

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

PREAMBLE

- | | |
|-----------------------------|--------------------------|
| 1. Sections Affected | Rulemaking Action |
| R7-2-601 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 15-203(A) and 15-534(F)

Implementing statutes: A.R.S. §§ 15-203(A)(18) and (24) and 15-534(F)
- 3. The effective date of the rules:**

September 20, 1996
- 4. A list of all previous notices appearing in the Register addressing the adopted rule:**

Notice of Rulemaking Docket Opening:
1 A.A.R. 1559, September 8, 1995

Notice of Proposed Rulemaking:
2 A.A.R. 854, February 2, 1996

Notice of Rulemaking Docket Opening:
2 A.A.R. 1464, April 19, 1996
- 5. The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name: Corinne L. Velasquez, Administrator

Address: State Board of Education
1535 West Jefferson, Room 418
Phoenix, Arizona 85007

Telephone: (602) 542-5057

Fax: (602) 542-3046
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

R7-2-601 sets forth the general provisions for issuance of a certificate. The amendment addresses the issue of criminal offenses and convictions that will be reviewed by the State Board of Education in the certification application process. The amendment also deletes a provision in the rule which states that applicants will not be considered for certification if the offense has occurred less than 6 years prior to the date of the Board's review.

The State Board of Education reviews applications for certification from all individuals who have been convicted of a misdemeanor or felony, if that offense is one contained in A.R.S. § 15-534(F) or if that offense constitutes immoral or unprofessional conduct. This review is done under the authority of A.R.S. § 15-203(A)(18), which requires the State Board of Education to supervise and control the certification of teachers and prescribe rules for certification; A.R.S. § 15-203(A)(24), which requires the Board to impose such disciplinary action, including the issuance of a letter of censure, suspension, suspension with conditions, or revocation of a certificate, upon a filing of immoral or unprofessional conduct; and A.R.S. § 15-534(F), which requires an applicant for certification to certify as to whether they are awaiting trial on or have ever been convicted of or admitted in open court to committing any of the 24 criminal offenses listed in the statute.

A.R.S. § 15-203(A)(24) gives authority to the Board to impose the disciplinary action, including revocation of a certificate, upon a finding of immoral or unprofessional conduct. Although this provision does not expressly authorize denial of an application for certification for immoral or unprofessional conduct, such authority is implied within A.R.S. § 15-203(A)(18) and (24). Under principles of administrative law, an agency will not be forced to perform a futile act by having to issue an applicant a certificate only to turn around and revoke it based upon the unfavorable criminal history, which may involve immoral or unprofessional conduct.

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Implied in this statute is the Board's authority to deny an individual's application for certification for conduct or a conviction involving immoral or unprofessional conduct, if the Board would have grounds to revoke the certificate of a certified individual under the same set of facts.

A.R.S. § 15-534(F) requires an applicant for certification to certify as to whether they are awaiting trial on, have ever been convicted of, or admitted in open court, to committing any of the 24 criminal offenses listed in the statute. The Board believes that the legislature had intended this list to be all inclusive when specifically naming offenses for which applicants were required to make notification. However, A.R.S. § 15-534 does not address immoral or unprofessional conduct. It would have been possible for the legislature to have repealed the language of A.R.S. § 15-203(A)(24) at the time it proposed A.R.S. § 15-534(F); however, because it did not, the Board believes that its authority to review offenses specified in subsection (F) is separate and distinct from the authority under A.R.S. § 15-203 to review all other actions of an applicant which may be considered by the Board as immoral or unprofessional conduct.

R7-2-601(V)(2) currently contains a provision that applicants will not be considered for certification if the offense has occurred fewer than 6 years prior to the date of the Board's review. This provision is being repealed to allow the Board to review applications for certification on a case-by-case basis.

- 7. 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.
8. The summary of the economic, small business, and consumer impact: Review of the applications for certification when an individual has been convicted of a criminal offense requires that the applicant provide court records and documentation of the arrest and conviction. In addition, the applicant is required to submit letters of recommendation and is encouraged to attend the meeting of the Professional Practices Advisory Committee and the State Board of Education where the application is being reviewed. Although not required, many times the applicant will retain legal counsel. Amendments to the rule will not increase or decrease the costs associated with the review process. The process for reviewing criminal offenses as specified in A.R.S. § 15-534(F) is the identical process for reviewing actions which may be determined by the Board to be immoral or unprofessional conduct under A.R.S. § 15-203(A)(24). The State Board of Education believes that the responsibility and necessity to protect Arizona's school children far outweighs the costs associated with providing documentation and legal support related to convictions of felony offenses or acts of immoral or unprofessional conduct.
9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable): Page 1, delineated subsection (b), change "wtih" to "with" to correct a typographical error. Page 1, subsection (V): Reword and reformat to separate the authority of A.R.S. §§ 15-534(F) and 15-203(18) and (24)
10. A summary of the principal comments and the agency response to them: The Board received no comments on the proposed amendment.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules: Not applicable.
12. Incorporations by reference and their locations in the rules: None.
13. Was this rule previously adopted as an emergency rule? No.
14. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 6. CERTIFICATION

Section

R7-2-601. General Certification Provisions

ARTICLE 6. CERTIFICATION

R7-2-601. General Certification Provisions

- A. No change.
B. No change.
C. No change.
D. No change.
E. No change.
F. No change.
G. No change.
H. No change.

- I. No change.
J. No change.
K. No change.
L. No change.
M. No change.
N. No change.
O. No change.
P. No change.
Q. No change.
R. No change.
S. No change.
T. No change.
U. No change.
V. Conviction of criminal offenses. Applicants shall certify on forms that are provided by the Department of Education and

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notarized whether they are awaiting trial on, or have ever been convicted of, or have admitted in open court or pursuant to a plea agreement committing any offense listed in A.R.S. § 15-534(F). Applicants for certification shall not be required to disclose information regarding misdemeanor offenses other than those listed in A.R.S. § 15-534(F).

- 1. Moral and professional character. Applicants shall certify on forms that are provided by the Department of Education and notarized whether they are awaiting trial on, or have ever been convicted of, or have admitted in open court or pursuant to a plea agreement committing any felony offense. The State Board of Education shall consider evidence of whether an applicant is awaiting trial on, was ever convicted of, or ever admitted in open court or pursuant to a plea agreement committing any felony offense to determine whether the applicant has engaged in immoral or unprofessional conduct pursuant to A.R.S. § 15-203(A)(24). Felony offenses are subject to the review process in accordance with subsection (V)(2).
2. Review process. In determining whether to revoke, issue, or renew certification of a person who has been convicted of or admitted in open court or pursuant to a plea agreement committing any felony offense or any criminal offense listed in A.R.S. § 15-534(F) but not listed in subsection (V)(43), the Board shall consider all relevant and reliable evidence submitted on behalf of any party interested in the certification. The Board shall not issue or renew such certification if the offense occurred less than

six years prior to the date of the Board's review. In reviewing the nature of the offense, the Board shall examine the date of the offense, whether the offense involved moral turpitude, the judicial disposition of the conviction, the age of the person at the time the offense was committed, and all aggravating and mitigating circumstances of the offense. In reviewing the potential for crimes against children, the Board shall examine the criminal record of the person.

- 4-3. Offenses that are not subject to review. The Board shall revoke, not issue, or not renew the certification of a person who has been convicted of or admitted in open court or pursuant to a plea agreement committing any of the following criminal offenses in this state or similar offenses in another jurisdiction:
a. Sexual abuse of a minor,
b. Incest,
c. First-degree murder,
d. Sexual assault,
e. Sexual exploitation of a minor,
f. Commercial sexual exploitation of a minor,
g. A dangerous crime against children as defined in A.R.S. § 13-604.01,
h. Armed robbery,
i. Sexual conduct with a minor,
j. Molestation of child,
k. Exploitation of minors involving drug offenses.

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TITLE 8. EMERGENCY AND MILITARY AFFAIRS

CHAPTER 2. DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS

DIVISION OF EMERGENCY MANAGEMENT

PREAMBLE

1. Sections Affected

- R8-2-33
R8-2-34
R8-2-35
R8-2-36
R8-2-37
R8-2-38
R8-2-39
R8-2-301
R8-2-302
R8-2-303
R8-2-304
R8-2-305
R8-2-306
R8-2-307
R8-2-308
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R8-2-310
R8-2-311
R8-2-312
R8-2-313
R8-2-314
R8-2-315
R8-2-316
R8-2-317
R8-2-318
R8-2-319

Rulemaking Action

- Repeal
Repeal
Repeal
Repeal
Repeal
Repeal
Repeal
New Section

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R8-2-320
R8-2-321

New Section
New Section

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

This rulemaking is authorized under A.R.S. §§ 26-102 and 26-306, in order to implement A.R.S. §§ 26-303, 26-305, and 26-313, and is specifically mandated by A.R.S. § 35-192

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

September 18, 1996

4. **A list of all previous notices appearing in the Register addressing the adopted rule:**

Notice of Rulemaking Docket Opening:

1 A.A.R. 367, April 21, 1995

Notice of Proposed Rulemaking:

2 A.A.R. 1520, April 26, 1996

5. **The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name: S. Lynn Goss

Address: Department of Emergency and Military Affairs
5636 East McDowell Road
Phoenix, Arizona 85008

Telephone: (602) 231-6266

Fax: (602) 231-6356

6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The purpose of this rulemaking is to change the rules from an instructional layout to an accepted rule format and to renumber the criteria and procedure for administering the Governor's Emergency Fund.

7. **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.

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

The principal impact of these rules will be on the political subdivisions of disaster-affected communities. The new rules will provide a more concise system for the affected communities to obtain state and federal disaster assistance to protect life, preserve property, and restore public assets.

For businesses, there will be no benefit as the Governor's Emergency Fund does not provide funds or assistance.

The Governor's Emergency Fund is not used to provide assistance to individuals; therefore, individuals are not directly affected.

9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

Between the proposed rules and the final rules, ADEM made only non-substantial changes to improve the clarity, conciseness, and understandability of the rules and incorporated ADEM publication by reference.

10. **A summary of the principal comments and the agency response to them:**

ADEM received no comments from the public.

11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None.

12. **Incorporations by reference and their locations in the rules:**

"Disaster Assistance Guide", ADEM Publication 100, June 1996. The reference is incorporated in R8-2-302(B).

13. **Was this rule previously adopted as an emergency rule?**

No.

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

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TITLE 8. EMERGENCY AND MILITARY AFFAIRS

CHAPTER 2. DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS

DIVISION OF EMERGENCY MANAGEMENT

ARTICLE 3. GOVERNOR'S EMERGENCY FUND

- R8-2-33. General Provisions
- R8-2-34. Definitions
- R8-2-35. Designation of Fund Administrator
- R8-2-36. Application of Funds
- R8-2-37. Time Limit
- R8-2-38. General Criteria of Eligibility
- R8-2-39. Final Claim
- R8-2-301. Definitions
- R8-2-302. Applications for Emergency Assistance
- R8-2-303. Contents of an Application
- R8-2-304. Application by a Political Subdivision
- R8-2-305. Application by a State Agency
- R8-2-306. Action on an Application
- R8-2-307. Proclamation File Number
- R8-2-308. Limitation of Fund Expenditure
- R8-2-309. Time Limit for Filing Claims
- R8-2-310. Retention of Records
- R8-2-311. Establishment of the Incident Period and the Opening and Closing of the Proclamation
- R8-2-312. Duplication of Benefits
- R8-2-313. Allowable Claims Against the Fund
- R8-2-314. Mitigation of Future Damages by the Applicant
- R8-2-315. Advance of Funds
- R8-2-316. Final Inspection and Audit
- R8-2-317. Procurement Requirements
- R8-2-318. Inspection and Audit of Contract Provisions
- R8-2-319. Refund from an Applicant
- R8-2-320. Appeal of a Director's Decision
- R8-2-321. Scope
- R8-2-322. Reserved
- R8-2-323. Reserved
- R8-2-324. Reserved
- R8-2-325. Reserved
- R8-2-326. Reserved
- R8-2-327. Reserved
- R8-2-328. Reserved
- R8-2-329. Reserved
- R8-2-330. Reserved

ARTICLE 3. GOVERNOR'S EMERGENCY FUND

- R8-2-33. General Provisions**
- A. Pursuant to A.R.S. § 35-192, which governs the "Governor's Emergency Fund", the Arizona State Legislature has indicated its intent to provide an orderly and continuing means of assistance to state agencies and local governments in carrying out their responsibilities to alleviate suffering and damage resulting from major disasters, and to repair essential public facilities damaged in major disasters.
- B. These rules and regulations describe the administration of the "Governor's Emergency Fund" and prescribe the procedures for submission of reimbursement requests by eligible claimants, in their efforts to combat the effects of a disaster, when a gubernatorial declaration of a state of emergency has been made. As such, these rules and regulations are designed to carry out the provisions of A.R.S. § 35-192(G), and supersede the rules and regulations dated August 31, 1977.
- R8-2-34. Definitions**
- A. "Governor's Emergency Fund" means the portion of the gen-

eral fund used to pay incurred liabilities and expenses authorized as claims against the state to meet contingencies and emergencies when the Governor declares that a state of emergency exists.

- B. "Major disaster" means any flood, drought, fire, tornado, earthquake, storm, or other catastrophe in any part of the state of Arizona which, in the determination of the Governor, is or threatens to be of sufficient severity and magnitude to warrant disaster assistance to supplement the facilities and funds available to state agencies and local governments in alleviating the damage, hardship, or suffering caused thereby.
- C. "State agency" means any department, commission, or other organizational element which has been designated as an official part of state government of Arizona by Arizona Revised Statutes.
- D. "Local government" means any county, city, town, village, district, including schools or other political subdivision of the state of Arizona established by law.
- E. "Director" means the Director of the Arizona Division of Emergency Services unless otherwise specified.

R8-2-35. Designation of fund administrator

The Director is responsible for administering the Governor's Emergency Fund. In this capacity, pursuant to Executive Order 79-4, the Director:

1. Shall disburse the funds and sign encumbrances, claims, and other pertinent documents and will maintain such records as are normally acceptable for audit purposes.
2. May, pursuant to state of Arizona procurement procedures, develop, negotiate, and consummate contracts or leases with individuals, institutions, or commercial agencies to prevent or minimize the loss of lives or property, to ease the suffering of disaster victims or to effect repairs, restoration and other assistance to eligible applicants.
3. May employ necessary additional personnel by exempt appointment or individual contract to effect full recovery measures.
4. May, pursuant to state of Arizona procurement procedures, contract for the conduct of feasibility studies to analyze the adequacy of present personnel, procedures and equipment to cope with disasters and for a determination of changes or additional resources that will be required.

R8-2-36. Application for funds

- A. After the Governor declares the emergency and authorizes the incurring of liabilities, and when he has allocated a specified sum to meet the emergency or contingency in a particular political subdivision, funds may be advanced to the particular governmental entity.
- B. In the event a disaster reaches such proportion as to be beyond the control and resources of a county or city/town, it is the responsibility of the chairman of the board of supervisors to declare a "Local Emergency" within ten days of the actual occurrence. (Sample "Resolution" included as Attachment 1.) At the time the "Local Emergency" declaration is made, the governing body of the affected political subdivision shall establish a procedure which will provide it the capability of maintaining separate accounts for all expenses incurred as a result of the disaster.

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1. When the disaster area is confined to the corporate limits of the city or town, the mayor of that city or town should petition the chairman of the county board of supervisors for a local declaration.
 2. The incorporated city or town having need for an advance of funds should channel its request through the chairman of the county board of supervisors to the Director.
 3. In order to prevent any unnecessary delay, payment of an advance of funds will be made directly to the appropriate official of the political subdivision. An information copy of the covering transmittal letter will be sent to the chairman of the county board of supervisors.
- C.** Simultaneous with the local declaration the chairman should request a proclamation of a "State of Emergency" by the Governor. This request should be channeled through the Director using the format shown as Attachment 2.
- D.** In the event a state owned facility only is involved, the primary state agency head should request the gubernatorial declaration by letter addressed to the Director. The letter should include the name and location of the affected facility, a description of the damages incurred, and a preliminary estimate of the cost of repair or replacement.
- E.** All requests for an advance of funds should come from the chairman of the concerned county board of supervisors to the Director by the most convenient means of communication. Such requests should state the specific purpose of the advance and provide some valid estimates of cost.
1. Advances will be based upon eligible expenditures to date and the estimated eligible expenditures for the next 60-day period.
 2. In the event that an advance or any portion of an advance is deposited in a commercial bank account, any interest accrued and paid from that deposit will automatically revert to the state.
- F.** Upon receipt of request cited above, the Director will prepare an appropriate claim form and agreement for the signature of the appropriate official of the political subdivision or head of state agency.

R2-8-37. Time Limit

All projects and accounts pertaining to an emergency or disaster must be completed within one year of the date of the Governor's declaration. Any extension of time beyond one year must be specifically authorized by the Director with the concurrence of the Governor. When the gubernatorial declaration is followed by a presidential declaration, the time limit is automatically extended two years from the date of the gubernatorial declaration.

R3-2-38. General Criteria of Eligibility

Only certain costs incurred in emergencies or in major disaster operations are eligible for funding from the Governor's Emergency Fund. The following paragraphs describe the specific items which are clearly eligible or clearly ineligible. Determinations on other items will be made within the framework of this guidance.

1. Salaries, wages, and administrative expenses
 - a. Eligible:
 - i. All salaries and wages of regular and extra employees directly engaged in eligible disaster work, except as noted in (b) below.
 - ii. Overtime pay for regular employees must be the recorded policy of the applicant state agency or local government.
 - iii. All communications charges directly related to disaster operations.
 - iv. Travel beyond the limits of the political subdivision when directly related to disaster operations.

- b. Ineligible:
 - i. Salaries and wages of regularly employed emergency services personnel, such as policemen, firemen, and other employees whose duties do not change because of the disaster.
 - ii. When the Governor authorizes the mobilization of the National Guard, the Director will coordinate with the Adjutant General as to the mission requirements and funding availability. The Adjutant General will issue orders giving tactical and administrative instructions, and defining the objectives to be accomplished. Cost of the mobilization may include wages, P & A, travel, rations issued or in kind, miscellaneous items required to accomplish the mission, cost for operation, maintenance, repair or replacement of U.S. Government property on loan to the National Guard of Arizona and/or state-owned property. The Director shall provide for payment of expenses incurred by the National Guard during emergency mobilization by providing the Division of Military Affairs a Certificate of Availability of Funds to be allocated to the National Guard. A certificate of the Adjutant General, in addition to an itemized statement, that the expenses are necessary and were actually made in the emergency will be provided.
 - iii. Salaries and wages of elected or appointed officials who are responsible for directing regular governmental activities.
 - iv. Office supplies and equipment.
 - v. Rental of administrative office space.
2. Equipment, supplies, and materials
 - a. Eligible:
 - i. Cost of materials and supplies consumed, lost, damaged, or destroyed in eligible disaster work, including those procured by direct purchase or taken from applicant's stock.
 - ii. Rental costs of privately owned equipment used in performing eligible disaster work, provided that the rates do not exceed the lowest rates locally available for the same or similar equipment. (See also 2(a)(iii))
 - iii. Contributions toward the purchase of equipment, provided that necessary equipment is not available on a loan basis from federal, state or local sources. Such contributions shall be funded only in the amounts agreed upon between the acquiring state agency or local government and the Director, and shall not exceed:
 - (1) Estimated rental costs of the item at prevailing local rates for the period of use; or
 - (2) The difference between the purchase price and the depreciated value existing upon termination of the disaster work. Depreciation value will be established by depreciation schedules regularly used for such equipment.
 - iv. Actual costs incurred in the operation of applicant owned equipment in eligible disaster work, including fuel, lubricants, tires, and other operating costs of a similar nature.
 - v. Repairs (labor and supplies) necessary for the operation of applicant owned equipment in eli-

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- ~~gible disaster work. Repairs must be necessitated by damage to equipment during disaster operations.~~
- ~~vi. Costs of hand tools, personal equipment, and protective equipment when determined that procurement is essential for the protection of life, health and property.~~
- ~~b. Ineligible:~~
 - ~~i. Charges for depreciation, insurance, storage, and similar fixed overhead costs.~~
 - ~~ii. Costs of repair or replacement of materials, equipment, and supplies lost or damaged during a disaster, other than in performance of eligible disaster work, except where such material, equipment and supplies are components of a facility, operation of which is essential to health, safety or welfare.~~
 - ~~iii. Repairs and fuel for privately owned rented equipment, except where the rental agreement provides that the applicant will be responsible for such repair and fuel in addition to the rental.~~
 - ~~iv. Costs of transportation and personal equipment utilized by police and other employees whose duties do not change because of the disaster.~~
- ~~3. Work performed under contract~~
 - ~~a. Eligible:~~
 - ~~i. Costs of work performed by private contractors on eligible projects.~~
 - ~~ii. Costs of work performed under contractual agreement between local governments or between a local government and a state agency, but limited to actual costs. Actual costs must be completely documented by the local government or state agency performing such work.~~
 - ~~b. Ineligible:~~
 - ~~i. Costs of work performed under contractual agreement between a state agency or local government and a federal agency where such work is funded by federal funds.~~
 - ~~ii. Costs incurred under contracts based on cost plus a percentage of costs, except where performance of immediate emergency work would be unduly delayed and where such delay would extend or create a hazard to health or safety. Requests for exceptions to this rule must be fully justified and will be considered on an individual case basis.~~

- ~~4. Prison labor~~
 - ~~a. Eligible: Out of pocket costs to an eligible applicant of prison labor performing eligible disaster work, including the amount paid the prisoner in accordance with rates established prior to the disaster, and the cost of transportation.~~
 - ~~b. Ineligible: Costs of food, lodging and guards. Also, any costs of prison labor utilized by a contractor.~~
- ~~5. Other. To be used only for eligible items which cannot be classified by the above categories. Each entry must be fully explained and will be considered on a individual case basis.~~
- ~~6. Limitations. The cost of repair and replacement of public facilities from the Governor's Emergency Fund will be limited to pre-disaster standards and design. The elimination of a disaster caused health hazard on private property may be authorized when supported by certification from a qualified public health official. Normal recurring costs such as road and street maintenance are not eligible.~~

R8-2-39, Final Claim

- ~~A. When authorized projects for the repair or reconstruction caused by the disaster have been completed, the political subdivision which received an advance of funds must file a final report and claim with the Director.~~
 - ~~1. A political subdivision which does not apply for an advance of funds will submit a final report.~~
 - ~~2. Complete documentation of all expenditures in the form of copies of paid vouchers, payrolls, contracts, agreements, receipts, and similar documents must be included with the final report.~~
 - ~~3. Funds advanced by the state to a political subdivision which are not expended for the specified purpose will be refunded to the state at the time of the final report.~~
- ~~B. Upon receipt of the final report, the Director will arrange for a field audit to be made by the Arizona Division of Emergency Services of the political subdivision's records covering all costs necessary to complete the approved work.~~
 - ~~1. This audit will be the basis for the final reimbursement to the political subdivision.~~
 - ~~2. Final reimbursement will be the costs incurred to complete necessary repairs and reconstruction, less the amount advanced as a result of the original request.~~
- ~~C. Upon completion of the audit, the Director will prepare a final claim for the signature of the appropriate official of the political subdivision.~~

SAMPLE

COUNTY EMERGENCY RESOLUTION — Attachment 1

~~WHEREAS, the unusually strong earthquake of _____, 19____, and the fires therefrom have caused death of _____ persons and extensive damage or destruction to private property and to the many public facilities, streets and road of County; and~~

~~WHEREAS, the earthquake has resulted in a condition of extreme peril to the health and safety of many citizens; and~~

~~WHEREAS, the Chairman of the Board of Supervisors of _____ County is authorized by resolution of the Board of Supervisors to declare a local emergency;~~

~~NOW, THEREFORE, it is hereby declared that an emergency now exists in _____~~

~~County; and~~

~~Mutual aid from the Cities of _____, _____ and _____ Is hereby requested; and~~

~~It is further ordered that during the existence of said emergency, local government agencies assigned emergency roles in the _____ County Emergency Plan are an Emergency Organization and the County of _____ Emergency~~

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Plan is hereby activated and in effect until further notice.

Dated: _____ Chairman of the Board of Supervisors
_____ County

Attest:

SAMPLE

APPLICATION FOR GOVERNOR'S DISASTER PROCLAMATION — Attachment 2

The honorable _____
Governor, State of Arizona
State Capitol
Phoenix, Arizona 85007

Dear Governor _____:

1. A disaster situation exists in _____ (political subdivision) due to _____ (detailed explanation of circumstances)
2. Unless remedial action is taken to correct the present conditions, results will be as follows:
 - a. (Include statement of manner in which persons and property
 - b. Will be affected; number of people affected; economic impact;
 - c. Potential health hazards, etc.)
3. Action has already been taken by the government of _____ to meet the emergency at a cost of \$ _____. These expenditures have accomplished the following:
 - a.
 - b.
 - c.
4. The additional funds required to accomplish minimum essential work are estimated to be \$ _____. The additional funds will permit the following projects to be completed:
 - a. \$ _____
 - b. \$ _____
 - c. \$ _____
5. Possible alternate solutions or temporary expediencies could be accomplished for approximately \$ _____. These would consist of the following projects:
 - a. \$ _____
 - b. \$ _____
 - c. \$ _____
6. (Statement of availability of funds in political subdivision for emergency work. Attach affidavit executed by appropriate official of political subdivision.)
7. It is respectfully requested that you issue a proclamation declaring that a state of emergency exists in under provisions of A.R.S. § 35-192, and authorize funds in the amount of \$ _____ to be expended to alleviate the condition.

/s/ _____ (officials of political subdivision)

Attachments: (as appropriate)

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Maps

Affidavits

Engineering data

Etc.

R8-2-301. Definitions

In addition to the definitions provided in A.R.S. § 26-301, the following definitions apply to this Article, unless specified otherwise:

1. "Applicant" means an state agency or political subdivision of the state that requests emergency assistance form the state.
2. "Applicant's authorized representative" means the person authorized by the governing body of a political subdivision to request funds, time extensions, and attend to other recovery matters related to a specific emergency proclamation.
3. "Application" means a written or verbal request by an applicant to the Director for emergency assistance.
4. "Contingency proclamation" means the document in which the governor authorizes the Director to pay expenses incurred by political subdivisions or state agencies that respond to frequently occurring emergencies that pose a significant and constant threat such as search or rescue, and hazardous materials spills.
5. "County" means the county or counties where an emergency is located.
6. "Department" means the Department of Emergency and Military Affairs provided in A.R.S. § 26-101.
7. "Eligible work" means actions taken and work performed by an applicant in response to an emergency that are consistent with the intent and purposes set forth in A.R.S. § 35-192 and these rules.
8. "Emergency" means any occasion or instance for which, in the determination of the Governor, state assistance is needed to supplement state agencies' and political subdivisions' efforts and capabilities to save lives, protect property and public health and safety, or to lessen or avert the threat of a disaster in Arizona.
9. "Emergency resolution" means a document by which the governing body of a political subdivision declares an emergency.
10. "Fund" means the portion of the general fund used to pay incurred liabilities and expenses authorized as claims against the state to meet contingencies and emergencies when the Governor declares that a state of emergency exists.
11. "Incident period" means the time interval of an emergency during which damage occurs.
12. "Political subdivision" means any county, incorporated city or town, or school, community college, or other taxlevying public improvement district.
13. "Proclamation" means the document in which the Governor declares that a state of emergency exists pursuant to A.R.S. § 35-192(A) and authorizes an expenditure from the fund.
14. "State" means the state of Arizona.
15. "State agency" means any department, commission, board, agency, or division of the state, including the Department of Emergency and Military Affairs.

R8-2-302. Applications for Emergency Assistance

- A. An applicant shall act for the purpose of this Article through its chief executive officer or body, or the applicant's authorized representative.
- B. An applicant shall use forms that are in the "Disaster Assis-

tance Guide", ADEM Publication 100, June 1996 (and no future amendments or editions), which is incorporated by this reference and is on file with ADEM and the Office of the Secretary of State.

R8-2-303. Contents of an Application

- A. An application shall set forth in an application the cause, location, and beginning date of the emergency, a description of the damage caused by the emergency and potential health hazards arising from the emergency, the costs incurred for emergency response, and an estimate of the number of people affected by the emergency and costs for recovery.
- B. Before submitting an application to the Director, the applicant shall use its available resources to respond to the emergency and request assistance from other political subdivisions that might respond to the emergency.

R8-2-304. Application by a Political Subdivision

- A. A county shall issue an emergency resolution before submitting an application to the Director.
- B. A political subdivision other than a county shall submit an emergency resolution to the county and request that, if necessary, the county issue an emergency resolution and make application to the Director. If the county fails to issue an emergency resolution expeditiously, a political subdivision may apply directly to the Director for assistance.
- C. A political subdivision shall submit an application to the Director using the most expeditious means.
- D. The Director shall reject an application that is not received within 15 days from the start of the emergency unless the political subdivision shows good cause for the delay or that the emergency is of a type that the date the emergency started is difficult to establish.

R8-2-305. Application by a State Agency

- A. An applicant that is a state agency shall submit an application directly to the Director using the most expeditious means.
- B. The Director shall reject an application that is not received within 15 days from the start of the emergency unless the state agency show good cause for the delay or that the emergency is of a type that the date the emergency started is difficult to establish.

R8-2-306. Action on an Application

- A. The Director shall make a recommendation to the Governor whether to issue a proclamation.
- B. The Director shall notify the applicant immediately by telephone or, if necessary, in writing, of the Governor's decision to issue or not to issue a proclamation. If the Governor issues a proclamation, the Division shall forward a copy to the applicant.
- C. The Governor shall prescribe in the Governor's proclamation the maximum amount for which the state will be liable for the emergency that is the subject of the proclamation.
- D. State payment of claims submitted by a political subdivision pursuant to a proclamation shall not exceed 75% of eligible costs or the amount prescribed in the proclamation, whichever is less.

R8-2-307. Proclamation File Number

- A. The Division shall assign a file number to each emergency that is the subject of a proclamation.

B. All correspondence regarding an emergency to which a file number is assigned shall reference the file number.

R8-2-308. Limitation of Fund Expenditure

Expenditure from the fund as a result of a particular proclamation shall not exceed the amount authorized in the proclamation unless an additional amount is authorized by the council as prescribed in A.R.S. § 35-192.

R8-2-309. Time Limit for Filing Claims

Before the ending date of the Governor's proclamation, the Director shall assess whether an extension of time is needed for an applicant to complete work and submit claims arising from an emergency. If the Director determines an extension of time is needed, the Director shall recommend that the Governor grant an extension.

R8-2-310. Retention of Records

The applicant shall maintain for 5 years all records relating to claims submitted by the applicant in accordance with A.R.S. § 41-1346 and shall make the records available for inspection and audit by the department auditor and the auditor general.

R8-2-311. Establishment of the Incident Period and Termination of the Proclamation

A. The Director shall recommend to the Governor, for inclusion in the Governor's proclamation, the beginning and ending dates of the incident period. If the Director determines that the incident period has a beginning or ending date different from that stated in the proclamation, the Director shall recommend to the Governor that the proclamation be amended to reflect the correct dates.

B. At the Director's recommendation, the Governor shall terminate the proclamation when the following occur:

1. The recovery work is complete,
2. The Division completes a final inspection of all work for which the applicant submits a claim,
3. The applicant submits a claim to the Director for all work which the applicant seeks reimbursement,
4. The Division pays all authorized claims,
5. The required audits are complete, and
6. The applicant receives amount due or pays amount owed.

C. After the audit and final payment of the applicant's claims, the Governor shall issue a termination proclamation.

R8-12-312. Duplication of Benefits

A. The state is not liable for any claim arising from an emergency for which the applicant receives funds from another source.

B. The state is not liable for any claim arising from an emergency unless the applicant applies for and is denied funding from other available sources before submitting the claim to the state.

C. If the Director or an applicant determines that the applicant received duplicate funds for a claim from the state and from another source, the applicant shall refund the amount received from the state.

R8-2-313. Allowable Claims Against the Fund

A. The Director shall allow expenditures from the fund for a claim arising from an emergency only if:

1. The amount claimed is a direct result of response or recovery operations to the emergency,
2. The applicant is legally responsible for providing response or recovery operations in the emergency, and
3. The amount claimed is authorized under the provisions of subsection (B) or (D).

B. The Director shall allow the following costs to be paid as claims against the fund:

1. Salaries or wages and benefits of the applicant's budgeted

personnel directly engaged in eligible work;

2. Salaries or wages and benefits of nonbudgeted employees directly engaged in eligible work;
3. Communications;
4. Travel;
5. Materials and supplies consumed, except those listed under subsection (C)(2);
6. Rental of privately owned equipment at documented contractual rates;
7. Contributions toward the purchase of equipment if the necessary equipment is not available from federal, state, or local sources, and if the contribution does not exceed the cost of renting the item at prevailing local rates;
8. Owning and operating the applicant's equipment using rates approved by the Director;
9. Work performed by private contractors;
10. Work performed under an agreement between local governments or between a local government and a state agency, that is completely documented by the local government or state agency performing the work; and
11. Prison labor including amounts paid to prisoners in accordance with established rates and costs of transporting prisoners.

C. The Director shall not allow the following costs to be paid as claims against the fund:

1. Salaries or wages and benefits of elected or appointed officials responsible for directing governmental activities;
2. Office supplies and equipment;
3. Rental of administrative office space;
4. Depreciation, insurance, storage, and similar fixed overhead costs;
5. Repairs and fuel for privately owned rented equipment, except where the rental agreement provides that the applicant will be responsible for repairs and fuel in addition to the rental fee;
6. Work performed under agreement between a state agency and or local government and a federal agency where the work is paid for by federal funds;
7. Costs incurred under contracts based on cost plus a percentage of costs, unless the Director determines that the performance of immediate emergency work would be unduly delayed and would likely result in an imminent hazard to health or safety, in which case the Director may authorize an exception; and
8. Prison labor costs for food, lodging, and guards.

D. To submit a claim for a cost that cannot be classified under subsection (B), an applicant shall make a written request to the Director for an exception. The Director shall grant a request for an exception if the request explains the nature of the exception and justifies why it is needed. The Director shall immediately inform the applicant in writing of the decision to grant or deny the request for an exception.

E. When a facility damaged as a result of an emergency is repaired or replaced, the Director shall allow only the costs required to return the facility to the condition it was before the emergency, incorporating current standards and design requirements.

R8-2-314. Mitigation of Future Damages by the Applicant

The applicant shall comply with any mitigating requirements specified by the Director for repair or replacement projects subject to repeated damage from flooding or other threats to life or property.

R8-2-315. Advance of Funds

All requests for an advance of funds shall be signed by the applicant's authorized representative and forwarded to the Director. The

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Director shall assess a request for an advance to determine whether the request is reasonable and for eligible work that has been completed. The Director shall grant a request for an advance for work not completed only if an applicant has demonstrated that the work cannot be completed without an advance. The amount of an advance will be based upon eligible expenditures to date and the estimated eligible expenditures for the next 60-day period.

R8-2-316. Final Inspection and Audit

Upon completion of all work by an applicant, the Division shall inspect all the work that the applicant claims. The applicant shall provide the Division with access to all claimed work and shall permit review of all records relating to the work. After completion of the final inspection, the Department's chief auditor shall conduct an audit of the applicant's claims. The Director shall use this audit to determine the allowability of claimed costs and final payment due to the applicant or overpayment due to the Division.

R8-2-317. Procurement Requirements

The Director shall not allow a claim arising from a procurement unless the applicant complies with the Arizona procurement laws set forth in A.R.S. § 41-2501, et seq., and A.A.C. R2-7-101 et seq.

R8-2-318. Inspection and Audit of Contract Provisions

If a contract or subcontract for the furnishing of goods, equipment, labor, materials, or services to the applicant may result in a claim, the applicant shall include in the contract or subcontract a provision that all books, accounts, reports, and other records relating to the contract or subcontract shall be subject to inspection and audit by the state for 5 years after completion of the contract or subcontract.

R8-2-319. Refund from an Applicant

A. If the Director determines that an applicant is required to refund an amount, the Director shall provide the applicant written notice of the amount owed. The applicant shall reim-

burse the Division within 2 months of the date of notification.

B. An applicant may request a review, as set forth in R8-2-320, of a determination under subsection (A) that an amount must be refunded. If the review results in a decision that the applicant is required to reimburse the Division, the applicant shall refund the amount required within 2 months of the decision.

R8-2-320. Appeal of the Director's Decision

A. Any party aggrieved by a decision rendered by the Director may appeal the decision, in writing, not later than 15 days after receipt of notice of the Director's decision.

B. When an appeal is filed, the Director shall contact the Office of Administrative Hearings to schedule the case with the office in accordance with A.R.S. § 41-1092.02.

R8-2-321. Scope

The provisions of this Article apply to contingencies arising from hazardous materials incidents.

R8-2-322. Reserved

R8-2-323. Reserved

R8-2-324. Reserved

R8-2-325. Reserved

R8-2-326. Reserved

R8-2-327. Reserved

R8-2-328. Reserved

R8-2-329. Reserved

R8-2-330. Reserved

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

PREAMBLE

1. Sections Affected

- R20-4-203
R20-4-204
R20-4-212
R20-4-305
R20-4-306
R20-4-307
R20-4-308
R20-4-312
R20-4-314
R20-4-315
R20-4-316
R20-4-319
R20-4-320
R20-4-321
R20-4-323
R20-4-329
R20-4-331
R20-4-501
R20-4-505
R20-4-507
R20-4-509
R20-4-510

Rulemaking Action

- Repeal

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R20-4-511	Repeal
R20-4-513	Repeal
R20-4-514	Repeal
R20-4-515	Repeal
R20-4-517	Repeal
R20-4-522	Repeal
R20-4-523	Repeal
R20-4-527	Repeal
R20-4-528	Repeal
R20-4-531	Repeal
R20-4-601	Repeal
R20-4-609	Repeal
R20-4-610	Repeal

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 6-123
Implementing statutes: A.R.S. §§ 6-122, 6-123, 6-124, 6-225, 6-271, 6-409, 6-411, 6-421, 6-423, 6-441, 6-442, 6-445, 6-451, 6-473, 6-474, 6-477, 6-478, 6-603, 6-604, 6-605, 6-607, 6-611, 6-616, 6-617, 6-625, 6-626, 6-628, 6-651, 6-653, 6-654, 6-656, 6-701, 6-709, and 20-1611
3. **The effective date of the rules:**
September 19, 1996
4. **A list of all previous notices appearing in the Register addressing the adopted rule:**
Notice of Rulemaking Docket Opening:
1 A.A.R. 199, March 17, 1995
Notice of Proposed Rulemaking:
2 A.A.R. 3023, May 31, 1996
5. **The name and address of agency personnel with whom persons may communicate regarding the rule:**
Name: Joseph F. Olsen
Address: Banking Department
2910 North 44th Street, #310
Phoenix, Arizona 85018
Telephone: (602) 255-4421, ext. 120
Fax: (602) 381-1225
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**
As a result of the Department's 5-year rule review, the Department is repealing antiquated rules that do not reflect current policy and practice.
7. **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.
8. **The summary of the economic, small business, and consumer impact:**
The Department believes that these rules are exempt as specified under A.R.S. § 41-1055(D)(3). The repeal of these rules will decrease the recordkeeping on the regulated businesses, the Secretary's of State's Office, the Governor's Regulatory Review Council, and the Banking Department.
9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
No changes were made.
10. **A summary of the principal comments and the agency response to them:**
No comments were received by the agency.
11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
Not applicable.
12. **Incorporations by reference and their locations in the rules:**
Not applicable.
13. **Was this rule previously adopted as an emergency rule?**
No.

14. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 2. BANK ORGANIZATION AND REGULATION

Section

- R20-4-203. Reports of Condition—A.R.S. § 6-123
- R20-4-204. Report of Income and Expense—A.R.S. § 6-123
- R20-4-212. Legal Reserved—A.R.S. § 6-271

ARTICLE 3. SAVINGS AND LOAN ASSOCIATIONS

Section

- R20-4-305. ~~Formal Hearing on Application to Organize—A.R.S. § 6-409~~
- R20-4-306. ~~Subscription of Capital Forms—A.R.S. § 6-411(1)~~
- R20-4-307. ~~Formal Hearing on Communication with Members—A.R.S. § 6-421~~
- R20-4-308. ~~Required Audit Information—A.R.S. § 6-477~~
- R20-4-312. ~~Loans to Finance Acquisition and Development of Land—A.R.S. § 6-445~~
- R20-4-314. ~~Variable Rate Certificate Account—A.R.S. §§ 6-423(4)(e), 6-442(B)(4), 6-473~~
- R20-4-315. ~~Reserve Allocations—A.R.S. §§ 6-441(A), 6-473, 6-474~~
- R20-4-316. ~~Determination Date—A.R.S. § 6-123~~
- R20-4-319. ~~Dividends—A.R.S. § 6-442(B)(4)~~
- R20-4-320. ~~Accounting Practices—A.R.S. § 6-474~~
- R20-4-321. ~~Financial and Other Reports—A.R.S. § 6-478~~
- R20-4-323. ~~Branch Application Hearings—A.R.S. § 6-123~~
- R20-4-329. ~~Reports of Condition—A.R.S. § 6-123~~
- R20-4-331. ~~Approved Sales with Recourse—§ 6-451~~

ARTICLE 5. SMALL LOANS

Section

- R20-4-501. ~~Time Periods for Computing Loan Charges—A.R.S. §§ 6-625, 6-626~~
- R20-4-505. ~~Charges for First Installment Period Pay off—A.R.S. § 6-626~~
- R20-4-507. ~~Refund Due for Full Loan Prepayment—A.R.S. § 6-626~~
- R20-4-509. ~~Refunds to be Computed on Total Charges—A.R.S. §§ 6-626, 20-1611~~
- R20-4-510. ~~Prepayment Before Third Installment Date—A.R.S. §§ 6-625, 6-626~~
- R20-4-511. ~~Prepayment On or After the Third Installment Date—A.R.S. §§ 6-625, 6-626~~
- R20-4-513. ~~Definition: Default—A.R.S. § 6-626~~
- R20-4-514. ~~Default Charge—A.R.S. § 6-626~~
- R20-4-515. ~~Computation of Default Charges—A.R.S. § 6-626~~
- R20-4-517. ~~Deferred Payments—A.R.S. § 6-626~~
- R20-4-522. ~~Consistent or Frequent Extensions—A.R.S. §§ 6-603, 6-605, 6-607, 6-628~~
- R20-4-523. ~~Refund Chart—A.R.S. § 6-626~~
- R20-4-527. ~~Report of Sales Without Foreclosure Proceedings—A.R.S. §§ 6-616, 6-617, 6-122, 6-124~~
- R20-4-528. ~~Discontinuance of Business—A.R.S. § 6-611~~
- R20-4-531. ~~Charges for Real Estate Loans—A.R.S. §§ 6-604, 6-628, 6-225~~

ARTICLE 6. DEBT MANAGEMENT COMPANIES

Section

- R20-4-601. Definitions
- R20-4-609. Articles of Incorporation; By-laws; Governing Document
- R20-4-610. Change of Business Location

ARTICLE 2. BANK ORGANIZATION AND REGULATION

R20-4-203. Reports of Condition—A.R.S. § 6-123

- ~~A. Every bank shall make to the Superintendent not less than 3 reports of condition each year on forms furnished by the Superintendent. Each report shall be verified by the oath of the president, vice president, or cashier of the bank and attested to by not less than 3 directors. The date specified by the Superintendent shall be the date designated by the officer of the United States authorized to make the call for reports of national banking associations.~~
- ~~B. The report shall show the financial condition of the bank at the close of business on the date specified.~~
- ~~C. The report shall be transmitted to the Superintendent within 30 days after the receipt of a request therefore, unless a shorter time is designated in the request.~~
- ~~D. At the same time, the report required in A.R.S. § 6-353(b) shall be submitted: "...a report of the obligations to the bank of each director and officer outstanding at the date of the report of condition, if the aggregate obligations of such person, exclusive of obligations outstanding in the regular process of bank collection transactions, exceeds the lesser of \$50,000 or 1% of the capital account of the bank."~~

R20-4-204. Report of Income and Expense—A.R.S. § 6-123

- ~~A. Every bank shall make to the Superintendent at least 1 report of income and expense each year on forms furnished by the Superintendent. Each report shall be verified by the oath of the president, vice president, or cashier of the bank.~~
- ~~B. The report shall be transmitted to the Superintendent within 30 days after the receipt of a request therefor, unless a shorter time is designated in the request.~~

R20-4-212. Legal Reserved—A.R.S. § 6-271

~~Each bank, not a member of the Federal Reserve System, shall maintain legal reserved equal to the following percentages of the average daily net deposits for a 14-day period computed on the basis of gross deposits less such deposits as are lawfully secured and each deposit balance due to another bank to the extent of a reciprocal deposit due from such other bank:~~

- ~~1. With respect to demand deposits—0%.~~
- ~~2. With respect to time and savings deposits—0%.~~

ARTICLE 3. SAVINGS AND LOAN ASSOCIATIONS

R20-4-305. Formal Hearing on Application to Organize—A.R.S. § 6-409

~~A formal hearing shall be held at least 10 days prior to the issuance of a permit to organize, which hearing shall be reported by a competent reporter who shall certify and file the transcript of the proceedings with the applicant and the Superintendent, the cost of which shall be borne by the applicant.~~

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R20-4-306. Subscription of Capital Forms—A.R.S. § 6-411(1)

Forms for reporting subscription of capital shall be the form approved by the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation.

R20-4-307. Formal Hearing on Communication with Members—A.R.S. § 6-421

An order directing communication with members of an association shall be issued only if the Superintendent finds, after formal hearing notice to the affected association at least 10 days prior thereto, that the same is appropriate and truthful. Form of communication shall be presented at the hearing and affected association be given opportunity to object. The cost of such hearing shall be assessed to the requesting member or the affected association or both as the Superintendent may determine.

R20-4-308. Required Audit Information—A.R.S. § 6-477

If, pursuant to A.R.S. § 6-477, a licensed certified public accountant is retained to perform an annual audit of the books of an association, the association shall so notify the Superintendent, which notice shall include the name and business address of the person or firm so retained, prior to the commencement of such audit, and instructions by the association to the said accountant to file with the Superintendent of Banks as soon as completed a copy of all of the same audit reports, correspondence, and supplemental reports furnished to the association. This rule shall apply solely to the annual audit and not apply to internal audits, directors' audits, or any other audit performed by the association. The association may voluntarily file a copy of such internal audits with the Superintendent.

R20-4-312. Loans to Finance Acquisition and Development of Land—A.R.S. § 6-445

A. General provisions

1. Subject to A.R.S. § 6-445 and the provisions of this rule, an association may invest in loans to finance:
 - a. The acquisition and development of land for primarily residential usage, and
 - b. The construction of homes or single family dwellings, inclusive of acquisition and development of land for primarily residential usage.
2. An association shall not invest in a loan under this rule unless it appears to the association that the purpose of the loan is to enable the borrower to undertake prompt development of land previously acquired or of land which will be acquired at the time the loan is made. The association shall fix the term of the loan, within the maximum term permitted by this rule, on the basis of its determination as to a reasonable period of time necessary for the borrower to complete development and to dispose of the completed lots and improvements to be constructed thereon.

B. Basic limitations

1. An association may make loans under this rule only when
 - a. The aggregate amount of its outstanding guaranty shares, surplus, and reserves for losses is equal to more than 5% of the amount of its withdrawable accounts;
 - b. The resulting aggregate amount of its investments in loans under this rule, exclusive of that portion of loans under subsection (D) of this rule which is for the purpose of financing the construction of homes or single family dwellings, would not exceed 5% of the amount of its withdrawable accounts;
 - c. The loans are loans on the security of 1st liens, and
 - d. The real estate security for each such loan is located within the association's regular lending area.

C. Loans to finance acquisition and development of land

1. No loan shall be made under this paragraph in an amount equal to more than 75% of the value of the real estate security therefor as of the completion of the development thereof into building lots or sites ready for construction thereon. Each loan shall be repayable within a period of not more than 5 years and the interest thereon shall be payable at least semiannually. No disbursement of any of the proceeds of any loan made under this paragraph shall be made at any time if such disbursement, together with the aggregate amount of such proceeds previously disbursed by the association and not repaid to it, would exceed an amount equal to 75% of the value at such time of:
 - a. That portion of the security property which is building lots or sites and development of which is in progress or completed and
 - b. The remaining security property.

D. Loans to finance construction of homes inclusive of acquisition and development of land

1. An association may make loans on the security of, and for the purpose of financing the construction of homes or single family dwellings for sale on land the acquisition and development of which for primarily residential usage is also a purpose of any such loan. No loan shall be made under this paragraph in an amount equal to more than 80% of the value of the real estate security therefor as of the completion of the construction of homes or single family dwellings thereon. Each loan made under this paragraph shall be repayment in full within a period of not more than 6 years after the date of the loan instruments, with or without periodic amortization but with interest payable at least semiannually, except that
 - a. Beginning not more than 12 months after the 1st disbursement of loan proceeds made for the purpose of financing the construction of any home or single family dwelling, whether or not such construction has been completed, there shall be amortization of principal each month at a rate of not less than 1% of that portion of the loan balance that is applicable to such home or single family dwelling, including the building site, and
 - b. Beginning not more than 4 years after the first disbursement of any loan proceeds, there shall be amortization of principal each month at a rate of not less than 1% of that portion of the loan balance which is not applicable to the construction of any home or single family dwelling and its building site.
2. No disbursement of any of the proceeds of any loan made under this subsection shall be made at any time if such disbursement, together with the aggregate amount of such proceeds previously disbursed by the association and not repaid to it, would exceed an amount equal to the sum of
 - a. 80% of the value at such time of homes or single family dwellings under construction or completed and not sold;
 - b. 75% of the value at such time of that portion of the remaining security property which is building lots or sites and development of which is in progress or completed; and
 - c. 75% of the value at such time of the remaining security property, but any principal amortization required by this paragraph shall be deducted from such sum.
3. By a construction loan agreement or other suitable instrument applicable to each construction loan made by an association under this subsection, such association shall

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reserve to its board of directors full power and the exclusive right, without regard to any other provision of any loan instrument or of any agreement applicable to such loan, to impose, at any time and from time to time, such limitations as such board of directors may determine on the number of homes and single-family dwellings the construction of which may be in progress at any 1 time from the proceeds of such loan.

E. Releases; loan extensions

1. Upon the release from the lien of any portion of the security property, the principal balance of any loan made under this rule shall be reduced by an amount at least equal to 110% of that portion of the outstanding principal loan balance which is attributable to the value of the property to be released; 'value' for such purpose is to be the value fixed at the time the loan was made or the loan amount was determined. The board of directors of an association may approve the extension of any such loan for a period of not more than 1 year beyond the loan term limit and may approve a second extension for an additional period of not more than 1 year. No such approval may be given unless:

- a. Interest on the loan is current;
- b. The unpaid principal balance of the loan is or has been reduced to an amount not in excess of 75% of the value of the security property (80% of the value of homes or single-family dwellings, less any amortization required by subsection (D)), and
- c. Such board of directors has before it
 - i. An audited current financial statement of the borrower;
 - ii. A current written credit report on the borrower;
 - iii. A current independent appraisal of the security property; and
 - iv. A current written report on the feasibility of repayment of the loan at the expiration of the extension.

F. Loans made prior to completion of planning. If a loan is made under this rule to a borrower who acquires the land before completion of plans for development thereof, an association may lease the total amount of the loan for its later determination, based on appraisal after completion of such plans. However, an association shall not make such a loan unless the borrower has submitted a preliminary plan which, in the opinion of the association, is a feasible plan for development of the land for primarily residential usage. Where determination of the total amount of the loan is deferred under this subsection, the loan agreement or other suitable instrument shall provide for acceleration of maturity of the loan to a fixed date (which shall be not more than 2 years after the date of the first disbursement of any of the proceeds of the loan) if by such fixed date the borrower has not furnished to the association complete plans, satisfactory to the association, for development of the land and, if it is a loan under subsection (D) of this rule, for construction thereon.

G. Limitations on loans on a single project or to 1 borrower. No association shall invest an amount in excess of 2% of its withdrawable accounts in loans of any 1 land development project or in any such loan or loans to 1 borrower, including the balance of all outstanding loans made under this rule to any partnership, corporation, or syndicate of which any partner, stockholder, owner, participant, or officer is the borrower, or is a partner, stockholder, owner, participant, or officer of the borrower.

H. Definition. The term "development" as used in this rule means the installations and improvements necessary to produce from

the land building sites so completed, in keeping with the applicable governmental requirements and with general practice in the community, that they are ready for the construction of buildings thereon.

R20-4-314. Variable Rate Certificate Account—A.R.S. §§ 6-423(4)(e), 6-442(B)(4), 6-473

- A. An association may offer and issue a Variable Rate Certificate Account if the by-laws so provide and the board of directors of the association has, prior to offering said Certificate Account, by appropriate resolution setting forth the certificate form to be issued in connection therewith, approved such Variable Rate Certificate Account.
- B. The certificate form shall be submitted to the Superintendent for his approval together with a certified copy of the approving resolution.
- C. Each account shall be evidenced by a separate certificate which shall provide for maintenance for a continuous period of not less than 90 days in order to qualify for the higher variable rate.
- D. The board of directors may distribute earnings on a Variable Rate Certificate Account, from and after the date of such certificate, at a rate higher than the current rate being paid on regular accounts. Dividends in excess of the current regular rate shall not be paid except upon full compliance with the terms set forth in the certificate.
- E. If a portion of the Variable Rate Certificate Account is withdrawn, the certificate shall be, as of the date of such withdrawal, cancelled and a new certificate may be issued for the remaining balance of the account with the same rate, date, and maturity as the original certificate.
- F. No Variable Rate Certificate Account shall be issued prior to, or bear a date prior to, the effective date of this rule and regulation.

R20-4-315. Reserve Allocations—A.R.S. §§ 6-441(A), 6-473, 6-474

The required allocation to the contingent reserve during each semi-annual period shall be as follows:

1. During the period January 1, 1964, to December 31, 1966, the required allocation during each period was 10% of the profit being apportioned.
2. For the semi-annual periods subsequent to December 31, 1966, the required allocation for each semi-annual period shall be not less than 5% except that the Superintendent may allow a lesser percent upon receipt of a written request setting forth the reasons why a lesser allocation should be permitted.
3. Prior excess allocations credit may be taken for allocations previously credited to the contingent reserve in excess of the above required amounts subsequent to December 31, 1963. A report listing the date and amount of each identifiable prior excess allocation previously credited to the reserve shall be filed with the Superintendent by June 26, 1967, for his examination and approval as to the total amount of excess allocations available for future credit as of that date. The failure of any such association to file this report by June 26, 1967, is presumptive evidence that there were no such prior excess allocations claimed.
4. Special reserves, as ordered by the Superintendent under A.R.S. § 6-474(E), shall not be construed as excess credits.

R20-4-316. Determination Date—A.R.S. § 6-123

For the purpose of computing earnings for distribution on savings accounts, the board of directors of an association may, after adop-

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tion of a resolution so providing and while such resolution remains in effect, fix a date, not later than the 10th day of the calendar month, for determining the date of investment of payments on savings accounts or designated classes thereof. Payments received by the association on or before such determination date shall receive earnings as if invested on the first of such month; payments received subsequent to such determination date shall receive earnings as if invested on the first of the next succeeding month, except that after adoption by the association's board of directors of a resolution so providing, payments received subsequent to a determination date may receive earnings from the date of receipt.

R20-4-319. Dividends—A.R.S. § 6-442(B)(4)

The board of directors of an association may, if the articles of incorporation and by-laws permit, adopt a resolution providing that dividends may be paid at the time of withdrawals on amounts withdrawn from savings accounts, or designated classes thereof, between the dates as of which such association regularly distributes earnings on savings accounts.

R20-4-320. Accounting Practices—A.R.S. § 6-474

A. An association shall use such forms and follow such accounting practices as the Superintendent may from time to time require, and shall close its books as of June 30 and December 31 of each year. An association may elect to close its books more often than once semi-annually.

B. An association which determines to maintain any of its records by means of data processing services shall notify the Superintendent, in writing, at least 90 days prior to the date on which such maintenance of records will begin. Such notification shall include identification of the records to be maintained by data processing services and the location at which such records will be maintained. Any contract, agreement or arrangement made by an association pursuant to which data processing services are to be performed for such association shall be in writing and shall expressly provide that the records to be maintained by such services shall at all times be available for examination and audit by federal and state supervisory authorities. A copy of the contract, agreement or arrangement shall be filed with the Superintendent.

R20-4-321. Financial and Other Reports—A.R.S. § 6-478

Each association shall file from time to time financial and other reports with the Superintendent in such form and manner as required by the Superintendent. In addition, each association shall file with the Superintendent a copy of each report filed with the Federal Home Loan Bank Board and Federal Home Loan Bank of San Francisco.

R20-4-323. Branch Application Hearings—A.R.S. § 6-123

All savings and loan associations, wishing to appear at a hearing held pursuant to A.R.S. § 6-475, for the purpose of objecting to the establishment of a branch, shall notify the Superintendent, in writing, of its intent to appear and the specific objections to the application at least 5 days prior to the hearing.

R20-4-329. Reports of Condition—A.R.S. § 6-123

A. Every savings and loan association shall make to the superintendent not less than 3 reports each year on forms furnished by the superintendent. Each report shall be verified by the oath of the president, vice president or controller of the association and attested to by not less than 3 directors. The date specified by the superintendent shall be the date designated by the officer of the United States authorized to make the call for reports of national banking associations.

B. The report shall show the financial condition of the association at the close of business on the date specified.

C. The report shall be transmitted to the superintendent within 10 days after the receipt of a request therefor, unless a shorter period is designated in the request.

R20-4-331. Approved Sales with Recourse—A.R.S. § 6-451

Sales of loans to the following agencies may be made with recourse if required by the agency:

1. Federal Home Loan Mortgage Corporation.
2. Federal National Mortgage Association.
3. Government National Mortgage Association.

ARTICLE 5. SMALL LOANS

R20-4-501. Time Periods for Computing Loan Charges—

A.R.S. §§ 6-625, 6-626

Charges, on precomputed charge loan contracts, shall be computed on the basis of a 360-day year and each installment, other than the first installment, shall be computed as if there were 30 days in the installment period.

R20-4-505. Charges for First Installment Period Pay-off—

A.R.S. § 6-626

On a precomputed charge loan repaid in full by cash during the 1st installment period, charges shall be computed as provided in Sections R20-4-507, R20-4-508, and R20-4-509 hereof, except that the licensee may at his option recompute charges as provided in paragraph (3) of A.R.S. § 6-626.

R20-4-507. Refund Due for Full Loan Prepayment—A.R.S. § 6-626

The standard refund table attached hereto as R20-4-523, based upon the direct ratio method (commonly known as the "Rule of 78"), shall be the basis for determining the amount of refund or credit due the borrower for prepayment in full of a precomputed loan. Under the Rule of 78, the amount of charge applicable to any particular monthly installment period bears the same ratio to the original amount of precomputed charges, excluding any adjustment for a first period of more or less than 1 month, as the balance scheduled to be outstanding during that monthly period bears to the sum of all monthly balances scheduled by the original contract of loans.

R20-4-509. Refunds to be Computed on Total Charges—

A.R.S. §§ 6-626, 20-1611

Refunds shall be computed on the total amount of precomputed charges based upon equal monthly periods, regardless of whether or not the 1st period is more or less than 1 month.

R20-4-510. Prepayment before Third Installment Date—

A.R.S. §§ 6-625, 6-626

If a precomputed loan is prepaid in full by renewal, refinancing, or a new loan by the same licensee before the 3rd installment date, the licensee must recompute charges on the percent per month basis on unpaid principal balances by applying each payment which has been made, 1st to charges, and any remainder of the payment to principal. The charges so computed and retained by the licensee shall be in lieu of the precomputed charges or any portion thereof.

R20-4-511. Prepayment on or After Third Installment Date—

A.R.S. §§ 6-625, 6-626

If prepayment of a precomputed loan in full by renewal, refinancing or by a new loan by the same licensee occurs on or after the 3rd installment date, or at any time if made by cash, the refund to the borrower of unearned charges shall be computed as provided in Sections R20-4-507, R20-4-508, and R20-4-509 hereof.

R20-4-513. Definition: Default—A.R.S. § 6-626

A default of a loan contract is failure to pay any full installment payment on or before the due date.

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R20-4-514. Default Charge—A.R.S. § 6-626

A default charge on a precomputed loan for 1 month is the amount of refund or credit that would be given if the contract were prepaid in full 1 month before maturity, as determined from the table in R20-4-523.

R20-4-515. Computation of Default Charge—A.R.S. § 6-626

For the purpose of computing default charges, on a precomputed loan, a licensee may elect to use 1 of the following methods:

1. If default of a full installment extends beyond 15 days, the default charge for 1 month multiplied by the nearest number of months such installment is in default, may be charged and collected at the time payment correcting the default is received.
2. By multiplying the exact number of days the installment is delinquent by 1/30th of the default charge for 1 month.

R20-4-517. Deferred Payments—A.R.S. § 6-626

Payment of all wholly unpaid installments may be deferred 1 or more full months and the due date of each such installment and the maturity of the contract so extended. The month or months in which no scheduled payment has been made or in which no payment is to be required by reason of the deferment shall be the deferment period and, unless otherwise requested by the borrower, such period

shall not include an installment which is due more than 15 days after the date of deferment. Such a deferment may be made at the option of the licensee only when at least 1 wholly unpaid installment is more than 15 days in default. When such a deferment is made, the licensee may charge and collect an extension charge which shall not exceed the amount of charge applicable to the 1st month of the deferment period, multiplied by the number of months in said period. No portion of the precomputed charges shall apply to the deferment period and the portion of such charges applicable to each installment period following the deferment period and prior to the extended maturity shall remain the same as that applicable to such installment periods under the original contract of loan.

R20-4-522. Consistent or Frequent Extensions—A.R.S. §§ 6-603, 6-605, 6-607, 6-628

Consistent or frequent extensions for the approximate minimum period necessary to qualify for a full month charge will be closely scrutinized and investigated by the Banking Department.

R20-4-523. Refund Chart—A.R.S. § 6-626

The following table is made part of the rules and regulations with reference to refunds, default charges and extension charges under A.R.S. § 6-626.