonds or Treasury Notes, a self-insured public agency may post a local government investment pool (LGIP) fund only if:
 - a. The self-insurer ensures that the funds are deposited through the Arizona State Treasurer as custodian subject to the order of, and in trust for, the Industrial Commission of Arizona, registered and assigned to: "The Industrial Commission of Arizona, in trust for the fulfillment by ----- of its obligations under the Arizona Workers' Compensation Laws;"
 - b. The LGIP funds posted as security in compliance with this Section are in an amount not less than the security deposit amount required under R20-5-1109;
 - c. The Commission has the ability to:
 - i. Collect or order collection of the funds; and
 - ii. Apply or order the application of the funds to the payment of any award rendered against the self-insurer, as determined by the Commission, if the self-insurer defaults in any of its obligations;
 - d. The self-insurer submits an assignment for the benefit of the Industrial Commission of Arizona, and an Endorsement-Receipt for Notice of Assignment, signed by the State of Arizona Treasurer and notarized. The Endorsement-Receipt shall contain the following language: Receipt is hereby acknowledged by the Treasurer of the State of Arizona of written notice of the assignment to the Industrial Commission ("Commission") of the above-identified account. We have noted our records to show the interest of the Commission in said account as shown in and by the above assignment. We have retained a copy of this document. We hereby certify that we

have not received any notice of lien, encumbrance, hold, claim, or other obligation against the above-identified account prior to its assignment to the Commission. We further hereby waive any current or future right of set-off against such account. We agree to make payment as required by the Rules and Regulations of the Commission adopted in accordance with applicable laws and the law applicable to this institution.

2. Interest on the funds deposited under this Section may be remitted by the State of Arizona Treasurer directly to the self-insurer.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1113. Substitution of Securities

The Commission may authorize the return a self-insurer's security deposit with written approval from the Division. The Commission shall not authorize the return or release of security unless the self-insurer substitutes the security with new security in an amount sufficient to satisfy the self-insurer's obligations under R20-5-1109.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1114. Exemption from Requirement to Post Security

- A.** Conditions to qualify for exemption. A public entity applicant or public entity self-insurer is exempt from the requirements under this Article to post or provide security if the public entity:
 1. Has a fully-funded risk management fund sufficient to cover actuarial liabilities for workers' compensation as determined by the self-insurer in accordance with Government Accounting Standards Board Statement #10; and
 2. Provides funding to the risk management fund each year sufficient to cover actuarial liabilities for workers' compensation as determined by the self-insurer in accordance with Government Accounting Standards Board Statement #10.
- B.** Written request for exemption. A public entity applicant or public entity self-insurer that requests exemption from posting security shall file a certified statement along with its Workers' Compensation Liability form with the Commission before the effective date of initial self-insurance or before the anniversary date, if a renewal, that contains the following:
 1. A statement that the public entity meets the conditions required under subsection (A);
 2. A statement that the governing body of the public entity shall immediately notify the Commission and provide security required under this Article if the governing body learns that the risk management fund has insufficient funds to cover all workers' compensation liabilities of the public entity self-insurer;
 3. The signatures of a majority of the members of the public entities' governing body; and
 4. If the Commission has previously authorized the public entity to self-insure its workers' compensation obligations, a statement requesting the return of security previously posted or provided to the Commission, including a specific description of the type and amount of security previously posted or provided.
- C.** Approval or denial of request for exemption.
 1. If the Commission determines that a self-insurer qualifies for exemption under this Section, the Division shall return to the self-insurer security previously posted or

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provided to the Commission, within 30 days after receiving written notice under subsection (B).

2. If the Commission denies a request for exemption under this subsection, the Commission shall provide written notice to the public entity within 10 days of the initial written request. The applicant or self-insurer has 10 days from the date the Commission's notice is received to request a hearing under A.R.S. § 23-945.
- D. Failure to comply with conditions of exemption. The Commission shall order a self-insurer exempt under subsection (A) to immediately file with the Commission a completed, dated, and signed Workers' Compensation Liability form and post or provide security as required under this Article if any of the following occurs:
 1. The self-insurer fails to file the certified statement to request renewal of self-insurance authority;
 2. The self-insurer fails to comply with the conditions in subsection (A); or
 3. The Commission determines, based upon receipt of information under subsection (B), or its own review, that the self-insurer's risk management fund has insufficient funds to cover all actuarial liabilities for workers' compensation liabilities of the self-insurer.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1115. Rating Plans Available for a Self-insurer

- A. A self-insurer shall use one of the following rating plans to calculate the premium taxes required under A.R.S. §§ 23-961 and 23-1065:
 1. Fixed-premium plan;
 2. Ex-medical plan;
 3. Guaranteed-cost plan; or
 4. Retrospective-rating plan.
- B. The provisions of the rating plans apply only to operations and payroll in Arizona. The self-insurer shall combine all operations in Arizona as a single base to calculate any premium modification.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1116. Fixed-Premium Plan; Formula; Eligibility; Necessary Information for Plan

- A. The Division shall calculate the net taxable premium under a fixed-premium plan as follows: payroll multiplied by the applicable workers' compensation rate minus the premium discount.
- B. A self-insurer shall use a fixed-premium plan to calculate its net taxable premium if:
 1. The self-insurer elects this plan;
 2. The self-insurer's annual net taxable premium does not exceed \$100,000; or
 3. The self-insurer is not eligible for any other plan authorized by the Commission under this Article.
- C. A self-insurer shall provide the following information in support of the fixed-premium plan:
 1. Self-insurer's Payroll Report,
 2. Self-insurer's Medical Report, and
 3. Self-insurer's Quarterly Tax Payment form.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1117. Ex-medical Plan; Formula; Eligibility; Necessary**Information for Plan**

- A. The Division shall calculate the net taxable premium under an ex-medical plan as follows: [(payroll multiplied by the applicable workers' compensation rate) multiplied by (1 minus the ex-medical factor)] minus the premium discount.
- B. A self-insurer may use the ex-medical plan if:
 1. The self-insurer's program for medical, surgical, or hospital services meets the requirements of A.R.S. § 23-1070; and
 2. The self-insurer's annual net taxable premium exceeds \$100,000.
- C. A self-insured shall provide the following information in support of the plan submitted under this Section:
 1. Self-insurer's Payroll Report,
 2. Self-insurer's Hospital Report,
 3. Self-insurer's Medical Report, and
 4. Self-insurer's Quarterly Tax Payment form.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1118. Guaranteed-Cost Plan; Formula; Eligibility; Necessary Information for Plan

- A. The Division shall calculate the net taxable premium under a guaranteed-cost plan as follows: [(payroll multiplied by the applicable worker's compensation rate) multiplied by (the experience modification rate) minus the premium discount].
- B. A self-insurer may use the guaranteed-cost plan if:
 1. The self-insurer has an annual net taxable premium exceeding \$100,000; and
 2. Uses an experience modification rate calculated as follows:
 - a. In the first year of self-insurance, the experience modification rate is 1.0;
 - b. In the second and third years of self-insurance, the Division calculates the experience modification rate based upon the loss data accumulated by the self-insurer during its term of self-insurance; and
 - c. In the fourth year of self-insurance and all following years, the Division calculates the experience modification rate based upon the most recent three years of loss data provided on the Self-insured Injury Report, excluding the most recent year.
- C. A self-insurer shall provide the following information in support of the guaranteed-cost plan:
 1. Self-insurer's Payroll Report,
 2. Self-insurer's Medical Report,
 3. Self-insurer's Injury Report, and
 4. Self-insurer's Quarterly Tax Payment form.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1119. Retrospective-Rating Plan; Formula; Eligibility; Necessary Information for Plan

- A. The Division shall calculate the net taxable premium under a retrospective-rating plan as follows: [(payroll multiplied by the applicable worker's compensation rate multiplied by the experience modification rate multiplied by the basic premium factor) added to (losses for the current year plus adjusted losses from the previous year) multiplied by (the loss conversion factor)] multiplied by the tax multiplier. The net taxable premium is subject to a maximum and minimum premium level.
- B. A self-insurer may use the retrospective-rating plan if:

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1. The self-insurer has an annual net taxable premium exceeding \$100,000; and
2. The Division calculates the experience modification rate as follows:
 - a. In the first year of self-insurance, the experience modification rate is 1.0;
 - b. In the second and third years of self-insurance, the Division calculates the experience modification rate based upon the loss data accumulated by the self-insurer during its term of self-insurance; and
 - c. In the fourth year of self-insurance and all following years, the Division calculates the experience modification rate based upon the most recent three years of loss data provided on the Self-insured Injury Report, excluding the most recent year. The Division shall use the most recent year's data to calculate the actual premium tax.
- C. A self-insurer shall provide the following information in support of the retrospective-rating plan:
 1. Self-insurer's Payroll Report;
 2. Self-insurer's Medical Report;
 3. Self-insurer's Injury Report; and
 4. Self-insurer's Quarterly Tax Payment form.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1120. Completion of Reports in Support of Tax Rating Plan; Calculation and Payment of Taxes Owed by Self-insurer under A.R.S. §§ 23-961 and 23-1065

- A. A self-insurer shall submit to the Division the information required in R20-5-1116, R20-5-1117, R20-5-1118, or R20-5-1119 by February 15 of each year.
- B. After receiving the information required under A.R.S. § 23-961, § 23-1065, and this Article, the Division shall determine the annual taxes owed by the self-insurer. The Division shall determine whether the self-insurer has overpaid or underpaid its taxes for the previous calendar year. If the total of the quarterly payments is less than the actual taxes for the year, the self-insurer shall pay the difference on or before March 31 of the calendar year in which the taxes are due. If the total of the quarterly payments exceeds the amount of the actual taxes for the year, then the Division shall refund the amount described in A.R.S. § 23-961 or § 23-1065 as applicable.
- C. A self-insurer shall pay to the Commission the self-insurer's annual workers' compensation premium taxes on or before March 31 based on the net taxable premium calculated for the preceding calendar year. A self-insurer shall pay a premium tax of at least \$250.00 per calendar year.
- D. The Division shall calculate a self-insurer's quarterly taxes owed under A.R.S. §§ 23-961 and 23-1065 in one of the following ways:
 1. 25% of the tax calculated for the previous year; or
 2. A calculation based on actual payroll and losses calculated for each quarter, using the same rating plan to calculate the quarterly payment as used to calculate the taxes required under A.R.S. §§ 23-961 and 23-1065. If the Division selects this method, the self-insurer shall submit quarterly payroll and loss information by classification code.
- E. Quarterly tax payments are due April 30, July 31, October 31, and January 31 for the periods ending March 31, June 30, September 30, and December 31, respectively.
- F. If the self-insurer fails to pay the annual or quarterly taxes to the Commission when due, the self-insurer shall pay a penalty of \$25.00 or 5% of the tax or payment due, whichever is more,

plus interest at the rate of 1% per month from the date the tax or payment was due until paid.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1121. Basis for Definitions, Classifications, Rating Procedures, and Plans

The Division shall use the definitions, classifications, rating procedures, and plans specified in the rating systems filed by the rating organization used by the State Compensation Fund under A.R.S. Title 20, Chapter 2, Article 4 in calculating the net taxable premium under A.R.S. §§ 23-961 and 23-1065.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1122. Report, Book, Record, and Data Review by the Commission

- A. All reports, books, records, and data of a self-insurer relating to classifications, payroll, incurred-loss reserves, calculation of premiums, completion of Workers' Compensation Liability form, and procedures for development of statistical information for the development of rating information are subject to review by the Commission or its authorized representative upon request.
- B. A self-insurer shall ensure that the reports, books, records, and data described in subsection (A) are readily available for review by the Commission.
- C. A self-insurer shall ensure that the reports, books, records, and data described in subsection (A) are clear, valid, and understandable.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1123. Audit and Cost of Audit

The Commission may, at any time, perform or have performed for its benefit an audit of the payroll, loss payment, and loss reserve records for incurred losses of a self-insurer for the purpose of determining the scope and adequacy of the records. The entire cost of the audit shall be borne by the self-insurer.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1124. Requirement to Provide Information to the Commission

A self-insurer shall make available to the Commission, upon request and at an office of the Commission, information described in this Article.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1125. Notice to Commission of Location of Self-insurer's Claims Files

In addition to the requirements found in 20 A.A.C. 5, Article 1, a self-insurer shall advise the Claims Manager of the location of the self-insurer's open and closed workers' compensation claims files. Except for a claims file that is made available for copying and inspection under R20-5-131(C), if a self-insurer or third-party administrator intends to change the location of its claims files, the self-insurer shall provide written notice to the Claims Manager of the change in location at least 30 days before the files are moved.

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Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1126. Processing of Workers' Compensation Claims by a Self-insured Employer

The Claims Division shall permit a self-insurer to process its own workers' compensation claims if the self-insurer provides information and supporting documentation establishing the following:

1. The self-insurer has facilities and equipment to manage, process, and store its own information pertaining to the self-insurer's workers' compensation claims;
2. The self-insurer's workers' compensation claims are processed by persons with experience, training by the Claims Division, or knowledge regarding the Arizona Workers' Compensation Act; and
3. The persons processing the self-insurer's workers' compensation claims attend and complete training provided by the Claims Division.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1127. Review of Initial Application and Request for Renewal to Self-insure

A. Upon the filing of a completed initial application or request for renewal, the Division shall:

1. Determine whether the applicant or self-insurer meets the requirements of A.R.S. § 23-961;
2. Determine whether the applicant or self-insurer meets the requirements of this Article. Except for a self-insurer that is exempt under R20-5-1114, the self-insurer shall post security according to R20-5-1109 that is adequate to provide for the self-insurer's future estimated liability. If applicable, the Division shall advise the applicant or self-insurer of the need for additional security, and the self-insurer shall post the additional security before the Commission makes its decision under R20-5-1128;
3. If a self-insurer requests a decrease of 10% or greater in the value or amount of security provided in the prior year, perform an additional review to determine the adequacy of the security deposit, including:
 - a. Mathematical verification of the accuracy of amounts reported on the Workers' Compensation Liability form;
 - b. Review of claims filed for the three preceding years;
 - c. Review of changes in the payroll of the self-insurer to determine changes in employment levels;
 - d. Review of changes in workers' compensation classification codes to determine changes in operations of the company in Arizona; and
 - e. Review of the financial condition of the self-insurer to determine changes in financial stability, including a review of the total incurred liability expenses for the past three years;
4. Determine whether the applicant or self-insurer has the ability to process and pay benefits required under the Arizona Workers' Compensation Act.
 - a. For an applicant that is not a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
 - i. Reviewing the financial statements to determine the current ratio, quick ratio, cash-flow ratio, working-capital ratio, debt-status ratio, profitability ratio, and the applicant's net profit or loss;

- ii. Comparing the applicant's ratios with the ratios of existing self-insurers in the same or a closely related industry;
 - iii. Reviewing notes to the financial statements;
 - iv. Reviewing management reports of operations and other information provided by the self-insurer; and
 - v. Comparing the applicant's ratio of claims filed to total employees with that of other employers within the same or closely related industry;
- b. For an applicant that is a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
- i. Reviewing the public entity's general fund financial statement to determine the cash ratio and fund equity ratio;
 - ii. Reviewing excess revenues over expenditures and the ending balances in the general fund and all fund accounts for the past two years;
 - iii. Reviewing notes to the self-insurer's financial statements;
 - iv. Reviewing management reports of operations and other information provided by the self-insurer;
 - v. Comparing the public entity's ratio of claims filed to total employees with that of other public entities;
 - vi. Comparing cash and fund equity ratios with that of other self-insured public entities; and
 - vii. Reviewing the risk management fund to determine if it is sufficient to pay all workers' compensation liabilities;
- c. For a self-insurer requesting renewal that is not a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
- i. Reviewing the information in subsection (A)(4)(a);
 - ii. Reviewing the claims profile for the past three years, which includes a review of the claims filed, claims denied, and denial rate;
 - iii. Reviewing of the self-insurer's experience modification rate;
 - iv. Comparing of the self-insurer's ratio of claims filed to total employees with that of other self-insurer's; and
 - v. Reviewing the Parent Company Guaranty form; and
- d. For a self-insurer requesting renewal that is a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
- i. Reviewing the information in subsection (A)(4)(b);
 - ii. Reviewing the claims profile for the past three years, including a review of the claims filed, claims denied, and denial rate;
 - iii. Reviewing the self-insured's experience modification rate; and
 - iv. Comparing the self-insurer's ratio of claims filed to total employees with that of other self-insured public entities of similar size.
- B. The Division shall present the findings and recommendations of its review to the Commission, and may include a recommendation regarding the adequacy of the security based on its review and determination whether the self-insurer has the ability to process and pay as set forth in subsection (A)(3).

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Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1128. Decision by the Commission on Initial Application or Request for Renewal of Authorization to Self-insure

- A.** The Commission shall consider the following before granting or denying an initial application or request for renewal to self-insure:
1. The information submitted by an applicant or self-insurer;
 2. The information and recommendations of the Division; and
 3. The requirements of A.R.S. § 23-961 and this Article, including compliance with the requirement for posting additional security as recommended by the Division under R20-5-1127.
- B.** The Commission shall deny authority to self-insure if the Commission finds one or more of the following conditions:
1. The applicant or self-insurer does not meet the requirements of A.R.S. § 23-961,
 2. The applicant or self-insurer does not meet the requirements of this Article, or
 3. The applicant or self-insurer is unable to process and pay benefits under the Arizona Workers' Compensation Act.
- C.** The Commission may table consideration of, or action on, a request for renewal pending the self-insurer posting additional security based on a Division decision under R20-5-1127 that the posted security is insufficient.
- D.** Whether to grant, deny, or table an application for self-insurance authority shall be made by a majority vote of a quorum of Commission members present when the application for initial authority or renewal is presented at a public meeting.
- E.** If the Commission approves an initial application of an applicant that is not exempt under R20-5-1114:
1. The approval is contingent upon the self-insurer posting the required security;
 2. After the Commission takes action under subsection (D), the Division shall provide written notice to the applicant that the Commission approves the application for self-insurance authority effective on a date certain;
 3. The applicant shall provide to the Commission the required security before the effective date of the authority to self-insure; and
 4. After the applicant complies with the requirements of subsection (E)(3), the Division shall mail a Resolution of Authorization to Self-insure to the last known business address of the applicant.
- F.** If an applicant fails to comply with the requirements of subsection (E)(3), the Commission shall not grant authority to self-insure and the Commission shall deem the initial application withdrawn.
- G.** If the Commission approves an initial application of an applicant exempt under R20-5-1114, the Division shall mail a Resolution of Authorization to Self-insure, to the last known business address of the applicant.
- H.** If the Commission approves a request for renewal of authority to self-insure, or tables consideration of the request for renewal, the Division shall mail written notice of the Commission's action on the request for renewal to the last known business address of the self-insurer.
- I.** If the Commission denies authority to self-insure, the Commission shall issue and mail written findings and an order to the last known business address of the applicant or self-insurer no later than 10 days after the Commission denies authority to self-insure.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1129. Right to Request a Hearing

- A.** An applicant or self-insurer has 15 days from the date the Commission's findings and order is mailed to request a hearing.
- B.** A request for hearing shall comply with A.R.S. § 23-945 and be signed by an authorized representative of the applicant or self-insurer or the applicant's or self-insurer's legal representative. The applicant or self-insurer shall file the request for hearing with the Division.
- C.** The Commission shall deem its findings and order final if a request for hearing is not received by the Division within the time specified in subsection (A).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1130. Hearing Rights and Procedures

- A. Burden of proof.**
1. Except as provided in subsection (A)(2), in all proceedings arising out of this Article, the applicant or self-insurer has the burden of proof to establish that it has met the requirements of A.R.S. § 23-901 et seq. and this Article.
 2. In a revocation hearing, the Commission has the burden of proof to establish that the self-insurer has committed the acts described in R20-5-1133.
- B. Roles of Chair and Chief Counsel.**
1. The Chair of the Commission or designee shall preside over hearings held under this Article. Except as otherwise provided in this Section, the Chair shall apply the provisions of A.R.S. § 41-1062 to hearings held under this Article and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.
 2. The Chief Counsel of the Commission shall represent the Commission in hearings held before the Commission and upon direction of the Chair of the Commission shall issue on behalf of the Commission all notices and subpoenas required under this Section.
- C. Appearance by a party.**
1. Except as otherwise provided by law, a party to a hearing may appear on its own behalf or through counsel.
 2. When an attorney appears or intends to appear before the Commission, the attorney shall file a notice of appearance.
- D. Filing and service.**
1. For purposes of this Section, a document is considered filed when the Commission receives the document. All documents required to be filed under this Section with the Commission shall be served upon the Chief Counsel of the Commission and upon all parties to the proceeding.
 2. Except as otherwise provided in A.R.S. § 23-901, et seq. and this Article, service of all documents upon the Commission, applicant, or self-insurer shall be by personal service or mail. Personal service includes delivery upon the Commission or party. Service by mail includes every type of service except personal service and is complete on mailing.
- E. Notice of hearing.**
1. The Commission shall give the parties at least 20 days notice of hearing.
 2. A notice of hearing shall be in writing and mailed to the last known address of the applicant or self-insurer as shown on the records of the Commission, or upon the

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applicant's or self-insurer's representative if a notice of appearance has been filed by a representative.

3. A notice of hearing shall comply with the requirements in A.R.S. § 41-1061.

F. Evidence.

1. The civil rules of evidence do not apply to hearings held under this Section.
2. A party may make an opening and closing statement with the permission of the Chair if the Chair determines that the statement will be helpful to a determination of the issues.
3. All witnesses at a hearing shall testify under oath or affirmation.
4. A party may present evidence and conduct cross-examination of witnesses.
5. The Commission Chair may admit documents into evidence if filed no later than 15 days before the date of the hearing. Upon request or upon direction from the Commission Chair, the Commission may issue a subpoena to the author of any document submitted into evidence to appear and testify at the hearing.
6. Upon written request by a party or upon direction from the Commission Chair, the Commission may issue a subpoena requiring the attendance and testimony of a witness whose testimony is material. A party shall submit its subpoena request no later than 10 days before the date of the hearing.
7. Upon written request by a party or upon direction from the Commission Chair, the Commission may issue a subpoena duces tecum requiring the production of documents or other tangible evidence. The written request by a party shall contain a statement explaining the general relevance, materiality, and reasonable particularity of the documentary or other tangible evidence and the facts to be proved by them.

- G. Transcript of Proceedings.** The Commission shall stenographically report or electronically record hearings. Any party desiring a copy of transcript shall obtain a copy from the court reporter. Any party desiring a copy of an electronic recording may obtain a copy from the Commission.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1131. Decision Upon Hearing by the Commission

- A.** A decision of the Commission to deny authority to self-insure shall be based upon the grounds in R20-5-1128 and shall be made by a majority vote of the quorum of Commission members present at a public meeting.
- B.** A decision of the Commission to revoke authority to self-insure shall be based upon the grounds in R20-5-1133 and shall be made by a majority vote of the quorum of Commission members present at a public meeting.
- C.** The Commission shall issue a written decision after the hearing that shall include findings of fact and conclusions of law, separately stated.
- D.** The Commission decision is final unless an applicant or self-insurer requests review under R20-5-1132 no later than 15 days after the written decision is mailed to the parties.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1132. Request for Review

- A.** A party may request review of a Commission decision issued under R20-5-1131 by filing with the Commission a written

request for review no later than 15 days after the written decision is mailed to the parties.

- B.** A request for review of a Commission Decision shall be based upon one or more of the following grounds, which have materially affected the rights of a party:
 1. Irregularities in the hearing proceedings or any order or abuse of discretion that deprives a party seeking review of a fair hearing;
 2. Accident or surprise, which could not have been prevented by ordinary prudence;
 3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
 4. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of the hearing;
 5. Bias or prejudice of the Division or Commission; and
 6. The order, decision, or findings of fact are not justified by the evidence or are contrary to law.
- C.** The request for review shall state the specific facts and law in support of the request and shall specify the relief sought.
- D.** The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.
- E.** The Commission's decision upon review is final unless an applicant or self-insurer seeks judicial review as provided in A.R.S. § 23-946.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1133. Revocation of Authorization to Self-insure

- A.** The Commission may revoke a Resolution of Authorization to Self-insure for good cause. Good cause includes any of the following:
 1. An inability or failure to process and pay any claim under the Arizona Workers' Compensation Act;
 2. Failure of the self-insurer to pay any taxes levied by the Commission as required under A.R.S. §§ 23-961 and 23-1065 and this Article;
 3. Failure of the self-insurer to comply with the requirements of this Article, including the failure of the self-insurer to:
 - a. Promptly provide the Commission reports or other information required under this Article; and
 - b. File the written Letter of Intent required under R20-5-1135;
 4. Failure or deliberate refusal to comply with the applicable requirements of A.R.S. § 23-901 et seq.;
 5. Failure to pay or comply with any award or order of the Commission after the award or order becomes final;
 6. Willful misstating of any material fact in a tax report, application, renewal documentation, or other report or statement made to or filed with the Commission;
 7. Failure or deliberate refusal to comply with the requirements of 20 A.A.C. 5, Article 1;
 8. Failure to deposit or file security timely as specified in this Article; or
 9. Failure to provide information or documentation necessary to timely renew the Authorization to Self-insure.
- B.** Upon receiving information that a self-insurer has committed an act described in subsection (A), the Division shall conduct an investigation of the facts of the alleged misconduct. If, upon completion of the investigation, the Division determines that sufficient evidence exists to warrant revocation of a self-insurer's authority to self-insure, the Division shall present its findings to the Commission.

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- C. The Commission shall consider the findings and recommendation of the Division before revoking a self-insurer's authorization to self-insure.
- D. The Commission shall revoke a self-insurer's authority to self-insure if the Commission finds one or more of the grounds in subsection (A). The Commission shall issue written findings and an order revoking the Resolution of Authorization to Self-insure and shall serve a copy of the findings and order upon the self-insurer addressed to the last known address of the self-insurer as shown by the records of the Commission.
- E. A self-insurer has 15 days from the date the Commission serves the findings and order described in subsection (D) to request a hearing. The request for hearing shall comply with the requirements of A.R.S. § 23-945.
- F. R20-5-1130, R20-5-1131, and R20-5-1132 govern hearing rights and procedures for revocation hearings and review.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1134. Notice of Bankruptcy, Change in Ownership Status, or Change in Business Address

- A. A self-insurer shall notify the Commission in writing within 24 hours of any bankruptcy filing under federal law or insolvency proceeding under any state's laws.
- B. A self-insurer shall notify the Commission in writing within 24 hours of any change in the ownership status or business address of the employer.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1135. Plan of Action for Retaining Self-insurance Authority in the Event of Insolvency or Bankruptcy

- A. If a self-insurer becomes insolvent or files for protection under the United States Bankruptcy Code seeking to reorganize, and desires to remain self-insured, it shall file with the Division a written Letter of Intent regarding its intent to reorganize under the applicable provisions of the United States Bankruptcy Code.
 1. If the self-insurer is incorporated, the chief executive officer shall sign the Letter of Intent and the board of directors shall approve the Letter if the corporation is still operating;
 2. If the self-insurer is not incorporated, an authorized representative of the self-insurer shall sign the Letter of Intent; or
 3. An attorney representing the entity in its bankruptcy reorganization case may sign the Letter of Intent instead of the chief executive officer or authorized representative.
- B. The self-insurer shall file the Letter of Intent with the Division within 10 days of the initial bankruptcy filing or insolvency proceeding.
- C. The self-insurer shall ensure that a provision addressing the self-insurer's obligations to workers' compensation claimants and the Commission is included in the Plan of Reorganization filed with the United States Bankruptcy Court. This Plan shall state the self-insurer's intentions and financial ability to continue self-insurance.
- D. During the period between the initial bankruptcy filing and the approval of a Plan of Reorganization or Plan of Liquidation, the self-insurer may continue its self-insurance status only upon the demonstration of adequate protection to cover its current workers' compensation claims, or those claims that may come due before the Bankruptcy Court approves the Reorganization or Insolvency Plan. As part of the adequate protection

for the Commission, the self-insurer shall post or deposit additional security in an amount the Commission deems necessary to pay claims currently pending or anticipated before the approval of the Plan of Reorganization or liquidation.

- E. The self-insurer, or its legal representative, shall send a copy of the proposed Plan of Reorganization or Liquidation, including amendments to the Division.
- F. The Commission may file an Objection to the Plan of Reorganization in the appropriate bankruptcy court and take other actions as permitted under the United States Bankruptcy Code if it determines that the Plan of Reorganization or Liquidation does not adequately provide for the processing and payment of the self-insurer's workers' compensation claims.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1136. Notice of Self-insurer's Termination of Self-insurance

- A. A self-insurer shall file with the Division a completed and signed Notice of Self-insurer's Termination of Self-insurance form, if the self-insurer decides to terminate its self-insurance. The Notice of Self-insurer's Termination shall be filed with the Division 30 days before the effective date of termination of self-insurance.
- B. Before the effective date of the termination of self-insurance, the self-insurer shall file a certificate with the Claims Division designating an insurance carrier, or other proof, satisfactory to the Commission, of compliance with the requirements of A.R.S. § 23-961, to cover claims of the self-insurer that:
 1. Are pending at that time the self-insurer terminates self-insurance; and
 2. Occur after the effective date of the termination of self-insurance.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

ARTICLE 12. ARIZONA MINIMUM WAGE AND EARNED PAID SICK TIME PRACTICE AND PROCEDURE**R20-5-1201. Notice of Rules**

- A. This Article applies to all actions and proceedings before the Industrial Commission of Arizona arising under A.R.S. Title 23, Articles 8 and 8.1.
- B. The Industrial Commission of Arizona shall provide a copy of this Article upon request to any person free of charge.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 2907, effective October 3, 2017 (Supp. 17-4).

R20-5-1202. Definitions

In this Article, the definitions of A.R.S. §§ 23-362 (version two), 23-371, and 23-364 apply. In addition, unless the context otherwise requires, the following definitions shall apply to both the Act and this Article:

1. "Act" means A.R.S. Title 23, Chapter 2, Articles 8 and 8.1.
2. "Affected employee" means an employee or employees on whose behalf a complaint may be filed alleging a violation under the Act.

GENERAL AND SPECIFIC STATUTES

A.R.S. § 23-107. General powers

A. The commission has full power, jurisdiction and authority to:

1. Formulate and adopt rules and regulations for effecting the purposes of this article.
2. Administer and enforce all laws for the protection of life, health, safety and welfare of employees in every case and under every law when such duty is not specifically delegated to any other board or officer, and, when such duty is specifically delegated, to counsel, advise and assist in the administration and enforcement of such laws and for such purposes may conduct investigations.
3. Promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees.
4. License and supervise the work of private employment offices, bring together employers seeking employees and working people seeking employment, and make known the opportunities for employment in the state.
5. Collect, collate and publish all statistical and other information relating to employees, employers, employments and places of employment with other appropriate statistics.
6. Act as the regulatory agency insuring that workers' compensation carriers are processing claims in accordance with chapter 6 of this title.
7. Provide nonpublic, confidential or privileged documents, materials or other information to another state, local or federal regulatory agency for the purpose of the legitimate administrative needs of the programs administered by that agency if the recipient agency agrees and warrants that it has the authority to maintain and will maintain the confidentiality and privileged status of the documents, materials or other information.
8. Receive nonpublic documents, materials and other information from another state, local or federal regulatory agency to properly administer programs of the commission. The commission shall maintain as confidential or privileged any document, material or other information that is identified by the exchange agency as confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.
9. Enter into agreements that govern the exchange of nonpublic documents, materials and other information that are consistent with paragraphs 7 and 8. The commission may request nondisclosure of information that is identified as privileged or confidential. Any disclosure pursuant to paragraph 7 or 8 or this paragraph is not a waiver of any applicable privilege or claim of confidentiality in the documents, materials or other information.

B. Upon petition by any person that any employment or place of employment is not safe or is injurious to the welfare of any employee, the commission has power and authority, with or without notice, to make investigations necessary to determine the matter complained of.

C. The members of the commission may confer and meet with officers of other states and officers of the United States on matters pertaining to their official duties.

D. Notwithstanding any other law, the commission may protect from public inspection the financial information that is received from a private entity that applies to self-insure or that renews its self-insurance plan pursuant to section 23-961, subsection A if the information is kept confidential by the private entity in its ordinary and regular course of business.

A.R.S. § 23-108.03. Performance of certain powers and duties

A. The industrial commission shall be responsible for determining the policy of the commission.

B. Any powers and duties prescribed by law to the commission in this chapter and chapters 2 and 6 of this title, whether ministerial or discretionary, may by resolution be delegated by the commission to the director or any of its department heads or assistants, provided, that the commission shall not delegate its power or duty to:

1. Make rules and regulations.
2. Commute awards to a lump sum.
3. License self-insurers.

C. The commission shall be responsible for the official acts of its employees acting in the name of the commission and by its delegated authority.

A.R.S. § 23-961. Methods of securing compensation by employers; deficit premium; civil penalty

A. Employers shall secure workers' compensation to their employees in one of the following ways:

1. By insuring and keeping insured the payment of such compensation with an insurance carrier authorized by the director of the department of insurance and financial institutions to write workers' compensation insurance in this state.
2. By furnishing to the commission satisfactory proof of financial ability to pay the compensation directly or through a workers' compensation pool approved by the commission in the amount and manner and when due as provided in this chapter. The requirements of this paragraph may be satisfied by furnishing to the commission satisfactory proof that the employer is a member of a workers' compensation pool approved by the commission pursuant to section 23-961.01. The commission may require a deposit or any other security from the employer for the payment of compensation liabilities in an amount fixed by the commission, but not less than \$100,000 dollars for workers' compensation liabilities. If the employer does not fully comply

with the provisions of this chapter relating to the payment of compensation, the commission may revoke the authority of the employer to pay compensation directly.

B. An employer may not secure compensation to comply with this chapter by any mechanism other than as provided in this section. No insurance, combination or other program may be marketed, offered or sold as workers' compensation that does not comply with this section. An employer violates this chapter if the employer purchases or secures its obligations under this chapter through a substitute for workers' compensation that does not comply with this section.

C. Insurance carriers that transact the business of workers' compensation insurance in this state are subject to the rules of the director of the department of insurance and financial institutions.

D. On application of an insurance carrier, the director of the department of insurance and financial institutions may order the release to the insurance carrier of all or part of the cash or securities that the insurance carrier deposited before July 1, 2015 with the state treasurer pursuant to this section. In determining whether to order the release of all or part of the deposit, the director of the department of insurance and financial institutions shall consider all of the following:

1. The financial condition of the insurance carrier.
2. The insurance carrier's liabilities for workers' compensation loss and loss expenses in this state.
3. Whether the insurance carrier is subject to a finding of hazardous condition, an order of supervision, a delinquency proceeding or any other regulatory action in this state, the insurance carrier's state of domicile or any other state in which the insurance carrier transacted the business of insurance.
4. Any other factors the director of the department of insurance and financial institutions determines are relevant to the application for release of the deposit.

E. Except in the event of nonpayment of premiums, each insurance carrier shall carry a risk to the conclusion of the policy period unless the policy is cancelled by the employer or unless one or both of the parties to a professional employer agreement terminate the agreement. The policy period shall be agreed on by the insurance carrier and the employer.

F. At least thirty days' notice shall be given by the insurance carrier to the employer and to the commission of any cancellation or nonrenewal of a policy if the cancellation or nonrenewal is at the election of the insurance carrier. The insurance carrier shall promptly notify the commission of any cancellation by the employer or failure of the employer to renew the policy. The failure to give notice of nonrenewal if the nonrenewal is at the election of the insurance carrier shall not extend coverage beyond the policy period. An insurance carrier shall notify the commission on a form prescribed by the commission that it has insured an employer for workers' compensation promptly after undertaking to insure the employer.

G. Every insurance carrier on or before March 1 of each year shall pay to the state treasurer for the credit of the administrative fund, in lieu of all other taxes on workers' compensation

insurance, a tax of not more than three percent on all premiums collected or contracted for during the year ending December 31 next preceding, less the deductions from such total direct premiums for applicable cancellations, returned premiums and all policy dividends or refunds paid or credited to policyholders within this state and not reapplied as premiums for new, additional or extended insurance. Every self-insured employer, including workers' compensation pools, on or before March 31 of each year shall pay a tax of not more than three percent of the premiums that would have been paid by the employer if the employer had been fully insured by an insurance carrier authorized to transact workers' compensation insurance in this state during the preceding calendar year. The commission shall adopt rules that shall specify the premium plans and methods to be used for the calculation of rates and premiums and that shall be the basis for the taxes assessed to self-insured employers. The tax shall be not less than \$250 per annum and shall be computed and collected by the commission and paid to the state treasurer for the credit of the administrative fund at a rate not exceeding three percent to be fixed annually by the industrial commission of Arizona. The rate shall be no more than is necessary to cover the actual expenses of the industrial commission of Arizona in carrying out its powers and duties under this title. Any quarterly payments of tax pursuant to subsection I of this section shall be deducted from the tax payable pursuant to this subsection.

H. An insurance carrier may reduce the amount of premiums paid by an employer by up to five percent if all of the following apply:

1. The insured employer complies with the drug testing policy requirements prescribed in section 23-493.04.
2. The insured employer conducts drug testing of prospective employees.
3. The insured employer conducts drug testing of an employee after the employee has been injured.
4. The insured employer allows the employer's insurance carrier to have access to the drug testing results under paragraphs 2 and 3 of this subsection.

I. Any insurer that, pursuant to this section, paid or is required to pay a tax of \$2,000 or more for the preceding calendar year shall file a quarterly report, in a form prescribed by the commission, accompanied by a payment in an amount equal to the tax due at the rates prescribed in subsection G of this section for premiums determined pursuant to subsection G of this section or an amount equal to twenty-five percent of the tax paid or required to be paid pursuant to subsection G of this section for the preceding calendar year. The quarterly payments shall be due and payable on or before the last day of the month following the close of the quarter and shall be made to the state treasurer.

J. If an overpayment of taxes results from the method prescribed in subsection I of this section the industrial commission of Arizona may refund the overpayment without interest.

K. An insurer who fails to pay the tax prescribed by subsection G or I of this section or the amount prescribed by section 23-1065, subsection A is subject to a civil penalty equal to the

greater of \$25 or five percent of the tax or amount due plus interest at the rate of one percent per month from the date the tax or amount was due.

L. An insurance carrier authorized to write workers' compensation insurance may not assess an employer premiums for services provided by a contractor alleged to be an employee under section 23-902, subsection B or C, unless the carrier has done both of the following:

1. Prepared written audit or field investigation findings establishing that all applicable factors for determining employment status under section 23-902 have been met.
2. Provided a copy of such findings to the employer in advance of assessing a premium.

M. Notwithstanding section 23-901, paragraph 6, subdivision (i), a sole proprietor may waive the sole proprietor's rights to workers' compensation coverage and benefits if both the sole proprietor and the insurance carrier of the employer subject to this chapter for which the sole proprietor performs services sign and date a waiver that is substantially in the following form:

I am a sole proprietor, and I am doing business as (name of sole proprietor) . I am performing work as an independent contractor for (name of employer) . I am not the employee of (name of employer) for workers' compensation purposes, and, therefore, I am not entitled to workers' compensation benefits from (name of employer) . I understand that if I have any employees working for me, I must maintain workers' compensation insurance on them.

Sole proprietor Date

Insurance carrier Date

A.R.S. § 23-961.01. Self-insurance pools

A. Two or more employers, each of whom are engaged in similar industries, may enter into contracts to establish a workers' compensation pool to provide for the payment and administration of workers' compensation claims pursuant to this chapter. The members of each workers' compensation pool shall elect a board of trustees to manage the workers' compensation pool established pursuant to this section. Each member employer shall have been in business for at least five consecutive years before entering into a contract to establish a workers' compensation pool. The total amount of gross workers' compensation insurance premiums paid by the members of the pool in the year preceding the execution of the contract must equal at least seven hundred fifty thousand dollars. The group of employers that makes up a workers' compensation pool shall have been formed for a specific purpose, other than to engage in self-insurance, before the formation of a workers' compensation pool. Employers may establish workers' compensation pools pursuant to this section by one of the following means:

1. On a cooperative or contract basis.
2. Through the joint formation of a nonprofit corporation.

3. By the execution of a trust agreement to carry out the provisions of this chapter directly by the employers or by contracting with a third party.

B. A workers' compensation pool established pursuant to this section is subject to approval as a self-insurer by the industrial commission pursuant to section 23-961, subsection A, paragraph 2. The commission shall adopt rules as necessary to carry out the purposes of this section.

C. Workers' compensation pools established pursuant to this section are exempt from taxation under title 43.

D. Each agreement or contract shall provide that the members of a workers' compensation pool are jointly and severally liable for the liabilities of the pool. If a member of a pool discontinues its membership in the pool, that party shall be liable only for liabilities accruing prior to the discontinuation of its membership in the pool.

E. As to self-insurance pools established under this section, no pool, employer within a pool, or agent of any pool or employer within a pool may require an employee to be treated by or directed to any specific medical provider subsequent to the employee's initial visit to treat an industrial injury or illness, except as may be required as part of an independent medical examination for an employee making a workers' compensation claim.

F. The industrial commission shall adopt rules necessary for safeguarding the solvency of pools and guaranteeing that injured workers receive benefits as required under this chapter. These rules shall include, at a minimum, matters pertaining to classification and rating, loss reserves, investments, financial security including minimum and combined premiums, combined net worth and other indicia necessary for protection from insolvency, specific and aggregate excess insurance, group homogeneity and assessments necessary for participation in and administration of the workers' compensation system.

A.R.S. § 23-966. Failure of employer to pay claim or comply with commission order; reimbursement of funds

A. If a self-insured employer or other employer authorized by the commission to process or pay claims directly pursuant to this chapter does not fully comply with the provisions of the workers' compensation law relating to the processing or payment of compensation, medical benefits or the final orders of the commission, the workers' compensation claims shall be assigned by the commission to the special fund established by section 23-1065. The special fund shall ensure that these claims are processed and that compensation, benefits or amounts due are paid. The special fund may use third-party processors or other legal, medical, claims or labor market personnel to assist in the processing and payment of claims assigned under this section.

B. In addition to expenditures authorized under subsection A of this section, the special fund may use monies for any expense or service that is necessary to ensure that claims assigned under subsection A of this section are processed and paid, necessary to assist in the determination of liability of a claim that is assigned under this section or necessary to assist in the collection of monies owed to the special fund under this section, including collection against the cash, securities, bond and other assets of the employer. These expenses may include travel, discovery

procedures and employing any third-party processor, expert, consultant or professional, including an attorney, auditor, examiner or actuary. The special fund shall reimburse the administrative fund for all expenses incurred by the administrative fund related to the processing and payment of claims assigned under this section.

C. The special fund is the successor in interest to all excess insurance policies in effect at the time of an assignment under subsection A of this section that insure any part of the self-insured employer's financial obligations under the workers' compensation laws. The special fund's recovery rights under this subsection are subject to applicable coverage terms and policy limits in the excess policy. The excess insurer shall make payment directly to the special fund for all covered amounts spent under this section, including administrative costs, necessary expenses and attorney fees to the extent covered by the excess policy. Unless recovered from an excess insurer, the special fund shall have a claim against the employer for all monies that are spent or anticipated to be spent under this section, including administrative costs, necessary expenses and attorney fees. Any claim by the special fund shall be made on the cash, securities or bond filed under section 23-961 or applicable rules or on any other asset of the employer.

A.R.S. § 23-1065. Special fund; purposes; investment committee

A. The industrial commission may direct the payment into the state treasury of not to exceed one per cent of all premiums received by private insurance carriers during the immediately preceding calendar year. The same percentage shall be assessed against self-insurers based on the total cost to the self-insured employer as provided in section 23-961, subsection G. Such assessments shall be computed on the same premium basis as provided for in section 23-961, subsections G, H, I, J and K and shall be no more than is necessary to keep the special fund actuarially sound. Such payments shall be placed in a special fund within the administrative fund to provide, at the discretion of the commission, such additional awards as may be necessary to enable injured employees to accept the benefits of any law of this state or of the United States, or both jointly, for promotion of vocational rehabilitation of persons with disabilities in industry.

B. In claims involving an employee who has a preexisting industrially-related permanent physical impairment of the type specified in section 23-1044, subsection B and who thereafter suffers an additional permanent physical impairment of the type specified in such subsection, the claim involving the subsequent impairment is eligible for reimbursement, as provided by subsection D of this section, according to the following:

1. The employer in whose employ the subsequent impairment occurred or its insurance carrier is solely responsible for all temporary disability compensation to which the employee is entitled and for an amount equal to the permanent disability compensation provided by section 23-1044, subsection B for the subsequent impairment. If the employee is determined to have sustained no loss of earning capacity after the medically stationary date, the employer or carrier shall pay him as a vocational rehabilitation bonus the amount calculated under this paragraph as a lump sum, which shall be a credit against any permanent compensation benefits awarded in any subsequent proceeding. The amount of the vocational rehabilitation bonus for which the employer or carrier

is responsible under this paragraph shall be calculated solely on physical, medically rated permanent impairment and not on occupational or other factors.

2. If the commission determines that the employee is entitled to compensation for loss of earning capacity under section 23-1044, subsection C or permanent total disability under section 23-1045, subsection B, the total amount of permanent benefits for which the employer or carrier is solely responsible under paragraph 1 of this subsection shall be expended first, with monthly payments made according to the loss of earning capacity or permanent total disability award. The employer or carrier and the special fund are equally responsible for the remaining amount of compensation for loss of earning capacity under section 23-1044, subsection C or permanent total disability under section 23-1045, subsection B. This paragraph shall not be construed as requiring payment of any benefits under section 23-1044, subsection B in any case in which an employee is entitled to benefits for loss of earning capacity under section 23-1044, subsection C or permanent total disability benefits under section 23-1045, subsection B.

C. In claims involving an employee who has a preexisting physical impairment that is not industrially-related and, whether congenital or due to injury or disease, is of such seriousness as to constitute a hindrance or obstacle to employment or to obtaining reemployment if the employee becomes unemployed, and the impairment equals or exceeds a ten per cent permanent impairment evaluated in accordance with the American medical association guides to the evaluation of permanent impairment, and the employee thereafter suffers an additional permanent impairment not of the type specified in section 23-1044, subsection B, the claim involving the subsequent impairment is eligible for reimbursement, as provided by subsection D of this section, under the following conditions:

1. The employer in whose employ the subsequent impairment occurred or its carrier is solely responsible for all temporary disability compensation to which the employee is entitled.

2. The employer had knowledge of the permanent impairment at the time the employee was hired, or that the employee continued in employment after the employer acquired such knowledge.

3. The employee's preexisting impairment is due to one or more of the following:

(a) Epilepsy.

(b) Diabetes.

(c) Cardiac disease.

(d) Arthritis.

(e) Amputated foot, leg, arm or hand.

(f) Loss of sight of one or both eyes or a partial loss of uncorrected vision of more than seventy-five per cent bilaterally.

(g) Residual disability from poliomyelitis.

- (h) Cerebral palsy.
- (i) Multiple sclerosis.
- (j) Parkinson's disease.
- (k) Cerebral vascular accident.
- (l) Tuberculosis.
- (m) Silicosis.
- (n) Psychoneurotic disability following treatment in a recognized medical or mental institution.
- (o) Hemophilia.
- (p) Chronic osteomyelitis.
- (q) Hyperinsulinism.
- (r) Muscular dystrophies.
- (s) Arteriosclerosis.
- (t) Thrombophlebitis.
- (u) Varicose veins.
- (v) Heavy metal poisoning.
- (w) Ionizing radiation injury.
- (x) Compressed air sequelae.
- (y) Ruptured intervertebral disk.

4. The employer or carrier and the special fund are equally responsible for the amount of compensation for loss of earning capacity under section 23-1044, subsection C or permanent total disability under section 23-1045, subsection B.

D. The employer or insurance carrier shall notify the commission of its intent to claim reimbursement for an eligible claim under subsection B or C of this section not later than the time the employer or insurance carrier notifies the commission pursuant to section 23-1047, subsection A. Upon receiving notice the commission may expend funds from the special fund created by this section for travel and discovery procedures and for the employment of such independent legal, medical, rehabilitation, claims or labor market consultants or experts as may be deemed necessary by the commission to assist in the determination of the liability of the special fund, if any, under subsection B or C of this section. In the event there is any dispute regarding liability to the special fund pursuant to subsection B or C of this section, the commission shall not delay the issuance of a permanent award pursuant to section 23-1047, subsection B.

E. If the special fund created by this section is determined to be liable under either subsection B or C of this section, the employer or insurance carrier that is primarily liable shall pay the entire amount of the award to the injured employee and the commission shall by rule provide for the reimbursement of the employer or insurance carrier on an annual basis. In any case arising out of subsection B or C of this section, the written approval of the special fund is required for the compromise of any claim made pursuant to section 23-1023. In any such case, written approval shall not be unreasonably withheld by the special fund, carrier, self-insured employer or other person responsible for the payment of compensation. Failure to obtain the written approval of the special fund shall not cause the injured worker to lose any benefits but ends the special fund's liability for reimbursement and makes the employer or carrier solely responsible for the payment of the remaining benefits.

F. The employer or insurance carrier shall make its claim for reimbursement to the commission no later than November 1 each year, for payments made pursuant to subsection B or C of this section during the twelve months prior to October 1 each year. Claims shall be paid before December 31 each year. If the total annual reserved liabilities of the special fund obligated under subsections B and C of this section exceed six million dollars, as determined by the annual actuarial study performed pursuant to subsection I of this section, the commission, after notice and a hearing, may levy an additional assessment under subsection A of this section of up to one-half per cent to meet such liabilities. Any insurance carrier or employer who may be adversely affected by the additional assessment may at any time prior to the sixtieth day after such additional assessment is ordered file a complaint challenging the validity of the additional assessment in the superior court in Maricopa county for a judicial review of the additional assessment. On judicial review the determination of the commission shall be upheld if supported by substantial evidence in the record considered as a whole.

G. In the event the injured employee is awarded additional compensation, under subsection A of this section, the commission retains jurisdiction to amend, alter or change the award upon a change in the physical condition of the injured employee resulting from the injury.

H. On receiving notice that the special fund may be liable under this chapter, the commission may spend monies from the special fund established by this section for expenses that are necessary to assist in the processing, payment or determination of liability of the fund. These expenses may include travel, discovery procedures and employing any legal, medical, rehabilitation, claims or labor market consultant, examiner or expert.

I. The commission shall cause an annual actuarial study of the special award fund to be made by a qualified actuary who is a member of the society of actuaries. The actuary shall make specific recommendations for maintaining the fund on a sound actuarial basis. The actuarial study shall be completed on or before September 1.

J. The special fund of the commission consists of all monies from premiums and assessments, except penalties assessed pursuant to this chapter, received and paid into the fund, property and securities acquired by the use of monies in the fund, interest earned on monies in the fund and other monies derived from the sale, use or lease of properties belonging to the fund. The special

fund created by this section shall be administered by the director of the industrial commission, subject to the authority of the industrial commission. The director of the commission with approval of the investment committee, in the administration of the special fund, may provide loans, subject to repayment, budgetary review and legislative appropriation, to the administrative fund for the purposes and subject to section 23-1081, acquire real property and acquire or construct a building or other improvements on the real property as may be necessary to house, contain, furnish, equip and maintain offices and space for departmental and operational facilities of the commission. The commission when using space constructed pursuant to this section shall make equal payments of rent on a semiannual basis, which shall be deposited in the special fund. The investment committee shall determine the amount of the rent, which must be at least equal to or greater than that determined by the joint committee on capital review for buildings of similar design and construction as provided by section 41-792.01.

K. There is established an investment committee consisting of the director and the chairman of the commission and three persons knowledgeable in investments and economics appointed by the governor. Of the members appointed by the governor, one shall be a professional in the investment business, one shall represent workers' compensation insurers and one shall represent self-insurers. The term of members appointed by the governor is three years, which shall begin on July 1 and end on June 30 three years later. The committee shall prescribe by rule investment policies and supervise the investment activities of the special fund.

L. Each member of the investment committee, other than the director of the commission, is eligible to receive from the special fund:

1. Compensation of fifty dollars for each day while in actual attendance at meetings of the investment committee.
2. Reimbursement for expenses pursuant to title 38, chapter 4, article 2.

M. The investment committee shall meet at least once every month.

N. The investment committee shall periodically review and assess the investment strategy.

O. The investment committee, by resolution, may invest and reinvest the surplus or reserves in the funds established under this chapter in any legal investments authorized under section 38-718.

P. In addition to the investments authorized under section 38-718, the investment committee may approve the investment in real property and improvements on real property to house and maintain offices of the commission, including spaces for its departmental and operational facilities. Title to the real estate and improvements on the real estate vests in the special fund of the commission, and the assets become part of the fund as provided by this section.

Q. The investment committee may appoint a custodian for the safekeeping of all or any portion of the investments owned by the special fund of the commission and may register stocks, bonds and other investments in the name of a nominee. Except for investments held by a custodian or in the name of a nominee, all securities purchased pursuant to subsection O of this section shall

promptly be deposited with the state treasurer as custodian thereof, who shall collect the dividends, interest and principal thereof, and pay, when collected, into the special fund. The state treasurer shall pay all vouchers drawn for the purchase of securities. The director may sell any of the securities as the director deems appropriate, if authorized by resolution of the investment committee, and the proceeds therefrom shall be payable to the state treasurer for the account of the special fund upon delivery of the securities to the purchaser or the purchaser's agent.

A.R.S. § 41-1037. General permits; issuance of traditional permit

A. If an agency proposes a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license or agency authorization, the agency shall use a general permit if the facilities, activities or practices in the class are substantially similar in nature unless any of the following applies:

1. A general permit is prohibited by federal law.
2. The issuance of an alternative type of permit, license or authorization is specifically authorized by state statute.
3. The issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements.
4. The issuance of a general permit would result in additional regulatory requirements or costs being placed on the permit applicant.
5. The permit, license or authorization is issued pursuant to section 8-126, 8-503, 8-505, 23-504, 36-592, 36-594.01, 36-595, 36-596, 36-596.54, 41-1967.01 or 46-807.
6. The permit, license or authorization is issued pursuant to title V of the clean air act.

B. The agency retains the authority to revoke an applicant's ability to operate under a general permit and to require the applicant to obtain a traditional permit if the applicant is in substantial noncompliance with the applicable requirements for the general permit.

A.R.S. § 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.

F.

CONSIDERATION AND DISCUSSION OF A PETITION FROM THE AMERICAN
PROPERTY CASUALTY INSURANCE ASSOCIATION PURSUANT TO A.R.S. §
41-1033(G)



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM

MEETING DATE: May 4, 2021

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

FROM: Council Staff

DATE: April 20, 2021

SUBJECT: A.R.S. 41-1033(G) Petition - Department of Insurance and Financial Institutions

I. STANDARD OF REVIEW

American Property Casualty Insurance Association (APCIA), a national trade association for home, auto, and business insurers,¹ filed this petition pursuant to A.R.S. § 41-1033(G), alleging that the Department of Insurance and Financial Institutions's (DIFI) Regulatory Bulletin No. 2020-06 (Bulletin) (Exhibit 2 to the petition) does not fulfill a public welfare concern and unduly burdens auto insurers and insureds.

At the March 2, 2021 Council Meeting, at least four (4) Council Members voted to hear this petition at the April 27, 2021 Study Session and May 4, 2021 Council Meeting. Council staff sent letters to both APCIA and DIFI dated March 2, 2021 advising of the Council's vote. In the letter to DIFI, Council staff noted that the Department had to submit a response to the petition no later than April 1, 2021. Council staff received DIFI's response via email on April 1, 2021.

When at least four Council Members voted to request of the Chair that this matter be heard in a public meeting pursuant to A.R.S. § 41-1033(H), pursuant to (H)(1), the Council agreed that it would make a determination within 90 days of whether DIFI's bulletin "meets the guidelines prescribed in subsection G of this section." Therefore, the question before the Council is whether the Bulletin results in an undue burden on APCIA and whether it is necessary to fulfill a public health, safety, or welfare concern.

¹ <https://www.apci.org/about>

II. PROCEDURE

Pursuant to A.R.S. § 41-1033(G) “[a] person may petition the council to request a review of [a]...substantive policy statement...based on the person's belief that the...substantive policy statement...is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern.”

After considering the petition, the Department’s response, and the supporting materials submitted, the Council must make a decision that includes findings of fact and conclusions of law, separately stated. The conclusions of law shall specifically address the agency’s authority to act consistent with section 41-1030. *See* A.R.S. § 41-1033(K).

Pursuant to R1-6-402, no later than seven days after the Council makes a decision on this petition, the Chair shall send a letter to the affected agency head and the person filing the petition advising them of the reasons for, and date of, the decision.

III. BACKGROUND

As described to the Council in a memorandum from Council staff dated February 1, 2021, on January 19, 2021, Council staff received a petition from Ellen Poole on behalf of the APCIA. APCIA raised several issues with the DIFI related to the application of the prohibitions in A.R.S. § 20-263(A) (Vehicle insurance; prohibited act by insurer; hearing; penalty) and related documentation issued by DIFI providing guidance and establishing additional requirements regarding motor vehicle insurance premium increases.

Specifically, A.R.S. § 20-263(A) states, “[n]o insurer shall increase the motor vehicle insurance premium of an insured as a result of an accident not caused or significantly contributed to by the actions of the insured. Any insurer which increases the premium as a result of accident involvement shall notify the insured of the reason for such increase.” On December 4, 2020, DIFI issued Regulatory Bulletin No. 2020-06 (Bulletin) setting forth DIFI’s interpretation of, and guidance on, A.R.S. § 20-263(A). According to the petitioner, the Bulletin contains several key provisions relevant to this petition:

- “The Department interprets ARS § 20-263(A) to require a particular limitation on insurers regarding the automobile insurance underwriting process, and the Department therefore concludes that ARS § 20-263(A) prohibits premium increases for ‘an accident not caused or significantly contributed to by the actions of’ both currently insured drivers and those seeking new coverage.”
- “[T]he Department considers using data that does not demonstrably exclude not-at-fault accidents as being contrary to ARS § 20-263(A), which prohibits raising automobile insurance premiums for accidents not caused or significantly contributed to by insureds.”

APCIA alleges the guidance outlined above the Bulletin is unduly burdensome and is not demonstrated to be necessary to fulfill a public health, safety, or welfare concern for two reasons:

- That it effectively prevents the use of prior vehicle damage rating factors [vehicle history scoring] even though APCIA alleges A.R.S. § 20-263(A) applies to driver fault for an accident and not to the rating of vehicle characteristics; and
- That the Bulletin determines the statute applies both to insureds and applicants although the statute references only insureds. APCIA argues that in applying the statute to both “insureds” and “applicants”, “DIFI conflates “insured” with “applicant.” It further argues that “[t]he statute prohibits an insurer from increasing the premium ‘of an insured’ for a NAF accident; the statute does not expressly apply to “applicants.” The second sentence of the statute requires insurers to notify insureds as to the reason for premium increases because of an accident. Logically, an insurer cannot “increase the premium,” much less notify a person of the reason for an increase, of someone who does not have an established premium from which to increase.”

In its response, DIFI makes the following key points:

- The Department’s interpretation of A.R.S. § 20-263(A) is reasonable and Regulatory Bulletin No. 2020-06 does not place added burdens on the insurance industry. Specifically, the Department argues on page 7-8 of its response that: “[i]f the Department has interpreted A.R.S. § 20-263(A) correctly, whether any requirements flowing from that interpretation are burdensome are ultimately irrelevant because it is the statute that imposes those requirements, not the Department. Moreover, the Bulletin’s interpretation of A.R.S. § 20-263(A) limits insurers’ use of any data used to develop a score that fails to account for fault in any given accident. This does not universally preclude insurers from using vehicle history scoring. It simply requires insurers to use data that accounts for a driver’s fault and contribution to a prior accident, as required by Arizona law.”
- In reference to the petitioner's arguments regarding the application of A.R.S. § 20-263(A) to “applicants”, the Department argues that the petition’s interpretation of the statute “[p]roduces absurd results that the Department’s interpretation avoids.” While the Department acknowledges that a plain reading of the statute suggests a distinction between an “insured” and an “applicant”, it argues that interpreting the statute this way would result in a “bizarre underwriting regime, where an initial premium quote for an applicant, which could use vehicle history scores that potentially increased the premium quote because of a NAF accident, would have to be underwritten differently (by not using that same vehicle history score data) upon renewal. Second, it would mean that an “insured” consumer shopping for a different insurance provider could be quoted as an “applicant” (and therefore with impermissible vehicle history score data possibly included), even though the consumer is an “insured” person through a different provider. Moreover, in such a circumstance, the shopping consumer’s current insurance provider would not be able to provide a renewal quote using vehicle history score data, even though its competitors could. Third, it ignores the fact that once a premium quote is provided to a consumer, the insurance provider is obligated to make that consumer an “insured” when the consumer pays the quoted premium, thus making any distinction between “insured” and “applicants” practically irrelevant.”

On April 20, 2021, APCIA submitted a reply to DIFI's response, which is included in the final materials for the Council's consideration. In its reply, APCIA makes the following points in rebuttal to the points raised in DIFI's response:

- GRRC does have the jurisdiction and authority to hear the petition and invalidate the Bulletin based on APCIA's understanding of A.R.S. § 41-1033;
- The relevant statute, A.R.S. § 20-263(A), can only be applied to "insureds" and not "applicants" based on APCIA's reading of the statute. Further, there are legitimate reasons to apply the distinction between "insureds" and "applicants"; and
- DIFI cannot interpret A.R.S. § 20-263(A) to prohibit vehicle history scoring because it is a new technology that did not exist in 1987 when the statute was enacted. APCIA notes that "[i]t is up to the Legislature to amend the statute to address or regulate this new technology, if it so desires."

IV. DISCUSSION

A. The Council only needs to determine whether DIFI's Bulletin results in an undue burden and not whether DIFI's interpretation of A.R.S. § 20-263(A) is correct.

DIFI's Bulletin is a substantive policy statement. *See* Exhibit 1 to DIFI's response. A substantive policy statement is defined in A.R.S. § 41-1001(22) as:

[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.

Therefore, by definition, the Bulletin is DIFI's current approach to, or opinion of, A.R.S. § 20-263(A), which states that [n]o insurer shall increase the motor vehicle insurance premium of an insured as a result of an accident not caused or significantly contributed to by the actions of the insured. Any insurer which increases the premium as a result of accident involvement shall notify the insured of the reason for such increase."

The Bulletin applies this statute to a recently developed underwriting tool known as "vehicle history scoring." APCIA describes vehicle history scoring as "the process of tracking vehicle-specific information, including prior damage to the vehicle, to predict future loss

involving the vehicle, regardless of the driver's actions." Notably, the Bulletin does not prohibit the use of vehicle history scoring. The Department states in its Bulletin that "the Department concludes that A.R.S. § 20-263(A) prohibits an insurer from increasing premium on an automobile policy, including surcharges, eliminating discounts, placing the insured in a higher rating tier, or charging a higher base rate, unless the insurer determines and can demonstrate that the insured caused or significantly contributed to the historical damage contained in a vehicle history report."

The Council's role in this proceeding is to determine whether the substantive policy statement (e.g. Bulletin) is unduly burdensome to insurers and insureds, as APCIA alleges, or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. A.R.S. § 41-1033(G). Many of the arguments put forth by APCIA and DIFI reflect an attempt to litigate A.R.S. § 20-263(A) before the Council, but it is not the Council's statutory responsibility under A.R.S. § 41-1033 to interpret the underlying statute which the Bulletin is applying.

B. APCIA has not presented any specific facts, instances, or evidence that demonstrate that the Bulletin is unduly burdensome.

By their very nature, regulations, and even substantive policy statements, often create burdens on the regulated community. However, the scope of the current petition is whether DIFI's Bulletin is "*unduly* burdensome" on insurers and insureds. *See* A.R.S. § 41-1033(G) (emphasis added).

APCIA has not presented any specific facts, instances, or evidence that demonstrate how the prohibition on certain vehicle history scoring factors in the Bulletin results in undue burdens on insurers or insureds (e.g. evidence of higher premiums or proof of diminished profits). Moreover, industry declined to identify some of the vehicle history scoring factors.²

Similarly, APCIA's arguments related to the distinction between "applicants" vs. "insureds" turns solely on the scope of applicability of A.R.S. § 20-263(A) rather than on whether the application of the requirements to applicants and insureds as outlined in the Bulletin are unduly burdensome. As outlined previously, the scope of the Council's analysis in this matter is limited to whether the substantive policy statement is unduly burdensome, not an interpretation of the statutory scope of applicability of A.R.S. § 20-263(A). Neither APCIA's petition nor its supporting documents include any specific facts or instances that demonstrate how the Bulletin results in undue burdens on insurers or insureds.

A Council decision pursuant to A.R.S. § 41-1033(G) shall include findings of fact and conclusions of law separately stated. *See* A.R.S. § 41-1033(K). It is Council staff's position that, on the record before the Council, APCIA has not provided sufficient facts to show that the Bulletin itself imposes undue burdens on insurers or insureds, rather than applying an already existing statutory burden (e.g. compliance with A.R.S. § 20-263(A)) on a new underwriting tool (vehicle history scoring).

² At the March 2, 2021 Council Meeting, a representative of GEICO stated that vehicle history scoring allows the company to consider factors that it believes are "actuarially justified." The representative declined to say what those factors are, citing "competitive information." *See* Recording of the March 2, 2021 Council Meeting at 9:18, available at <https://archive.org/details/3.2.2021-cm>.

V. CONCLUSION

As stated above, the question before the Council is whether the Bulletin is unduly burdensome or not necessary to fulfill a public health, safety, or welfare concern pursuant to A.R.S. § 41-1033(G). Further, it is Council staff's view that the other issues raised in the petition, DIFI's response, APCIA's reply, and public comments regarding DIFI's interpretation of A.R.S. § 20-263(A) are beyond the scope of the petition process in A.R.S. § 41-1033. Council staff takes no position on the propriety of DIFI's interpretation of A.R.S. § 20-263(A) as it relates to certain vehicle history scoring factors or APCIA's and industry's understanding of the same. In Council staff's view, APCIA has not made the required showing under A.R.S. § 41-1033(G) and recommends that the Council reject this petition.

January 19, 2021

VIA ELECTRONIC MAIL

Ms. Nicole Sornsin, Chairwoman
Governor's Regulatory Review Council
100 N. 15th Ave., #305
Phoenix, AZ 85007

Re: GRRC Review of Arizona Department of Insurance and Financial Institutions' New Bulletin on Rate Filings

Dear Ms. Sornsin and Members of the Governor's Regulatory Review Council ("GRRC"):

The American Property Casualty Insurance Association ("APCIA") is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members write 55.7 percent of the property casualty insurance market in Arizona. APCIA members include insurers that issue private passenger automobile ("PPA") insurance in Arizona, including 51.7 of the personal automobile insurance market and 73.3 percent of the commercial automobile insurance market. The members must file their rates and forms with the Arizona Department of Insurance and Financial Institutions ("DIFI"). The filings govern nearly every aspect of the members' businesses – what risks they cover, how policies may be issued, and how much they are permitted to charge in premiums.

PPA insurers are required to file their proposed rates with DIFI. A.R.S. §§ 20-383, 20-385, 20-388. An insurer may not charge rates which have been disapproved by DIFI. Generally, DIFI may only disapprove rates which are excessive, inadequate, or unfairly discriminatory. Arizona law permits insurers to consider nearly any potential factor in classifying risks and setting rates. *Id.*; A.R.S. § 20-384(C). So long as the rates are actuarially justified and the insurer does not use one of the impermissible factors – race, color, creed, or national origin – the insurer may use the classification system. PPA insurers consider factors such as age, driving experience, zip code, vehicle characteristics, and loss history in setting premium. One limited exception to Arizona's broad practice permitting the use of any driver's experience factors in setting ratings is A.R.S. § 20-263(A), which provides:

A. No insurer **shall increase** the motor vehicle insurance premium of **an insured** as a result of **an accident** not caused or significantly contributed to by the actions of the insured. Any insurer which increases the premium as a result of accident involvement shall notify the insured of the reason for such increase. [Emphasis added].

The purpose of the statute is to prohibit premium increases on existing policies based on car accidents the insured did not cause. APCIA's members comply with the statute, and have done so since the statute's enactment in 1987.

Beginning in 2019, APCIA became aware that DIFI had begun enforcing a new requirement on PPA rate filings by objecting to filings which used vehicle history scoring in setting rates or used claims other than accidents to set rates. “Vehicle history scoring” is the process of tracking vehicle-specific information, including prior damage to the vehicle, to predict future loss involving the vehicle, regardless of the driver’s actions. DIFI did not announce its new position in any formal bulletin; APCIA’s members simply received objections to individual rate filings with DIFI’s cited reason being that the filing violated § 20-263(A).

In March 2020, without notice, DIFI amended a checklist posted on its website to reflect this new interpretation. Until this time the checklist merely contained procedural guidance for insurers on how to submit filings within statutory compliance; this inclusion of a new statutory interpretation seemed far beyond the checklist’s purpose and function. As relevant here, the amended checklist included the following interpretation of § 20-263(A):

Insurers may not implement rating rules that allow for the increase of premiums or tier placement based on accidents **or claims** that are not caused or significantly contributed to by the actions of the insured. **This includes the use of vehicle history scoring.** [Emphasis added]

See DIFI Checklist (March 2020), attached. APCIA expressed concerns to DIFI over the checklist on the basis that the checklist impermissibly expanded the text of the statute and did not reflect the actual practice within the auto insurance market of how fault determinations are made and disseminated. In October 2020, DIFI issued a notice stating that it was considering issuing a bulletin related to § 20-263(A) and soliciting comments from the public. At the same time, it suddenly removed this version of the checklist from its website. A number of insurers and industry trade groups, including APCIA, provided comments on the proposed bulletin.

On December 4, 2020, DIFI issued Regulatory Bulletin No. 2020-06 (attached) setting forth DIFI’s interpretation of and guidance on § 20-263(A). The Bulletin contains several key provisions, including, as relevant to this Petition:

- “The Department interprets ARS § 20-263(A) to require a particular limitation on insurers regarding the automobile insurance underwriting process, and the Department therefore concludes that ARS § 20-263(A) prohibits premium increases for ‘an accident not caused or significantly contributed to by the actions of’ both currently insured drivers and those seeking new coverage.”
- “[T]he Department considers using data that does not demonstrably exclude not-at-fault accidents as being contrary to ARS § 20-263(A), which prohibits raising automobile insurance premiums for accidents not caused or significantly contributed to by insureds.”

The additional requirements imposed by DIFI are not supported by the text, but are instead purely extrastatutory. DIFI has premised the new requirements on an expansive and incorrect interpretation of A.R.S. § 20-263, as detailed below. In addition, DIFI’s new position is unduly burdensome and is not demonstrated to be necessary to fulfill a

public health, safety, or welfare concern, because it prohibits insurers from setting rates that are actuarially justified for riskier vehicles, even though that is not prohibited by § 20-263(A). APCIA's members have had their rate filings objected to and held up by DIFI based on the same principles set forth in the Bulletin. Review of the Bulletin by GRRC is appropriate.

Section 41-1033(G) authorizes GRRC review of a substantive policy statement "based on the [petitioner's] belief that the ... substantive policy statement ... is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern." APCIA submits this Petition pursuant to § 41-1033(G) seeking a declaration from GRRC that the Bulletin does not fulfill a public welfare concern, and unduly burdens auto insurers and insureds. As noted above, the statute prohibits the "**increase** [of] the motor vehicle insurance premium of **an insured** as a result of **an accident** not caused or significantly contributed to by the actions of the insured. Any insurer which increases the premium as a result of accident involvement shall notify the insured of the reason for such increase." A.R.S. § 20-263(A) (emphasis added). Through the Bulletin, DIFI has adopted unduly burdensome interpretations of the statute, including (1) effectively preventing the use of prior vehicle damage rating factors even though the statute applies to driver fault for an accident and not to the rating of vehicle characteristics; and (2) determining that the statute applies both to insureds and applicants although the statute references only insureds.

With respect to the first item, the Bulletin effectively prohibits insurers' use of vehicle history scoring if the insurer cannot show NAF accidents are excluded. Vendors providing vehicle damage information to insurers cannot discern the cause or fault of the damage. Thus, as a practical matter, the Bulletin prohibits scoring altogether and ties the hands of insurers in evaluating vehicle risk. That prohibition is not found in § 20-263, or elsewhere in the Insurance Code. DIFI's prohibition cannot be squared with Arizona's broad policy providing that "[r]isks may be classified in any reasonable way." A.R.S. § 20-384(C). Use of any relevant factor is the default; a prohibition on using a factor is the exception. A driver can have a clean driving history but, if the vehicle being driven is less safe, there is still increased risk, and the Insurance Code allows insurers to adjust for these two different types of risk. Vehicle history scoring, commonly used by PPA insurers since at least 2016, allows insurers to evaluate not just general risk, but risk involving *that specific vehicle*. A vehicle's condition has obvious relevance to the risk, and actuarial data supports using vehicle history. A vehicle that has previously been damaged is inherently less safe – and thus riskier to insure – than an undamaged vehicle. It is more likely to break down or be involved in a collision, and in either case the expected loss on a claim is higher. Classifying damaged vehicles as riskier is certainly reasonable

under § 20-384(C). To compensate for additional risk, PPA insurers, like all insurers, charge additional premium. But the Bulletin forbids this practice. It is up to the Legislature, not DIFI, to expand the statute from rating based on accidents to also cover rating based on vehicle condition. It has not done so.

The Bulletin's broad prohibition on the use of vehicle history scoring also reaches categories of damage that are not considered accidents. Although the Bulletin appears to permit vehicle history scoring where damage to the vehicle did not result from a collision-type accident, this is a distinction without a difference. The insurer has no way of knowing whether a vehicle's condition resulted from an accident, NAF or otherwise, or other type of claim (fire, flood, theft, etc.) within the vehicle history report. Without the ability to prove the negative - that a vehicle's condition did not result from a NAF accident - the insurer may not use vehicle conditions arising from non-accidents, even though the Bulletin purports to allow it. In practice, the Bulletin does the opposite. When insurers cannot determine the cause of damage from a vehicle history report, they are effectively barred from considering that damage in determining rates. If insurers cannot charge higher rates for riskier vehicles, they will instead be forced to require all policyholders to cover the costs. Higher rates for everyone benefit no one.

As to the second item, the Bulletin applies the statute to both existing insureds and applicants for insurance. (“[A]ny offered rate to an applicant via a premium quote must comply with ARS § 20-263(A) in the same way that the statute applies to any premium offered to a currently insured policyholder.”). DIFI conflates “insured” with “applicant.” “Insured” means an existing insured; someone who is covered or protected by an insurance policy. An applicant is a person who applies for insurance. An applicant may become an insured, but is not an insured until the application is accepted and the policy is issued. The statute's prohibition on increasing rates is much narrower than DIFI's interpretation – it applies only to “insured[s].”

The statute prohibits an insurer from increasing the premium “of an insured” for a NAF accident; the statute does not expressly apply to “applicants.” The second sentence of the statute requires insurers to notify insureds as to the reason for premium increases because of an accident. Logically, an insurer cannot “increase the premium,” much less notify a person of the reason for an increase, of someone who does not have an established premium from which to increase. The Legislature's intent was to prevent existing insureds from receiving premium increases related to NAF accidents. Moreover, DIFI's interpretation is in conflict with A.R.S. § 20-383(A) which requires insurers to charge adequate rates that equitably address differences in expected losses and expenses without being excessive. DIFI's expansion of A.R.S. § 20-263(A) to applicants prevents charging a higher rate to new higher risk policies (and

consequentially also prevents a lower rate to lower risk policies) and in doing so creates a subsidy in conflict with the Arizona public policy. If the Legislature intended for the statute to reach both existing insureds and future insureds, it could have included the term “applicant” within the statute, as it has in other provisions of the Insurance Code. *Compare with* A.R.S. § 20-259.01 (insurer must offer uninsured motorist coverage “to a named insured or applicant”). It did not.

Lastly, DIFI’s general practices in the administration of A.R.S. § 20-263(A) can be observed to be inconsistent with the interpretations expressed in its Bulletin relating to discounts and tier assignments. The statute prohibits an insurer from increasing the premium “of an insured” for a NAF accident; the statute does not, for example, require insureds with NAFs or other claims be granted access to discounts that would lower their rate. A review of the objections to insurers’ filed program rates and rules over the past several years show occurrences where DIFI has required insurers to provide access to discounts to policyholders with NAFs or other claims. This goes beyond the plain meaning of the phrase “increase the premium” in the statute.

The Bulletin’s prohibitions impose undue burdens on both auto insurers and insureds. The Bulletin unduly burdens insurers because as a practical matter, the only insurer who can make a fault determination for an accident is the insurer on the claim at the time. The Bulletin forces subsequent insurers to treat all prior accidents as NAF accidents, and prohibits the setting of rates based on those accidents. In addition, the prohibition on the use of vehicle history means insurers cannot collect sufficient premium for insureds who drive damaged vehicles. Insureds are unduly burdened as well because those with clean driving records and undamaged vehicles will be forced to pay higher premiums to compensate for the prohibition.

Section 20-263 applies to a narrow subset of claims – premium increases for accidents not caused by an insured. The statute provides that when an insured is involved in a NAF accident, an insurer may not increase the insured’s premium. It does not apply to persons who are applicants rather than existing insureds or mandate discount eligibility. DIFI has sought to rewrite and expand the language of the statute.

APCIA requests GRRC review the Bulletin, the use of the Checklist and DIFI’s general practices related to this issue. APCIA respectfully requests that GRRC grant the Petition, compel DIFI to stop enforcing these practices, and specifically clarify that § 20-263(A) only applies to an insured’s not at-fault accidents and does not apply to other claims, vehicle history rating on other claims, applicants or discount eligibility.

Sincerely,

/s/ Ellen Poole

Ellen Poole, on behalf of
The American Property Casualty Insurance Association

ARIZONA PROPERTY AND CASUALTY RATE AND RULE FILINGS

PERSONAL AUTOMOBILE INSURANCE

The Property and Casualty Section within the Arizona Department of Insurance (“AZDOI”) has developed the following checklist to help you submit a complete and correct rate and rule filing.

NOTE: This checklist is not intended to serve as an all-inclusive list of requirements. Insurance policies must meet all requirements of Arizona law, regardless of whether the law is summarized in this checklist.

This checklist applies to the following types of insurance (TOI’s) and sub-types:

19.0: Personal Auto

- 19.0001 - Private Passenger Auto;
- 19.0002 – Motorcycle;
- 19.0003 - Recreational Vehicle;
- 19.0004 - Other.

This checklist is in addition to the [General Filing Checklist](#)

FILING REQUIREMENTS

NOTE – Use and file. All rate filings must be made within 30 days after the effective date of the rate. Arizona law provides that if the rate or rule does not comply, the AZDOI may issue an order at any time specifying in what respect the filing is in conflict and stating that, within 30 days after the order is issued, the rate is no longer effective. The order will not affect any contract made or issued prior to the effective date of the order. The insurer or rate service organization making the filing may request a hearing pursuant to Arizona Revised Statutes, Title 41, Chapter 6, Article 10. Please ensure that all of the applicable issues below are addressed in your rate filing. [ARS § 20-385](#).

Topic	References*	Requirements
* “§” = Arizona Revised Statutes Section		
At Fault Accidents	<u>§ 20-263 (A)</u>	Insurers may not implement rating rules that allow for the increase of premiums or tier placement based on accidents or claims that are not caused or significantly contributed to by the actions of the insured. This includes the use of vehicle history scoring.
Automobile Theft Authority Fee	<u>§ 41-3451(J)</u>	The Arizona Automobile Theft Authority (AATA) per vehicle semiannual fee is \$0.50 or a maximum of \$1.00 per year.
Minimum Limits of Coverage	<u>§ 20-266</u>	Insurers must make the mandatory minimum liability limits available on all personal auto policies. These limits are defined under ARS §28-4009 as bodily injury limits of \$25,000 per person, \$50,000 per accident, and property damage liability limits of \$15,000 per accident or a combined policy limit (CSL) of \$65,000..

Topic	References*	Requirements
* "§" = Arizona Revised Statutes Section		
Monthly Payment Plans	§20-267	Insurers must <u>offer</u> a monthly payment plan, and may charge an installment fee. Insurers may not charge more than "an amount equal to one and one-half times the monthly premium in addition to the first month's premium."
Motor Vehicle ID Cards	§ 28-4133	Insurers must issue at least two motor vehicle insurance identification cards for a motor vehicle or automobile liability policy that include the Insurers name and the MVD ID Number assigned to the insurer.
Rating Seat Belt Usage	§28-909 (E)	Insurers may not implement rating or underwriting rules that surcharge an applicant, or cancel or non-renew an existing insured, based on vehicle restraint (lap and shoulder belt) violation.
Rating Speed Violations	§28-702.01	Insurers may not implement rating or underwriting rules that surcharge an applicant, or cancel or non-renew an existing insured, based on a moving violation for driving sixty-five miles per hour or less if the maximum speed limit was fifty-five miles per hour.
Safety Equipment	§ 20-264	When offering comprehensive coverage, insurers must also <u>offer</u> a separate rate for safety equipment coverage including glass in windows and doors and plastic material used in the lights for a vehicle, without a deductible.
Credit Score Models	§ 20-2110	The Department requires that provision statements pertaining to § 20-2110(F)1-6 are included in the company UW manual or credit scoring model filed.
Discounts/Surcharges	§ 20-375	The Department requires actuarial support for discounts. This support may be in the form of relativity tables displaying comparisons of profits and losses between policyholders receiving the discount and those that are not. While data specific to Arizona is preferred, national data to support a discount is acceptable.
Confidential Documentation	§ 44-401 § 20-386	Supporting documents provided in a filing, may be recognized as Trade Secret. However, the insurer or filer shall have the burden of asserting to the director that the information is a trade secret.
GLM Models	§ 20-381	All supplementary rate information may be requested by the Department in order to further support the rate filing made. This information may be acknowledged as Trade Secret upon request. Please see the GLM Checklist provided by the Department.
Fees	§ 20-385	Any fees charged by the insured must be included in a filing and actuarially supported via an expense breakdown.
Privacy Notices	§ 20-2104	Privacy notices must be issued to insureds in accordance with statute. Please review the following: § 20-2104 and § 20-2101
Adverse Action Notices	§ 20-2110	Adverse underwriting decisions must be provided to the insured in accordance with § 20-2110(A-E).
subTOIs		Any Rate or Rate/Rule filing shall use the applicable subTOI when filing rate changes. Do not use "TOI XX Sub-OI Combinations" for filing types Rate or Rate/Rule for Homeowners, Personal Auto, Med Mal, Other Liabilities,

Topic	References*	Requirements
* "§" = Arizona Revised Statutes Section		
		Crop Hail, Commercial Auto, Commercial Multi-Perl, Inland Marine or Mortgage Guarantee filings when the rate change(s) apply to specific subTOI(s). This ensures that any rate change is assigned to the applicable subTOI.

CERTIFICATION OF COMPANY OFFICER

NOTE: Filer certification must be completed and signed by an officer of the company.

I, _____, certify on behalf of the company that is submitting this filing that I am responsible for the validity, accuracy and completeness of the enclosures in this filing. To the best of my knowledge and belief each form or rate filing included in this filing: 1) conforms to all of the applicable requirements outlined above; 2) contains no provision(s) previously disapproved or required to be corrected and/or revised by the Arizona Department of Insurance; 3) does not exceed this company's powers, the authority granted by its state of domicile or its Arizona certificate of authority; and 4) complies with all applicable provisions of state or federal law and orders of the Director of Insurance.

Title: _____

Email: _____

Phone: _____

Date: _____

Company Officer Signature: _____

Important Note: Pursuant to ARS § 28-4148, each insurer who cancels or becomes aware of the cancellation or nonrenewal of or failure to renew or issuance of a motor vehicle liability insurance policy issued on a vehicle in this state shall provide to the Department of Transportation all cancellations, non-renewals or new issues for any reason after seven or fewer days have elapsed from the time of processing the cancellation, nonrenewal or new issue of a policy.

The insurer shall provide the information by electronic data interchange in a format schedule specified by and in a manner prescribed by the Director of the Department of Transportation. ARS § 20-237 provides that if an insurer has failed to comply with the provisions of ARS § 28-4148, the Director of Insurance shall impose a civil penalty for each violation of not more than two hundred fifty dollars (\$250) per day for each day the insurer is in violation of ARS § 28-4148. The Director of Insurance also may suspend the insurer's certificate of authority until the insurer complies with the provisions of section ARS § 28-4148. For further information on reporting the required information, please contact the Arizona Department of Transportation.



Douglas A. Ducey, Governor
Evan G. Daniels, Director

Regulatory Bulletin 2020-06¹

ARS § 20-263(A) and Premium Increases for Not-At-Fault Accidents

Pursuant to Arizona Revised Statutes (ARS) §§ 41-1001(22) and -1091, the Arizona Department of Insurance and Financial Institutions (Department) occasionally issues Substantive Policy Statements to provide guidance regarding common compliance matters or recurring questions identified through the Department's review of market analysis, consumer complaints and product filings. Department Substantive Policy Statements are intended to promote a level playing field and uniform application of statutory or regulatory provisions.

I. Purpose

The purpose of this Substantive Policy Statement is to address how ARS § 20-263(A) applies to an insurer's use of historical accident data when determining the premium for an automobile insurance policy.

II. Scope

This Substantive Policy Statement is intended to provide guidance to all property and casualty insurers that sell automobile insurance to Arizona consumers and is directed to all property and casualty insurers, insurance rating organizations and agencies, insurance underwriters, producers, and interested parties.

III. Background

The Department has observed a number of rate/rule filings and consumer complaints that include or reference the practice of applying rating factors to policy premiums based on historical vehicle data, including prior property damage and salvaged vehicle title status. This practice raises the question of whether such data may be used in establishing automobile insurance premiums under ARS § 20-263(A). Pursuant to ARS §§ 41-1001(22) and -1091, on October 9, 2020, the Department issued a Notice of Opportunity to Comment in which it stated its intent to

¹ 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.

address ARS § 20-263(A) in a Substantive Policy Statement that would set forth the Department's interpretation of the statute and provide guidance as to when insurers may use historical vehicle data consistent with the statute. The Department solicited comments from interested parties regarding ARS § 20-263(A) and how vehicle history data is used to establish automobile insurance premiums. The Department received, reviewed, and considered numerous comments in the course of crafting this Substantive Policy Statement.

IV. Department Position

As relevant to this Substantive Policy Statement, ARS § 20-263(A) provides:

No insurer shall increase the motor vehicle insurance premium of an insured as a result of an accident not caused or significantly contributed to by the actions of the insured. Any insurer which increases the premium as a result of accident involvement shall notify the insured of the reason for such increase.

A. Scope of ARS § 20-263(A)

The Department interprets ARS § 20-263(A) to require a particular limitation on insurers regarding the automobile insurance underwriting process, and the Department therefore concludes that ARS § 20-263(A) prohibits premium increases for "an accident not caused or significantly contributed to by the actions of" both currently insured drivers and those seeking new coverage. Broadly construing the term "insured" is consistent with the statute's evident purpose of establishing a limitation on the underwriting process, which is to protect insurance consumers from motor vehicle premium increases due to accidents not caused or significantly contributed to by the insured.

Although the term "insured" as used in ARS § 20-263(A) is not defined, the Department concludes that distinguishing between drivers who are "insured" and "applicants" seeking a new policy is not warranted. Because the statute's main effect is to place a limitation on the insurance underwriting process, applying a distinction between "insured" and "applicants" here would create inequitable and absurd results. Ultimately, the Department is aware of no significant difference in underwriting premiums for drivers that currently possess insurance versus those seeking insurance. Industry's comments submitted to the Department did not identify any significant difference in underwriting premiums for their insureds and new applicants. In addition, broadly construing the term "insured" to include applicants to whom an insurance company has quoted a premium allows for effectuating the plain meaning of the term "premium." Only insureds pay premium, and, of course, once an applicant pays a quoted premium, an applicant becomes insured. At renewal, the same historical data regarding a vehicle ostensibly would be used to calculate a renewal premium.² Therefore, any offered rate to an

² Among the absurd results that would occur in concluding § 20-263(A) applies to "insured" drivers but not "applicants" is that a not-at-fault accident could be considered in establishing an initial premium for an applicant, but upon renewal, the insurance company would need to revise

applicant via a premium quote must comply with ARS § 20-263(A) in the same way that the statute applies to any premium offered to a currently insured policyholder. In other words, both new and renewal rates must comply with ARS § 20-263(A).

In addition, the Department concludes that ARS § 20-263(A) prohibits an insurer from increasing premium on an automobile policy, including surcharges, eliminating discounts, placing the insured in a higher rating tier, or charging a higher base rate, unless the insurer determines and can demonstrate that the insured caused or significantly contributed to the historical damage contained in a vehicle history report. Section 20-263(A) does not distinguish between the vehicle and the driver when it comes to raising premiums; the statute prohibits any increases to the total premium charged for the policy.

B. The Department's interpretation of "accident" in ARS § 20-263(A)

Section 20-263(A) confines the underwriting limitation on insurers to "accident[s] not caused or significantly contributed to by the actions of the insured." The term "accident" is not defined in ARS § 20-263(A). The Department narrowly construes the term "accident" as a loss involving a vehicle's upset/overtake or impact, or what the industry appears to commonly categorize as "collision." Therefore, the Department will apply the term "accident" as consistent with incidents involving a "collision," regardless of the policy coverages under which an associated claim arose, including uninsured/underinsured motorist, comprehensive, and MedPay coverages. In any analysis, the Department considers the key inquiry to be whether the circumstances demonstrate an accident occurred, not what policy coverage shouldered the claim.

C. Vehicle History Scoring Data

As previously described, the Department interprets ARS § 20-263(A) to prevent an insurer's underwriting process from relying on a not-at-fault accident to cause an increase in automobile insurance premium rates. The Department is aware that some insurers use vehicle history scoring data as part of automobile insurance underwriting. At least one major vendor of such data produces reports that include information showing a vehicle's prior accident history, repair and maintenance history, as well as other vehicle-related information. However, this particular vendor's reports do not include information showing the insured's contribution to or fault (or lack thereof) for an accident that affected the vehicle's condition. Without specific information regarding fault or contribution, an insurer using such data as part of its underwriting process could not demonstrate that any premium increase excludes not-at-fault accidents, thus imputing a vehicle's condition and its assumed risks onto individual drivers who may not have caused or contributed to an accident. Accordingly, the Department considers using data that does not demonstrably exclude not-at-fault accidents as being contrary to ARS § 20-263(A), which prohibits raising automobile insurance premiums for accidents not caused or significantly contributed to by insureds.

its underwriting criteria for the same driver to ensure that the accident was not considered in providing the renewal quote.

D. Additional Considerations

The Department's reading of ARS § 20-263(A) has two other notable considerations regarding permissive drivers and salvage titles. First, as noted previously, the Department considers ARS § 20-263(A) to broadly limit underwriting considerations that would result in a premium increase to a policy for "an accident not caused or significantly contributed to by the actions of the insured," which would include any surcharge to the insured for not-at-fault accidents incurred by a permissive driver. Because permissive drivers generally are considered insured under an automobile policy, a policy premium may not be increased because of a not-at-fault accident involving a permissive driver. Second, ARS § 20-263(A) would prevent insurers from increasing the policy premiums for a vehicle with a salvage certificate unless the insurer can demonstrate either that (1) the insured caused or significantly contributed to the accident that led to the salvage title or (2) the salvage title did not result from an "accident."

V. Conclusion

Since ARS § 20-263's enactment, rating methodologies used by insurers have evolved significantly and the data available to insurers for calculating premiums are becoming much more specific to the individual risks being insured. The Department recognizes that as new types of data become available, industry may want to incorporate relevant, actuarially meaningful data into its underwriting and pricing. Vehicle history reports are a prime example of such a burgeoning data source. However, in using this data, insurers still must comply with current Arizona law and ensure that underwriting decisions are not affected by accidents not caused or significantly contributed to by an insured.

By April 1, 2021, insurers must file necessary corrections to applicable rates and rules and adhere to ARS § 20-263.

Any questions regarding the contents of this memo should be addressed to: PropCas@difi.az.gov

Issued December 4th, 2020



OFFICE OF THE DIRECTOR
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100 North 15th Avenue, Suite 261, Phoenix, AZ 85007-2631
Phone: (602) 364-2393 | Web: <https://difi.az.gov>

Douglas A. Ducey, Governor
Evan G. Daniels, Director

April 1, 2021

VIA EMAIL: grrc@azdoa.gov

Governor's Regulatory Review Council
Attn: Nicole Sornsin, Chairperson
100 North 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS' RESPONSE TO APCIA'S PETITION

Dear Ms. Sornsin:

Following the Governor's Regulatory Review Council's March 2, 2021 Notice, the Department of Insurance and Financial Institutions hereby files its response to American Property Casualty Insurance Association's Petition.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Savary", is written over a horizontal line.

Jon Savary, Deputy Director



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DIFI's RESPONSE TO APCIA's PETITION

I. Introduction

Enacted in 1987, Arizona Revised Statutes ("A.R.S.") § 20-263(A) provides that "[n]o insurer shall increase the motor vehicle insurance premium of an insured as a result of an accident not caused or significantly contributed to by the actions of the insured." Although technology allows insurers to consider much more information in underwriting motor vehicle insurance premiums, Arizona law, as prescribed under A.R.S. § 20-263(A), remains unchanged.

Arizona law charges the Department of Insurance and Financial Institutions ("Department") with the duty to enforce A.R.S. Title 20. See A.R.S. § 20-142(A). The Department has an obligation to interpret Arizona law and identify how Title 20 statutes affect Arizona's insurance industry and consumers. Through insurers' rate filings, the Department became aware of a widespread industry practice of increasing premiums on drivers for accidents in which those drivers were not involved. Given the Department's statutory mandate to enforce Title 20, the Department issued Regulatory Bulletin 2020-06 ("Bulletin"). The Bulletin concluded that A.R.S. § 20-263(A) "require[s] a particular limitation on insurers regarding the automobile insurance underwriting process" and that "the Department considers using data that does not demonstrably exclude not-at-fault accidents as being contrary to A.R.S. § 20-263(A)." Exhibit 1.

Department's interpretation of A.R.S. § 20-263(A) does not place an unduly burdensome limitation on insurers. Indeed, *the Department* has placed no limitation on insurers at all; rather, the Department has clarified its understanding of what *the statute*—the law itself—requires concerning when and under what circumstances insurers may use certain data. Accordingly, pursuant to A.R.S. §



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41-1033(H)(3), the Department submits its response to the American Property Casualty Insurance Association’s Petition (“Petition”) requesting that the Governor’s Regulatory Review Council (“Council”) modify, revise, or declare the Bulletin void. The Department requests that the Petition be rejected because, first, the Petition fails to establish both that the Department’s Bulletin incorrectly interpreted A.R.S § 20-263(A) and is unduly burdensome to insurers, and second, the Petition asks the Council for relief that the Council is not empowered by Arizona law to grant.

II. Background

Arizona law charges the Department with effectuating and enforcing A.R.S. Title 20, including reviewing insurance rates so that they are not “excessive, inadequate or unfairly discriminatory.” A.R.S. § 20-383. Auto insurers operating in Arizona must file proposed premium and rating factors with the Department and can only use rates the Department does not disapprove. *Id.* An insured’s premium is calculated based on a variety of different factors, such as the likelihood that the driver will incur claims (i.e. teenage boys are generally in a higher risk category), the cost of repairing or replacing the insured’s vehicle (i.e. a new BMW will cost more than an older Toyota Corolla), and others.

The Legislature enacted section 20-263 in 1987 (S.B. 1280), and although legislative history is not expansive, what is available demonstrates that the Legislature’s purpose was simple: to prohibit insurers from increasing premiums on drivers involved in an accident for which they were not at fault. Exhibit 2 The final enacted language, which has not been amended since becoming law, continues to read, as previously noted:

A. No Insurer shall increase the motor vehicle insurance premium of an insured as a result of an accident not caused or significantly contributed to by the actions of the insured. Any insurer which increases the premium as a result of accident involvement shall notify the insured of the reason for such increase.



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Since its enactment, the Department has interpreted it to prohibit premium increases for not-at-fault (“NAF”) accidents. Over the years, the Department has consistently communicated its position to the industry in various forms, including official Department letters to insurers. Exhibit 3. At least since 2013, the Department, through rate filing objections, has consistently held the position that pursuant to A.R.S. § 20-263(A) “an insurer cannot use not-at-fault accidents in the underwriting process whether or not it is for new or existing business.” Exhibit 4. Additionally, the Department has entered into numerous orders with insurers citing violations of A.R.S. § 20-263(A), further evidencing the Department’s consistent enforcement of the statute and its robust engagement with the industry concerning the statute’s requirements. Exhibit 5. The Department’s interpretation and application of A.R.S. § 20-263(A) has remained unchanged.

While the Department’s position has remained consistent, industry’s rating practices have evolved rapidly. As early as 2017, insurers started a new rating practice in calculating a driver’s premium rate by using data that was not possible to obtain in 1987. This new practice, called “vehicle history scoring,” is an increasingly complex new rating element used in premium underwriting. Though scoring algorithms typically are proprietary from insurer to insurer and (as industry has pointed out) can contain hundreds or even thousands of individual factors, the data itself is usually obtained from third parties. These third-party reports, typically called vehicle history data source, include a wide array of information that provide a flavor of what kind of data insurers now can access to produce vehicle history scores, such as odometer readings, title issues, prior accident history, and vehicle condition. Exhibit 6.¹

¹ The document is a Department compiled list of common vehicle history rating variables that are typically part of proprietary underwriting methods more fully explained in filings submitted by insurers.



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To date, insurers have not demonstrated in their rate filings that vehicle history scores exclude factors relating to NAF accidents. Importantly, the third-party data reports upon which the scores are based do not include information regarding a vehicle owner's contribution or fault for any accident. However, the reports do include information about a vehicle's condition, including major repairs, severe accidents, airbag deployment, potential vehicle damage and frame damage, among others. *Id.* As a result, insurers' newfound practice of using vehicle history scores in their underwriting process effectively imputes the assumed risk of a vehicle to an insured who may not have caused or significantly contributed to an accident or to the prior condition of the vehicle.² Put simply, using a vehicle history score makes the current owner financially responsible for damage to the vehicle the owner did not cause and, in some cases, was caused by someone else entirely, including the vehicle's previous owners. Under the Department's longstanding interpretation of A.R.S. § 20-263(A), this outcome is prohibited by the statute.

The Department often has communicated to insurers its position that the use of vehicle history scoring that does not account for fault violates A.R.S. § 20-263(A). See Exhibits 3, 4, and 7. For years, the Department has issued objections on insurer filings involving premium increases for NAF accidents. Exhibit 7. Despite these objections, the Department noticed that industry's use of historical vehicle data was becoming increasingly widespread, which necessitated the Department to issue a substantive policy

² Furthermore, the Petition's claim (at 5) that "the prohibition on the use of vehicle history means insurers cannot collect sufficient premium for insureds who drive damaged vehicles" rings particularly hollow given the industry's success in remaining solvent and profitable between A.R.S § 20-263's enactment in 1987 and when vehicle history scoring emerged as an underwriting tool in 2017.



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statement, as defined in A.R.S. § 41-1022(22),³ to ensure industry-wide understanding of the Department's position regarding the applicability of A.R.S. § 20-263(A) to the use of historical vehicle data.

Before issuing the Bulletin, the Department again sought industry's comments and explanation for why the industry's use of vehicle history scoring met the requirements of A.R.S. § 20-263(A). On October 9, 2020, the Department issued a Notice of Opportunity to Comment, which invited the public and insurers to comment on the subject of the Department's forthcoming Bulletin. Exhibit 8. The Department received five comments, all from insurers and their representatives. Exhibit 9. The Department considered all previous and current industry input in formulating the final Bulletin.

On November 4, 2020, the Department issued the Bulletin interpreting A.R.S § 20-263(A) to require limitations on insurers regarding the automobile insurance underwriting process. The Bulletin does not broadly prohibit vehicle history scoring; rather, the Bulletin noted that to avoid being contrary to A.R.S § 20-263(A), a vehicle history score must be able to show that its rating factors could account for accidents not caused or significantly contributed to by the insured so that any NAF accidents are not part of the premium calculation. Nor does the Bulletin preclude an insurer from choosing to decline to issue a policy to an applicant with prior NAF accidents. The Department explained that the statute's broad language does not distinguish between vehicle or driver risks but simply prohibits any premium increases to NAF drivers. The Department further explained that the application of A.R.S § 20-263(A) does not distinguish between those who are already insured and those seeking insurance coverage due

³ Pursuant to A.R.S. § 41-1001(22), a substantive policy statement is defined as "a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of . . . state statute . . . including, where appropriate, the agency's current practice, procedure or method of action based upon that approach or opinion."



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to the general limitations the statute places on the underwriting process. Subsequently, the American Property Casualty Insurance Association (“APCIA” or “Petitioner”) filed its Petition to review the Department’s Bulletin with the Council pursuant to A.R.S. § 41-1033(G).

III. Analysis

A. Legal Standard

Pursuant to A.R.S. § 41-1033(J) the Council must determine whether the Bulletin is unduly burdensome to insurers or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. If the Council makes this determination, it may modify, revise, or declare the Bulletin void. *Id.* The Council’s decision shall include findings of fact and conclusions of law, separately stated. A.R.S. § 41-1033(K).

B. The Department’s Interpretation of A.R.S. § 20-263(A) is Reasonable And Does Not Place Added Burdens On The Industry Beyond The Statutory Requirements

The Petition does not establish that the Department’s interpretation of A.R.S. § 20-263(A) is incorrect. The Petition makes purely legal arguments regarding A.R.S. § 20-263(A) that requires the Council to conclude that the Department has interpreted the statute incorrectly before it can reach a decision whether the Department’s Bulletin is unduly burdensome on insurers. Whether the Bulletin imposes unduly burdensome requirements on insurers necessarily follows from whether the Department’s interpretation of A.R.S. § 20-263(A) is incorrect. If the Department has interpreted A.R.S. § 20-263(A) correctly, whether any requirements flowing from that interpretation are burdensome are ultimately irrelevant because it is the statute that imposes those requirements, not the Department. Moreover, the Bulletin’s interpretation of A.R.S. § 20-263(A) limits insurers’ use of any data used to develop a score that fails to account for fault in any given accident. This does not universally preclude



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insurers from using vehicle history scoring. It simply requires insurers to use data that accounts for a driver's fault and contribution to a prior accident, as required by Arizona law.

The Bulletin reasonably interprets A.R.S. § 20-263(A) under longstanding principles of statutory construction established in Arizona law. Statutes should be interpreted in a manner that seeks to effectuate the drafters' intent and gives effect to every word and provision. See *City of Phoenix v. Orbitz Worldwide, Inc.*, 448 P.3d 275, 279 ¶10 (Ariz. 2019). Though a statute's language is the best indicator of intent, statutory language must be read in context with other provisions or relevant statutes when more than one reasonable interpretation is possible. See *Killian v. Stambaugh*, 398 P.3d 574, 575 ¶7 (Ariz. 2017). Importantly, statutes should not be construed in a manner that produces absurd results. See *France v. ICA*, No. CV-20-0068-PR, slip op. at 5, 13 (Ariz. Sup. Ct. 2021).

First, the Department's interpretation of A.R.S. § 20-263(A) best effectuates the legislature's intent of broadly protecting consumers from premium increases resulting from increased risk due to accidents for which they are not at fault. Even the Petition acknowledges (at 1) that the statute exists to prevent premium increases on insured drivers when, through no fault of their own, risk increases are due to an accident. This perhaps was even more obvious in 1987, when it was not common practice to track the history of a particular vehicle and incorporate it into a driver's risk profile.

Second, interpreting A.R.S. § 20-263(A) to place underwriting limitations on insurers aligns with the Department's duty under A.R.S. § 20-388 to avoid approving rates that are "excessive, inadequate or unfairly discriminatory." The Petition asserts (Petition, pg.2) that the Department's duty is (or should be) primarily focused on approving rates that can be justified actuarially. Though the Department does have a responsibility to allow actuarially justified rates, those rates must also conform with other applicable requirements imposed by Arizona laws. The Department's interpretation of A.R.S. § 20-



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263(A) reads the statute in context with its other responsibilities under Title 20 and harmonizes the provisions together rather than emphasizing one over the other.

Third, the Petition's proffered interpretation of A.R.S. § 20-263(A) produces absurd results that the Department's interpretation avoids. The Bulletin interprets the term "insured" to include both consumers who have paid premium and possess an active automobile insurance policy and consumers who have received a quote for premium but have yet to activate a policy through payment (what the Petition calls "applicants"). Although a plain language reading alone would suggest a valid distinction between an "insured" and an "applicant," construing the statute this way is absurd. First, it would create a bizarre underwriting regime, where an initial premium quote for an applicant, which could use vehicle history scores that potentially increased the premium quote because of a NAF accident, would have to be underwritten differently (by not using that same vehicle history score data) upon renewal. Second, it would mean that an "insured" consumer shopping for a different insurance provider could be quoted as an "applicant" (and therefore with impermissible vehicle history score data possibly included), even though the consumer is an "insured" person through a different provider. Moreover, in such a circumstance, the shopping consumer's current insurance provider would not be able to provide a renewal quote using vehicle history score data, even though its competitors could. Third, it ignores the fact that once a premium quote is provided to a consumer, the insurance provider is obligated to make that consumer an "insured" when the consumer pays the quoted premium, thus making any distinction between "insured" and "applicants" practically irrelevant. Ultimately, the Department's interpretation is much more straightforward; premiums cannot be increased as a result of NAF accidents, irrespective of when a consumer pays premium.



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In addition to the Department's reasonable interpretation of A.R.S. § 20-263(A), the Petition's general claim that "the Bulletin forces subsequent insurers to treat all prior accidents as [not-at-fault] accidents, and prohibits the setting of rates based on those accidents," is not substantiated with any specificity nor does it demonstrate an actual burden on insurers. The Petition offers no statistical data or other evidence in support of these general statements. Before vehicle history scoring was available, insurers nevertheless established premium for risk levels of a particular vehicle based on various factors, such as the frequency and severity of the claims for a specific make and model of vehicle. Indeed, as previously mentioned, nothing in Arizona law prevents insurers from using such factors, including the use of accident data when calculating a vehicle history score, as long as the insurer can demonstrate that the vehicle history score was not calculated using any damage or accident data for which the insured was not at fault. Not being able to use all aspects of its newfound capability to develop vehicle history scores as a basis to increase an insured's premium, whether actuarially justified or not, does not constitute an undue burden to insurers.

Accordingly, the Petition fails to establish that the Bulletin incorrectly interpreted A.R.S. § 20-263(A). By failing to articulate with specificity anything but general claims, the Petition provides nothing on which the Council can make findings which it is required to do pursuant to A.R.S. § 41-1033(K). Given the lack of evidence, the Council is not able to accurately assess whether the Bulletin in fact imposes any undue burdens upon insurers. Without specific evidence, the Council will not be able to comply with A.R.S. § 41-1033(K) and provide complete findings of fact section.

The Department has demonstrated that the Bulletin is an appropriate exercise of its duty to enforce Title 20 and notify the general public of its interpretation and application of A.R.S. § 20-263(A). The Bulletin is narrowly tailored to explain how A.R.S. § 20-263(A) applies vehicle history scoring data



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that does not incorporate information relating to an insured's fault or contribution to an accident. Nothing in the Bulletin (much less A.R.S. § 20-263(A)) prohibits insurers from rating a vehicle's general characteristics. The Department therefore requests that the Council reject the Petition because it fails to comply with ARS § 41-1033(G).

C. The Petition Asks The Council To Take Action It Is Not Authorized By Statute To Take

The Petition cites no authority that empowers the Council to clarify and interpret Arizona statutes.

Pursuant to ARS 41-1033(J), the Council may only modify, revise, or declare void any substantive policy statement that the Council concludes is unduly burdensome. The Council is limited by its statutory authority to an action against the Bulletin and may not require an agency to adopt a particular statutory interpretation. Should the Council conclude that the Department's Bulletin is unduly burdensome, the Council can either modify, revise, or void the Bulletin. However, nothing in Arizona law enables the Council to grant the Petition's request to clarify an Arizona statute by engaging in statutory interpretation. Therefore, the Council should reject APCIA's petition based on the grounds that it seeks relief that the Council cannot provide.

IV. Conclusion

The Department respectfully requests that the Council reject the Petition.



Jon Savary, Deputy Director
Department of Insurance and Financial Institutions

Exhibit 1



Douglas A. Ducey, Governor
Evan G. Daniels, Director

Regulatory Bulletin 2020-06¹

ARS § 20-263(A) and Premium Increases for Not-At-Fault Accidents

Pursuant to Arizona Revised Statutes (ARS) §§ 41-1001(22) and -1091, the Arizona Department of Insurance and Financial Institutions (Department) occasionally issues Substantive Policy Statements to provide guidance regarding common compliance matters or recurring questions identified through the Department's review of market analysis, consumer complaints and product filings. Department Substantive Policy Statements are intended to promote a level playing field and uniform application of statutory or regulatory provisions.

I. Purpose

The purpose of this Substantive Policy Statement is to address how ARS § 20-263(A) applies to an insurer's use of historical accident data when determining the premium for an automobile insurance policy.

II. Scope

This Substantive Policy Statement is intended to provide guidance to all property and casualty insurers that sell automobile insurance to Arizona consumers and is directed to all property and casualty insurers, insurance rating organizations and agencies, insurance underwriters, producers, and interested parties.

III. Background

The Department has observed a number of rate/rule filings and consumer complaints that include or reference the practice of applying rating factors to policy premiums based on historical vehicle data, including prior property damage and salvaged vehicle title status. This practice raises the question of whether such data may be used in establishing automobile insurance premiums under ARS § 20-263(A). Pursuant to ARS §§ 41-1001(22) and -1091, on October 9, 2020, the Department issued a Notice of Opportunity to Comment in which it stated its intent to

¹ 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.

address ARS § 20-263(A) in a Substantive Policy Statement that would set forth the Department's interpretation of the statute and provide guidance as to when insurers may use historical vehicle data consistent with the statute. The Department solicited comments from interested parties regarding ARS § 20-263(A) and how vehicle history data is used to establish automobile insurance premiums. The Department received, reviewed, and considered numerous comments in the course of crafting this Substantive Policy Statement.

IV. Department Position

As relevant to this Substantive Policy Statement, ARS § 20-263(A) provides:

No insurer shall increase the motor vehicle insurance premium of an insured as a result of an accident not caused or significantly contributed to by the actions of the insured. Any insurer which increases the premium as a result of accident involvement shall notify the insured of the reason for such increase.

A. Scope of ARS § 20-263(A)

The Department interprets ARS § 20-263(A) to require a particular limitation on insurers regarding the automobile insurance underwriting process, and the Department therefore concludes that ARS § 20-263(A) prohibits premium increases for “an accident not caused or significantly contributed to by the actions of” both currently insured drivers and those seeking new coverage. Broadly construing the term “insured” is consistent with the statute's evident purpose of establishing a limitation on the underwriting process, which is to protect insurance consumers from motor vehicle premium increases due to accidents not caused or significantly contributed to by the insured.

Although the term “insured” as used in ARS § 20-263(A) is not defined, the Department concludes that distinguishing between drivers who are “insured” and “applicants” seeking a new policy is not warranted. Because the statute's main effect is to place a limitation on the insurance underwriting process, applying a distinction between “insured” and “applicants” here would create inequitable and absurd results. Ultimately, the Department is aware of no significant difference in underwriting premiums for drivers that currently possess insurance versus those seeking insurance. Industry's comments submitted to the Department did not identify any significant difference in underwriting premiums for their insureds and new applicants. In addition, broadly construing the term “insured” to include applicants to whom an insurance company has quoted a premium allows for effectuating the plain meaning of the term “premium.” Only insureds pay premium, and, of course, once an applicant pays a quoted premium, an applicant becomes insured. At renewal, the same historical data regarding a vehicle ostensibly would be used to calculate a renewal premium.² Therefore, any offered rate to an

² Among the absurd results that would occur in concluding § 20-263(A) applies to “insured” drivers but not “applicants” is that a not-at-fault accident could be considered in establishing an initial premium for an applicant, but upon renewal, the insurance company would need to revise

applicant via a premium quote must comply with ARS § 20-263(A) in the same way that the statute applies to any premium offered to a currently insured policyholder. In other words, both new and renewal rates must comply with ARS § 20-263(A).

In addition, the Department concludes that ARS § 20-263(A) prohibits an insurer from increasing premium on an automobile policy, including surcharges, eliminating discounts, placing the insured in a higher rating tier, or charging a higher base rate, unless the insurer determines and can demonstrate that the insured caused or significantly contributed to the historical damage contained in a vehicle history report. Section 20-263(A) does not distinguish between the vehicle and the driver when it comes to raising premiums; the statute prohibits any increases to the total premium charged for the policy.

B. The Department's interpretation of "accident" in ARS § 20-263(A)

Section 20-263(A) confines the underwriting limitation on insurers to "accident[s] not caused or significantly contributed to by the actions of the insured." The term "accident" is not defined in ARS § 20-263(A). The Department narrowly construes the term "accident" as a loss involving a vehicle's upset/overtake or impact, or what the industry appears to commonly categorize as "collision." Therefore, the Department will apply the term "accident" as consistent with incidents involving a "collision," regardless of the policy coverages under which an associated claim arose, including uninsured/underinsured motorist, comprehensive, and MedPay coverages. In any analysis, the Department considers the key inquiry to be whether the circumstances demonstrate an accident occurred, not what policy coverage shouldered the claim.

C. Vehicle History Scoring Data

As previously described, the Department interprets ARS § 20-263(A) to prevent an insurer's underwriting process from relying on a not-at-fault accident to cause an increase in automobile insurance premium rates. The Department is aware that some insurers use vehicle history scoring data as part of automobile insurance underwriting. At least one major vendor of such data produces reports that include information showing a vehicle's prior accident history, repair and maintenance history, as well as other vehicle-related information. However, this particular vendor's reports do not include information showing the insured's contribution to or fault (or lack thereof) for an accident that affected the vehicle's condition. Without specific information regarding fault or contribution, an insurer using such data as part of its underwriting process could not demonstrate that any premium increase excludes not-at-fault accidents, thus imputing a vehicle's condition and its assumed risks onto individual drivers who may not have caused or contributed to an accident. Accordingly, the Department considers using data that does not demonstrably exclude not-at-fault accidents as being contrary to ARS § 20-263(A), which prohibits raising automobile insurance premiums for accidents not caused or significantly contributed to by insureds.

its underwriting criteria for the same driver to ensure that the accident was not considered in providing the renewal quote.

D. Additional Considerations

The Department's reading of ARS § 20-263(A) has two other notable considerations regarding permissive drivers and salvage titles. First, as noted previously, the Department considers ARS § 20-263(A) to broadly limit underwriting considerations that would result in a premium increase to a policy for "an accident not caused or significantly contributed to by the actions of the insured," which would include any surcharge to the insured for not-at-fault accidents incurred by a permissive driver. Because permissive drivers generally are considered insured under an automobile policy, a policy premium may not be increased because of a not-at-fault accident involving a permissive driver. Second, ARS § 20-263(A) would prevent insurers from increasing the policy premiums for a vehicle with a salvage certificate unless the insurer can demonstrate either that (1) the insured caused or significantly contributed to the accident that led to the salvage title or (2) the salvage title did not result from an "accident."

V. Conclusion

Since ARS § 20-263's enactment, rating methodologies used by insurers have evolved significantly and the data available to insurers for calculating premiums are becoming much more specific to the individual risks being insured. The Department recognizes that as new types of data become available, industry may want to incorporate relevant, actuarially meaningful data into its underwriting and pricing. Vehicle history reports are a prime example of such a burgeoning data source. However, in using this data, insurers still must comply with current Arizona law and ensure that underwriting decisions are not affected by accidents not caused or significantly contributed to by an insured.

By April 1, 2021, insurers must file necessary corrections to applicable rates and rules and adhere to ARS § 20-263.

Any questions regarding the contents of this memo should be addressed to: PropCas@difi.az.gov

Issued December 4th, 2020

Exhibit 2

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For Committee on IRA



For Caucus & Floor Action

As passed by the Senate

Arizona State Senate

REVISED FACT SHEET FOR S.B. 1280

Motor vehicle insurers; prohibited act

Purpose:

S.B. 1280 provides that insurers may not raise the premium of an insured who is involved in an accident if the insured is not at fault.

Background:

Under the current law, an insured who has an accident frequently has his/her premium increased even when they were not at fault. This bill would assure that such insureds would not incur an increase in their insurance rates.

Prepared by Senate Staff
February 26, 1987

ARIZONA STATE SENATE

38TH LEGISLATURE

FIRST REGULAR SESSION

MINUTES OF COMMITTEE ON INSURANCE, RETIREMENT AND AGING

DATE February 25, 1987

TIME 1:30 p.m.

ROOM H.R. 2

The meeting was called to order at 1:45 p.m. by Chairman West and roll call was taken.

MEMBERS PRESENT

Senator De Long
Senator Higuera
Senator Hill
Senator Lunn
Senator Mawhinney
Senator Osborn
Senator Stephens
Senator Macdonald, Vice Chairman
Senator West, Chairman

OTHERS PRESENT - See Attached List

APPROVAL OF MINUTES

The minutes of the previous meeting were approved as distributed.

CONSIDERATION OF BILLS

<u>S.B. 1095 - insurance; closed claims report</u>	<u>HELD</u>
<u>S.B. 1097 - unlawful insurance business; exemption</u>	<u>HELD</u>

Chairman West stated that these bills would be held until next week.

<u>S.B. 1093 - long-term care insurance policies</u>	<u>AMEND, DO PASS</u>
--	-----------------------

Bill McCullough, Analyst, explained that the bill defines and authorizes the issuance of long term or nursing home insurance policies, and informs potential consumers of the extent and limits of coverage under such policies by requiring a certificate of insurance prior to or at issuance of the policy. Mr. McCullough also explained that the amendment assures the insured's right to return the policy within 10 or 30 days if he is not satisfied.

David Childers, Director of the Department of Insurance, stated support for the bill because it protects the insurance consumer, includes nursing home care, and requires outline of the coverage the consumer will receive. Senator West asked Mr. Childers if by passing this bill, we are creating barriers for insurance companies. Mr. Childers stated that was one of his concerns, and that the bill provides flexibility in that it doesn't mandate specific renewability. He also stated that A.A.R.P supports the bill. Senator Osborn asked why the insured would have 10 days to return the policy. Mr. Childers stated that it was felt to be a more appropriate length of time, and that it conformed with the model act.

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Page 3

The motion carried by a roll call vote of 6-0-3. (See Attachment #3)

S.B. 1164 - risk retention groups; legislation DO PASS

Bill McCullough, Analyst, stated that this bill clarifies the extent of state authority with respect to the regulation of risk retention groups authorized under the Federal Risk Retention Act of 1986. It is also based on a Model Act, and sets standards for financial ratios applicable to risk retention groups which choose to be licensed in Arizona.

Jim Roush, Staff Director for Fairness and Accountability in Insurance Reform, stated support for the bill, as it will help to "strengthen the market."

David Childers, Director for the Department of Insurance, stated that this bill deals with risk retention groups and purchase groups, and that once they are chartered, can do business in any state. He also stated that it will allow groups to purchase insurance at better rates.

Senator Lunn moved that S.B. 1164 be given a Do Pass recommendation. The motion carried by a roll call vote of 5-0-4. (See Attachment # 4)

S.B. 1280 - motor vehicle insurers; prohibited act AMEND, DO PASS

Christina Cag, Intern, stated that the bill provides that insurers may not raise the premium of an insured who is involved in an accident with an uninsured motorist, if the insured is not at fault.

Robert Hing, Attorney for the Alliance of American Insurers, stated opposition to the bill, saying that it is an "unnecessary" piece of legislation. He further stated that out of 200 companies, only 5 would raise the rates of someone involved in an accident even if it wasn't their fault, as studies have shown that those same motorists are likely to be in other accidents. Senator Osborn stated that he is in favor of the bill, and asked why insurance rates go up for motorists without any explanation from the company. Mr. Hing stated that different factors are possible--the amount of claims rose in that overall group, increased costs for paying off claims, etc. He further stated that everyone cannot be rated perfectly by the companies; the concept of insurance is always, to some degree, unfair.

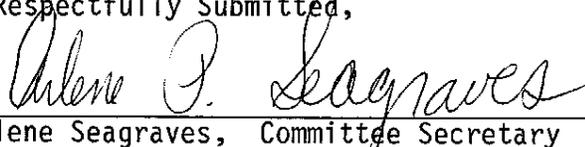
Senator Hill moved that S.B. 1280 be given a Do Pass recommendation.

Senator Hill moved that the 2 line amendment, dated 2/16/87, 9:00 a.m. be adopted by the Committee. The motion carried by a voice vote.

Senator Hill moved that S.B. 1280, as amended, Do Pass. The motion carried by a roll call vote of 5-0-4. (See Attachment #5)

The meeting was adjourned at 3:20 p.m.

Respectfully Submitted,


Arlene Seagraves, Committee Secretary

Mr. White moved, seconded by Mrs. Steffey, that the proposed amendment dated 4/1/87 be adopted. The motion carried (Attachment 2).

Mr. White moved, seconded by Mrs. Steffey, that S.B. 1226 as amended do pass. The motion carried by a roll call vote of 12-0-0-3 (Attachment 3).

S.B. 1280, Motor vehicle insurers; prohibited act - DO PASS AMENDED

Mr. White moved, seconded by Mr. Hungerford, that S.B. 1280 do pass.

Mr. White moved, seconded by Mr. Hungerford, that the proposed two-page amendment, dated 4/7/87, to S.B. 1280, be adopted (Attachment 4).

J. Michael Low, representing American Insurance Association, stated the amendment does what Senator Usdane wanted, it clearly says that an insurer cannot increase the premium of an insured as a result of an accident not caused or significantly attributed to by the insured.

Mr. Low said Section 2 of the amendment creates a legislative study commission to study the cost and availability of motor vehicle insurance in the standard market and to study alternatives to problems and costs of motor vehicle insurance for policyholders.

A general discussion followed. The discussion covered the necessity for the study commission.

Mr. Bartlett moved Section 2 of the amendment, beginning with page 1, line 16, and all the rest of page 2, except line 18, should be stricken from the amendment. Mr. Hungerford seconded the motion.

Mr. Meredith asked for a vote on Mr. Bartlett's amendment that the study commission be eliminated and the amendment carried by a show of hands 9 to 1.

Mr. White moved, seconded by Mr. Hungerford, the amendment as amended to S.B. 1280 be adopted.

Mr. Carson moved, seconded by Mr. English, that his nine-line amendment to S.B. 1280, dated 4/8/87, be adopted (Attachment 5). Division was called and by a hand vote of 5 to 7, the motion failed.

Question was called on Mr. White's motion that the amendment as amended to S.B. 1280 be adopted and the motion carried.

Mr. White moved, seconded by Mr. Hungerford, that S.B. 1280 do pass as amended. The motion carried by a roll call vote of 10-3-1-1 (Attachment 6).

S.B. 1172, State board of deposit; investments; banks - DO PASS

Alan Maguire, Deputy State Treasurer, Arizona Treasurer's Office, spoke in favor of S.B. 1172 and summarized the amendments as attempting to maintain the responsibilities of the office in the changing market.

Mr. White moved, seconded by Mrs. Steffey, that S.B. 1172 do pass. The motion carried by a roll call vote of 12-0-1-2 (Attachment 7).

S.B. 1093, Long term care insurance policies - DO PASS

S. David Childers, Director, Department of Insurance, gave an overview of S.B. 1093 and said it authorizes the issuance of long term care insurance policies. He said the law is two-fold, it provides a reasonably flexible regulatory environment to encourage the sale of policies and, also, gives needed protection of the elderly from abuses by some insurance companies. He then answered questions from the Committee.

Marion Halleck, member of the State Legislative Committee, American Association of Retired Persons, said there are 400,000 A.A.R.P. members in the State of Arizona and they feel long-term care insurance is desperately needed. He stated they are in favor of S.B. 1093 and urge its passage.

Andrea Lazar, Director, Government Relations, Blue Cross/Blue Shield of Arizona, advised they support S.B. 1093.

Mr. White moved, seconded by Mrs. Johnson, that S.B. 1093 do pass. The motion carried by a roll call vote of 14-0-0-1 (Attachment 8).

S.B. 1164, Risk retention groups; regulation - DO PASS AMENDED

S. David Childers, Director, Arizona Department of Insurance, passed out copies of a memorandum he sent to members of the Senate Retirement and Aging Committee. He said this memorandum summarizes a very complex piece of legislation of the federal and state governments. This bill provides the state regulation of the formation and regulation of risk retention groups (Attachment 9).

Mr. Childers also passed out copies of a five-page amendment to S.B. 1164, dated 4/7/87 (Attachment 10). Mr. Childers then answered questions from the Committee.

Mr. White moved, seconded by Mr. Hungerford, that S.B. 1164 do pass.

Mr. White moved, seconded by Mr. Hungerford, that the five-page amendment be adopted. The motion carried.

Mr. White moved, seconded by Mr. Hungerford, that S.B. 1164 do pass as amended. The motion carried by a roll call vote of 14-0-0-1 (Attachment 11).

S.B. 1055, Insurance cancellation; proof of notice - DO PASS AMENDED
(STRIKE EVERYTHING AMENDMENT)

Fred Cuthbertson, Risk Manager, Arizona Department of Administration, Risk Management Division, advised S.B. 1055 is purely a housekeeping bill. This bill clarifies the extent and manner in which DOA may obtain property, liability or workmen's compensation insurance, self insurance or develop risk retention pools for losses against contractors of this state.

Mr. White moved, seconded by Mrs. Johnson, that S.B. 1055 do pass.

Mr. White moved, seconded by Mrs. Johnson, that the strike-everything amendment (risk retention pools) to S.B. 1055 be adopted (Attachment 12). The motion carried.

Mr. White moved, seconded by Mrs. Johnson, that S.B. 1055 do pass as amended. The motion carried by a roll call vote of 13-0-0-2 (Attachment 13).

S.B. 1099, Chiropractors; insurance benefits; direct payment - DO PASS

Mr. White thanked both of his subcommittees' members. There would be a subcommittee amendment offered, Mr. White said (Attachment 14). He also said that after much discussion and talking with Senator West and what he wanted to do for the psychiatrists and psychologists, he would offer a substitute amendment (Attachment 15) to take them out of S.B. 1099, so this bill would cover chiropractors only.

Mr. Bartlett said the chiropractors seemed to be singled out. He asked Mr. White if Senator West would go ahead with his psychiatrist and psychologist bill as it is, if the amendment is defeated.

Mr. White said if this amendment is defeated then Senator West had urged him to ask the Committee to put a two-year sunset on it, so that the sunset would allow the review of the provision.

Mr. Carson advised he had an amendment to the nine-page amendment of the subcommittee.

Mr. English called for a point of order and stated it would be appropriate to move the bill and move the amendments under rules of debate.

Mr. White moved, seconded by Mr. Killian, that S.B. 1099 do pass.

Mr. White moved, seconded by Mr. Denny, the nine-page subcommittee amendment, dated 4/6/87, to S.B. 1099 be adopted (Attachment 14).

Mr. White moved, seconded by Mrs. Steffey, a substitute amendment (29-line, dated 4/7/87) be adopted (Attachment 15).

Mr. Carson proposed an amendment to Mr. White's substitute amendment as follows:

- Page 1, line 1, after "POLICYHOLDER" insert "WITH LESS THAN TEN SUBSCRIBERS"
- line 11, after "POLICYHOLDER" insert "WITH LESS THAN TEN SUBSCRIBERS"
- Line 20, after "POLICYHOLDER" insert "WITH LESS THAN TEN SUBSCRIBERS"

Mr. Carson moved, seconded by Mr. English, that the above amendment to Mr. White's substitute amendment be adopted. Division was called for and by a hand vote of 9 to 6, the motion carried.

Mr. White moved, seconded by Mrs. Steffey, the substitute amendment as amended be adopted.

Mr. English urged defeat of the amendment.

Question was called on the amendment as amended and by a hand vote of 4 to 8, the amendment failed.

Mr. Meredith said we are now back to the amendment as it came from the subcommittee.

Mr. Carson moved, seconded by Mr. Bartlett, his eleven-line amendment, dated 4/8/87, to the subcommittee amendment be adopted (Attachment 16).

Mr. Meredith spoke against the amendment and said the amendment would gut the bill. Mr. Carson stated it would gut the amendment, not the bill.

Question was called and by a hand vote of 8 to 7, the Carson amendment carried.

Mr. White moved, seconded by Mr. Hungerford, that the nine-page subcommittee amendment as amended do pass.

Mr. English said he felt the psychiatrists and psychologists should be treated equally and he urged defeat of the amendment.

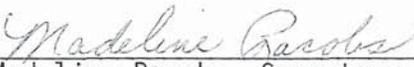
Mr. Meredith called for the question on the amendment as amended and the motion failed by a hand vote of 7 to 7.

Mr. White moved, seconded by Mr. Killian, to offer an amendment on page 5 to add Section 11 to S.B. 1099 entitled "Delayed Repeal", effective September 30, 1989.

Question was called and by a show of hands on "Delayed Repeal", the motion failed 7 to 8.

Question was called on the motion that S.B. 1099 do pass. The motion carried by a roll call vote of 9-0-6-0 (Attachment 17).

Mr. Killian moved, seconded by Mrs. Steffey, that the meeting be adjourned. The motion carried and the meeting adjourned at 10:23 a.m.



Madeline Racobs, Secretary

(Attachments on file in the Office of the Chief Clerk and with the Committee Secretary.)

mr
4/15/87

-5-

BANKING AND INSURANCE
4/8/87

PROPOSED AMENDMENT

HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1226

(Reference to Senate engrossed bill)

- 1 Page 2, strike lines 37 through 44
- 2 Renumber to conform
- 3 Amend title to conform

JIM WHITE
Subcommittee Chairman

ARIZONA HOUSE OF REPRESENTATIVES
Thirty-eighth Legislature - First Regular Session

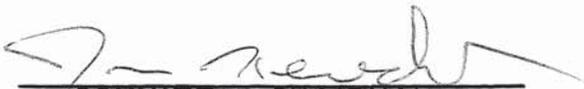
ROLL CALL VOTE

COMMITTEE: BANKING & INSURANCE BILL NO. S.B. 1226

DATE: April 8, 1987 MOTION: D.P.A.

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Bartlett		✓			
Mr. Carson					✓
Mr. Denny		✓			
Mr. B. English		✓			
Mr. Hungerford		✓			
Mrs. Johnson		✓			
Ms Kennedy					✓
Mr. Killian					✓
Mrs. McCune		✓			
Mr. McLendon		✓			
Mrs. Resnick		✓			
Mrs. Steffey		✓			
Mr. Wilcox		✓			
Mr. White		✓			
Mr. Meredith, Ch.		✓			
		12	0	0	3

APPROVED:


COMMITTEE CHAIRMAN


COMMITTEE SECRETARY

PROPOSED AMENDMENT

HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1280

(Reference to Senate engrossed bill)

1 Page 1, line 5, strike "presumption; civil action" and insert
2 "hearing; penalty"

3 Line 6, after "A." strike remainder of line and strike lines 7 through 18
4 and insert "NO INSURER SHALL INCREASE THE MOTOR VEHICLE INSURANCE
5 PREMIUM OF AN INSURED AS A RESULT OF AN ACCIDENT NOT CAUSED OR SIGNI-
6 FICANTLY CONTRIBUTED TO BY THE ACTIONS OF THE INSURED. ANY INSURER
7 WHICH INCREASES THE PREMIUM AS A RESULT OF ACCIDENT INVOLVEMENT SHALL
8 NOTIFY THE INSURED OF THE REASON FOR SUCH INCREASE.

9 B. THE DIRECTOR, AFTER A HEARING, SHALL ORDER AN INSURER THAT
10 HAS RAISED THE PREMIUM OF AN INSURED IN VIOLATION OF SUBSECTION A
11 TO REFUND THE AMOUNT ATTRIBUTABLE TO SUCH PREMIUM INCREASE AND
12 SHALL IMPOSE A CIVIL PENALTY NOT TO EXCEED THREE HUNDRED DOLLARS.
13 IN DETERMINING WHETHER AN INSURER HAS VIOLATED SUBSECTION A, THE
14 DIRECTOR MAY CONDUCT SUCH INVESTIGATION AS HE DEEMS NECESSARY AND
15 THE COSTS SHALL BE PAID BY THE INSURER PURSUANT TO SECTION 20-159.

16 Sec. 2. Study commission on motor vehicle insurance

17 A. A study commission on motor vehicle insurance is established
18 consisting of seven members for the following purposes:

19 1. To study the cost and availability of motor vehicle insurance
20 in the standard market.

21 2. To study possible alternatives designed to ameliorate
22 problems and costs of motor vehicle insurance for policyholders.

23 B. The commission shall consist of the following members:

24 1. The chairman of the house of representatives committee on
25 banking and insurance.

26 2. The chairman of the senate committee on insurance, retirement
27 and aging.

28 3. The director of the department of insurance.

PROPOSED AMENDMENT

HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1280

*no
failed*

(Reference to proposed Meredith Amendment)

1 Page 1, between lines 8 and 9 insert:

2 "B. AN INSURER ISSUING VEHICLE INSURANCE IN THIS STATE
3 COVERING A MOTOR VEHICLE SHALL NOT CHARGE ANY RATE THAT RAISES
4 THE INSURANCE PREMIUM ON THE MOTOR VEHICLE OF AN INSURED SOLELY
5 BECAUSE THE INSURED IS CITED AND CONVICTED OF THE WASTE OF A
6 FINITE RESOURCE CURRENTLY IN SHORT SUPPLY AS PROVIDED IN
7 SECTION 28-702.01."

8 Reletter to conform

9 Amend title to conform

DAVE CARSON

ATTACHMENT 5

jj
4/8/87

ARIZONA HOUSE OF REPRESENTATIVES
Thirty-eighth Legislature - First Regular Session

ROLL CALL VOTE

COMMITTEE: BANKING & INSURANCE

BILL NO. S.B. 1280

DATE: April 8, 1987

MOTION: D.P.A.

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Bartlett		✓			
Mr. Carson			✓		
Mr. Denny		✓			
Mr. B. English			✓		
Mr. Hungerford		✓			
Mrs. Johnson			✓		
Ms Kennedy		✓			
Mr. Killian					✓
Mrs. McCune		✓			
Mr. McLendon		✓			
Mrs. Resnick				✓	
Mrs. Steffey		✓			
Mr. Wilcox		✓			
Mr. White		✓			
Mr. Meredith, Ch.		✓			
		10	3	1	1

Madeline Jacobs,
COMMITTEE SECRETARY

APPROVED:

[Signature]
COMMITTEE CHAIRMAN

ATTACHMENT 6

Exhibit 3



Department of Insurance

State of Arizona

Office of the Director

Telephone: (602) 364-3471

Facsimile: (602) 364-3470

JANET NAPOLITANO

Governor

2910 North 44th Street, 2nd Floor

Phoenix, Arizona 85018-7256

www.id.state.az.us

CHRISTINA URIAS

Director of Insurance

June 10, 2008

Cinda Smith

Senior Counsel

GEICO

One GEICO Plaza, Suite 5T

Washington, D. C. 20076

RE: Applicability of ARS §20-263(A)

Dear Ms. Smith:

During the course of the Department's most recent market conduct examination of GEICO we learned that you were still waiting for a response from the Department regarding the applicability of ARS §20-263(A) when GEICO writes new business. I apologize for any miscommunication or delay in confirming our interpretation of the law. We understand that GEICO has been using not-at-fault accidents in combination with other underwriting characteristics to place applicants for new business. If that is the case, GEICO must immediately stop the practice.

The Department's position is that ARS §20-263(A) prohibits the use of not-at-fault accidents in underwriting regardless of whether it is new business or existing business. This is not a new interpretation of the law and we are consistently applying this interpretation to all private passenger automobile insurers. It is not reasonable to conclude that the law intended to prohibit an insurer covering the risk at the time of a not-at-fault accident from increasing the insured's premium if, on the other hand, another insurer could consider the same not-at-fault accident when making an underwriting decision and writing new business on the same insured.

If you have any other questions or need further assistance, please feel free to contact me.

Sincerely,

Gerrie L. Marks

Deputy Director

cc: Dean Ehler, Assistant Director

Exhibit 4

State: Arizona **Filing Company:** Progressive Advanced Insurance Company
TOI/Sub-TOI: 19.0 Personal Auto/19.0001 Private Passenger Auto (PPA)
Product Name: AZ Direct 2013-06
Project Name/Number: /

Objection Letter

Objection Letter Status	Holding for Industry Response
Objection Letter Date	07/17/2013
Submitted Date	07/17/2013
Respond By Date	07/26/2013

Dear Meghan Friesen,

Introduction:

An insurer can not use not-at-fault accidents in the underwriting process whether or not it is for new or existing business. Not-at-fault accidents" include comprehensive claims (CMP) and are prohibited by ARS § 20-263(A). An insurance company may not use non-chargeable losses in its tier determination.

The company's X04 Comprehensive Claims' Rating Rule in the attached manual will need to be amended along with the Underwriting Level Determination matrix in the AZ DI Complete Factor Set 1306s, Part 1, file.

Thank you.

Conclusion:

Sincerely,
Rosemary Cutter

Exhibit 5

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

JAN 19 1994

DEPARTMENT OF INSURANCE
By *llc*

In the Matter of)	
)	Docket No. 8329
RELIANCE INSURANCE COMPANY)	
PLANET INSURANCE COMPANY)	CONSENT ORDER
UNITED PACIFIC INSURANCE COMPANY)	
)	
Respondents.)	
_____)	

A rate examination was made of Reliance Insurance Company ("R"), Planet Insurance Company ("P") and United Pacific Insurance Company ("UP") as of May 19, 1992 by Rate Examiners ("Examiners") for the Arizona Department of Insurance ("ADOI"). These companies are affiliates of the Reliance Insurance Group and are hereinafter referred to as the "Respondents". Based upon the examination results, it is alleged that the Respondents have violated the provisions of the Arizona Revised Statutes, Sections 20-229, 20-263, 20-311, 20-356, 20-357, 20-359, 20-383, 20-385, 20-398, 20-400.01, 20-448, 20-1113, 20-1120, 20-1632, 20-1674, 20-1676, 20-1677 and 23-961.

The Respondents wish to resolve this matter without formal adjudicative proceedings and hereby agree to a Consent Order.

The Arizona Director of Insurance (the "Director") enters the following Findings of Fact, and Conclusions of Law, which are neither admitted nor denied by Respondents, and the following Order.

FINDINGS OF FACT

1. Respondents are authorized to transact property and casualty insurance, including Workers' Compensation ("WC"), in

1 Arizona pursuant to Certificates of Authority issued by the
2 Director.

3 2. The Examiners were authorized by the Director to
4 conduct an examination of the Respondents. The on-site
5 examination was concluded May 19, 1992 and a Report of
6 Examination ("Report") was written. All policies examined were
7 effective after January 1, 1987.

8 3. The National Council of Compensation Insurance ("the
9 NCCI"), a duly licensed rating organization in Arizona, makes
10 rate filings on behalf of its members with the ADOI. Workers'
11 Compensation ("WC") insurers are required by statute to belong
12 to a WC rating organization and to adhere to its rates unless
13 the insurer has filed deviations from these rates. R, P and UP
14 are members of the NCCI. Any reference to the filings of these
15 Companies, or their "filed rates and rules" means rates and
16 rules filed with the ADOI by these Companies or by the NCCI on
17 their behalf. Of these Companies, none currently has a filed
18 deviation from rates filed by the NCCI. UP withdrew its filed
19 deviation on April 1, 1984.

20 4. The NCCI's Schedule Rating Plan ("Plan") was approved
21 for use in Arizona July 8, 1982 by the Director. Effective
22 October 1, 1988, the Plan was amended to require insurers to
23 include within each WC policy file a completed schedule rating
24 ("SR") worksheet and loss prevention survey. R, P and UP adopted
25 the Plan on July 1, 1982.

26 5. The Examiners found that R and P failed to:

27 a. adequately document and allocate Schedule Rating
28 ("SR") credits and debits in the files of three (3) WC policies.

1 b. R issued seven (7) WC policies where the files
2 did not contain any documentation of SR.

3 c. P issued one (1) and R issued two (2) WC
4 policies with changes in SR credits or debits over prior terms.
5 The files were not documented with justification to substantiate
6 the credit or debit changes.

7 d. R applied an undocumented schedule credit on WC
8 policy #WC131808700. A 25% schedule credit was applied when the
9 policy was documented for only a 20% schedule credit.

10 6. R failed to include a loss control report in the file
11 of eleven (11) WC policies. R failed to include a loss control
12 report in the file of sixteen (16) WC policies, within ninety
13 (90) days of the effective date of the policies.

14 7. P issued WC policy #NWA1496137001 without a signed
15 countersignature endorsement by a licensed Arizona resident
16 agent.

17 8. R issued WC policies #WC011952800 and #WC011969800,
18 where the schedule credit applied exceeded the individual risk
19 characteristic maximum allowed under the Schedule Rating Plan.

20 9. R failed to apply the correct experience modifier by:
21 a. not applying to the NCCI for an experience
22 modifier on WC policy #WC011951800, when the insured was
23 eligible for Experience Rating ("ER").

24 b. on three (3) WC policies, failing to obtain
25 documentation of the experience modifiers from NCCI.

26 c. issuing four (4) WC policies where R applied a
27 different experience modifier than the modification factor
28 promulgated by NCCI.

1 10. R issued WC policy #WC131806800 with Form
2 WC990602-Cancellation Condition "30 Day Notice" attached. This
3 form is in conflict with Arizona Cancellation Endorsement which
4 is also attached to the policy. Arizona statute requires thirty
5 (30) days notice for any cancellation. R's form allows for a ten
6 (10) day notice of cancellation for nonpayment.

7 11. R issued nine (9) WC policies where filed endorsements
8 or signed endorsements were not attached to the policy.

9 12. P failed to send form RR-1, Retrospective Rating Plan
10 Notification of Coverage, to NCCI on WC policy #NWA1496137001.

11 13. R issued notices of cancellation or nonrenewal not in
12 compliance with the Arizona cancellation or nonrenewal statute.
13 Specifically, R failed to:

14 a. provide any notice of nonrenewal for WC policies
15 #WC011958300 and #WC011953600.

16 b. provide thirty (30) days notice of
17 cancellation/nonrenewal timely on four (4) WC policies. One
18 policy was cancelled with only twenty-seven (27) days notice of
19 cancellation. Three (3) policies were nonrenewed with notices of
20 nonrenewal that were less than thirty (30) days.

21 14. R applied cancellation calculations on five (5) WC
22 policies which were not in accordance with NCCI's Rule X-D
23 provided for short rate cancellations. As a result, these
24 insureds paid \$10,543.00 less than they should have paid had R
25 adhered to its filings.

26 15. Respondents developed WC premiums in a manner not
27 consistent with their ADOI filings by:

28

1 a. UP issuing one (1) and R issuing two (2) WC
2 policies where the premiums were reduced to meet an agent's
3 quotation or another carriers price.

4 b. R failing to adjust payrolls to reflect the prior
5 term audits on WC policies, #WC131808801 and #WCO11956000. As a
6 result, the insureds paid a total of \$2,629.00 less than they
7 should have paid had R adhered to its filings.

8 c. UP issuing one (1) and R issuing two (2) WC
9 policies where the correct minimum premiums were not applied. On
10 one policy, the correct minimum premium charge for employers
11 liability was not applied. On two policies, the correct policy
12 minimum premium was not applied.

13 d. UP issuing one (1), P issuing one (1) and R
14 issuing twelve (12) WC policies where the correct employer
15 liability rates were not applied. As a result, the insureds paid
16 \$1,616.00 more than they should have paid had Respondents
17 adhered to their filings.

18 e. R failing to apply the correct premium discount
19 on five (5) WC policies. As a result, the insureds' paid a total
20 of \$70.00 less than they should have paid had R adhered to its
21 filings.

22 f. P issuing one (1), UP issuing one (1) and R
23 issuing four (4) WC policies where the correct workers'
24 compensation rates were not applied. On three (3) policies, the
25 prior years rates were used. On the other three (3) policies, an
26 unfiled charge was made for a waiver of subrogation endorsement.
27 As a result, the insureds paid a total of \$117.00 more than they
28 should have paid had Respondents adhered to their filings.

1 16. Respondents are members of the Insurance Services
2 Office ("ISO"), a property and casualty (P&C) rating
3 organization duly licensed by the ADOI to file rates on behalf
4 of its members. ISO files rates on behalf of the Companies, from
5 which the Companies have filed various deviations. These rates
6 are included in this Order's reference to Respondents' "filings"
7 and "filed rates and rules".

8 17. R and UP failed to adequately document Commercial
9 Package ("CP") policies by:

10 a. UP issuing four (4) CP policies and R issuing six
11 (6) CP policies, but failing to include any documentation in
12 support of the schedule/IRPM credits/debits given.

13 b. UP issuing twenty-four (24) CP policies and R
14 issuing twenty-nine (29) CP policies, but failing to include
15 adequate documentation in support of IRPM and schedule
16 credits/debits given.

17 c. UP issuing four (4) CP policies, but failing to
18 have justification of credit/debit adjustments given.

19 d. UP issuing four (4) CP policies with different
20 IRPM or schedule credits than the credits documented in the
21 files.

22 e. UP issuing eight (8) CP policies and R issuing
23 three (3) CP policies, but failing to document the experience
24 credits/debits. As a result, the insureds paid a total of
25 \$6,023.00 less than they should have paid had R and UP adhered
26 to their filings.

27 f. R issuing two (2) CP policies and UP issuing five
28 (5) CP policies, where the documentation of ER credits/debits

1 was different than the credits/debits shown on the rating
2 worksheets. As a result, the insureds paid a total of \$52,737.00
3 less than they should have paid had Respondents adhered to their
4 filings.

5 18. The Examiners found that UP and R developed premiums
6 for CP policies not consistent with their ADOI filings by:

7 a. UP and R issuing seven (7) CP policies using
8 liability rates other than their filed "A" rates.

9 b. UP issuing ten (10) and R issued five (5) CP
10 policies reducing the premiums, to match competition or meet
11 quotations, as documented in the policy files.

12 c. classifying risks other than according to
13 Respondents' filed rules, by:

14 i. UP issuing two (2) CP policies, #UP081827202
15 and #QB113938250, using incorrect rating territories for rating
16 automobile liability. As a result, the insureds paid \$16,743.00
17 and \$33,012.00 less than they should have paid had UP adhered to
18 its filings.

19 ii. UP misclassifying the general liability
20 rating territory on four (4) CP policies.

21 d. UP applying an incorrect deviation to CP policy
22 #UP065543500. As a result, the insured paid \$39.00 more than he
23 should have paid had UP adhered to its filings.

24 e. UP issuing CP Policy #QB849561901 and applied an
25 unfiled 25% credit for Employee Benefit Liability. As a result,
26 the insured paid \$97.00 less than he should have paid had UP
27 adhered to its filings.

28

1 f. On CP Policy #XB849549100, R applied an unfiled
2 Personal Property rated development factor. As a result, the
3 insured paid \$25.00 less than he should have paid had R adhered
4 to its filings.

5 19. Respondents have filed, and ISO has filed on
6 Respondents' behalf, experience rating ("ER") and SR plans which
7 apply to policies. The Examiners found that Respondents did not
8 develop premiums in accordance with the ER and SR plans by:

9 a. R and UP applying credits which exceeded the
10 maximum allowable for an individual risk characteristic under
11 the SR Plan on forty-two (42) CP policies. R also issued CP
12 policy JK2089566 with 40% IRPM credits applied to the property
13 section of the policy when the maximum filed with the ADOI is
14 25% IRPM, resulting in the insured paying \$816.00 less than he
15 should have paid had R adhered to its filings.

16 b. R and UP failing to apply general liability ER to
17 eleven (11) CP policies which were eligible for ER..

18 c. UP and R applying an unfiled IRPM or SR
19 characteristic on fourteen (14) CP policies.

20 d. On thirteen (13) CP policies, R and UP applying
21 an IRPM or SR plan when they were not eligible.

22 e. issuing thirty-one CP policies where the risks
23 qualified for ER but the method by which the experience
24 modifiers were calculated was not filed with the ADOI, resulting
25 in overcharges of \$1,717.00 to three (3) insureds and
26 undercharges of \$10,657.00 to two (2) insureds.

27 f. UP failing to apply all known losses in the
28 general liability ER calculations on CP policy, #QB613445800.

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As a result, the insured paid \$5,194.00 less than he should have paid had UP adhered to its filings.

g. UP failed to apply the earned loss/experience credits on two (2) CP policies, #BU071414805 and #BU07114504.

20. R and UP issued sixty (60) CP policies where the companies added ER or SR credit or debit modifiers although the method of combining these factors was not filed with the ADOI. The lines of coverages which are affected by this additive method are general liability, automobile liability and physical damage.

21. UP issued CP policies using unfiled forms by:

a. issuing CP policy #QB113938250 with a California reduction or rejection of uninsured motorist coverage form (CANP85330889CA).

b. issuing three (3) CP policies with employee benefit liability coverage when this coverage form was not filed with the ADOI.

22. R failed to send notices of premium increase or policy change at least sixty (60) days in advance of the premium increase or policy changes to twenty-four (24) CP policyholders. UP failed to send notices of premium increase or policy change at least sixty (60) days in advance of the premium increase or policy changes to thirty (30) CP policyholders.

23. UP and R failed to send notices of nonrenewal to six (6) CP policyholders at least sixty (60) days prior to policy expiration dates.

.

1 24. UP cancelled CP policies, #BU642035702 and
2 #BU42225403, but failed to provide the insured with the reason
3 for the cancellation.

4 25. R issued one (1) CP binder, UP issued three (3) CP
5 binders and P issued two (2) CA binders, #NK1258942 and
6 #NKA125894201, that extended coverage beyond ninety (90) days
7 without written approval from the Director.

8 26. R and UP did not apply the correct general liability
9 classification on four (4) CP policies.

10 27. UP did not apply the correct general liability factor
11 on thirteen (13) CP policies. As a result, twelve (12) insureds
12 paid \$41,812.00 less and one (1) insured paid \$596.00 more than
13 he should have paid if UP had adhered to its filings.

14 28. UP issued CP Policy #UP065544200 with a \$250.00
15 general liability property deductible, which was not applied. As
16 a result, the insured paid \$182.00 more than he should have paid
17 had UP adhered to its filings.

18 29. UP and R failed to apply the correct specific property
19 rates to five (5) CP policies. As a result the insureds paid a
20 total of \$21,210.00 less than they should have paid had UP and R
21 adhered to their filings.

22 30. UP and R failed to apply the correct property class
23 rates to three (3) CP policies. As a result, two (2) insureds
24 paid a total of \$707.00 less and one (1) insured paid \$7.00 more
25 then he should have paid had UP and R adhered to their filings.

26 31. On six (6) CP policies, R and UP did not apply the
27 correct property territorial multiplier. As a result some
28 insureds paid a total of \$2,952.00 less and other insureds paid

1 \$111.00 more than they should have paid had R and UP adhered to
2 their filings.

3 32. UP and R issued three (3) CP policies with some
4 property exposures class rated. The protection class multiplier
5 was not applied to these properties. As a result, the insureds
6 paid a total of \$112.00 more than they should have paid had UP
7 and R adhered to their filings.

8 33. UP deleted the applicable transition factors from two
9 (2) CP Policies, #QB849551500 and #QB113938250. As a result the
10 insureds paid a total of \$5,905.00 less than they should have
11 paid had UP adhered to its filings.

12 34. R failed to use the correct automobile rates on Policy
13 #QB849551151. As a result, the insured paid at least \$929.00
14 less than he should have paid had R adhered to its filings.

15 35. R and UP failed to apply filed "A" or (a) rates by:

16 a. failing to use the published "A" rate on code
17 99990 for the Broad Form Comprehensive General Liability
18 coverage on twenty-four (24) CP policies. As a result, the
19 insureds paid a total of \$87,969 less than they should have paid
20 had R and UP adhered to their filings.

21 b. applying unfiled "A" and (a) rates to fifty (50)
22 CP policies. As a result, five (5) insureds paid a total of
23 \$67,186.00 less and two (2) insureds paid a total of \$449.00
24 more than they should have paid had R and UP adhered to their
25 filings.

26 36. UP issued twenty-six (26) CP policies using unfiled
27 liquor liability rates.

28

1 37. UP issued CP Policy #QB113931001 with non-owned
2 automobile and hired automobile coverages, but did not make
3 minimum premium charges. As a result, the insured paid \$112.00
4 less than he should have paid had UP adhered to its filings.

5 38. UP issued CP Policy #QB84953101 with an unfiled .80
6 expense credit. As a result, the insured paid \$1,956.00 less
7 than he should have paid had UP adhered to its filings.

8 39. P and R issued seven (7) Monoline Commercial General
9 Liability ("GL") policies using unfiled programs, rates and
10 forms.

11 40. P did not attach the Arizona mandatory cancellation
12 endorsement to GL Policy #NGI1495979200.

13 41. P did not send the notice of cancellation to the
14 insured at least thirty (30) days prior to the termination of GL
15 Policy #NGI1495792-02.

16 42. R issued GL Policy #NGA1494481 and P issued GL Policy
17 #NKE0100991, without countersignatures of Arizona resident
18 agents.

19 43. Under "specialty programs" initiated by individual
20 agents, Respondents issued GL policies for day care centers,
21 longterm auto leasing, public entities and moving and storage
22 companies. For each of these groups, all policies were issued
23 through one agent. Although the agents' contracts did not
24 identify the agents as exclusive agents, the Examiners found no
25 evidence that all agents authorized by Respondents to handle
26 commercial property and casualty coverage in Arizona were made
27 aware of their ability to market these specialty programs.

28

1 44. Respondents failed to document Commercial Auto ("CA")
2 policy files by:

3 a. P failing to include any documentation in support
4 of the schedule credits/debits given on four (4) CA policies.

5 b. R failing to include adequate documentation in
6 support of the schedule credits by individual risk
7 characteristics on CA Policy #JK1720603.

8 c. P applying a different schedule debit than the
9 one documented in the file on CA Policy #NKA201651501.

10 d. UP failing to document experience credits applied
11 to CA Policy #JK1720570. As a result, the insured paid \$47,963
12 less than he should have paid had UP adhered to its filings.

13 e. R issuing CA Policy #JK2089607 with experience
14 credits different than what was documented in the file. As a
15 result, the insured paid \$27,216.00 more than he should have
16 paid had R adhered to its filings.

17 45. R issued CA Policy #JK1720603 and P issued CA
18 Policies, #NKA181394801 and #NKA181394800, selectively applying
19 schedule credits/debits to certain automobiles within a fleet.

20 46. UP and P failed to obtain the insured's signatures on
21 the rejection of uninsured motorist coverage on CA Policy
22 #KR1735569(UP) and CA Policy #VA1911677(P).

23 47. P cancelled CA Policy #JA2087431, but failed to
24 provide notice of the cancellation to the insured.

25 48. R, P and UP issued five (5) CA policies through
26 non-resident agents without countersignatures by licensed
27 resident agents.

28

1 49. P and UP issued three (3) CA policies through
2 non-resident agents who are not licensed as non-resident agents.

3 50. P failed to apply the correct automobile zone
4 territories on CA Policy #NKA2016515. Territories of 29-41 were
5 applied when territories 41-49 should have been applied.

6 51. P issued CA policies, #NKA2016515 and #NKA201651501,
7 and did not apply the correct automobile classification. As a
8 result, these insureds paid a total of \$48,141.00 less than they
9 should have paid had P adhered to its filings.

10 52. P did not apply the correct automobile limit factor on
11 CA Policy #NKA2016515. An increased limit factor of 2.24 was
12 applied when it should have been 2.42.

13 53. P issued five (5) CA policies and applied the ISO Loss
14 Rating Plan in a manner not consistent with the Plan. These
15 policies were either not eligible for the Loss Rating Plan due
16 to the losses not meeting the plan's eligibility requirements or
17 P did not apply the ISO Loss Rating formula.

18 54. UP issued four (4) Personal Automobile ("PA") policies
19 where UP failed to send to insureds notices of premium increase
20 due to at-fault accidents.

21 55. UP issued PA Policy #AU789906806, where the notice of
22 nonrenewal sent to the insured was not in compliance with A.R.S.
23 § 20-1632(A).

24 56. UP used an unfiled rate to match an agent's quotation
25 of premium amount on PA Policy #AU828722800.

26 57. UP increased the premium for an accident which was not
27 substantially the insured's fault on PA Policy #AU8185531-05.

28

1 8. By failing to attach a signed Arizona Countersignature
2 Endorsement to a WC policy P violated A.R.S. § 20-229(A).

3 9. R, P and UP violated A.R.S. § 20-385(A) by failing to
4 file all rating systems for CP and GL risks, including their
5 Guide (A) rates and deviations therefrom with the ADOI.

6 10. R, P and UP violated A.R.S. § 20-400.01(A) by
7 developing premiums for commercial risks in a manner not
8 consistent with filings made by them pursuant to A.R.S. §
9 20-385(A).

10 11. By reducing the premiums of CP policies to match
11 competition or meet quotations, R and UP calculated the premium
12 charged of an insured differently than premium charged other
13 insureds having substantially like insuring, risk and exposure
14 factors, or expense elements, in violation of A.R.S. §§
15 20-383(A) and 20-448(C).

16 12. By making adjustments to full manual premiums
17 developed for CP and MCA risks without adequately documenting
18 facts supporting the adjustments in policy files, R, P and UP
19 violated A.R.S. § 20-400.01(B). By developing premiums based
20 upon these undocumented adjustments, R, P and UP violated A.R.S.
21 § 20-400.01(A).

22 13. By misclassifying CP risks and determining their rates
23 on the basis of the misclassifications, R and UP violated A.R.S.
24 §§ 20-400.01(B) and (C). By developing premiums based upon these
25 undocumented adjustments, R and UP violated A.R.S. §
26 20-400.01(A).

27 14. By failing to send notices of premium increase, change
28 in deductible or substantial reduction in coverage of CP

1 policies at least sixty (60) days before the expiration date of
2 the policy, R and UP violated A.R.S. § 20-1677(A).

3 15. By failing to send notices of nonrenewal to CP
4 policyholders at least sixty (60) days before the expiration
5 date of their policies, R and UP violated A.R.S. § 20-1676(B).

6 16. By failing to attach filed or signed endorsements to
7 their policies, R and P violated A.R.S. § 20-1113(A)(7).

8 17. R and P violated A.R.S. § 20-398(A) by issuing
9 policies using unfiled forms.

10 18. R, P and UP violated A.R.S. § 20-1120(B) by binding
11 coverage over ninety (90) days without the written permission of
12 the Director.

13 19. P violated A.R.S. § 20-1674(A) by failing to deliver a
14 notice of commercial policy cancellation to an insured at least
15 sixty (60) days before cancellation of the policy.

16 20. UP violated A.R.S. § 20-1632(A) by sending to an
17 insured a notice of nonrenewal which was not in accordance with
18 Arizona law.

19 21. If it were found that Respondents had offered
20 specialty programs for day care centers, long term auto leasing
21 firms, public entities and moving and storage companies through
22 exclusive agents without offering the specialty programs through
23 all of their agents authorized for similar types of insurance
24 coverage, Respondents would be in violation of A.R.S. § 20-460.

25 22. By issuing MGL and MCA policies through unlicensed
26 agents and paying a commission therefore, R, P and UP violated
27 A.R.S. § 20-311(A).

28

1 attach filed endorsements to policies as required by their
2 filings; from failing to document insureds' acceptance of
3 Retrospective Rating Plans as required by their filed
4 Retrospective Rating Plan Manual; from failing to show minimum
5 retrospective premium factors in the Schedule for Retro-Rated
6 Policies completed for each policy and from failing to send
7 notices of GL and CP premium increase, policy change or policy
8 nonrenewal at least sixty (60) days prior to the expiration
9 date. Respondents shall refrain from offering any insurance
10 programs through exclusive agents without offering them through
11 all other agents and brokers authorized for similar types of
12 coverage.

13 2. Within sixty (60) days of this Order's filed date,
14 Respondents shall submit to the Director written action plans to
15 provide ongoing training and written precedires to ensure that:

16 a. only classifications, rates, rating plans and
17 rating rules which have been filed with the ADOI by Respondents
18 or on their behalf, are used in determining policy premiums.

19 b. that facts on which the rating of a policy is
20 based are documented in such detail that they support any
21 credits/debits used to develop the premiums.

22 3. Respondents shall file with the ADOI within ninety
23 (90) days of the filed date of this Order any rates, rules,
24 deviations and forms used in Arizona which have not been filed
25 with the ADOI.

26 4. Respondents shall, within sixty (60) days of the filed
27 date of this Order, reimburse the policyholders listed on
28 Exhibit 1, attached hereto, for premium overcharges in the total

1 amount of Fifty-Two Thousand One Hundred and Ten Dollars
2 (\$52,110.00) plus interest at the rate of ten percent (10%) per
3 annum calculated from the date the premium was paid by the
4 insured to the date of reimbursement. The reimbursements shall
5 be accompanied by a letter to the insured acceptable to the
6 Director. A list of reimbursements, giving the name and address
7 of each party reimbursed, the amount of overcharge, the amount
8 of interest paid, and the date of payment, shall be provided to
9 the ADOI within seventy (70) days of the filed date of this
10 Order.

11 5. Respondents, R, P, and UP have notified and filed with
12 the ADOI their intention to use the additive method of combining
13 the rating factors developed from experience and schedule rating
14 plans; per ISO's amendment of the Experience and Schedule Rating
15 Plan as filed with the ADOI.

16 6. Respondents shall notify all of their agents
17 authorized to handle commercial property and casualty coverage
18 in Arizona of their ability to directly handle Respondents'
19 specialty programs for day care centers, long term auto leasing
20 firms, public entities, moving and storage companies, and any
21 other specialty coverages written by Respondents. Within sixty
22 (60) days of the filed date of this Order, Respondents shall
23 file an affidavit with the ADOI listing the agents and brokers
24 which have been so notified.

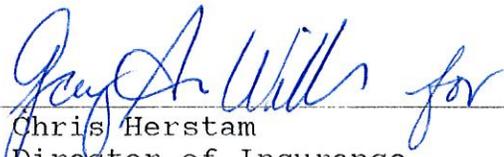
25 7. The ADOI shall be permitted, through authorized
26 representatives, to verify Respondents have fully complied with
27 all requirements of this Order, and the Director may separately
28 order Respondents to comply.

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8. R shall pay a civil penalty of \$24,150.00, P shall pay a civil penalty of \$2,775.00 and UP shall pay a civil penalty of \$32,475.00 to the Director for remission to the State Treasurer for deposit in the State General Fund in accordance with A.R.S. §20-220 (B). Said civil penalties shall be provided to the Hearing Division of the ADOI on or before January 14, 1994.

9. The May 19, 1992 Report of Examination, to include any objections to the Report by Respondents, shall be filed with the ADOI.

DATED at Phoenix, Arizona this 19th day of January, 1994.


Chris Herstam
Director of Insurance

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COPY of the foregoing mailed/delivered
this 19th day of January , 1994, to:
Katrina Rogers
Chief Hearing Officer
Saul R. Saulson
Supervisor
Examinations Section
Bernie Hill
Supervisor
Life and Disability Section
Deloris E. Williamson
Assistant Director
Rates & Regulations Division
Jay Rubin
Assistant Director
Investigations Division
Gary Torticill
Assistant Director and Chief Financial Examiner
Corporate & Financial Affairs Division
DEPARTMENT OF INSURANCE
2910 North 44th Street, Suite 210
Phoenix, AZ 85018

Linda S. Kaiser, Esq.
Reliance Insurance Group
4 Penn Center Plaza
19th Floor
Philadelphia, PA 19103

Chris Crawford

RELIANCE INSURANCE GROUP
POLICYHOLDERS AND AMOUNTS TO BE REIMBURSED

POLICY #	EFFECTIVE DATE	AMOUNT
UP0655435500(UP)	3/1/87	\$39
UP065544200(UP)	3/13/87	\$182
JK2089607(R)	9/1/91	\$27,216
WC011959400(R)	10/8/88	\$55
WC131806200(R)	1/1/89	\$170
WC130808000(R)	6/23/89	\$50
WC011951700(R)	10/8/87	\$72
WC131807600(R)	6/1/89	\$50
WC011955600(R)	4/1/88	\$77
WC011969500(R)	4/1/87	\$100
WC011955800(R)	4/1/88	\$47
QC131808502(UP)	6/1/91	\$1,543
QC849554401(R)	1/20/91	\$63
WC131808801(R)	9/13/89	\$379
WC131806200(R)	1/1/89	\$56
WC011954100(R)	12/1/87	\$100
WC131805300(R)	12/1/88	\$100
WC011952000(R)	10/1/87	\$400
QC849554401(R)	1/20/91	\$30
QB849563601(R)	2/13/92	\$11
QB849563601(R)	2/13/92	\$21
QB121963750(R)	11/18/90	\$78
QB121963750(R)	11/18/90	\$16
XB849549750(R)	1/1/91	\$46
XB849529750(R)	1/1/91	\$258
XB849549950(R)	1/30/91	\$29
QB849582500(R)	1/30/92	\$37
QB849566200(R)	3/1/91	\$444
XB113927950(R)	3/12/91	\$213
UP065542800(UP)	4/1/87	\$817
QB113932800(R)	4/20/91	\$431
UP081801100(UP)	7/1/87	\$502
QB113931001(UP)	4/15/90	\$3,827
UP081803600(UP)	7/15/87	\$3,737
UP065543800(UP)	3/31/87	\$40
QB113931250(R)	4/9/91	\$40
UP081804500(UP)	6/1/87	\$844
UP081832000(UP)	11/1/87	\$743
UP081804100(UP)	8/1/87	\$130
UP065544600(UP)	3/6/87	\$135
UP081833210(UP)	11/7/87	\$5,275
QB081830500(UP)	10/10/87	\$818
UP065544500(UP)	3/30/87	\$596
QB849567901(R)	3/14/92	\$7
QB849551550(UP)	12/1/90	\$12
QB121963802(R)	7/21/90	\$99
QB113938250(P)	6/30/91	\$95
QB121963803(P)	7/21/91	\$6
XB849549750(R)	1/1/91	\$258
QB113933350Q(R)	4/26/92	\$191

UP065544500(UP)	3/30/87	\$1,577
UP081803300(UP)	7/1/87	\$22
UP035641101(UP)	7/1/87	\$26

TOTAL AMOUNT OF REIMBURSEMENTS
\$52,110.00

EXHIBIT 1

SEP 25 2013

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

DEPT OF INSURANCE
BY 

In the Matter of:

MERCURY CASUALTY COMPANY,
NAIC # 11908,
Respondent.

) Docket No. 13A-113-INS
)
)

) **CONSENT ORDER**
)
)

Examiners for the Department of Insurance (the "Department") conducted a target market conduct examination of Mercury Casualty Company ("MCC"). In the Report of Target Market Conduct Examination of the Market Conduct Affairs of Mercury Casualty Company, the examiners allege that MCC violated A.R.S. §§20-263, 20-461, 20-1632, 20-1653 and 20-2106.

Mercury Casualty Company wishes to resolve this matter without formal proceedings, admits that the following Findings of Fact are true, and consents to the entry of the following Conclusions of Law and Order.

FINDINGS OF FACT

1. Mercury Casualty Company is authorized to transact property and casualty insurance pursuant to a Certificate of Authority issued by the Director.

2. The Director authorized the examiners to conduct a target market conduct examination of Mercury Casualty Company. The examination covered the time period from January 1, 2012 through December 31, 2012 and concluded on June 4, 2013. Based on their findings, the examiners prepared the "Report of Target Market Conduct Examination of Mercury Casualty Company" dated December 31, 2012.

3. The examiners reviewed 50 of 3,881 private passenger automobile policies surcharged for an at-fault accident during the time frame of the examination

1 and found that MCC failed to notify 12 insureds that an at-fault accident was the reason
2 for their policy premium increase.

3 4. The examiners reviewed 2 of 2 private passenger automobile policies
4 non-renewed for underwriting reasons during the time frame of the examination and
5 found that MCC failed provide 2 policyholders with the specific reason for the non-
6 renewal.

7 5. The examiners reviewed 23 of 23 homeowner policies non-renewed for
8 underwriting reasons and 50 of 50 homeowner policies cancelled for underwriting
9 reasons during the time frame of the examination and found that MCC failed provide
10 the specific reason for the non-renewal or cancellation to 13 policyholders.

11 6. The examiners found two claim authorization disclosure forms used
12 during the time frame of the examination that failed to specify that the authorization
13 remains valid for no longer than the duration of the claim and advise the individual or a
14 person authorized to act on behalf of the individual that they are entitled to receive a
15 copy of the authorization form. (see Exhibit A)

16 7. The examiners reviewed 79 of 79 homeowner claims settled during the
17 time frame of the examination and found that MCC failed to correctly calculate and pay
18 the Transaction Privilege Tax on 7 homeowner settlements.

19 8. The examiners found that the Company incorrectly cited the California
20 Department of Insurance and/or California statutes, instead of Arizona, in claims
21 correspondence to 6 claimants during the time frame of the examination.

22 9. Following the examiner review of the Company's homeowner claim
23 settlement practices, MCC resettled the 7 homeowner claims which resulted in
24 restitution payments to insureds of \$244.52, plus \$24.46 interest.

25

1 e. correctly calculate and pay the Transaction Privilege Tax on
2 homeowner claim settlements.

3 f. identify the correct state and/or state statutes on all claims
4 correspondence.

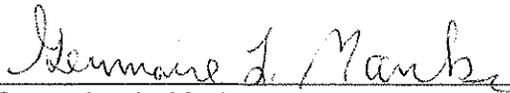
5 2. Within 90 days of the filed date of this Order, Mercury Casualty Company
6 shall submit to the Arizona Department of Insurance, for approval, evidence that MCC
7 implemented corrections and communicated these corrections to the appropriate
8 personnel, regarding the issues outlined in Paragraph 1 of the Order section of this
9 Consent Order. Evidence of corrective action and communication thereof includes, but
10 is not limited to, memos, bulletins, E-mails, correspondence, procedures manuals, print
11 screens, and training materials.

12 3. The Department shall, through authorized representatives, verify that
13 MCC has complied with all provisions of this Order.

14 4. Mercury Casualty Company shall pay a civil penalty of \$19,000.00 to the
15 Director for remission to the State Treasurer for deposit in the State General Fund in
16 accordance with A.R.S. §20-220(B). MCC shall submit the civil penalty to the Market
17 Oversight Division of the Department prior to the filing of this Order.

18 5. The Report of Target Market Examination of Mercury Casualty Company
19 of December 31, 2012, including the letter with their objections to the Report of
20 Examination, shall be filed with the Department upon the filing of this Order.

21 DATED at Arizona this 24th day of September, 2013.

22
23 
24 Germaine L. Marks
25 Director of Insurance

1 CONSENT TO ORDER

2 1. Mercury Casualty Company has reviewed the foregoing Order.

3 2. Mercury Casualty Company admits the jurisdiction of the Director of
4 Insurance, State of Arizona, admits the foregoing Findings of Fact, and consents to the
5 entry of the Conclusions of Law and Order.

6 3. Mercury Casualty Company is aware of the right to a hearing, at which it
7 may be represented by counsel, present evidence and cross-examine witnesses.
8 Mercury Casualty Company irrevocably waives the right to such notice and hearing
9 and to any court appeals related to this Order.

10 4. Mercury Casualty Company states that no promise of any kind or nature
11 whatsoever was made to it to induce it to enter into this Consent Order and that it has
12 entered into this Consent Order voluntarily.

13 5. Mercury Casualty Company acknowledges that the acceptance of this
14 Order by the Director of the Arizona Department of Insurance is solely for the purpose
15 of settling this matter and does not preclude any other agency or officer of this state or
16 its subdivisions or any other person from instituting proceedings, whether civil, criminal,
17 or administrative, as may be appropriate now or in the future.

18 6. KEN KITZMILLER, who holds the office of
19 VICE PRESIDENT of Mercury Casualty Company, is authorized to enter
20 into this Order for them and on their behalf.

21 **MERCURY CASUALTY COMPANY**

22
23
24 8/22/2013
Date

By 

1 COPY of the foregoing mailed/delivered
2 this 25th day of September , 2013, to:

3 Germaine L. Marks
4 Director of Insurance
5 Mary Butterfield
6 Assistant Director
7 Consumer Affairs Division
8 Helene I. Tomme
9 Market Examinations Supervisor
10 Market Oversight Division
11 Dean Ehler
12 Assistant Director
13 Property and Casualty Division
14 Kurt Regner
15 Assistant Director
16 Financial Affairs Division
17 David Lee
18 Chief Financial Examiner
19 Alexandra Shafer
20 Assistant Director
21 Life and Health Division
22 Chuck Gregory
23 Special Agent Supervisor
24 Investigations Division

25 DEPARTMENT OF INSURANCE
2910 North 44th Street, Suite 210
Phoenix, AZ 85018

James S. Kasza, CPCU, AU
Assistant Vice-President, Underwriting
Mercury Casualty Company
PO Box 203010
Austin, Texas 78720-3010

24 
25 _____

EXHIBIT A

Claim Authorization Disclosure

These forms fail to comply with A.R.S. § 20-2106(8)(b) and (9).

The following table summarizes these application form findings:

Form Description / Title	Form #	Statute Provision
Wage Authorization (4 pages including cover letter)	None	8(b) and 9
Authorization for Release and/or Disclosure of Medical Information	C7A	8(b) and 9

STATE OF ARIZONA
DEPARTMENT OF INSURANCE

In the Matter of:

Docket No. 20A-033-INS

**NATIONAL GENERAL INSURANCE
COMPANY**

CONSENT ORDER

NAIC # 23728

Respondent.

Examiners for the Arizona Department of Insurance (the “Department”) conducted a target market conduct examination of National General Insurance Company. In the Report of Target Market Conduct Examination of the market conduct affairs of National General Insurance Company, the examiners allege that National General Insurance Company violated Arizona Revised Statutes (A.R.S.) §§ A.R.S. 20-466, 20-442, 20-443, 20-444 , 20-443, 20-259.01, 20-191, 20-263, 20-385, 20-2110, 20-460, 20-466.03, 20-461, 20-462 and Arizona Administrative Code (“A.A.C”) R20-6-801.

National General Insurance Company wishes to resolve this matter without formal proceedings, admits that the following Findings of Fact are true, and consents to the entry of the following Conclusions of Law and Order.

FINDINGS OF FACT

1. National General Insurance Company (“NGIC” or “Respondent”) is authorized to transact casualty, without worker’s compensation, property and vehicle insurance pursuant to a Certificate of Authority issued by the Director of the Arizona Department of Insurance (“Director”).

2. The Director authorized the examiners to conduct a target market conduct examination of Respondent. The examination covered the time period from July 1, 2017 through December 31, 2018 and concluded on February 4, 2020. Based on their findings, the examiners prepared the Report of Target Market Conduct Examination of National General Insurance Company (“Report”) dated December 31, 2018. The examination found:

1 a. Respondent failed to refer to the Department a claim denied for material
2 misrepresentation as a suspected fraud claim which resulted in 1 statutory violation.

3 Respondent has policies and procedures in place to ensure NGIC refers suspected fraud
4 claims to the Department as described in NGIC's Claims Handling Guidelines.

5 b. Respondent failed to clearly identify the entity providing insurance coverage. The
6 examiners reviewed 300 of 21,230 new business and renewals of motorcycle ("MC"), private
7 passenger automobile ("PPA") and recreational vehicle ("RV") policies issued during the time
8 frame of the examination. The examination found that Respondent failed to clearly identify the
9 entity providing insurance coverage in at least 170 instances. Respondent issued policies with the
10 name and logo of "Good Sam Vehicle Insurance Plan" or "NRLCA Vehicle Insurance Plan" rather
11 than the registered "doing business as" name. Neither of those names was registered or licensed
12 with the Department. This deficiency resulted in 170 statutory violations.

13 Respondent modified its advertising, sales and policyholder materials to ensure the proper
14 entity providing insurance coverage is clearly represented.

15 c. Respondent withdrew its cancellation fee rule for new business and renewal policies,
16 effective July 29, 2016 and September 3, 2016, respectively. The examination disclosed at least
17 three (3) invoice forms, pertinent to the policies purchases or renewed after the effective dates,
18 containing a statement "a fifty-dollar (\$50) cancellation fee will be applied."

19 Respondent revised all of its invoice forms to remove the statement "a fifty-dollar (\$50)
20 cancellation fee will be applied."

21 d. Respondent failed to secure and retain signed underinsured and uninsured motorist
22 coverage selection forms for new MC insurance policies. The examination disclosed fifteen (15)
23 violations within the fifty (50) reviewed files.

24 e. Respondent's billing notices included a statement that the premium is to be mailed
25 seven (7) days before the due date and that the postmark is not sufficient proof of the payment date.
26 The examination disclosed ninety-four (94) violations within the 300 reviewed files.

1 Respondent revised all of its billing notices to remove the statement that the premium is to
2 be mailed seven (7) days before the due date and that the postmark is not sufficient proof of the
3 payment date.

4 f. Respondent failed to provide sufficient evidence that an accident listed on a
5 Comprehensive Loss Underwriting Exchange (“C.L.U.E.”) Report was caused or significantly
6 contributed to by the actions of the insured. The examination disclosed thirty-one (31) violations
7 within the 300 reviewed files.

8 g. Respondent failed to file with the Department a MC model year/vehicle age factor
9 for comprehensive and collision coverages prior to applying this factor to determine policy
10 premium. The issue began on October 18, 2011 for MC new business and on November 18, 2011
11 for MC renewal policies. The examination disclosed three (3) violations within the 100 reviewed
12 files. Additionally, Respondent conducted a self-audit and determined that 100 MC new business
13 and ninety-nine (99) MC renewal policies were impacted by this deficiency, resulting in \$14,871.93
14 of overcharges and \$391 of undercharges.

15 On November 5, 2019, Respondent issued refund checks to the insureds for overcharges and
16 interest due of \$14,872.15 and \$8,981.07, respectively. Respondent also filed with the Department a
17 MC model year/vehicle age factor scheduled to take effect on September 13, 2019 for new business
18 and on October 19, 2019 for renewal policies.

19 h. Respondent failed to file with the Department factors and base rates prior to
20 applying them in determining policy premiums for PPA and RV new business and renewal policies.
21 The examiners reviewed 200 files and found the following:

22 i. Respondent applied an accident forgiveness factor that was not filed with the
23 Department. The premium charged to policyholders was not consistent with filings with the
24 Department. The issue began on June 1, 2013. The examination disclosed thirty-four (34) violations
25 within the 200 reviewed files. However, Respondent’s self-audit determined 1,058 policies were
26 impacted with overcharges of \$1,293.21.

1 Respondent issued refund checks to the insureds for the overcharges and interest due in the
2 amounts of \$1,293.21 and \$317.56, respectively. Respondent also filed with the Department an
3 accident forgiveness factor scheduled to take effect on December 13, 2019 for new business and on
4 January 18, 2020 for renewal policies.

5 ii. Respondent applied an accidental death and dismemberment base rate that included
6 an increased limit factor for individual plans two (2) through seven (7) and all of its family plans.
7 According to the rating algorithm filed with the Department, the increased limit factor would then
8 be applied again to determine premium, resulting in a policyholder being charged twice for the
9 increased limit factor. The Respondent failed to follow the filed rating algorithm. Respondent's
10 self-audit determined that the incorrect implementation began on June 1, 2013 for PPA and RV new
11 business and on December 1, 2013 for PPA and RV renewal policies. However, this deficiency did
12 not affect the premium. The examination disclosed fifty-three (53) violations within the 200
13 reviewed files.

14 On November 19, 2019, Respondent submitted SERFF filing #GMMX-132160775 to show
15 the base rate and increased limit factor separately effective December 13, 2019 for new business
16 and January 19, 2020 for renewal business.

17 iii. Respondent applied a PPA model year/vehicle age factor to comprehensive and
18 collision coverage that was not filed with the Department. The examination disclosed fifty-five (55)
19 violations within the 100 reviewed files. However, Respondent's self-audit determined 1,100 PPA
20 new business and 3,786 PPA renewal policies were impacted with overcharges of \$2,120.29 and
21 undercharges of \$177,999.21. The issue began on May 26, 2017 for PPA new business and on July
22 1, 2017 for renewal business.

23 On November 11, 2019, Respondent issued refund checks to the insureds for the
24 overcharges and interest due in the amounts of \$2,120.29 and \$526.37, respectively. Respondent
25 also filed with the Department a model year/vehicle age factor that took effect on November 10,
26 2017 for new business and on December 16, 2017 for renewal policies.

1 iv. Respondent applied a PPV new business discount factor that was not filed with the
2 Department. The examination disclosed ninety-five (95) violations within the 100 reviewed files.
3 However, Respondent's self-audit determined 18,784 PPA new business and 36,965 PPA renewal
4 policies were impacted by this deficiency. The issue began on August 23, 2013 for PPV new
5 business and renewal policies. All of Respondent's policyholders were undercharged.

6 Respondent resolved the system failure issue by modifying its system to match its filing
7 effective December 13, 2019 for new business and January 18, 2020 for renewal business.

8 v. Respondent failed to apply a multiple RV owner surcharge when determining policy
9 premium. The issued began on April 1, 2011 for RV new business and renewal policies.
10 Respondent's self-audit determined one (1) RV new business and three (3) RV renewal policies
11 were impacted with undercharges of \$391. This deficiency resulted in one (1) statutory violation.

12 Respondent resolved the system failure issue on June 7, 2018.

13 vi. Respondent failed to apply a correct bodily injury model year factor for the year
14 2017. This issue began on October 7, 2016 for PPA new business and renewal policies.
15 Respondent's self-audit determined 200 PPA new business and four 475 PPA renewal policies were
16 impacted with undercharges of \$32,036.88. This deficiency resulted in one (1) statutory violation.

17 Respondent resolved the system failure upon discovering the issue.

18 vii. Respondent's own rating system audit determined the driver class factor table for
19 medical payments coverage failed by showing a different factor than the one company applied.
20 Respondent's self-audit determined 1,271 RV new business and 2,219 renewal policies were
21 impacted with undercharges of \$17,079. The issue began on May 26, 2017 for RV new business
22 and renewal policies. This deficiency resulted in one (1) statutory violation.

23 Respondent resolved the factor tables for the May 26, 2017 rate revision on August 9, 2018.

24 i. Respondent failed to provide a specific reason for an adverse underwriting decision
25 in writing or advise the person in writing that, upon written request, the person may receive the
26 specific reason for an adverse decision in writing. The examination disclosed twenty-three (23)

1 violations within the 250 reviewed files.

2 Respondent modified applicable forms and has procedures and controls in place to ensure it
3 provides the specific reason for the adverse underwriting decision in writing or advise the person, in
4 writing, that upon written request the person may receive the specific reason in writing.

5 j. Respondent failed to show that it does not exclusively offer certain programs to only
6 certain exclusive producers, without also offering those same programs to all of its authorized
7 insurance producers, in violation of state statute.

8 k. Respondent failed to include the required statutory language pertaining to knowingly
9 presenting a false or fraudulent claim for payment of a loss on its estimate of physical damage
10 forms. The examination disclosed four (4) violations within the fifty (50) reviewed files.

11 Respondent modified its claims forms to include the required fraud warning on November
12 20, 2019.

13 l. Respondent failed to respond within ten (10) business days to communications
14 received from claimants. In at least nine (9) instances, Respondent failed to timely respond to
15 claimants who submitted photographs of the damages for an estimate, to timely respond to counter
16 offers, and/or to timely respond to correspondence/telephone calls. The examination disclosed nine
17 (9) violations within the fifty (50) reviewed files.

18 Respondent has written procedures and controls in place to ensure it responds within ten
19 (10) working days to communications received from claimants.

20 m. Respondent failed to investigate claims within thirty (30) days from the date of
21 receipt. Respondent's business practices displayed unnecessary delays to assess liability, to address
22 the claimant's damages and/or to address the estimate of damages. On multiple occasions,
23 Respondent requested unnecessary additional pictures of damages or resubmission of a claim form.
24 The examination disclosed eleven (11) violations within the fifty (50) reviewed files.

25 Respondent has written procedures and controls in place to ensure NGIC completes
26 investigation of a claim within thirty (30) days after notification of claim.

1 n. Respondent failed to pay the interest of ten percent (10%) on a first party claim not
2 paid within thirty (30) days after the receipt of an acceptable proof of loss. The examinations
3 disclosed five (5) violations within the five (5) reviewed files.

4 On October 17, November 13, and November 19 of 2019, Respondent issued interest
5 payments totaling \$7,335.39 to five (5) claimants.

6 o. Respondent failed to acknowledge the receipt of a subrogation claim within ten (10)
7 business days. In at least nine (9) instances, Respondent failed to send an acknowledgement letter
8 and in at least two (2) instances, the acknowledgement letter was sent after the required deadline.
9 The examination disclosed eleven (11) violations within the fifty (50) reviewed files.

10 p. Respondent failed to, upon request, provide to the Department with the complete
11 subrogation files needed to reconstruct the events of customer's claims. The files were missing
12 either notes or documentation verifying the insured received the deductible reimbursement. The
13 examiners could not determine the date the insured was reimbursed or the date the claim was
14 closed. The examination disclosed six (6) violations within the fifty (50) reviewed files.

15 Respondent has written procedures and controls in place to ensure it provides complete
16 claim files in such detail that pertinent events and the dates of such events can be reconstructed.

17 **CONCLUSIONS OF LAW**

18 1. Respondent violated A.R.S. §20-466 (G) by failing to refer a suspected fraud claim
19 to the Department.

20 2. Respondent violated A.R.S. §20-442, 20-443 and 20-444 (B) by failing to clearly
21 identify the company providing insurance coverage.

22 3. Respondent violated A.R.S. §20-443 by including cancellation fee policy that was
23 previously withdrawn on file with the Department.

24 4. Respondent violated A.R.S. §20-259.01 (A) and A.R.S. §20-259.01 (B) by failing to
25 secure and retain signed underinsured and uninsured motorist coverage selection forms.

26 5. Respondent violated A.R.S. §§20-191 (A) and (B) by including on its premium

1 billing notices a statement that the premium payment was to be mailed seven (7) days before the
2 due date and that the postmark is not sufficient proof of date of payment.

3 6. Respondent violated A.R.S. §20-263 by failing to provide sufficient evidence that an
4 accident listed on a C.L.U.E. Report was caused or significantly contributed to by the actions of the
5 insured.

6 7. Respondent violated A.R.S. §20-385 (A) by:

7 a. Failing to file with the Department and receive approval for a MC model
8 year/vehicle age factor prior to applying it to determine policy premiums for comprehensive and
9 collision coverages.

10 b. Failing to file with the Department and receive approval for an accident forgiveness
11 factor prior to applying it to determine policy premiums.

12 c. Failing to accurately apply an accidental death and dismemberment base rate that
13 included an increase limit factor.

14 d. Failing to file with the Department and receive approval for a PPA model
15 year/vehicle age factor prior to applying it to the comprehensive and collision coverages.

16 e. Failing to file with the Department and receive approval for a new business discount
17 factor prior to applying it to determine policy premiums.

18 f. Failing to apply a multiple RV owner surcharge.

19 g. Failing to apply a correct bodily injury model year factor for the year 2017.

20 h. Failing to apply a correct driver class factor for medical payments coverage.

21 8. Respondent violated A.R.S. §20-2110 (A) by failing to provide a specific reason for
22 the adverse underwriting decision in writing.

23 9. Respondent violated A.R.S. §20-460 by failing to ensure all its products are
24 available to all of Respondent's authorized insurance producers.

25 10. Respondent violated A.R.S. §20-466.03 (A) by failing to include on its estimate of
26 physical damage forms the fraud warning notice in at least 12 point type.

1 3. The Department shall, through authorized representatives, verify that National
2 General Insurance Company has complied with all provisions of this Order.

3 4. National General Insurance Company (“NGIC”) shall pay a civil penalty of
4 \$75,000.00 to the Director for remission to the State Treasurer for deposit into the State General
5 Fund in accordance with A.R.S. §20-220(B). NGIC shall submit the civil penalty to the Market
6 Regulation and Consumer Services Division of the Department prior to the filing of this Order.

7 5. The Report of Target Market Examination of NGIC of December 31, 2018 including
8 the letter with NGIC’s objections to the Report of Target Market Examination, shall be filed with
9 the Department upon the filing of this Order.

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DATED at Arizona this 19 day of July, 2020.

Erin H. Klug

Erin H. Klug, Interim Deputy Director for
Christina Corieri, Interim Director
Arizona Department of Insurance

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CONSENT TO ORDER

1. National General Insurance Company has reviewed the foregoing Order.

2. National General Insurance Company admits the jurisdiction of the Director of Insurance, State of Arizona, admits the foregoing Findings of Fact, and consents to the entry of the Conclusions of Law and Order.

3. National General Insurance Company is aware of its right to a hearing, at which it may be represented by counsel, present evidence and cross-examine witnesses. National General Insurance Company irrevocably waives its right to such notice and hearing and to any court appeals related to this Order.

4. National General Insurance Company states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Consent Order and that it has entered into this Consent Order voluntarily.

5. National General Insurance Company acknowledges that the acceptance of this Order by the Director of the Arizona Department of Insurance is solely for the purpose of settling this matter and does not preclude any other agency or officer of this state or its subdivisions or any other person from instituting proceedings, whether civil, criminal, or administrative, as may be appropriate now or in the future not related to this matter.

6. Jeffrey Weissmann, who holds the office of Secretary and General Counsel of National General Insurance Company, is authorized to enter into this Order for them and on their behalf.

NATIONAL GENERAL INSURANCE COMPANY

7/13/2020
Date

By Jeffrey Weissmann

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COPIES of the foregoing **E-MAILED** this
20th day of July, 2020, to:

Robin Lopez, Market Conduct Specialist
National General Insurance Company
5630 University Parkway
Winston-Salem, North Carolina 27105
Robin.Lopez@ngic.com

COPIES of the foregoing delivered, same date to:

Catherine M. O'Neil, Consumer Legal Affairs Officer
Deian Ousounov, Regulatory Legal Affairs Officer
Maria Ailor, Assistant Director
Sarah Borunda, Market Conduct Manager
Cheryl Hawley, Senior Market Analyst
Linda Lutz, Legal Assistant
Arizona Department of Insurance
100 North 15th Avenue, Suite 261
Phoenix, AZ 85007-2630

Ana Starcevic for

Francine Juarez

Exhibit 6

Department's Summary of Vehicle History Rating Variables

Odometer Readings

Odometer Discrepancy

Last Odometer Read

Estimated Annual Mileage

Number of Odometer Readings

Average Age of Odometer Reading

Vehicle Condition

Vehicle was Repurchased by the
Manufacturer

Vehicle Reported as Abandoned

Major Repairs

Persistent Automotive Deficiencies

Lemon Vehicle

Severe Problems

Total Loss

Severe Accident

Airbag Deployment

Recycle Vehicle

Potential Vehicle Damage

Damage Disclosed by Insured

Service/Maintenance History

Vehicle Emission Compliance

Junk

Frame Damage

Title Issues

Days Since Last Title Event

Branded Title - Salvage, Flood, Restored

Number of Titles

Length of Vehicle Ownership

Vehicle Registration/Ownership History

Rental/Fleet Vehicle

Police Vehicle

Commercial Vehicle Usage

Stolen Vehicle

Miscellaneous

Vehicle Theft Factor

Certified Pre-Owned Vehicle

Lease Vehicle

Police Accident Report

Prior Claim History

Claim Severity

Exhibit 7

State: Arizona **Filing Company:** Acuity, A Mutual Insurance Company
TOI/Sub-TOI: 19.0 Personal Auto/19.0000 Personal Auto Combinations
Product Name: Personal Auto/Motorcycle
Project Name/Number: 16876 Ruth/16876

Response Letter

Response Letter Status Submitted to State
Response Letter Date 02/13/2018
Submitted Date 02/13/2018

Dear Brooke Lovallo,

Introduction:

Thank You for reviewing our filing.

Response 1

Comments:

Acuity believes that the vehicle history score is compliant with Arizona Statutes and requirements. In addition, TUVHS is vehicle data not driver specific. Accidents themselves do not have any impact on TransUnion Vehicle History Score 2.1 (TUVHS); rather, TUVHS adjusts based on the presence of prior severe or non-severe damage in the CARFAX data. It is possible that such damage may have been sustained in a not-at-fault accident. With that said, the change in TUVHS does not reflect penalizing a driver for being involved in the accident (regardless of fault), but rather reflects the change in insurance risk of the vehicle. The vehicle, as the result of previously sustaining damage, is statistically more likely to incur higher loss costs in the future due to its inability to function optimally (compared to a vehicle that has not sustained damage) and prevent future damage from occurring.

Related Objection 1

Applies To:

- Actuarial Supporting Exhibit Requirements - Article 4.1 (Supporting Document)

Comments:

A vehicle history rating factor cannot use criteria that is prohibited by ARS 20-263. Only at fault accidents may be used in the making of rates.[PC0222]

Changed Items:

No Supporting Documents changed.

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Conclusion:

Thank You.

Sincerely,

Heidi White

State: Arizona **Filing Company:** Acuity, A Mutual Insurance Company
TOI/Sub-TOI: 19.0 Personal Auto/19.0000 Personal Auto Combinations
Product Name: Personal Auto/Motorcycle
Project Name/Number: 16876 Ruth/16876

Objection Letter

Objection Letter Status	Holding for Industry Response
Objection Letter Date	02/13/2018
Submitted Date	02/13/2018
Respond By Date	02/20/2018

Dear Heidi White,

Introduction:

Thank you for your response. We are still in need of additional information. Please see below. If you have any questions, please feel free to contact me.

Objection 1

Comments: It still appears that the driver is being penalized for the accident regardless of fault by being charged a higher price for their policy due to previous damage, whether severe, or non-severe, to their vehicle. The scoring is based in part on previous damage to the vehicle, which may have been a result of a not at fault accident, or the result of an accident that occurred prior to the purchase of the vehicle by the potential insured. Additionally, we haven't been provided any data that shows a correlation between prior repairs to a vehicle and higher future losses. Please provide the statistical data that you are referencing, and any actuarial data that would support this model. [PC9999]

Conclusion:

The provisions of this letter apply notwithstanding any prior approval of any such non-compliant language that we may have inadvertently given in the past. If we have in the past inadvertently approved forms or acknowledge rate/rule filings containing or lacking such provisions for this or other companies within your group, please submit as separate filings which correct the aforementioned provisions.

Sincerely,

Brooke Lovallo

State: Arizona **Filing Company:** Twin City Fire Insurance Company
TOI/Sub-TOI: 19.0 Personal Auto/19.0001 Private Passenger Auto (PPA)
Product Name: AZ Auto Open Road Agency (TCFIC)
Project Name/Number: AZ Auto Open Road Agency/FN.15.599.2019.04

Objection Letter

Objection Letter Status	Holding for Industry Response
Objection Letter Date	12/12/2019
Submitted Date	12/12/2019
Respond By Date	01/17/2020

Dear Betzaida Llanes,

Introduction:

The submitted filing does not comply with Arizona statutes and/or administrative code. While grounds exist to disapprove the filing, we are providing you with an opportunity to resolve the objections or to withdraw the filing. If neither occurs, we will disapprove or reject the filing as ambiguous, misleading or deceptive or otherwise failing to comply with Arizona law. The objections are:

Objection 1

- Objection Response (Supporting Document)

Comments: In regard to the response to objection #1:

As this time frame is so limited, the company needs to display this provision clearly to the policyholder. If this is displayed elsewhere or within the policy, please provide supporting documentation.

If the 48 hour time period limitation to alter the type of trip taken under the telematics program is not explicitly displayed elsewhere, please provide a revised version of the terms and conditions reflecting the requirement to document a trip properly, within 48 hours.

The language is not clear and is ambiguous or misleading. This material may be disapproved per ARS § 20-1111 as advertising or sales material.[PC0017]

Objection 2

- Objection Response (Supporting Document)

Comments: Objection 4 remains. Please remove factors related to prior damage to the vehicle unless it can be directly attributed to an at-fault accident of the current insured.

Accident factors used in rate making may only use at fault accidents in accordance with ARS 20-263. This Arizona statute only allows at fault accidents to be used for rate making purposes. Vehicle history scoring is not permitted as it may reflect damages to the vehicle that were a result of an accident that occurred prior to the policyholder's ownership, or accidents they were not deemed at fault for.

[PC0025]

Conclusion:

The provisions of this letter apply notwithstanding any prior approval of any such non-compliant language that we may have inadvertently given in the past. If we have in the past inadvertently approved forms or acknowledge rate/rule filings containing or lacking such provisions for this or other companies within your group, please submit as separate filings which correct the aforementioned provisions.

Sincerely,

Vanessa Darrah

State: Arizona **Filing Company:** GEICO Secure Insurance Company
TOI/Sub-TOI: 19.0 Personal Auto/19.0001 Private Passenger Auto (PPA)
Product Name: 263 - Auto Form/Rate/Rule
Project Name/Number: 263 - Auto Form/Rate/Rule/2020-263

Objection 11

- Confidential Actuarial Exhibits (Supporting Document)

Comments: In the Confidential Filing Memorandum, under Telematics Program:

Please clarify the following statement: "For an improved customer experience, the Consumer Scores have been adjusted up 15 points from the same filing."

[PC9999]

Objection 12

- Confidential Actuarial Exhibits (Supporting Document)

Comments: The Coverage Model Data Dictionary displays a variable named Vehicle Damageability Indicator, which indicates the use of vehicle history scoring as outlined in the Description column: "Binary variable indicating whether or not a vehicle has had its future reparability and damageability negatively received from CARFAX."

The company also noted in the Predictive Modeling Checklist Confidential Coverage Model Filing Memorandum: "Vehicle History information is pulled from a single third-party vendor, Carfax, who sources information from states' Department of Motor Vehicles among other sources. Symbol and model year frequency scores for Bodily Injury, Property Damage, Collision and Comprehensive coverages come from models filed as part of SERFF Tracking Number GECC-132240845."

Within the SERFF filing made 01/31/2020 (GECC-132240845), the Department addressed the issue of GEICO Casualty Company's (NAIC#41491) use of vehicle history scoring, which is non-compliant with A.R.S. § 20-263.

Pursuant to A.R.S. § 20-263, no insurer shall increase the motor vehicle insurance premium of an insured as a result of an accident not caused or significantly contributed to by the actions of the insured. Vehicle related factors used in rate making may only use at fault accidents in accordance with ARS 20-263. Vehicle history scoring is not permitted as it may reflect incidents that occurred prior to the policyholder's ownership, or damages and accidents they were not deemed at fault for.

[PC0025]

Objection 13

- Confidential Actuarial Exhibits (Supporting Document)

Comments: In regard to the Major Violation Factors factors Confidential Exhibit GS5:

The Indication from GLM versus the Selected Factor greatly varies. In some cases the ultimate selected factor is nearly double that of the indicated factor.

For each factor that differs more than 0.30, please provide an explanation to support why the ultimate selected factor was chosen.

The rate submission does not include actuarial justification that supports the rate submission. ARS § 20-384.

[PC0009]

Objection 14

- Underwriting Support Documents (Supporting Document)

Comments: In regard to Appendix 1 - Score Group 1, Theft/Vandalism Claims within the Past 5 Years:

Please provide additional actuarial justification for the use of this variable.

Exhibit 8



DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS

NOTICE OF OPPORTUNITY TO COMMENT

The Department of Insurance and Financial Institutions (“Department”) is considering the issuance of a regulatory bulletin. The Department occasionally issues regulatory bulletins to clarify issues that are the subject of frequent questions, to apply statutory requirements consistently to regulated entities, and to help industry members provide services and benefits that meet the requirements of Arizona law. The Department’s regulatory bulletins are advisory substantive policy statements issued in accordance with the Arizona Administrative Procedure Act (“APA”) under Arizona Revised Statutes (“A.R.S.”) Title 41, Chapter 6.

Although the APA does not require prior notice or an opportunity for public comment before issuing a substantive policy statement, the Department recognizes that the public may have experience, perspectives, and expertise that can assist the Department in its legal and policy analysis that would enhance or improve a substantive policy statement. Accordingly, the Department may, in its discretion, issue a Notice of Opportunity to Comment to request public comment on issues that may be the subject of a regulatory bulletin.

The public is invited to provide comments on the following topic. Instructions for submitting comments appear at the bottom of this Notice. The Department reserves the right to consider comments in its discretion and to make a final determination on whether to issue any advisory substantive policy statements.

TOPIC FOR COMMENT

The Department is considering issuing a regulatory bulletin to clarify the Department’s interpretation of A.R.S. § 20-263(A).

Under Arizona law, an insurer cannot increase customers’ premiums “as a result of an accident that was not caused or significantly contributed to by the actions of the insured.” A.R.S. § 20-263(A). In reviewing relevant form, rate, and rule filings, the Department has identified a number of filings that include rating factors being applied to policyholder premiums associated with historical vehicle data, including prior vehicle damage, comprehensive claims, and vehicle title status. However, the historical vehicle data used to establish the rating factors does not appear to differentiate whether prior damage or vehicle condition was caused or contributed to

by the insured or a permissive driver, and using vehicle history score rating factors may result in the insured paying higher premiums. This raises questions about how and whether such data may be used under A.R.S. § 20-263(A) to set premiums.

The Department invites interested parties to submit comments on this question. The Department is particularly interested in comments regarding the interpretation of the terms “insured” and “accident” as they appear in A.R.S. § 20-263(A). Additionally, the Department would be interested in receiving industry comments explaining the different applications of premium for risk coverage and collision coverage, as applied by Arizona insurers.

INSTRUCTIONS

Please clearly state and support your position, citing relevant legal authority as appropriate. The Department will consider all timely submitted comments. Although all comments are appreciated, the Department will not respond directly to submitted comments and will incorporate information from comments into the regulatory bulletin at its discretion.

When submitting a comment, include “**Regulatory Bulletin 2020-05**” (“the reference”) in the subject line if submitted by email, and in the heading of any mailed document. Comments not including the reference as instructed may not be considered by the Department.

COMMENT SUBMISSION DEADLINE: In order for comments to be considered, interested parties should submit comments on or before 5:00 PM MST on:

October 30, 2020

The Department may not consider comments received after the COMMENT SUBMISSION DEADLINE. Comments can be submitted either by email at public_comments@difi.az.gov, or by mail or courier delivery on or before the COMMENT SUBMISSION DEADLINE to:

Attention: Office of the Director
Department of Insurance and Financial Institutions
100 North 15th Avenue, Suite 261
Phoenix, AZ, 85007-2630.

Comments are public information, which is open to public inspection pursuant to Arizona’s public records laws under A.R.S. Title 39, Chapter 1. Accordingly, submitted comments should not contain confidential information. Persons submitting comments are responsible for ensuring comments do not contain confidential information.

Exhibit 9

MEMORANDUM

TO: Arizona Department of Insurance
FROM: Nathan Brown, Product Manager, Progressive
DATE: October 21, 2020
SUBJECT: A.R.S. §20-263

Progressive raises four points in answer to the Notice of Opportunity to Comment issued by the Department of Insurance and Financial Institutions concerning A.R.S. §20-263. These points are addressed in summary form in the accompanying table. Progressive welcomes the opportunity to provide further input to DIFI concerning the agency's implementation of this statute.

In brief, Section 20-263 prohibits an insurer from increasing the premium of an existing insured for an accident that the insured did not cause or significantly contribute to. The plain reading of the statutory language does not support the expansive interpretation currently being enforced by DIFI. The statute only applies to insureds and their accident histories. It does not apply to vehicle risk characteristics like prior damage or title issues. It does not apply to their other claims beyond accidents like thefts or roadside claims. It does not apply to applicants who have yet to pay premium. It does not apply to an insured's discount eligibility or tiering assignment unless those treatments increase the premium of an insured from a prior established premium.

Absent conflict with the plain meaning of the A.R.S. §20-263, A.R.S. §20-384 gives broad leeway to insurers to classify their risks based on actuarial support with few limitations. Broadening the meaning of A.R.S. §20-263 beyond the written-word of the Arizona Legislature curtails our ability to price accurately and innovate in a competitive market. Moreover, broadening the meaning of A.R.S. §20-263 is detrimental to the industry in that it ensures unfair subsidies to higher risk policies at the expense of lower risk policies, despite clear actuarial support on the issue, which is contrary to the rating standards established in A.R.S. §20-383.

Thank you for the opportunity to comment.

Respectfully,

Nathan Brown

Attachment



- Government Employees Insurance Company
- GEICO General Insurance Company
- GEICO Indemnity Company
- GEICO Casualty Company

One GEICO Plaza ■ Washington, DC 20076-0001

October 30, 2020

Deian Ousounov, Regulatory Legal Affairs Officer
Arizona Department of Insurance and Financial Institutions
100 North 15th Avenue, Suite 261
Phoenix, AZ 85007-2630
Sent via email to: Public_comments@difi.az.gov

RE: Regulation Bulletin 2020-05

Dear Mr. Ousounov,

Thank you for the opportunity to provide comments regarding A.R.S. § 20-263(A) and the possibility of a regulatory bulletin from the Department of Insurance and Financial Institutions (Department) as it relates to A.R.S. § 20-263(A).

GEICO is the largest private passenger automobile insurance company in Arizona and is the second largest in the country. The company also has a regional office located in Tucson, Arizona and employs approximately 1,693 employees in the state.

In the last couple of years, it has come to GEICO's attention through rate filings submitted to the Arizona Department that the Department is now interpreting A.R.S. § 20-263(A) to restrict the use of vehicle history factors in rating and underwriting. Since 2018, there has been discussion both through the SERFF filing system and in meetings with GEICO about the state's new interpretation of this statute. GEICO has indicated its concern about the Department's position and respectfully disagrees with the Department's new interpretation of the statute in recent filings. Ultimately, while GEICO's previous filings were acknowledged and closed, the Department has indicated that it will continue to review these factors and will revisit the issue at some point in the future, but it would provide objections to future filings that included vehicle history scoring.

A.R.S. § 20-263(A) states the following:

A. No insurer shall increase the motor vehicle insurance premium of an insured as a result of an accident not caused or significantly contributed to by the actions of the insured. Any insurer which increases the premium as a result of accident involvement shall notify the insured of the reason for such increase.

There is no mention of vehicle history scoring or factors in this statute. Furthermore, there are no specific limitations or prohibitions on the use of vehicle history scoring that can be found in the Arizona insurance code. However, the Department's interpretation is that A.R.S. § 20-263(A) should be read to prohibit the use of vehicle history factors in rating and underwriting by insurance companies.

October 30, 2020

Arizona Department of Insurance and Financial Institutions

Page 2 of 3

In addition, A.R.S. § 20-263(A) does not make any reference to claims nor is it reasonable to infer that “accidents” should include all types of claims. However, this year the Department, without the opportunity for public comment, issued a revised checklist on its website that provided new rate filing requirements in Arizona. In this revised checklist the Department indicated the following:

Insurers may not implement rating rules that allow for the increase of premiums or tier placement based on accidents **or claims** that are not caused or significantly contributed to by the actions of the insured. **This includes the use of vehicle history scoring.** [Emphasis added.]

While this checklist item has since been removed it is clear that the Department is interpreting A.R.S. § 20-263(A) to include all claims. The new prohibition of vehicle scoring is broadening the interpretation of this statute so that “accidents” now include claims that may result from fire, flood, hail, title issues, theft or even roadside claims. There is no indication from the history of the statute or otherwise that the legislative intent was to take on such a broad interpretation of this statute. The fact that the Department had to include the term “claims” in the checklist requirement is further proof that the legislature would have needed to include this term in the statute in order to authorize the Department’s new interpretation. The statute today does not include the term “claims.” Such a broad interpretation of the statute cannot be inferred from the current language of A.R.S. § 20-263(A). Thus, GEICO believes the use of vehicle history scoring is not prohibited by Arizona statute.

In addition to the language of the statute, it is also important to note that A.R.S. § 20-263(A) was enacted in 1987. Since 1987, there has been no changes made to the statute’s language. However, the Department is now interpreting the language to prohibit insurers from adjusting premiums based on vehicle history factors. We do not believe that this was the intention of the statute because the legislature has allowed insurers to underwrite the risk of the vehicle. Rather, the statute’s long-standing intent was applied strictly to accidents that were not the fault of the insured, and it did not reference the condition of the vehicle.

GEICO would also like to make some further clarifying points on how vehicle history scoring works and why A.R.S. § 20-263(A) was not intended to apply to these types of factors. Vehicle history scoring is not a measure of accident history of an insured but rather an assessment of the vehicle risk and is predictive of higher future loss costs. It is not a premium surcharge for the occurrence of accidents but an assessment of the relative risk of the vehicle. Vehicle history scoring is unrelated to an insured’s not-at-fault accident history and is not attributable to an insured’s driving record. Further, vehicle history factors are in no way reflective of an insured’s involvement in or negligence in any prior accident. A driver’s history is not relevant to the application of vehicle history factors. These factors are reflective of a vehicle’s increased risk due to damage that adversely impacts the vehicle’s future repairability, damageability, and probability of future losses.

Further, the presence of a not-at-fault accident does not mean a vehicle will necessarily sustain damage that would result in a change in premium. However, vehicles that experience certain levels of damage are demonstrably prone to experience more frequent and/or severe losses in the future. The use of vehicle history scoring is an indirect factor related to the changed risk of the vehicle based on the damage to the vehicle. Thus, vehicle history scoring is not tied to a specific driver but rather to the vehicle.

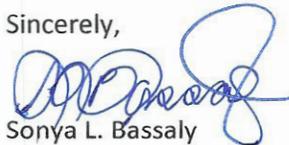
In GEICO's previous filings where vehicle history scoring has been filed for use, the company has clarified that these factors are not applied as a result of an accident and that if an insured is in an accident, the insured's premium will not be increased as a result of that accident. These factors are independent of and not the result of the occurrence of an insured's accident. This is in line with A.R.S. § 20-263(A).

Furthermore, A.R.S. § 20-384 allows for consideration of prospective loss experience and the classification of risk in any reasonable way as long as it is not based on race, color, creed or national origin. As mentioned above, the Department has indicated in previous GEICO filings that vehicle history scoring is prohibited based on A.R.S. § 20-263(A) alone. However, GEICO has respectfully disagreed with this position and has further provided actuarial support for use of vehicle history scoring.

Finally, in addition to the discussion above regarding vehicle history scoring, the language "increase in the motor vehicle premium" found in A.R.S. § 20-263(A) should also be considered when applying this statute to filings. This language should not apply to a new business applicant because an applicant for insurance has yet to pay a premium. Thus, we believe that A.R.S. § 20-263(A) may prevent an insurer from increasing the premium of a policy at renewal due to a not-at-fault accident during the policy term but it should not apply to a new business applicant. If the legislature intended for a broader application of this language, the legislature would have included the term "applicant" in the statute as well.

We appreciate the Department taking time to look into this matter further and seek comments on A.R.S. § 20-263(A) so as to offer further clarification to the industry. If you would like to discuss any of the comments included above or have any questions, please do not hesitate to contact me. Thank you.

Sincerely,



Sonya L. Bassaly
Senior Counsel

sbassaly@geico.com

October 30, 2020

Office of the Director
Arizona Department of Insurance and Financial Institutions
100 North 15th Ave., Ste. 261
Phoenix, AZ 85007-2630

Via email to public_comments@difi.az.gov

Re: Comments on proposed Regulatory Bulletin 2020-05

Dear Director Daniels and department staff:

On behalf of the National Association of Mutual Insurance Companies (NAMIC),¹ thank you for the opportunity to provide comments on a potential regulatory bulletin regarding the interpretation of Arizona Revised Statutes § 20-263(A).

NAMIC especially appreciates the department's approach in seeking input on the interpretation of this statute prior to the issuance of any bulletin. I hope these comments are useful to the department and encourage a similar process for future bulletins or guidance the department may consider on other issues.

In full, A.R.S. § 20-263 reads as follows:

A. No insurer shall increase the motor vehicle insurance premium of an insured as a result of an accident not caused or significantly contributed to by the actions of the insured. Any insurer which increases the premium as a result of accident involvement shall notify the insured of the reason for such increase.

B. The director, after a hearing, shall order an insurer that has raised the premium of an insured in violation of subsection A to refund the amount attributable to such premium increase and shall impose a civil penalty not to exceed three hundred dollars. In determining whether an insurer has

¹ NAMIC is the largest property and casualty insurance trade association in the country, with more than 1,400 member companies. NAMIC supports regional and local mutual insurance companies as well as some of the country's largest national insurers. Nationally, NAMIC members companies write \$273 billion in annual premiums, and our members account for more than 58 percent of homeowners, 44 percent of automobile, and 30 percent of the business insurance markets. NAMIC has 240 member companies doing business in Arizona.



Comments on proposed regulatory bulletin
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violated subsection A, the director may conduct such investigation as he deems necessary and the costs shall be paid by the insurer pursuant to section 20-159.

NAMIC believes the correct interpretation of this statute is strictly as a prohibition on an insurer increasing premiums for a current insured after an accident, if the accident was not “caused of significantly contributed to by the actions of the insured.” NAMIC believes that a broader interpretation of A.R.S. § 20-263 by bulletin or other guidance would be inconsistent with the statute’s plain meaning and context.

The overall context of § 20-263 in the Arizona statutes is important. Arizona law generally permits insurers to consider any reasonable means for classifying risks and setting rates, subject to a few prohibitions not relevant here. *See* A.R.S. § 20-384(C) (“Risks may be classified in any reasonable way for the establishment of rates and minimum premiums...”). As discussed further below, § 20-263 is a very limited exception to this general allowance for broad risk classification.

The first significant limitation in § 20-263 is its application to “an insured.” While NAMIC is not aware of a general definition of the term “insured” in the statute, the standard legal definition of “insured” is a “person who is covered or protected by an insurance policy,”² and there is no reason to think a different meaning is conveyed here. The term therefore includes only those for whom an insurance policy is already in place with a specific insurer, not applicants for insurance coverage or the public at large.

This interpretation is also consistent with the use of the term “increase” in the prohibition. The term “increase” means to raise above some previous premium amount, which can only occur if there is a previous premium amount. This is also consistent with subsection (B), which references refunds of amounts in excess of a previous premium for insurers which impermissibly “raised the premium of an insured.” Where there is no existing relationship between the insurer and insured, there can be no previous premium to increase, and § 20-263 does not apply.

While the statute’s plain application to insureds is clear, further support for this interpretation can be found in the fact that other Arizona statutes intended to apply to those other than insureds explicitly do so. For example, A.R.S. § 20-2101(B) provides that, “the rights extended by this chapter apply to...the *persons*, including natural persons who are the subject of information collected, received or maintained in connection with insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this state, *and applicants, individuals or policyholders who engage in or seek to engage in insurance transactions involving policies,*

² *Black’s Law Dictionary* at 823 (8th edition 2004).



Comments on proposed regulatory bulletin
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contracts or certificates of insurance delivered, issued for delivery or renewed in this state” (emphasis added). If § 20-263(A) were meant to invoke these broader groups, it would say so.

The second significant limitation in the statute is its application to premium increases “as a result of an accident.” While NAMIC is aware of no definition of the term “accident” in Title 20 or elsewhere in the statutes, the term is consistently used in statutes related to motor vehicles in a manner that clearly implies a limitation to certain events that occur while the vehicle is being operated, and a similar meaning is intended here.

For example, A.R.S. § 28-661, relating to duties of those involved in motor vehicle accidents, refers to the “driver of a vehicle involved in an accident,” which clearly assumes an event during the vehicle’s operation—and more specifically, something analogous to what would be referred to as a “crash” or “wreck,” rather than any event that may lead to a claim.

Many of the specific duties cited in these statutes only make sense in this narrower context. For example, A.R.S. § 28-662 refers to the duties of a “driver of involved in an accident resulting only in damage to a vehicle that is driven or attended by a person...”. These duties include a requirement to remain at the scene of the accident, and the statute prescribes criminal penalties for failure to do so. It is hard to imagine that these duties apply to all events that may damage a vehicle, but a broad reading of the term “accident” would require exactly that.

Further, if § 20-263 were intended to apply to more than the results of accidents as that term is commonly used in relation to motor vehicles, it would say so, or define the term more broadly. Other statutes make this distinction. For example, A.R.S. § 28-677 refers to “a motor vehicle accident *or other incident involving a motor vehicle* or ... a report of the accident *or incident*” (emphasis added). Similarly, A.R.S. § 28-678 references those who are “involved in *motor vehicle emergencies or accidents...*” (emphasis added). These references demonstrate that the term “accident,” in the context of motor vehicle laws, is not used to convey every event that damages or affects a vehicle. Similar wording would have been used in 20-263(A) if a broader application was intended—the statute would refer to “claims” or use some other more general description.

Two final considerations should also be noted. First, § 20-263 has been in place without change for more than 30 years. NAMIC believes the common understanding of the statute has been, in accordance with its plain language, as described above, and the Legislature has taken no action to expand its meaning, despite numerous opportunities. Second, NAMIC believes a broader interpretation of the statute would be poor policy even if the statute permitted such an interpretation. Prohibiting auto insurers from charging and collecting additional premiums from insureds who file claims not covered by this statute would likely require insurers to charge all insureds additional premium on the front end.



Comments on proposed regulatory bulletin
October 30, 2020

Thank you again for the department's proactive approach to engage with stakeholders on this issue. Please feel free to contact me if I may provide additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jon Schnautz', written in a cursive style.

Jon Schnautz
Regional Vice President
Southwest Region
National Association of Mutual Insurance Companies (NAMIC)

October 30, 2020

Attention: Office of the Director, Evan Daniels
ARIZONA DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
100 North 15th Avenue, Suite 261
Phoenix, AZ 85007-2630

Via Electronic Mail: at public_comments@difi.az.gov

Dear Director Daniels:

On behalf of the members of the American Property Casualty Insurance Association (APCIA), a trade association that promotes and protects the viability of a competitive property casualty insurance market for the benefit of consumers and insurers, we offer these comments regarding the Arizona Department of Insurance and Financial Institution's (DIFI) proposal to issue a bulletin to clarify the interpretation of A.R.S. § 20-263(A) concerning the use of not-at-fault (NAF) accidents. We appreciate the opportunity to provide comments and look forward to continued discussion on this issue.

APCIA members collectively write nearly 60 percent of the property casualty insurance in the U.S. With over 1200 member companies, APCIA has the broadest cross-section of home, auto, and business insurers of any national trade association. In Arizona specifically, APCIA members write 52 percent of private passenger auto (PPA) insurance.

Recently, without a change in statute, DIFI began enforcing a new rate filing requirement for NAF auto accidents. The new position was implemented as a general matter of practice in individual rate filing reviews and subsequently through a procedural filing checklist posted to the DIFI website. APCIA's members have received rate filing objections on the grounds that the rates do not comply with the new, unsupported requirement. APCIA believes that this requirement amounts to an unpromulgated rule and is concerned that implementation of DIFI's new statutory interpretation outside of formal rules will become increasingly problematic. Additionally, we believe that this interpretation runs counter to sound insurance policy and may result in negative outcomes for insureds.

As you know, PPA insurers are required by statute¹ to file their proposed rates with DIFI. The law states that DIFI may only disapprove rates which are excessive, inadequate, or unfairly discriminatory. Arizona law further permits insurers to consider nearly any potential factor in classifying risks and setting rates. If the risks are classified in a reasonable way and the insurer does not use one of the impermissible factors – race, color, creed, or national origin – the classification system may be used. Insurers have long considered factors such as age, driving experience, zip code, type of vehicle covered, miles driven per year, and loss history in setting premium in Arizona and other states.

There is a limited exception to Arizona's broad practice permitting the use of any driver's experience factors in setting ratings in A.R.S. § 20-263(A), which provides:

*A. No insurer shall increase the motor vehicle insurance premium of an insured **as a result of an accident** not caused or significantly contributed to by the actions of the insured. Any insurer which increases the premium as a result of accident involvement shall notify the insured of the reason for such increase. [Emphasis added].*

¹ A.R.S. §§ 20-383, 20-385, 20-388

The statute prohibits an insurer from increasing an insured's auto insurance premium based on an auto accident which the insured did not cause. The logic of the statute is apparent – an insured should not pay more based on accidents he did not cause. The statute was enacted in 1987 and has not been modified since enactment. The statute does not contain any provision that would limit the ability of insurers to adjust premium based on factors related to risk posed by the vehicle itself. Prior to the change in DIFI's policy, insurers commonly adjusted premiums based on the type of vehicle as well as its road worthiness.

Recently, without a change to A.R.S. § 20-263, DIFI revised its interpretation of how the statute applied to PPA rate filings. This interpretation effectively barred the use of vehicle history scoring in rate filings. Additionally, in March 2020, DIFI posted a since removed revised checklist to its website setting forth the rate filing requirements of several statutes which included the following interpretation of § 20-263(A):

*Insurers may not implement rating rules that allow for the increase of premiums or **tier placement** based on accidents **or claims** that are not caused or significantly contributed to by the actions of the insured. **This includes the use of vehicle history scoring.** [Emphasis added]*

APCIA believes this new position presents several problems. First, it prohibits the increase of premiums not just for not at fault "accidents," but also for "claims." A claim is broader than an accident as it does not require a collision. As such, this new position applies to damage to a vehicle arising from fire, flood, or hail; to title issues such as a salvage title; to roadside service claims; and to vehicles that have been stolen. As a result, it prevents insurers from taking in additional premium to compensate for the risks associated with the vehicle separate from those presented by the drivers.

Through § 20-263, the Legislature prohibited an insurer from increasing an insured's premium for an accident to which the insured did not cause or significantly contribute. The apparent intent was to protect the insured from having to pay a higher premium for an *accident* that was not their fault, whether caused by an insured or uninsured driver. The Legislature did not intend to restrict premium adjustments for *all* categories of damage to insureds' vehicles or determinations of the vehicle's roadworthiness. If the Legislature had intended to do so, it would have used the term "claim" or "accident or claim" in the statute. A driver can have a clean driving history but, if the vehicle the insured is driving is less safe, there is still increased risk and statutes allow insurers to adjust for these two different types of risk. If the new interpretation of the statute is applied, then drivers who drive less risky vehicles would be penalized and forced to subsidize drivers with higher risk vehicles.

Second, the new position prohibits the use of vehicle history scoring. That prohibition is not found in section 20-263, or elsewhere in the Insurance Code. This prohibition cannot be squared with Arizona's broad policy providing that "[r]isks may be classified in any reasonable way." A.R.S. § 20-384(C). Use of any relevant factor is the default; a prohibition on using a factor is the exception. Prohibitions should be applied sparingly, and only where the Legislature has expressly spoken on the issue. Vehicle history scoring, commonly used by PPA insurers, allows insurers to evaluate not just general risk, but risk involving *that specific vehicle*. A vehicle's condition has obvious relevance to the risk. A vehicle which has been previously damaged, even after full repair, may present more risk than a vehicle that has never been damaged. The Legislature has spoken on the issue in that it did not prohibit premium adjustments based on all types of damage to a vehicle, only for NAF accidents. The ability to adjust premium according to risk not only provides more favorable pricing, but it also provides an incentive for drivers to choose less risky vehicles.

Section 20-263 applies to a narrow subset of claims – NAF accidents. The statute requires that when an insured is involved in a NAF accident, an insurer may not increase the insured's premium, either on the existing policy or on renewals. But the statute does not apply to other types of claims, such as damage to a vehicle not caused by an accident such as a roadside towing service claim. The new position represents a rewrite of the statutory language. If PPA insurers were forced to cover this additional category of risk – and could not increase premium based on such claims – the net effect of this position would not be to prevent premium increases for some insureds, but instead to increase the base rates for all insureds. APCIA believes this is neither good policy nor a correct interpretation of law.

Third, APCIA members have also experienced an expanded interpretation of section 20-263(A) in rate filings through the prohibition on increasing premium for NAF accidents to apply to both existing insureds and new applicants for insurance. This interpretation changes and expands the meaning of the statute. The statute

prohibits an insurer from increasing the premium “of an insured” for a NAF accident; the statute does not expressly apply to “applicants.” An insured is someone who is covered or protected by an insurance policy. An applicant is someone who applies for insurance; she is a prospective insured but is not an existing insured. The second sentence of the statute requires insurers to notify insureds as to the reason for premium increases because of an accident. Logically, an insurer cannot “increase the premium,” much less notify a person of an increase, of someone who is not already an insured of that insurer because there is no premium yet established so the term ‘increase the motor vehicle premium’ cannot be applied to applicants. Preventing rating on the applicant’s risk profile creates subsidies that undermine rating accuracy and impairs the insurers ability to set the initial rating of an applicant to an actuarially justified rate at the inception of the policy.

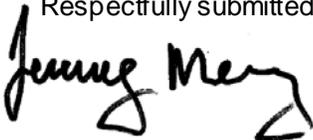
APCIA believes that if the Legislature intended for the statute to reach both existing insureds and future insureds, it could have included the term “applicant” within the statute, as it has in other provisions of the Insurance Code. *Compare with* A.R.S. § 20-259.01 (insurer must offer uninsured motorist coverage “to a named insured or applicant”). It did not.

Fourth, the new interpretation of ‘increase the motor vehicle premium’ in ARS 20-263 also prevents the use of NAF accidents in discount eligibility and renewal tier movement eligibility. The plain meaning of increase is to ‘make greater in amount.’ Not applying a discount at policy inception or not improving the rating tier at policy renewal does not increase the insured’s rate. Conversely, mandating access to discounts or lower rating tiers for which the insured does not qualify creates subsidies which undermine rating accuracy. While we agree that removing discounts already earned or increasing a rating tier at renewal based on NAF accidents is prohibited, barring access to discounts or preventing renewal tier improvement based on NAF accidents as defined by ARS 20-263 is not and should not be prohibited.

Finally, Arizona law does not allow agencies to apply its own interpretation to the statute which contradicts or expands the plain meaning. To the extent an agency action may be considered an interpretation rather than an expansion of the statute, it should do so through the Administrative Procedures Act’s (APA) agency rulemaking process, not through a general agency practice. Under the APA, A.R.S. § 41-1001(19) defines a “rule” as “an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency.” APCIA believes the new requirements fall squarely under this definition – it interprets a statute and is generally applicable as it applies to all auto insurers. To be considered a rule, an agency’s statement must implement, interpret, or prescribe law or policy, and not be merely an element to aid in the determination of a statutorily mandated action. APCIA does not believe that the new interpretation is statutorily mandated. Additionally, to the extent DIFI believes A.R.S. § 20-263 needs to be modernized to reflect issues the legislature did not anticipate, APCIA believes this requires a legislative discussion and action, not an agency reinterpretation.

APCIA urges DIFI to resume applying A.R.S. § 20-263 as it has been historically applied. Specifically, we seek the continued use of claims, vehicle history, discount and tier eligibility, and applicant accidents in PPA rate making. This position comports with sound insurance policy, the plain reading of the statute, the longstanding interpretation of A.R.S. § 20-263 and Arizona rules on agency actions. We again thank DIFI for the opportunity to provide comments on this issue.

Respectfully submitted,



Jeremy Merz
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(530) 902-3937
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State Farm
Corporate Headquarters
1 State Farm Plaza
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October 30, 2020

Office of the Director
Arizona Department of Insurance and Financial Institutions
100 North 15th Ave., Ste. 261
Phoenix, AZ 85007-2630

Via email to public_comments@difi.az.gov

**Re: State Farm Mutual Automobile Insurance Company Comments on proposed Regulatory Bulletin
2020-05**

Dear Director Daniels:

State Farm Mutual Automobile Insurance Company thanks you for the opportunity to provide comments on the proposed Regulatory Bulletin 2020-05 regarding the interpretation of ARS 20-263(A).

Our comments center on two key points: first, that the statutory section in question clearly deals only with issues regarding the RENEWAL of an auto insurance policy and not the initiation of a relationship with a new customer and, second, that the interpretation of the statute should not limit or impinge on the use of vehicle history reports.

ARS 20-263(A) reads, in relevant part:

No insurer shall increase the motor vehicle insurance premium of an insured as a result of an accident not caused or significantly contributed to by the actions of the insured.

The use of the word “increase” is critical to understanding that the statute is limited to addressing the impact for any on-board policyholder of an auto insurance company. By dictionary definition, there can be no “increase” until after an initial baseline is set. By far, the most common situation where that occurs in the auto insurance context is the consideration of relevant factors at the first and all subsequent renewals of a policy. In other words, when a customer first comes on board with a company a premium is calculated and set based on the filed rules of the company. No “increase” as the statute contemplates can occur until later. Thus, it is our view that any bulletin issued by the Department should explicitly confine its scope to renewal situations.

State Farm
Corporate Headquarters
1 State Farm Plaza
Bloomington, IL 61710-0001

State Farm also takes the view that the use of a vehicle history report is not within the scope of the statute. The prior damage information in these reports is unlike claim history reports, because it is not related to the people, the owners or the drivers who are within the protective ambit of the statute. In contrast, the data is useful to predict future risk associated with the exact individual vehicle (regardless of who owns it), because it relates to the condition and safety of that individual vehicle itself. The data does not have to do with claim-filing behavior of the people who own the vehicle and purchase insurance. The prior damage is related to the vehicle, even if that damage occurred while owned by someone other than the current owner who is purchasing insurance. The vehicle history report also does not include insurance claim information, but only prior damage to the vehicle (whether or not a claim was paid or requested). In short, the use of a vehicle history report is to enable understanding of the risk presented by the use of that vehicle itself and alone, and does not pertain to any driver of the vehicle. For this reason, we believe that any regulatory bulletin on this subject should explicitly allow for the continued use of vehicle history reports in all situations.

If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Roland Spies", written over a horizontal line.

Roland Spies
Counsel

April 19, 2021

VIA ELECTRONIC MAIL

Ms. Nicole Sornsin, Chairwoman
Governor's Regulatory Review Council
100 N. 15th Ave., #305
Phoenix, AZ 85007

APCIA's Reply to DIFI's Response to GRRC Petition

Dear Ms. Sornsin and Members of GRRC:

APCIA¹ submitted a Petition to GRRC on January 19, 2021 seeking review of DIFI practices and Bulletin. DIFI submitted its Response on April 1, 2021. APCIA hereby submits its Reply to DIFI's Response. Several of the items raised in the Response merit comment and were not included in the Petition due to the 5-page limit on the Petition.

GRRC Has Jurisdiction and Authority

GRRC may compel an agency to stop taking and applying an incorrect interpretation. GRRC has jurisdiction to hear the Petition, and authority to invalidate DIFI's practices and the Bulletin. DIFI's assertion to the contrary is incorrect. *See* Response, at 11.

APCIA submitted its petition pursuant to § 41-1033(G). *See* Petition, at 3. GRRC may review an existing agency practice or substantive policy statement to determine whether the practice or substantive policy statement is unduly burdensome. *See* A.R.S. § 41-1033(G), (H). Under GRRC's governing statute, "[i]f the council ultimately decides the agency practice or substantive policy statement constitutes a rule or that the final rule does not meet the requirements prescribed in § 41-1030, **the practice, policy statement** or rule **shall be considered void**. If the council determines that the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement is unduly burdensome ... **the council may modify, revise or declare void any such existing agency practice, substantive policy statement**, final rule or regulatory licensing requirement." A.R.S. § 41-1033(J) (emphasis added).

The bolded language clearly affords GRRC the authority to invalidate an agency practice or substantive policy statement. APCIA has challenged DIFI's Bulletin, DIFI's practice of applying § 20-263 to accidents that occurred prior to an insurer providing coverage, and DIFI's practice of applying § 20-263 as a prohibition on the use of vehicle history scoring. For the reasons set forth in the Petition and in this Reply, DIFI's Bulletin and practice are

¹ Terms used in this Reply have the meanings assigned to them in the Petition.

an incorrect interpretation of the statute and unduly burdensome. DIFI's Bulletin and practice impose additional, burdensome requirements on auto insurers which are not found in the statute. While GRRC cannot compel an agency to take a specific statutory interpretation, it can compel an agency to *stop* taking and applying an incorrect interpretation. Such is the case here, and GRRC has the authority and jurisdiction to review the issues raised in the Petition.

Insured vs Applicant

In its Response, in the Bulletin, and in practice, DIFI has conflated the term "insured" with "applicant." An insured is a person who is covered by an insurance policy. An applicant is a person who applies for an insurance policy. DIFI asserts that application of § 20-263(A) only to insureds and not also to applicants would result in absurd results. No such results would occur from the correct interpretation of the statute.

First, the distinction between insured and applicant was created by the Legislature, not by APCIA. *See* A.R.S. § 20-259.01(A) (expressly requiring insurers to offer uninsured and underinsured coverage to both insureds and applicants). "[W]hen the legislature chooses different words within a statutory scheme, [a court will] presume those distinctions are meaningful and evidence an intent to give a different meaning and consequence to the alternate language." *State v. Harm*, 236 Ariz. 402, 407, ¶ 19 (App. 2015). It is not up to DIFI or GRRC to alter the words used in the statute. If the Legislature desires to use the word "applicant" in the statute in addition to the word "insured," it must say so.

Second, there are legitimate reasons to apply the applicant vs. insured distinction, and for the statute to forbid premium increases only for existing insureds and not for new applicants. An existing insurer is privy to information about the insured's accidents and damage that occurred during the insurer's policy. The existing insurer has the ability to investigate that damage at the time it happens, make fault determinations, and, in the event of an accident in which the insured was at fault, increase premiums with notification to the insured. A prospective insurer, on the other hand, has no practical ability to determine the cause of damage to an applicant's vehicle from accidents that may have occurred years before the applicant came to the insurer. Under DIFI's interpretation of § 20-263(A), an applicant with a heavily damaged vehicle would pay premium as though the vehicle was undamaged.

It is also reasonable for the Legislature to more closely regulate an insurer's relationship with its existing insureds than the relationship between an insurer and prospective insureds. Insurers can exert substantial control over their existing insureds with respect to rates, renewals, and handling of claims. For that reason, the insurer-insured

relationship is highly regulated. *See, e.g., Zilisch v. State Farm Mutual Auto. Ins. Co.*, 196 Ariz. 234, 237, ¶ 20 (2000) (Noting that insurer owes several duties of a fiduciary nature to insured, including equal consideration, fairness, and honesty). Prospective insureds, on the other hand, are on more equal footing with the insurer, and can readily shop around among insurers.

Nor would APCIA's interpretation create a "bizarre underwriting scheme." *See* Response, at 9. Under § 20-263(A), an insurer cannot increase premium for an insured's NAF accident which occurs while that insurer was providing coverage to the insured. The prohibition is narrow; all other categories of damage may be considered in setting premium, whether in an initial policy or a renewal policy. These categories include: (A) an insured's at-fault accident which occurred at any time; (B) damage which does not result from an accident (such as damage caused by hail, flood, fire, or theft); and (C) damage from an insured's NAF accident which occurred before the insurer provided coverage to the insured. The statute does not apply the prohibition on premium increase to these categories of damage; DIFI may not extend the reach of the statute through the Bulletin or practice.

Vehicle History Scoring

DIFI objects to insurers' use of vehicle history reports which do not include information about a vehicle owner's contribution to or fault for an accident. Response, at 5. DIFI's objection is misplaced. Just as a Fiat convertible is riskier to the occupants than is a Volvo, damaged vehicles are inherently riskier than undamaged vehicles, and insurers are entitled to charge and collect additional premium for the additional risk. An example makes this clear. Suppose two individuals, Driver A and Driver B, each buy a 2018 Toyota Camry. Driver A's vehicle is in pristine condition, while Driver B's vehicle has substantial damage to it, including non-functional airbags. Clearly, Driver B's vehicle is riskier – it lacks working airbags, and the damage may make the vehicle less safe.

But under DIFI's incorrect interpretation, the insurer cannot account for the additional risk presented by Driver B's damaged vehicle. Driver A's premium does not benefit from his lower risk vehicle. In fact, not only does Driver A not benefit, if the insurer cannot charge Driver B more for the riskier vehicle, then it will be forced to charge all drivers, including Driver A, even more to subsidize the cost of the increased risk.

DIFI's solution to this issue is that an insurer can choose "to decline to issue a policy to an applicant with prior NAF accidents." Response, at 6. This is no solution at all. It deprives persons with vehicles in less than pristine condition of the ability to procure auto coverage. A market which offers no coverage is worse than a market which offers coverage at higher rates.

Vehicle History Scoring as New Technology

Vehicle history scoring is a relatively recent development. The technology to track and evaluate vehicles on an individual basis did not exist in 1987, when § 20-263 was enacted.

Nevertheless, the fact that the Legislature did not contemplate vehicle history scoring in 1987 does not justify DIFI's prohibition on the practice in 2021. In pre-computer days, insurers frequently conducted vehicle inspections prior to granting coverage, yet the Legislature chose not to preclude insurers from considering damage identified in this fashion in enacting § 20-263. Today's vehicle history scoring can be viewed essentially as a technological advancement in performing vehicle inspections. DIFI cannot apply the statute to prohibit vehicle inspections simply because technology has enabled a new way of performing them. It is up to the Legislature to amend the statute to address or regulate this new technology, if it so desires.

An insurer may not increase premium based on an insured's NAF accidents that occurred while the insurer was providing coverage to that insured. *See* A.R.S. § 20-263(A). But consideration of damage to a vehicle which occurred before the insurer provided coverage, or before the insured owned the vehicle, is not prohibited, whether through a vehicle inspection or a vehicle history report.

Conclusion

APCIA notes that DIFI's enforcement of the practice has been inconsistent. While DIFI devotes several pages in its response to its Response to asserting its consistency in enforcement of its practice, APCIA is aware of at least one instance in 2016 in which a filing which included the use of vehicle history scoring was accepted by DIFI. In addition, DIFI's issuance then subsequent removal of the checklist from its website, each time without notice, also illustrate how DIFI's interpretation of the statute was not clearly and unambiguously communicated to insurers or to the public. *See* Petition at 2. Furthermore, consistently erroneous enforcement is still erroneous; DIFI's repeated use of a practice does not make the practice correct.

For the reasons set forth in the Petition and in this Reply, APCIA respectfully requests GRRC exercise its statutory authority to declare the Bulletin and DIFI's practices void, and compel DIFI to cease enforcement of same.

Sincerely,

/s/ Ellen Poole

Ellen Poole, on behalf of
The American Property Casualty Insurance Association

State Farm
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April 19, 2021

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Ave., # 305
Phoenix, AZ 85007

Via email to grrccomments@azdoa.gov

Re: Support for APCA's Petition for Review of DIFI Bulletin 2020-06

Dear Chairwoman Sornsin and the Members of the Governor's Regulatory Review Council:

State Farm Mutual Automobile Insurance Company (State Farm) submits this letter to support the petition of the American Property Casualty Insurance Association (APCIA) which seeks to void Regulatory Bulletin 2020-06 issued by the Department of Insurance and Financial Institutions (DIFI). State Farm has already submitted a previous comment letter. The issues discussed in that letter remain relevant to the consideration before the Council and we ask that you once again consider that material in your deliberations. However, with the recent response by DIFI we have a few additional points we would like to make.

State Farm concerns with items in the DIFI Response are as follows:

1. DIFI is broadening the law beyond its plain meaning: We have addressed this point in prior correspondence, but in the Response DIFI once again seems to reach new conclusions. On page 2 of the Response, DIFI states that data must demonstrably exclude not-at-fault (NAF) accidents. However, insurer's underwriting models and practices are aimed at more than just rating. In fact, DIFI's own logic expressed elsewhere in the Response suggests that insurers can decline to issue a policy based, at least in part, on the use of a NAF accident. If a NAF accident is included in a single data stream that may be used for any legitimate purpose, then DIFI's suggestion (and, in fact, enforcement activity) of excluding that data is overbroad and creates significant burdens on insurers who attempt to comply with this inappropriate reading of the law. Note here that DIFI suggests that no additional undue burdens are created for insurers. This is utterly false. If insurers must now take the time to segregate – or exclude – data that can be used for a legitimate purpose, that alone entails a significant expenditure of resources to adapt existing models and methods. Furthermore, there is a substantial likelihood that such segregation could not be done at all or for any reasonable cost, meaning that insurers would be precluded from using it even for purposes that DIFI admits are legitimate.

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2. DIFI is extending the scope of the law for a not-at-fault accident: The bulletin attempts to address questions of the condition of the vehicle or its prior history as being within the scope of the statute even though a review of the statutory history does not support that interpretation. In addition, and as we addressed at some length in our prior letter, an insurer cannot “increase” a premium for a person with whom it has never done business. While approaches to calculating a premium or selecting a risk are proprietary, and even though State Farm may not use the same approach of establishing the history and risk of a particular vehicle, we are very concerned about how DIFI tries to establish this rather thin logic. Note in this respect that DIFI uses, on page 3 of the Response, the phrase that the law is aimed at prohibiting “insurers from increasing premiums on **drivers** involved in an accident for which they were not at fault.” (emphasis added) This is the exact point we are trying to make. The law, as written and with regard to its legislative history, disallows surcharges or other measures that would seek to make a **driver** pay for a NAF accident. The focus of the law is plainly on the person, not a vehicle or any other aspect of risk analysis. Thus, using the history of the vehicle to understand the risk that a particular vehicle might play in future use is not an attempt to hold a person responsible for a NAF accident. In fact, DIFI’s statement on page 5 of the Response that insurers are making a driver financially responsible for damage to the vehicle is an incorrect analysis of what occurs. It is the vehicle – and its risk – that is being reviewed, and nothing in that stage of the analysis pertains to the driver at all. An analogy would be the newer app-based insurers who analyze the location data of a customer – that technology may analyze a driver regularly using an accident-prone intersection which would raise the risk of that driver’s situation. None of the accidents in that intersection may be the particular driver’s fault, but passing through that area regularly means more risk which should be adequately reflected in the rate. What’s being considered and evaluated in this circumstance is the intersection, not the individual driver apart from the use of the intersection. The same philosophy applies to analyzing the risk of a particular vehicle. If a prior accident has made that vehicle a greater risk in the future it is not the same as attributing the accountability – or “blame” – for any prior NAF accident to the driver. In the end, it means that risk is analyzed and apportioned fairly so that drivers with a lower risk profile pay less for their auto insurance than those who present a less favorable risk profile.
3. Define continues to miss the clear and well-established distinction between an “insured” and an “applicant:” State Farm went into some detail in our last correspondence about how an applicant differs from an insured and how the existing law regularly refers to them in different categories. DIFI continues to insist that to treat them differently under this law – despite its plain language and seemingly clear meaning – would allow for an “absurd” result. Nothing could be further from the truth. It is just as likely to have been in the mind of the drafters of the statute in question that customers in an existing relationship with an insurer are entitled to protections and benefits not accorded to others. In fact, some of the “absurd” results that are absolutely routine in insurance relationships is that onboard customers are entitled to discounts not available to new applicants and that different rating characteristics could be and are used for onboard customers versus new applicants because a company has specific and individualized data about the onboard customer that could not exist for the new applicant. It is

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odd that DIFI claims its strained reading of the law is more straightforward when, in fact, the use of the word “increase” in the law has a plain and ordinary meaning in which one’s premium cannot be “increased” if there has been no earlier baseline set. This simple understanding of the law takes one sentence to explain while DIFI’s “straightforward” approach takes up the better part of a page in the Response.

For these reasons, State Farm urges the Council to grant APCIA’s petition and compel DIFI to comply with the existing law and to refrain from attempting to establish an interpretation contrary to its plain meaning. We thank you for your consideration of our views on the matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Roland Spies", written over a horizontal line.

Roland Spies
Counsel, State Farm Mutual Automobile Insurance Company

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February 17, 2021

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Ave., # 305
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Via email to grrccomments@azdoa.gov

Re: Support for APCIA's Petition for Review of DIFI Bulletin 2020-06

Dear Chairwoman Sornsin and the Members of the Governor's Regulatory Review Council:

State Farm Mutual Automobile Insurance Company (State Farm) submits this letter to support the petition of the American Property Casualty Insurance Association (APCIA) which seeks to void Regulatory Bulletin 2020-06 issued by the Department of Insurance and Financial Institutions (DIFI). In that bulletin, DIFI brought forth an entirely new – and in State Farm's view, entirely unwarranted and unsupported – interpretation of a statute which has been law in Arizona for considerably more than thirty years. During all that time, insurers have operated with an understanding of the law which has been undisturbed by any amendments to the law, any court decisions, or any regulatory guidance, until this bulletin appeared. Our view is that the bulletin clearly conflicts with the plain meaning of the law and, as APCIA suggests, held by GRRC to be a rule and thus invalidated.

State Farm has several concerns with the bulletin, but for the sake of brevity here we will focus on two.

1. Extending the scope of the law on who the statute applies to: The bulletin attempts to extend the scope of the law to apply to "applicants" as well as "insureds." This misinterpretation of the law is troublesome in two ways:
 - a. That the statute in question, ARS 20-263, explicitly uses the term "insured" and not "applicant," coupled with "applicant" being defined elsewhere in the Insurance Code as something clearly and obviously other than "insured" means the two terms cannot mean the same thing, and;
 - b. The statute uses the concept of an "increase" in insurance premium and there cannot be, by simple logic, an "increase" in premium for a person who is just beginning a business relationship with an insurer – the first time that an "increase" can occur is at a renewal of the contract.

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2. Extending the scope of the law for a not-at-fault accident: The bulletin attempts to address questions of the condition of the vehicle or its prior history as being within the scope of the statute even though a review of the statutory history does not support that interpretation.

Extending the scope of the law on who the statute applies to

With respect to the first point, that an “insured” is not an “applicant,” we must turn to the basic rule of statutory construction that the legislature chooses the words of the law deliberately and that they are written in the context of other existing law. Thus, where the law as enacted by the legislature has an already established meaning for a word, a regulatory agency cannot freely ignore that meaning and decide by fiat that it means something else entirely. In this case, the bulletin includes the following:

Although the term “insured” as used in ARS § 20-263(A) is not defined, the Department concludes that distinguishing between drivers who are “insured” and “applicants” seeking a new policy is not warranted.

This take on the law is entirely unfounded. At several points in the existing Insurance Code, the term “applicant” is specifically defined to be something other than an “insured.”

- As an example, ARS 20-2102 reads in part: “‘Applicant’ means any person who seeks to contract.”
- In addition, ARS 20-239 discussing electronic communications states: “‘Party’ means a recipient of any notice or document as part of an insurance transaction, including an applicant, an insured or a policyholder.” (emphasis added)
- And ARS 20-448, which addresses unfair discrimination against victims of domestic abuse, used this language: “This subsection is not intended to provide any private right or cause of action to or on behalf of any applicant or insured.” (emphasis added)
- But what must surely be most fatal to the current interpretive reach of the bulletin is that this very regulatory agency has already adopted an administrative code provision that clearly defines “applicant” as something other than an “insured” in Chapter 6, section 207: “‘Applicant’ means a person who is applying for a policy.” This last provision could not be a more clear statement of exactly the meaning that insurers have understood for many decades, and which stands in contrast to the meaning of “insured” in 20-263.

But there is an additional ground upon which the meaning proposed by DIFI is faulty. ARS 20-263 reads, in relevant part: “No insurer shall increase the motor vehicle insurance premium of an insured” The use of the word “increase” can only mean that the legislature intended this law to apply to the situation where a not-at-fault accident might have been considered as part of the record of an onboard insured. And that’s exactly what the law disallowed. But the law was not intended to apply to an applicant for new business because insurance companies cannot “increase” a premium for a person with whom it has not previously done business. For that person, the “applicant,” the insurance company can set or establish a premium, but it very clearly cannot “increase” the premium unless that word ceases to have any connection to its commonly understood meaning.

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Extending the scope of the law beyond a not-at-fault accident

In addition to the misinterpretation of the plain words of the statute, DIFI also attempts to broaden its scope to include considerations of the condition of the vehicle or other information that may be obtained from vehicle history reports. These are essential tools for determining a fair rate for a particular insurance risk. They pertain to the vehicle alone; there is no connection to the “insured” as that term was understood when the statute was adopted. Here is the full summary of the purpose of the legislation from the Senate Fact Sheet for what was then SB 1280 in the 1987 session of the Arizona legislature:

Purpose: S.B. 1280 provides that insurers may not raise the premium of an insured who is involved in an accident if the insured is not at fault.

This simple and clear statement of the law has nothing whatsoever to do with vehicle history reports or any consideration of the vehicle at all. The sole focus of the law when it was adopted was the particular insured person who was involved in an accident. And if that accident was not the fault of that particular insured person then the insurer could not raise that person’s premium rate as a result of that accident.

Impact to Policyholders

The perverse result of accepting the position of DIFI with this bulletin is that insurers would not be able to appropriately rate riskier vehicles. The costs which would otherwise be borne by the owners of those vehicles would have to be covered by persons who present otherwise more favorable risks, thus subsidizing the higher risks and not getting the rate they deserve.

For these reasons, State Farm urges the Council to grant APCIA’s petition and compel DIFI to comply with the existing law and to refrain from attempting to establish an interpretation contrary to its plain meaning. We thank you for your consideration of our views on the matter.

Sincerely,



Roland Spies
Counsel, State Farm Mutual Automobile Insurance Company

April 20, 2021

Governor's Regulatory Review Council
Attn: Nicole Sornsins, Chairperson
100 N. 15th Ave., #305
Phoenix, AZ 85007
Via Email to: grrc@azdoa.gov

Re: Follow up Letter in Support of APCIA's GRRC Petition for Review of Arizona Department of Insurance and Financial Institutions' Bulletin 2020-06

Dear Ms. Sornsins:

On behalf of Government Employees Insurance Company (GEICO), I am writing in support of APCIA's petition to the Governor's Regulatory Review Council (GRRC) and would like to follow up with some points of clarification in response to the Department of Insurance and Financial Institutions' (DIFI) rebuttal letter dated April 1, 2021.

On page 4, DIFI states that it "has consistently communicated its position to the industry in various forms, including official Department letters to insurers." It then references a letter attached as Exhibit 3 that was addressed to GEICO back in 2008. This letter discusses the statute ARS §20-263 but the issues related to vehicle history factors that are in front of GRRC today were not even in consideration at the time. As discussed in APCIA's position, DIFI's interpretation of ARS §20-263 per Bulletin 2020-06 is to effectively preclude the use of vehicle history factors in underwriting and rating. In 2008, this was not a factor at issue for GEICO because these variables were not available for use.

In addition, GEICO would like to also reiterate that DIFI's interpretation of ARS §20-263 does create an undue burden on companies. DIFI's interpretation of this statute is now to require insurers to prove that a vehicle history factor that would be utilized in a company's underwriting or rating model is somehow not the result of a not-at-fault accident by the insured. We believe DIFI's interpretation goes beyond the intended application of ARS §20-263. Companies do not utilize these factors to surcharge for customers involved in a not-at-fault accident. In DIFI's new Bulletin, these factors are now effectively prohibited due to DIFI's interpretation of a statute that was never intended to apply to these scenarios. As a result, companies can no longer use these factors. Thus, DIFI's interpretation further hinders innovation in the insurance marketplace.

Furthermore, these vehicle history factors are actuarially justified and are used because they help determine whether a vehicle may incur higher loss costs. If companies cannot use vehicle history data, the result is that some vehicles will be undercharged. Therefore, other vehicles will have to pay more in premium in order to cover the deficit despite having fewer losses. We believe the use of these factors are important to providing a more accurate rate for consumers.

Thank you for the opportunity to provide additional comments and for your consideration.

Sincerely,



Sonya L. Bassaly
Senior Counsel

February 3, 2021

Governor's Regulatory Review Council
100 N. 15th Ave., #305
Phoenix, AZ 85007
Via Email to: grrc@azdoa.gov

Re: Letter in Support of APCIA GRRC Petition for Review of Arizona Department of Insurance and Financial Institutions' New Bulletin on Rate Filings

Dear Governor's Regulatory Review Council:

On behalf of Government Employees Insurance Company (GEICO), I am writing in support of APCIA's petition to the Governor's Regulatory Review Council to request a review of the Department of Insurance and Financial Institution's (DIFI) *Bulletin Regulatory Bulletin 2020-06 (ARS § 20-263(A) and Premium Increases for Not-At-Fault-Accidents)*. This Bulletin creates new requirements which are neither reflected in a rule nor supported by statute. The Bulletin effectively prohibits the use of vehicle history factors by insurers in underwriting and rating. The law that DIFI is relying on in its bulletin is A.R.S. § 20-263 which has been in effect since 1987. However, DIFI's new interpretation of this statute is not what was intended when the statute was enacted. DIFI's interpretation of A.R.S. § 20-263 requires changes to underwriting and rating that are unduly burdensome and cannot be accomplished with the data that is currently available to insurance companies.

The new prohibition of vehicle scoring is broadening the interpretation of A.R.S. § 20-263 so that "accidents" now include claims that may result from fire, flood, hail, title issues, theft or even roadside claims. There is no indication from the history of the statute or otherwise that the legislative intent was to take on such a broad interpretation. Rather, the statute's long-standing intent was applied strictly to accidents that were not the fault of the insured, and it did not reference the condition of the vehicle. Such a broad interpretation of the statute cannot be inferred from the current language of A.R.S. § 20-263(A). Thus, GEICO believes the use of vehicle history scoring is not prohibited by Arizona statute.

GEICO would also like to make some further clarifying points on how vehicle history scoring works and why A.R.S. § 20-263(A) was not intended to apply to these types of factors. Vehicle history scoring is not a measure of accident history of an insured but rather an assessment of the vehicle risk and is predictive of higher future loss costs. It is not a premium surcharge for the occurrence of accidents but an assessment of the relative risk of the vehicle. Thus, vehicle history scoring is unrelated to an insured's not-at-fault accident history and is not attributable to an insured's driving record. Further, vehicle history factors are in no way reflective of an insured's involvement in or negligence in any prior accident. These factors are reflective of a vehicle's

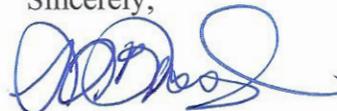
increased risk due to damage that adversely impacts the vehicle's future repairability, damageability, and probability of future losses.

In light of the above, allowing vehicle history factors is important to underwriting and rating in auto insurance as it takes into consideration the vehicle risk. There are many instances when vehicle history factors are independent of and not the result of the occurrence of an insured's accident. This is in line with A.R.S. § 20-263(A). Vehicle history factors allows the insurers to separately and independently evaluate the individualized risks of vehicles and the unique attributes of drivers. GEICO utilizes a vendor to provide vehicle history reports which help to assess the risk posed by a specific vehicle. This information can then be integrated into the company's underwriting and rating models. However, if there is information in the report that includes damage to the vehicle it is not always clear what may have caused the damage. For instance, if there is a branded tilted indicated on the report, the information may provide the last state to issue the branded title but it is not always clear as to what was the direct cause of the branded title. To require a company to link the damage to a specific accident would be unduly burdensome and, in most cases, not even possible.

Therefore, GEICO cannot always determine the main cause of the damage and often times would not be able to prove that the damage was a result of a specific accident. However, DIFI is now requiring per its recent bulletin that insurers must be able to prove that the vehicle history factor being used was not a result of a not-at-fault accident by the insured. This is an impossible task that insurers cannot accomplish based on the data available to them in the vehicle history reports. A damaged car is risky, regardless of whether the damage was caused by a prior owner or the current insured. However, the DIFI bulletin is now effectively prohibiting insurers from using these vehicle history factors in their underwriting and rating.

A.R.S. § 20-263(A) was not enacted to prohibit any underwriting of a vehicle's condition unless it was caused by the insured. DIFI's interpretation effectively bans the use of vehicle history reports except in very limited circumstances which was not the intention of A.R.S. § 20-263(A). GEICO supports APCIA's petition to GRRC and asks that GRRC determine that DIFI rescind the bulletin and halt any regulatory activity associated with it. Thank you for your consideration.

Sincerely,



Sonya L. Bassaly
Senior Counsel

MEMORANDUM

TO: Governor's Regulatory Review Council (GRRC)
FROM: Nathan Brown, Product Manager, Progressive
DATE: April 13, 2021
SUBJECT: APCIA Petition for GRRC Review of Arizona Department of Insurance and Financial Institutions (DIFI) regarding A.R.S. § 20-263

Progressive supports the petition filed by APCIA seeking GRRC Review of DIFI's implementation of A.R.S. § 20-263. We also would like to highlight some **inaccuracies in the DIFI rebuttal** to APCIA's GRRC petition. The three inaccuracies in DIFI's rebuttal that are of most obvious concern are:

1. **That the legislature intended the statute to apply to applicants and accidents that are distinct from Not-At-Fault Accidents (NAFs);**
2. **That DIFI has interpreted and implemented the statute correctly; and**
3. **That the industry has not suffered an undue burden.**

Progressive will attend the Study Session to address these points and to answer questions.

Point 1: The legislature, after thorough consideration, chose specific statutory language to solve a narrow issue under consideration. It chose the word 'insured,' not 'applicant.' It chose the word 'accident, not 'claim.' DIFI usurps the power of the legislature by interpreting these terms beyond their plain meaning. As DIFI itself noted in its rebuttal, "a statute's language is the best indicator of intent."

Point 2: DIFI has knowingly expanded its interpretation beyond the clear meaning of the statute by applying A.R.S. § 20-263's restrictions to the rating of applicants, to the rating of theft claims and other vehicle characteristics (such as salvage titles which are not accidents), and to the use of NAFs in entry-criteria for discounts (which lower, not increase, the premium). Moreover, it did so without completing the requisite rule making process required in Arizona law and over the objection of the industry.

Point 3: The impact of DIFI's impermissibly expansive implementation of A.R.S. § 20-263 has been to damage our business by creating significant rating inaccuracies that penalize lower risk drivers and subsidize other higher risk drivers. DIFI has undercut A.R.S. § 20-384, which allows insurers broad freedom to file actuarially-sound rating programs. Clear actuarial support shows that the presence of NAFs on an applicant's history is predictive of >25% higher future loss frequency and pure premium (loss costs) for collision coverage relative to those with zero NAFs. This type of justification has been shared with DIFI by many carriers. Yet, DIFI's A.R.S. § 20-263 interpretation precludes the industry from pursuing accurate rates which serves to either shrink our addressable market (if we choose not to pursue underpriced risks) or causes financial harm to our business model (if we choose to serve applicants with NAFs in their history at a premium level that does not cover their expected future risk of loss). That is an undue burden that needs to be remedied. DIFI argues in its rebuttal that allowing NAF rating on applicants would have to be undone at renewal because maintaining a warranted surcharge on a policy at renewal would violate A.R.S. § 20-263, but that argument is not accurate.

Charging an applicant \$500 for collision coverage at policy inception, including an actuarially justified surcharge for NAFs, and maintaining the premium at \$500 for collision coverage at that policy's renewal does not result in a premium increase and comports with the plain meaning of A.R.S. § 20-263.

MEMORANDUM

TO: Governor's Regulatory Review Council (GRRC)
FROM: Nathan Brown, Product Manager, Progressive
DATE: January 20, 2021
SUBJECT: APCA Petition for GRRC Review of Arizona Department of Insurance and Financial Institutions (DIFI)

Progressive supports the petition filed by APCA seeking GRRC Review of DIFI's implementation of A.R.S. § 20-263.

Progressive raised four points in response to the Notice of Opportunity to Comment issued by the Department of Insurance and Financial Institutions (DIFI) concerning A.R.S. § 20-263. Our letter with these points and the accompanying summary table are attached. Rather than reiterate these points here, I would offer **two distinct examples** of how DIFI staff is using overly broad and erroneous interpretations of A.R.S. § 20-263 to implement the statute.

First, in our submitted auto filing (State Tracking Number PRGS-132236664-VHS), the DIFI staff attached objections related to this issue that needed to be cured by the end of 2020. As part of their objection, **the DIFI staff made the following written comment** which is quite instructive on their willingness to go beyond the plain language of the statute.

“Please **revise discounting programs to exclude NAF and Comp claims as occurrences that would prevent an insured's eligibility for a discount...** NAF accidents cannot be used to determine tier, provide a discount, or exclude a policyholder from a discount. **While this is not a direct increase in premium due to a NAF accident**, it affects the policyholder's premium as though it was. Please remove NAF occurrences.” (emphasis added).

By their own words DIFI's staff concedes that withholding access to a discount is not an increase in premiums for an insured. Yet they chose to expand the interpretation to prohibit NAFs as discount eligibility criteria, effectively granting access to our 'accident-free' discounts to those who do not fit the actuarially supported criteria used to justify the discount. Their thought process appears to be that the premium would be lower if the policyholder did qualify for the discount so withholding entry into the discount is thereby an increase, **despite the fact that withholding access to the discount would not increase the policyholder's premium. The policyholder's premium would stay the same as it was in the previous term (all else being equal).** This is illogical and does not align with the plain language of the statute. Moreover, they include comprehensive claims like thefts and flood damage in their definition of NAFs which is an expansion of the statute.

Second, in their Regulatory Memo, issued on December 4, 2020 following their call for input on this issue from the industry, DIFI staff offered its position on why the statute should be read to apply to applicants in addition to insureds. **Their written comment**, again, displays their willingness to go beyond the plain language of the statute.

“Only insureds pay premium, and, of course, once an applicant pays a quoted premium, an applicant becomes an insured.” (emphasis added).

By their own words DIFI’s staff concedes that applicants are distinct from insureds. Yet they chose to expand their interpretation of the statute to include applicants. Their rationale is not logically sound on this point either. Their justification appears to be that if A.R.S. § 20-263 did not apply to applicants, then the insurance company would need to revise its rating for the policyholder at renewal to ensure compliance. But this is untrue and misconstrues what would happen. If a carrier offered a \$500 premium to an applicant based on an actuarial-justified rate that evaluated the applicant’s prior accident experience including NAFs, and that applicant accepted the premium and became an insured, then the carrier could renew that policyholder’s premium at \$500 without running afoul of the statute which only requires that the insured’s premium is not increased due to a NAF. In this example, \$500 at inception equals \$500 at renewal and is not an increase (but rather the actuarially justified rate for that insured determined at policy inception). Also, to be clear, the Progressive unequivocally agrees that any subsequent NAF by the insured on the existing policy would not be chargeable based on A.R.S. § 20-263. But that limited exception granted by the Legislature is beside the point. The key issue here is that the applicant is offered a premium commensurate with the risk they present to the carrier when they chose to contract for a policy.

Progressive wonders **why DIFI would interpret statute the way it does.** It appears that DIFI staff is attempting to protect one group of drivers at the expense of another group of drivers, thereby **creating unfair subsidies between these groups. This is neither fair, nor good public policy, and seems awkwardly arbitrary in Arizona’s free market economy.** In contrast to DIFI, Progressive’s interpretation allows the industry to charge drivers an accurate rate based on actuarial justification while following the letter of the law limiting NAF usage for increases to insureds. In addition, I am certain you will find the Progressive’s interpretation more in line with the **legislative intent** surrounding the inception of this statute, in which it appears that the Legislature **intended to protect existing insureds** from increases in premium due to NAFs (above the premium they had already agreed to with their chosen carrier at point of sale in a free market).

DIFI’s interpretations **unduly burden our business** by stifling rating accuracy and product innovation; two of our main sources of competitive advantage. Given the overly broad and erroneous interpretation of the statute being enforced by DIFI, Progressive asks GRRC to clarify that **A.R.S. § 20-263 does not apply to discount eligibility criteria, does not apply to applicants, and does not apply to claims other than NAFs.** Similarly, we hope that GRRC will advise that Vehicle History data can be used to rate new applicants as well.

Thank you for the opportunity to comment. Progressive welcomes the opportunity to provide further input to GRRC concerning the DIFI’s implementation of this statute or the actuarial justification for using any of the related variables in rating auto insurance.

Respectfully,

Nathan Brown

Attachment

MEMORANDUM

TO: Arizona Department of Insurance
FROM: Nathan Brown, Product Manager, Progressive
DATE: October 21, 2020
SUBJECT: A.R.S. §20-263

Progressive raises four points in answer to the Notice of Opportunity to Comment issued by the Department of Insurance and Financial Institutions concerning A.R.S. §20-263. These points are addressed in summary form in the accompanying table. Progressive welcomes the opportunity to provide further input to DIFI concerning the agency's implementation of this statute.

In brief, Section 20-263 prohibits an insurer from increasing the premium of an existing insured for an accident that the insured did not cause or significantly contribute to. The plain reading of the statutory language does not support the expansive interpretation currently being enforced by DIFI. The statute only applies to insureds and their accident histories. It does not apply to vehicle risk characteristics like prior damage or title issues. It does not apply to their other claims beyond accidents like thefts or roadside claims. It does not apply to applicants who have yet to pay premium. It does not apply to an insured's discount eligibility or tiering assignment unless those treatments increase the premium of an insured from a prior established premium.

Absent conflict with the plain meaning of the A.R.S. §20-263, A.R.S. §20-384 gives broad leeway to insurers to classify their risks based on actuarial support with few limitations. Broadening the meaning of A.R.S. §20-263 beyond the written-word of the Arizona Legislature curtails our ability to price accurately and innovate in a competitive market. Moreover, broadening the meaning of A.R.S. §20-263 is detrimental to the industry in that it ensures unfair subsidies to higher risk policies at the expense of lower risk policies, despite clear actuarial support on the issue, which is contrary to the rating standards established in A.R.S. §20-383.

Thank you for the opportunity to comment.

Respectfully,

Nathan Brown

Attachment

Argument (Why ARS 20-263 should not apply)	Rationale	What should be allowable?	What should not be allowable?
1. Vehicle history measures vehicle risk, not the accident history of the insured.	ARS 20-263 is silent on vehicle risk. Vehicle history is predictive of future loss based on actuarial support, regardless of insured accident history. Preventing rating on the vehicle's risk profile creates subsidies which undermine rating accuracy.	Setting the initial rating of a vehicle to an actuarially justified rate when the vehicle is added to a policy.	Increasing the premium charged for that vehicle at renewal based on a not-at-fault accident as defined by ARS 20-263.
2. Accidents do not include other claims such as thefts, flood damage, title issues, and roadside claims.	The statute refers to accidents and does not reference all claims. If the legislature had intended the broader term, they would have used 'claims and accidents' in the statute but they did not. Broadening the definition to include other claims creates subsidies which undermine rating accuracy and expands the reach of the statute.	Any classification that is actuarially justified under ARS 20-384 (B) and not prohibited under ARS 20-384 (C).	Any classification that is not actuarially justified under ARS 20-384 (B) or is prohibited under ARS 20-384 (C).
3. An applicant is not an insured. An applicant has yet to pay premium. As a result, the term 'increase the motor vehicle premium' cannot be applied to applicants.	ARS 20-263 prevents an insurer from increasing the premium at policy renewal for an existing insured involved in a not-at-fault accident during the policy term. The law does not bar an insurer from charging an actuarial justified rate at new business initiation. If the legislature had intended a broader definition, they would have used 'insureds and applicants' in the statute but they did not. Preventing rating on the applicant's risk profile at new business creates subsidies which undermine rating accuracy and expands the reach of the statute.	Setting the initial rating of an applicant to an actuarially-justified rate at the inception of the policy.	Increasing the premium charged at renewal to an insured based on a not-at-fault accident as defined by ARS 20-263.
4. Barring access to a discount or preventing movement to a lower rating tier is not increasing the premium of an insured.	The plain meaning of increase is to 'make greater in amount.' Not applying an unearned discount or not improving the rating tier does not increase the insured's rate – it keeps it where it belongs. Conversely, mandating access to discounts or lower rating tiers for which the insured does not qualify creates subsidies which undermine rating accuracy.	Barring access to discounts or preventing renewal tier improvement based on not-at-fault accidents as defined by ARS 20-263.	Removing discounts already earned or increasing the rating tier at renewal based on not-at-fault accidents as defined by ARS 20-263.

January 5, 2021

Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Ave., # 305
Phoenix, AZ 85007

Via email to grrccomments@azdoa.gov

Re: Support for GRRC review of Arizona Department of Insurance and Financial Institutions Bulletin 2020-06

Dear Chairwoman Sornsins and Members of the Governor's Regulatory Review Council (GRRC):

On behalf of the National Association of Mutual Insurance Companies (NAMIC), thank you for the opportunity to provide these comments in support of GRRC review of Department of Insurance and Financial Institutions Regulatory Bulletin 2020-06, a copy of which is attached. NAMIC contends that this bulletin incorrectly and impermissibly interprets the statute on which it purports to be based, A.R.S. § 20-263. NAMIC supports the petition filed on this matter and encourages the GRRC to take appropriate action to void the bulletin and limit the department's interpretation of this statute to the statute's express language.

NAMIC is the largest property/casualty insurance trade group with a diverse membership of more than 1,400 local, regional, and national member companies, including seven of the top 10 property/casualty insurers in the United States. NAMIC members lead the personal lines sector representing 66 percent of the homeowner's insurance market and 53 percent of the auto market nationally. In Arizona, NAMIC members write approximately 55 percent of the private passenger auto insurance market.

Arizona law generally permits private passenger auto insurers to consider any reasonable factor in classifying risks and setting rates. *See* A.R.S. § 20-384(C) ("Risks may be classified in any reasonable way for the establishment of rates and minimum premiums..."). Within the constraints of the law, insurers consider as factors a variety of different characteristics of both the drivers and the vehicles to be insured. This is both consistent with Arizona law and important to the function of a competitive insurance market, in which one of the key ways insurers compete is by seeking the most accurate methods of rating and pricing to risk.

One limited exception to the broad allowance for risk classification of drivers is A.R.S. § 20-263(A), which provides that, "*No insurer shall increase the motor vehicle insurance premium of an insured as a result of an accident not caused or significantly contributed to by the actions of the insured. Any insurer which increases the premium as a result of accident involvement shall notify the insured of the reason for such increase.*"

NAMIC believes this statute is clear: it is a prohibition on an insurer increasing premiums for a current insured after an accident, if that accident was not "caused or significantly contributed to by the actions of the insured."



However, despite this statute having been on the books for more than 30 years, Bulletin 2020-06 provides a new interpretation that is much broader than and inconsistent with its express language, and which would significantly impact how insurers rate risks. The bulletin interprets the statute to apply both to currently insured drivers and those applicants seeking new coverage, and would require that insurers “demonstrably exclude” not-at-fault accidents from any data related to the rating of a vehicle’s condition.

Contrary to the bulletin, the term “insured” refers to a person who is currently covered by an insurance policy, not applicants for insurance coverage or the public at large. While the statute’s plain application to insureds is clear, further support for this interpretation can be found in the fact that other Arizona statutes intended to apply to those other than insureds explicitly do so. For example, A.R.S. § 20-2101(B) provides that, “the rights extended by this chapter apply to...the *persons*, including natural persons who are the subject of information collected, received or maintained in connection with insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this state, *and applicants, individuals or policyholders who engage in or seek to engage in insurance transactions* involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this state” (emphasis added). If the legislature intended § 20-263(A) to apply to these broader groups, it would have said so, just as it did in § 20-2101.

This interpretation is also consistent with the use of the term “increase” in the prohibition. The term “increase” means to raise above some previous premium amount, which can only occur if there is a previous premium amount to increase. This is also consistent with subsection (B) of § 20-263, which references refunds of amounts in excess of a previous premium for insurers which impermissibly “raised the premium of an insured.” Where there is no existing relationship between the insurer and insured, there can be no previous premium to increase, and § 20-263 does not apply.¹ If the legislature had intended to broadly prohibit consideration of certain factors by insurers, it would have done so. It would not have used language referring to increases in premiums for current insureds after an accident.

The bulletin would also effectively prohibit consideration of vehicle condition and damage history by barring the use of any data that do not demonstrably exclude not-at-fault accidents. Insurers should be able to use vehicle condition as a factor reasonably related to the risk of insuring that vehicle, consistent with Arizona law’s general allowance for the use of reasonable factors in classifying and rating risks. Vehicle history and condition reports do not discern fault for damage, so practically, the requirement to show that damage did not result from a non-at-fault accident will preclude vehicle condition from being considered.

¹ In a footnote, Bulletin 2020-06 suggests that “absurd results” would occur if § 20-263 were interpreted not to apply to applicants. Specifically, the footnote suggests that if the statute were applied as actually written—only to insureds—then insurers would be required to revise their underwriting criteria for policy renewals to ensure that not-at-fault accidents were not considered. To the extent it is relevant, that assertion is incorrect, because the insurer would not be increasing the premium in such a case, anyway. Any absurdity in the example results from the bulletin’s overly broad interpretation of “increase.”



NAMIC comments to GRRC

January 5, 2021

The bulletin is an inappropriately broad interpretation of the prohibition in § 20-263, and if the legislature had intended to prohibit consideration of a vehicle's condition, it would have done so. To be clear, NAMIC believes such a policy would be ill-advised, however adopted. Prohibiting consideration of a legitimate risk factor like vehicle condition would likely require insurers to charge all insureds additional premium. But regardless of the wisdom of such a policy, NAMIC submits that the department may not adopt it by bulletin, or by any other process the results of which are inconsistent with the language of the applicable statute.

Thank you again for the opportunity to share our views. NAMIC respectfully requests that the GRRC grant the petition regarding this matter and clarify the appropriate interpretation of A.R.S. § 20-263(A).

Sincerely,

A handwritten signature in black ink, appearing to read 'Jon Schnautz'.

Jon Schnautz
Regional Vice President
Southwest Region
National Association of Mutual Insurance Companies (NAMIC)