

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 6. ECONOMIC SECURITY

#### CHAPTER 5. DEPARTMENT OF ECONOMIC SECURITY - SOCIAL SERVICES

##### PREAMBLE

1. Sections Affected:

Article 23  
R6-5-2301  
R6-5-2302  
R6-5-2303  
R6-5-2304  
R6-5-2305  
R6-5-2306  
R6-5-2307  
R6-5-2308  
R6-5-2309  
R6-5-2310  
Article 56  
R6-5-5601  
R6-5-5602  
R6-5-5603  
R6-5-5604  
R6-5-5605  
R6-5-5606  
R6-5-5607  
R6-5-5608  
R6-5-5609  
R6-5-5610  
R6-5-5611

Rulemaking Action:

Repeal  
New Article  
New Section  
New Section

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

Authorizing Statutes: A.R.S. §§ 41-1003, 1954(A)(3), and 46-134(A)(12)

Implementing Statutes: A.R.S. §§ 8-546.11 (through June 30, 1998); 8-807 (on and after July 1, 1998); 41-1959

3. The name and address of the agency personnel with whom persons may communicate regarding the rulemaking:

Name: Vista Thompson Brown  
Address: Department of Economic Security  
P.O. Box 6123, Site Code 837A  
Phoenix, Arizona 85005  
Telephone: (602) 542-6555  
Fax: (602) 542-6000  
E-mail: vovb5015@de.state.az.us

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**4. An explanation of the rules, including the agency's reasons for initiating the rules:**

Notice of Rulemaking Docket Opening: 1 A.A.R. 1157 (July 21, 1995).

The purpose of the rule is to set forth Departmental procedures for the protection and disclosure of confidential information in accordance with controlling state and federal statutes. The Department promulgated the current rules in May of 1976. These rules are outdated, are inconsistent with controlling law, and are ineffective. Legislation enacted since 1976 requires inclusion of new confidentiality and disclosure requirements and repeal of current rules. In this rulemaking package, the Department is adopting a new set of rules to govern the protection and disclosure of Child Protective Services records and files. The rules describe the procedures for requesting confidential information, fees to be paid to the Department for processing requests, and information that will be redacted from records and files prior to release. The rules also include a set of definitions relevant to confidentiality and release of records and files. The new rules will be consistent with current federal and state authority and with current program policy and practice

**5. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state.**

Not applicable.

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

There is an economic impact for some consumers attributable to the rules. The economic impact results from the legislative mandate to provide confidential records and files to authorized individuals. Specified consumers who request copies of Child Protective Services records and files, as permitted by Arizona Revised Statutes, will incur an expense for the Department to process the requested information. The authority to charge a fee for this service is permitted by statute.

**7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Vista Thompson Brown  
Address: Department of Economic Security  
P.O. Box 6123, Site Code 837A  
Phoenix, Arizona 85005  
Telephone: (602) 542-6555  
Fax: (602) 542-6000  
E-mail: vovb5015@de.state.az.us

**8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

The Department will accept written comments from now until the close of record, which is scheduled for 5 p.m., Friday, July 10, 1998. The Department has scheduled the following oral proceedings:

**PHOENIX; DISTRICT I:**

Date: Thursday, July 9, 1998  
Time: 2:15 p.m.  
Location: DES Conference Room  
815 North 18th Street  
Phoenix, Arizona

Coordinating Program Manager: Carla Van Cleve (602) 846-0001

**TUCSON; DISTRICT II:**

Date: Thursday, July 9, 1998  
Time: 2:15 p.m.  
Location: DES Conference Room  
400 West Congress #420  
Tucson, Arizona

Coordinating Program Manager: Henry Granillo (520) 628-6810

**FLAGSTAFF; DISTRICT III:**

Date: Thursday, July 9, 1998  
Time: 2:15 p.m.  
Location: DES Conference Room  
220 North LeRoux

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Flagstaff, Arizona

Coordinating Program Manager: Patty Laux (520) 779-2731, Ext. 233

YUMA: DISTRICT IV:

Date: Thursday, July 9, 1998

Time: 2:15 p.m.

Location: DES Conference Room  
Suite 232  
350 West 16th Street  
Yuma, Arizona

Coordinating Program Manager: Tim Acuff (520) 782-4343

CASA GRANDE: DISTRICT V:

Date: Thursday, July 9, 1998

Time: 2:15 p.m.

Location: DES Conference Room  
2510 North Trezell  
Casa Grande, Arizona

Coordinating Program Manager: Dan Van Kuren (520) 723-4151

BISBEE: DISTRICT VI:

Date: Thursday, July 9, 1998

Time: 2:15 p.m.

Location: District Conference Room  
209 Bisbee Road  
Bisbee, Arizona

Coordinating Program Manager: Steve Roybal (520) 432-5703

Persons with a disability who wish to participate in the oral proceeding may request accommodation, such as a sign language interpreter by contacting the coordinating program manager named above. Requests should be made as early as possible to allow time to arrange the accommodation. This document is available in an alternative format by contacting Vista Thompson Brown at (602) 542-6555, P.O. Box 6123, Site Code 837A, Phoenix, AZ 85005; TDD Relay (800) 367-8939. Requests should be made as early as possible to allow time to arrange the accommodation.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific agency or to any specific rule or class of rules.  
Not applicable.
10. Incorporations by reference and their locations in the rules:  
Not applicable.
11. The full text of the rules follows:

**TITLE 6. ECONOMIC SECURITY**

**CHAPTER 5. DEPARTMENT OF ECONOMIC SECURITY - SOCIAL SERVICES**

**ARTICLE 23. SAFEGUARDING OF RECORDS AND INFORMATION**

Section	
R6-5-2301.	Objective
R6-5-2302.	Legal authority
R6-5-2303.	Definitions
R6-5-2304.	System of records to be safeguarded
R6-5-2305.	Types of information to be safeguarded
R6-5-2306.	Subpoena of record by court
R6-5-2307.	Access to records and disclosure of information
R6-5-2308.	Public information and publicity
R6-5-2309.	Violation and penalties

R6-5-2310. Storage of case records or system of records

**ARTICLE 56. CONFIDENTIALITY AND RELEASE OF CPS RECORDS**

R6-5-5601.	Definitions
R6-5-5602.	Scope and Application
R6-5-5603.	Procedures for Requesting Information
R6-5-5604.	Procedures for Processing a Request for Information
R6-5-5605.	Release of Information in Situations Requiring Immediate Action or Service to a Child
R6-5-5606.	Release of Report and Investigation Findings
R6-5-5607.	Release of Summary Information to a Person Who

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	<u>Reported</u>
	Suspected Child Abuse and Neglect
<u>R6-5-5608.</u>	<u>Release of Information to a Research or Evaluation Project</u>
<u>R6-5-5609.</u>	<u>Release of Information to a Legislative Committee</u>
<u>R6-5-5610.</u>	<u>Release of Information to a State Official</u>
<u>R6-5-5611.</u>	<u>Fees</u>

**ARTICLE 23 SAFEGUARDING OF RECORDS AND INFORMATION**

**R6-5-2301. Objective**

The stipulation of policy for safeguarding records and the disclosure of information is mandated in federal and state statutes. Any information in records, registries, listing or data base information system is confidential. This information is extended to many people but each is equally accountable to the obligation to safeguard information. These regulations apply to all staff and employees of the Department of Economic Security, to members of the advisory councils, all agencies who contract or provide social services and county officers, representatives of social agencies, hospitals, and any educational facility to whom use of any information from any record is entrusted. This Article will identify all records and registries that are kept about individuals, state rules and regulations for safeguarding of records, and disclosure of information.

**R6-5-2302. Legal authority**

- A. Title XX, IV A, and IV B. Title 42 U.S.C. § 602 provides as a condition for federal financial participation, the state shall "provide safeguards which restrict the use of disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the program". Federal regulations set forth in 45 CFR § 205.50 must be followed.
- B. A.R.S. § 46-135. Power to promulgate rules concerning confidential nature of records.  
The state department shall establish such reasonable regulations as it deems necessary to protect confidential information. In no event shall the name of any recipient be made available for political or commercial purposes.
- C. Adoption  
A.R.S. § 8-120. Records; inspections; exception  
"A. All files, records, reports and other papers compiled in accord with this article, where filed in or in possession of the court, an agency or any other person or association, shall be withheld from public inspection.  
B. Such files, records, reports and other papers may be open to inspection by persons and agencies having a legitimate interest in the case and their attorneys and by other persons and agencies having a legitimate interest in the protection, welfare or treatment of the child if so ordered by the court."  
D. Child welfare and placement  
1. Foster care  
A.R.S. § 8-519. Records and reports  
"A. Each child welfare agency shall keep records regarding the children in its care as the division prescribes, and shall furnish to the division, upon request, such additional information as the division requires.  
B. All records and information in the possession of the department or any child welfare agency regarding children and their parents or relatives shall be deemed confidential, and shall be disclosed only pursuant to rules by the division or by order of court.  
C. A child welfare agency shall furnish a report of each placement or withdrawal of each child to the division."  
2. Termination of parental rights

A.R.S. § 8-541. Records; inspections; exception

"A. All files, records, reports and other papers compiled in accord with this article, whether filed or in possession of the court, a child placement agency or other agency or association, shall be withheld from public inspection."

3. Protective services

A.R.S. § 8-546.03. Central registry

A. The State Department of Economic Security shall maintain a central registry of reports, investigations and evaluations made under this article. The registry shall contain the information furnished by protective service workers throughout the state.

B. Data shall be kept in the central registry until the child concerned reaches the age of 18 years.

C. Data and information in the central registry shall be confidential and shall be made available only with the approval of the director of economic security to the juvenile court, social agencies, public health and law enforcement agencies, licensed health practitioners, and health and educational institutions licensed or regulated by the state of Arizona.

**R6-5-2303. Definitions**

- A. "Department". The Department of Economic Security (referred to as division in A.R.S. § 8-519 regarding foster care).
- B. "Record". Any item, collection or grouping of information about an individual that is maintained by the Department including, but not limited to the individual's education, financial transactions, medical, social and psychological histories, criminal or employment history, that contains his name, or any number, symbol and other identifying particular used and assigned in the past to the individual such as a finger or voice print or a photograph.
- C. "Statistical record". A record maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual.
- D. "System". A system of records under control of the Department from which information is retrieved by the name of the individual as well as by some identifying number, symbol or other identifying particular assigned to the individual. They will include central registries, payrolls and data base information system.
- E. "Routine use". The disclosure of information without the consent of the subject individual of such information for a purpose which is compatible with the purpose for which it was collected.
- F. "Individual". A living person who resides or has resided in the past within the state of Arizona or who is here temporarily, but who intends to make Arizona his permanent residence. This does not include aliens who are here illegally or are here on temporary work status.
- G. "Subject individual". That individual to whom a record pertains.
- H. "Disclosure". The availability or release of a record to anyone other than the subject individual.
- I. "Maintain". To collect, use or disseminate when used in connection with the term "record". To have control over or responsibility for a system of records when used in connection with the term "system of records".
- J. "Access". Availability of information or the record of an individual.
- K. "Storage". That method designated by the Department to safeguard records that contain information of individuals and the location of where records shall be kept.

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- L. "Retention". The length of time a record will be maintained and information kept intact.
- M. "Disposal". That method designed for destruction of closed records.

**R6-5-2304. System of records to be safeguarded**

The following system of records are kept by the Department:

1. Case records which may include but are not limited to the following information: applications—documents; field notes; reports of investigations; medical and psychiatric reports; correspondence; court reports; court orders; social studies; summaries and evaluations; foster home, day care home and adoptive home studies.
2. Child protective service central registry.
3. Social service data base information system.
4. Licensed foster home central registry.
5. Records of licensed group homes, licensed child care agencies and licensed child placing agencies.
6. Adoptive home certifications.
7. Pre placement studies and listing of children available for adoption.
8. Listing of foster care placement and withdrawal of children.
9. Payrolls on foster care, day care, adoption subsidy, family planning, shelter care, day treatment and special education.

**R6-5-2305. Types of information to be safeguarded**

- A. The names and addresses of applicants and recipients and the type of service provided;
- B. Information related to the social and economic conditions or circumstances of a particular individual;
- C. Agency evaluation of information about a particular individual;
- D. Medical data, including diagnosis and past history of disease or disability concerning a particular individual;
- E. All information, including records, applications, documents, case records, field notes, reports of investigations, medical reports, correspondence and evaluations or studies, concerning any applicant for or recipient of adoption and child placement services;
- F. All data and information filed in the child protective service central registry;
- G. All data and information filed in the licensed foster home central registry;
- H. All data and information filed in the listing of foster care placements and withdrawal of children;
- I. Data and information, such as names and addresses on the following payroll listings: day care, family planning, adoption subsidy, foster care, shelter care, day treatment, special education, institutional care—or any other printouts which list names and addresses;
- J. All data and information of the social services information system;
- K. Medical records of minors in cases of abortion, pregnancy, contraception, venereal disease, alcohol, drug and narcotic abuse or addiction;
- L. Adoption records must be segregated from other Departmental records and may be viewed only by Departmental employees directly connected with the case unless otherwise ordered by the Court. The statutes relating to adoption require adoption records to be withheld from public inspection; the Department must zealously guard against adoption information becoming public. In closed adoption cases, the Department of Economic Security shall release information only by authority of a court order.

**R6-5-2306. Subpoena of record by court**

- A. Information or records subpoenaed or ordered by the courts:
  1. No officer or employee of the Department shall testify or give evidence before any court or quasi-judicial proceeding concerning any applicant recipient, claimant or employee except as provided herein. If an officer or an employee of the Department is subpoenaed or ordered by the court to disclose information concerning any applicant, client or employee, the Legal Services Bureau must be notified promptly. No information shall be released except when authorized by the Legal Services Bureau. The Legal Services Bureau shall call to the attention of the court or quasi-judicial officer, the federal and state provisions against disclosure of information.
  2. If Department records and information are ordered by the court, the Legal Bureau will be notified immediately. The records will be photocopied and then the original case record will be submitted to the court. When the original case record is returned to the office, the photo copy will be destroyed.
  3. Under no circumstances is anyone to accept service of a subpoena unless he is the person named in the document. The acceptance of a subpoena for records will be the office manager.
- B. Acceptance or nonacceptance of a subpoena is to be communicated immediately to the District Manager or Bureau Chief, depending on whether the individual involved is on the district or state level. Pertinent information about the situation and the subpoena, if accepted, will then be forwarded to the Legal Service Bureau as expeditiously as possible through proper channels.
- C. When an individual requests information to be released to a court or to a hospital or health care where the information may be used in any adjudicatory procedure, the release will not be authorized. Records and information can be released only when subpoenaed or ordered by the court in the following circumstances:
  1. Juvenile courts when concerned with dependency, incorrigibility or delinquency;
  2. Superior courts when concerned with cases of mental health;
  3. Hospital and health care facilities involved in any litigation regarding the individual.

**R6-5-2307. Access to records and disclosure of information**

- A. No officer or employee shall release information concerning any individual applicant, recipient or client unless
  1. The use or disclosure of information concerning applicants and recipients will be limited to purposes directly connected with establishing eligibility, determining amount of assistance and providing services for applicants or clients.
  2. Written permission is obtained from the individual or parent or legal guardian thereof when request for information is made by an outside source.
  3. An emergency situation arises and it is in the best interest of the applicant or recipient that information be disclosed. Written consent need not be obtained for the release of information. The information disclosed and to whom disclosure was made shall be recorded in the case record. The applicant or recipient shall be notified promptly of the request or disclosure.
  4. Information is requested by persons or agency representatives who are subject to standards of confidentiality which are comparable as stated herein. Written consent

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- need not be obtained for the release of the information. Information disclosed and to whom disclosure was made shall be recorded in the case record. The applicant or recipient shall be notified promptly of the request or disclosure.
5. Only that information necessary for the determination of eligibility for another program will be disclosed.
- B. Reporting release of information
1. Information disclosed or released by the Department to other agencies or individuals shall be notified that the information they receive from the Department cannot be released to the clients, any other person or agency without written permission from the Department.
  2. Only employees having an authorized and established purpose in a record shall have routine use of or the privilege of inspection to information in the record. A log will be kept on the whereabouts of all records and systems of records and to whom the record is released.
  3. The information in the child protective services registry can only be released to Department staff directly connected with protective services. All other requests can only be honored by approval of the Department Director.
- C. Persons authorized to have access to records, listings, or files:
1. Director of Department of Economic Security
  2. Deputy Director of Department of Economic Security
  3. Assistant Director of Field Services
  4. Assistant Director of Program Services
  5. Assistant Attorney Generals assigned to the Legal Services Bureau
  6. Chief, Information and Legislative Services Bureau
  7. Chief information officer
  8. District managers
  9. District social service consultants
  10. Area managers
  11. Chief, Social Services Bureau
  12. Section managers and staff of Social Services Bureau
  13. Managers of the local offices
  14. Social services' supervisors
  15. Local office social service staff
  16. Management analyst, planner and research analyst employed by the Department
  17. Special investigators
  18. Internal auditors
  19. Non Department employees, conducting research projects with permission of the Department Director
  20. Student, interns, etc. in field placement status
  21. Special project personnel as approved by the Department Director.
- D. Persons authorized to approve disclosure of information:
1. Director of Department of Economic Security
  2. Deputy Director of Department of Economic Security
  3. Attorneys assigned to the Legal Service Bureau
  4. Assistant Director of Field Services
  5. District managers
  6. District social services consultants
  7. Area managers
  8. Managers of local offices
  9. Social services supervisors
  10. Local office social service staff may release case information when authorized to do so by district managers
  11. Assistant director of Program Services
  12. Chief, Social Services Bureau
  13. Section managers of Social Services Bureau.
- E. Release of information to applicant/client. Information contained in the Department's records shall not routinely be made available to applicant/client. However, where applicant/client requests a fair hearing as provided by Department regulations, or some form of court action has been instituted, the applicant/client and/or attorney may examine case records prior to the hearing.  
Exception: Medical, psychiatric and psychological records which could be harmful and have an adverse reaction to the client can only be released to a designated physician. The physician must be asked to evaluate the effect that access to the record would have on the individual client. The physician will interpret to the family and court. When the information is about a minor, age 12 years or older, that minor will have to sign the release in addition to the parents. The total case record may not be photocopied or taken from the office by the client or his attorney. If the attorney wants copies of items other than medical records, a fee of 10¢ a page may be charged.
- F. Release of information upon request of the applicant/client
1. The Department must approve all requests by the applicant/client to release information before it may be disclosed. Authority to approve requests is vested in the same personnel authorized to release information.
  2. The release of information must state to whom (title and address), the purpose, the exact information to be released and the date. This information, if approved for release, must be sent within a 30 day period. There can be no blanket release signed by any individual.
  3. No employee or staff of the Department can release copies or information from reports received from federal agencies unless a release is signed by the affected individual or by the federal agency (examples: Social Security Administration, Bureau of Indian Affairs, Veterans Administration, Department of Labor, or Department of Agriculture).
  4. Medical records of minors regarding abortion, pregnancy, contraception, venereal disease, alcohol, drug and narcotic abuse or addiction between the ages 12 to 18 can only be released with permission of the minor or when ordered by the court. Then it can only be released to a physician.
- G. Release of information upon request of the parent(s) of a minor. The Department must approve all requests by the parent(s) to release information before it may be disclosed. When the minor is a ward of the court, the court may approve disclosure. Authority to approve requests is vested in the same personnel authorized to release information. Requests must be signed by the parent(s) and filed in the case record (refer to R6-5-2307(E)).
- H. Release of information to relatives or interested parties. The Department may not release or acknowledge that any individual is known to the Department.
- I. Release of information to the parent(s). Information contained in the Department's records shall be made available to the parent(s) and his/her attorney when there is a fair hearing and to an attorney in a court action involving the minor. The minor of age 12 and over must sign and authorize the release of information. Medical records will not be made available.
- J. Release of names and addresses to a legislative body. Names and addresses of clients can never be available for political or commercial purposes. Names and addresses can be made available to a legislative body or legislative committee that certifies that the information is needed for the purpose directly connected with:

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1. Establishing eligibility;
2. Determining amount of assistance;
3. Providing services for applicants and clients;
4. Any investigation, prosecution or criminal or civil proceeding conducted in connection with the administration of the social service program.  
The Department Director will approve all releases to a legislative body or legislative committee.

K. Release of name of clients to employers submitting a certification of receipt of aid to dependent children to an employer for purposes of claiming tax credit in public law 94-12, the Tax Reduction Act of 1974 is considered to be for a purpose directly connected with the administration of the social services program.

**R6-5-2308. Public information and publicity**

- A. Public information office. Information of a general nature and statistical data not associated with any individual claimant, applicant, employer or employee shall be distributed by and through the Department's Public Information Office. The current Annual Report is maintained by and available for public distribution from the Public Information Office. The central office, local offices and contributing field offices shall maintain a small supply of these publications for distribution to the public upon request. Routinely all requests for statistical data not released should be referred to the Public Information Office.
- B. Day care and foster home publicity. Publicity programs regarding day care and foster parents will be approved by the Department. The release of day care and foster parents' names can be made to the news media if the publicity meets the established procedure and the day care foster parents sign a release of information form.
- C. Publicity for purposes of adoption. Pictures and facts about a child, except information that can easily identify the child and child's name and that of his natural parent(s) may only be published for purposes of adoption, subject to Department procedure for specific publicity programs.
- D. Distribution of materials sent to clients. All materials sent or distributed to clients or medical vendors, including material enclosed in envelopes containing checks will be limited to those which are directly related to the administration of the program and will not have political implication. Under no circumstances shall the following material be sent: Holiday greetings, general public announcements, voting information, and alien registration notices, etc. Only material pertaining to official business directly connected with the administration of social services shall be sent or distributed to clients. All materials sent over signature shall be signed by officers and employees of the Department in their official capacity. Under no circumstances shall personal material be sent to clients.

**R6-5-2309. Violation and penalties**

- A. Any staff or employee who makes any unlawful disclosure of confidential information to any person within the Department or outside sources will receive some form of disciplinary action. The severity of the violation could be grounds for immediate dismissal. When any employee knows of a violation, this must be reported to the immediate supervisor.
- B. Penalties applied by statute
1. Adoptions  
A.R.S. § 8-128. Violation; penalty  
"Any person who violates any provision of this article is guilty of a misdemeanor."
  2. A.R.S. § 8-542(B)

"A person who discloses information in violation of the provisions of this section or § 8-541 is guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars or imprisonment in the county jail, for not to exceed six months, or both."

3. 21 U.S.C. 1175, Confidentiality of alcohol and drug abuse patient records

"Penalty provided by law. Any person who violates any provision of the authorizing legislation or any provision of this part shall be fined not more than \$500 in the case of a first offense, and not more than \$5,000 in the case of each subsequent offense."

**R6-5-2310. Storage of case records or system of records**

A. Security of records

1. All case records and systems of records must be safe guarded. Adequate security is the responsibility of all division, bureaus, and/or office managers within the Department where case records or systems of records are kept or maintained. The person in charge of office shall have prime responsibility for safeguarding all records kept in that office.
2. Records and information which can identify specific applicants, recipients or clients that are sent through office mail shall be sent so that the identity will not be seen.
3. All discarded material which has the names, addresses or other identifiable particulars shall be torn, cut or so destroyed, so that information cannot identify individuals.

B. Destruction of case records or systems of records

1. Child protective services.  
A.R.S. § 8-546.03(B)  
"Data shall be kept in the central registry until the child concerned reaches the age of 18 years."
  2. Foster home and day care home records. All records of foster homes and day care homes are to be retained for five years following the expiration date of the last certificate issued by the Department.
  3. Out of town inquiries. These case records shall be destroyed two years after date of answer or closing; whichever is the latest.
  4. Adoption.  
A.R.S. § 8-120(D)  
"All files, records, reports and other papers not filed in or in the possession of the court shall be destroyed after a 20 year period."
  5. Licensed child placing agencies and child care institutions. Records will be destroyed five years after the expiration of the last license issued by the Department.
  6. All other case records will be destroyed five years after the date of closing, if client is living and three years after date of closing if client is dead. Retention must be extended beyond these periods whenever:
    - a. The federal fiscal audit and administration review has not been completed.
    - b. Specific records are involved in claims or expenditures questioned in any audit. These must be further maintained until necessary adjustments have been reviewed and cleared.
    - c. Records of clients where the Department is involved in any type of litigation with the client.
- C. The process of destruction of case records must be so that it is impossible for the record material to be identifiable. The person in charge of the records to be destroyed will notify by

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memorandum, all appropriate divisions of the scheduled date for destruction of the records.

**ARTICLE 56. CONFIDENTIALITY AND RELEASE OF  
CPS RECORDS**

**R6-5-5601. Definitions**

The definitions contained in A.R.S. § 8-546, 8-546.11, R6-5-5501, and the following definitions apply in this Article:

1. "ACYF" means the Administration for Children, Youth and Families, an organizational unit within the Division of Children, Youth and Families, Department of Economic Security.
2. "Caregiver" means a generic term used to describe a child's parent, guardian, or custodian.
3. "Completed request" means a Request for Confidential Information form with all information completed as prescribed in R6-5-5603.
4. "CPS" means Child Protective Services, which is a Department administration that operates a program to investigate allegations of child maltreatment and provide protective services.
5. "CPS Administrator" means the DES Administrator responsible for operation of CPS, or that person's designee, which may include the ACYF Field Operations Manager, the CPS District Program Manager ("DPM"), the CPS Assistant District Program Manager (APM), or the CPS Local Office Manager.
6. "Department" means the Arizona Department of Economic Security, which is sometimes referred to as "DES" or "ADES".
7. "Estimated processing fee" means an amount a requester must pay to the Department before the Department copies and redacts requested records and files.
8. "Information" means data contained in a hard copy case file or electronic case record.
9. "Maltreatment" means alleged abuse, neglect, abandonment or exploitation of a child.
10. "Person about whom a report is made" means an alleged abusive caregiver or other person, or a child victim over the age of 12.
11. "Personally identifiable information" means information which specifically identifies a protected individual and includes:
  - a. Name;
  - b. Address;
  - c. Telephone or fax number;
  - d. Photograph;
  - e. Fingerprints;
  - f. Physical description;
  - g. Place, address, and telephone number of employment;
  - h. Social security number;
  - i. Tribal affiliation, and identification number;
  - j. Driver's license number;
  - k. Auto license number;
  - l. Any other identifier which is specific to an individual; and
  - m. Any other information which would permit another person to readily identify the subject of the information.
12. "Processing fee" means the final amount a requester must pay to the Department for copying and redacting requested records and files, before the Department will release the copied records and files.

13. "Protected individual" means a person who is the subject of a CPS investigation and includes:
  - a. An alleged victim,
  - b. An alleged victim's sibling,
  - c. A parent,
  - d. A foster parent,
  - e. A child living with the alleged victim,
  - f. The person who made the report of child maltreatment, and
  - g. Any person whose health or safety would be endangered by disclosure of CPS information.
14. "Redacting" means striking or blacking out personally identifiable information on protected individuals contained in CPS records or files so that no one can read the information.
15. "Requester" means an individual or organization that has made a public records request for information from a CPS record or file.
16. "Research requester" means an individual or organization that seeks CPS information for a research or evaluation project.
17. "Workday" means Monday through Friday excluding Arizona State holidays.

**R6-5-5602. Scope and Application**

- A. This Article governs public records requests for CPS information and all requests made under A.R.S. § 8-546.11.
- B. The Department shall handle any request or subpoena for information made by a party to a pending administrative proceeding, or civil, criminal, juvenile, probate, or domestic relations court proceeding, in accordance with the disclosure and discovery rules applicable to the particular proceeding and court.

**R6-5-5603. Procedures for Requesting Information**

- A. A person who wishes to obtain information pursuant to A.R.S. § 8-546.11 shall comply with the requirements of this Section, and any applicable limitations and conditions in R6-5-5605, R6-5-5607, R6-5-5608, and R6-5-5609.
- B. The requester shall send the Department a completed information request form, as provided in subsections (C) and (D). The form shall include the following information:
  1. Requester's name, address, and telephone number;
  2. Name and title of the person signing the form, if different from the requester;
  3. Name of the child victim who is the subject of the CPS report, with as much of the following information as the requester can provide on the child victim:
    - a. Other possible spellings, names, or aliases for the child;
    - b. Date of birth;
    - c. The name of the child's caregivers; and
    - d. The date of the CPS report or timeframe for the report;
  4. Any other data that the requester believes will be likely to assist the Department in identifying the information requested, including the following:
    - a. The name of the child's siblings;
    - b. The child's social security number;
    - c. The name of the CPS Specialist handling the case; and
    - d. The location of the alleged maltreatment;
  5. A description of the specific information needed;
  6. A statement of the purpose for which the information is needed;

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7. The notarized signature of the person requesting the information; and
  8. The address to which the requested information is to be mailed, or an indication of another method for handling the response.
- C. The requester shall send the request to a local Department office or to the address indicated on the form.
- D. A person seeking information pursuant to A.R.S. § 8-546.11(C)(10), (D), (F), shall also send the Department a processing fee in an amount determined under R6-5-5611.

**R6-5-5604. Procedures for Processing a Request for Information**

- A. Upon receipt of a request for information, the Department shall determine if the request is complete. If the request is incomplete, the Department shall either:
1. Return the form to the requester with a statement explaining the additional information the Department needs to process the request; or
  2. Contact the requester to obtain the missing information.
- B. Upon receipt of a completed request, the Department shall stamp the receipt date on the form. The receipt date is the day that the receiving office designated on the form actually receives the completed request.
- C. Within 30 days of the receipt date, the Department shall provide the requester with 1 of the following written responses:
1. A statement that the requested information does not exist;
  2. The requested information;
  3. A statement that the Department cannot provide the requested information within 30 days, the reason for the delay, and the anticipated timeframe for response; or
  4. A statement that the Department cannot legally release the requested information, with the statutory citation and the reason for denial.

**R6-5-5605. Release of Information in Situations Requiring Immediate Action or Service to a Child.**

- A. When a person or entity entitled to receive records under A.R.S. § 8-546.11(C) requires information from a record or file in order to take immediate action on behalf of, or render service to, a child who is or may be the victim of maltreatment, the Department shall release the information without obtaining the form or fee required by R-5-5604.
- B. Before releasing information pursuant to this Section, the Department shall verify that the person requesting information is a person entitled to receive information under A.R.S. 8-546.11(C).
- C. The Department shall:
1. Obtain the name and telephone number of the requester;
  2. Call the requester to verify:
    - a. That the person requesting information is a person entitled to receive information under A.R.S. § 8-546.11(C); and
    - b. That the requester needs the information for a purpose described in subsection (A).

**R6-5-5606. Release of Report and Investigation Findings**

- A. Pursuant to A.R.S. § 8-546.11(E), a person about whom a report is made who is not a party in a dependency or termination of parental rights proceeding may obtain a copy of a CPS report and investigation findings, including the following persons:
1. An adult about whom a CPS report has been made;
  2. A child age 12 or older; and
  3. A child's parent or legal guardian.

- B. The person requesting a copy of the CPS report and investigation findings shall submit a completed information request form which shall include the information listed in R-5-5604©. Within 30 days of receipt of a completed information request form, the Department shall provide the requester with either:

1. A copy of the report and investigation findings, after redacting information as required by A.R.S. § 8-546.11(E) and (G); or
2. A written response indicating that the Department does not have the requested report or investigation findings.

**R6-5-5607. Release of Summary Information to a Person Who Reported Suspected Child Abuse and Neglect.**

- A. A person who reports alleged child maltreatment to CPS may contact CPS to determine the outcome of the report as permitted under A.R.S. § 8-546.11(H).
- B. After receiving a request and before releasing information, the Department shall verify that the person requesting information was the person who made the report as follows:
1. Obtain the name and telephone number of the requester;
  2. Compare the requester's name with the name of the person listed as the reporter on the CPS report; and
  3. Call the requester and advise whether the Department can legally honor the request.
- C. After verifying the identity of the requester, CPS shall give the person a summary of the outcome with the following information:
1. Disposition of the report;
  2. Investigation findings, if available; and
  3. A general description of the services offered or provided to the child and family.

**R-6-5608. Release of Information to a Research or Evaluation Project**

- A. A person seeking information for a research or evaluation project shall send a written request and provide information required for a complete request, under R6-5603. A complete research request shall also include the following information:
1. If the person works for a research organization:
    - a. The name of the organization, and
    - b. The organization's mission.
  2. A description of the research or evaluation project, and
  3. The funding source for the research or evaluation project.
- B. Upon receipt of a completed request from a research requester, the Department shall advise whether the Department can legally honor the request, and the estimated amount of the processing fee required under R6-5-5611.
- C. Upon receipt of the processing fee, the Department shall provide the requester with the expected time-frame for releasing the requested information.

**R6-5-5609. Release of Information to a Legislative Committee**

- A. A legislative committee entitled to receive information under A.R.S. § 8-546.11(C)(12), shall send a written request for information to the ACYF Program Administrator, or the Administrator's designee.
- B. The written request shall include:
1. The name of the committee,
  2. The purpose for which the information is sought, and
  3. The date by which the committee needs the information.
- C. The Program Administrator or the Administrator's designee, shall evaluate all requests for information and determine whether to release information to a legislative committee.

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D. When releasing information to a legislative committee, the Department shall send the committee written notice that the information is confidential and shall not be further disclosed.

**R6-5-5610. Release of Information to a State Official**

A. An Arizona state official entitled to receive information pursuant to A.R.S. § 8-546.11(C)(14) shall send a written request to the Department Director.

B. The Director, or the director's designee, shall verify:

1. That the requesting state official is:
  - a. Responsible for administration of CPS, or
  - b. Responsible for oversight of CPS enabling or appropriating legislation, and
2. That the requesting state official is seeking the information to carry out official functions.

**R6-5-5611. Fees**

A. If a record production will result in a processing fee, the Department shall notify the requester of the estimated processing fee before copying any records. Within 10 days of receiving the estimate, the requester shall send the fee or advise the Department to terminate the request.

B. When providing information to the persons entitled to receive information pursuant to A.R.S. § 8-546.11(C)(10), (D), or (F), the Department shall charge a fee of \$1.50 per page.

C. The \$1.50 per page fee covers the costs of:

1. Staff time to research and collect the requested information;
2. Staff time to review and redact information pursuant to A.R.S. § 8-546.11(D), (F), and (G);
3. Administrative staff time to review and prepare the information to be submitted; and
4. Costs of copying supplies such as paper, toner, and use of equipment.

D. The \$1.50 per page fee applies to both persons who obtain copies of files and persons who request to review files pursuant to A.R.S. §§ 8-546.11(C)(10), (D), or (F).

E. The Department shall charge 25¢ per page for copies of documents that were previously redacted and copied for another requester or user.

F. After the Department has prepared information for release, the Department shall prepare an itemized billing statement showing the document preparation costs and fees the requester must pay before the Department can release the records and files.

G. The Department shall refund any prepaid estimated processing fees which exceed the final processing fee.

**NOTICE OF PROPOSED RULEMAKING**

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

PREAMBLE

**1. Sections Affected**

R7-2-405  
R7-2-618

**Rulemaking Action**

Amend  
New

**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. § 15-203(A)

Implementing statute: A.R.S. §§ 15-766(F) and 41-1072-1077

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

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

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

The State Board of Education is proposing to amend R7-2-405 to establish minimum standards for hearing officers and to prescribe training requirements for hearing officers. This language is proposed pursuant to A.R.S. §15-766(F).

The State Board of Education is proposing a new rule, R7-2-618, pursuant to A.R.S. §41-1072-1077, which requires an agency that issues licenses to establish time-frames for issuance of such licenses. This rule will establish maximum time-frames for the issuance of teaching and administrative certificates.

**5. 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.

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6. **The preliminary summary of the economic, small business and consumer impact statement:**  
It is not anticipated that the rule amendment or new rule described herein will have any economic impact on the consumer. The amendment to R7-2-405 will assist in ensuring qualified, trained hearing officers are provided for due process hearings related to Special Education matters. In addition, the new language will ensure an equitable selection process for hearing officers. The new rule, R7-2-618, will assist in ensuring that applications for certification are processed in a timely manner by the agency. The new language will provide information to applicants as to the process of evaluating applications and will provide information as to the maximum allowable time of that processing, thereby allowing an applicant to project certification issue dates more accurately.
7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business and consumer impact statement:**  
Name: Corinne L. Velasquez, Executive Director  
Address: State Board of Education  
1535 West Jefferson, Room 418  
Phoenix, Arizona 85007  
Telephone: (602) 542-5057  
Fax: (602) 542-3046
8. **The time, place and nature of the proceedings for the adoption, amendment, or repeal of the rules, if no proceeding is scheduled, when, where, and how persons may request an oral proceeding on the proposed rules:**  
An oral proceeding on the proposed rulemaking is scheduled as follows:  
Date: August 24, 1998  
Time: 1:30 p.m.  
Location: State Board of Education  
1535 West Jefferson, Room 417  
Phoenix, Arizona 85007  
  
Written comments may be submitted on or before 5 p.m. on August 21, 1998, to the contact person listed above.
9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**  
Not applicable.
10. **Incorporations by reference and their location in the rules:**  
None.
11. **The full text of the rules follows:**

**TITLE 7. EDUCATION**

**CHAPTER 2. STATE BOARD OF EDUCATION**

**ARTICLE 4. SPECIAL EDUCATION**

Section  
R7-2-405

**ARTICLE 6. CERTIFICATION**

R7-2-608

**ARTICLE 4. SPECIAL EDUCATION**

**R7-2-405. Due Process Standards Relating to Special Education**

- A. Definitions.** The following definitions are applicable to this rule:
1. "Impartial hearing officer" or "hearing officer" means a person or tribunal assigned to preside at a due process hearing whose duty it is to assure that proper procedures are followed and that rights of the parties are protected.
  2. "Parent" has the meaning found in Title 15, Chapter 7, Article 4, and includes a surrogate parent. Appointment of a surrogate parent shall be made only by a court of competent jurisdiction.

3. "Public agency" means the school district, charter school or state or county agency responsible for providing educational service to a child.
  4. "State Education Agency" ("SEA") means the Department of Education, Exceptional Student Services Section.
- B.** The following due process procedures specified in this rule apply to all public agencies dealing with the identification, evaluation, and special education placement of and the provision of a free appropriate public education ("FAPE") for of handicapped children with disabilities.
- C.** ~~The SEA Each LEA and SSI shall establish policies and procedures concerning:~~
- a1. ~~Impartial due process hearings; and~~
  - b2. ~~Confidentiality and access to student records, such as, removal of evidence when child has been misclassified or misplaced.~~
  2. ~~The term "impartial hearing officer" means a person or tribunal or persons assigned to preside at a due process hearing and whose duty it is to assure that proper procedures are followed and that rights of the parties are protected. In all cases any action taken must comply with~~

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current A.R.S. §§ 15-766 and 15-767 and federal court decisions such as the Guadalupe Decision:

- D.** An impartial hearing officer shall be:
- a1. Unbiased – not prejudiced for or against any party in the hearing;
  - b2. Disinterested – not having any personal or professional interest which would conflict with his/her objectivity in the hearing;
  - e3. Independent – may not be an officer, employee, or agent of a the public agency or the SEA, LEA, SSI, or of any other public agency involved in the education or care of the child. A person who otherwise qualifies to conduct a hearing is not an employee of the public agency or the SEA solely because he or she is paid by the public agency to serve as a hearing officer;
  - d4. Trained and evaluated by the agency SEA as to the state and federal laws pertaining to the identification, evaluation, placement of, and the provision of FAPE for education of handicapped children with disabilities.
- 3E.** Hearing officer qualifications and training. Each LEA and SSI shall maintain a list of persons who serve as hearing officers. The list must include a statement of qualifications of these persons:
1. All hearing officers shall participate in all required training and evaluation conducted by the SEA as to the state and federal laws pertaining to the identification, evaluation, placement of and the provision of FAPE for children with disabilities.
  2. All hearing officers shall demonstrate competency by achieving a minimum score of 80% on a criterion-referenced test selected by the SEA.
  3. A hearing officer shall be an attorney licensed to practice law in the United States, or an attorney on inactive status whose withdrawal from active practice is not premised upon adverse disciplinary action from any state or federal bar association. A hearing officer shall not have represented a parent in a special education matter during the preceding calendar year and shall not have represented a school district in any matter during the preceding calendar year.
  4. An individual shall be removed from the list of eligible hearing officers if, at any time, the individual no longer meets the requirements specified in paragraph D(1) through D(4) and paragraph E(1) through E(3).
- F.** Selection of hearing officers.
1. The SEA shall prepare and maintain a list of individuals who meet the qualifications specified in paragraph E. to serve as hearing officers.
  2. Three hearing officers shall be selected randomly by the SEA and shall be screened to determine availability and possible bias. Once the SEA has selected 3 hearing officers who are available and show no evidence of bias, the 3 names shall be provided to the public agency and the parent. The public agency and the parent will each have the opportunity to strike 1 name from the list provided. The remaining individual shall be named as the hearing officer unless either party objects for cause and provides such reason in writing to the SEA. Objections for cause shall require specific evidence that the individual does not meet the criteria specified in paragraph E. The SEA shall review the evidence submitted and determine the qualifications of the individual. If the SEA determines that the individual is not qualified to serve as the hearing officer, the SEA shall repeat the process and select 3 additional hearing officers to be provided to the

parties. The selection process as outlined in this paragraph.

4. ~~Written notice must be given to the parents of a handicapped child a reasonable time before the agency proposes or refuses to initiate or change the identification, evaluation, educational placement of the child, or the provision of a free appropriate public education to the child. The notice shall contain:~~
    - a: ~~A full explanation of all procedural safeguards;~~
    - b: ~~A description of the action proposed or refused by the agency, an explanation of options the agency considered and the reasons why those options were rejected;~~
    - c: ~~A description of each evaluation procedure, test, record or report the agency used as a basis for the proposal or refusal;~~
    - d: ~~A description of any other factors which are relevant to the agency's proposal or refusal.~~
  5. ~~The term "days" in this rule means calendar days.~~
  6. ~~The "placement plan" means that program by which decisions concerning the educational placement of the child in a special education environment are formulated.~~
  7. ~~The term "consent" means that:~~
    - a: ~~The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;~~
    - b: ~~The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records, if any, which will be released, and to whom; and~~
    - c: ~~The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.~~
  8. ~~The term "parent" means parent, guardian, or surrogate parent. Appointments of surrogate parents shall be made only by the court system.~~
  9. ~~A parent or LEA or SSI may initiate a due process hearing on any of the matters listed below:~~
    - a: ~~Evaluation and related procedures;~~
    - b: ~~Eligibility;~~
    - c: ~~Written notice as defined in subsection(D) above;~~
    - d: ~~Proposal to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;~~
    - e: ~~Refusal to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;~~
    - f: ~~Written consent of the parent or guardian.~~
- G10.** A parent shall submit a written request for a due process hearing must be submitted in writing to the public agency LEA or SSI. The SEA shall provide a model form that a parent may use in requesting a due process hearing. Upon receipt of this a written request, there shall be no change in the educational placement of the child until the hearing officer renders his a decision, unless the public agency and parent agree to this. If a parent requests a due process hearing, the public agency shall advise the parents of any free or low-cost legal services available. All correspondence to the parent shall be provided in English and the primary language of the home. If the written request involves an application for initial admission, the child, with the consent of the parent,

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shall be placed in a program for which the child is eligible until the completion of all proceedings. Hearing procedures are governed by federal regulations, 45 C.F.R. § 121a.500 et seq.

11. The LEA or SSI may initiate a request for a due process hearing if the parent refuses to accept evaluation results or recommendations for special education placement.
  12. If a parent requests a due process hearing, the LEA or SSI shall advise the parents of any free or low-cost legal services available.
  13. Prior to the actual hearing, notification to the parent will be in compliance with A.R.S. § 41-1009(B).
  14. All written correspondence shall be provided in English and the primary language of the home.
- H15. An** The impartial due process hearing shall be conducted in accordance with the following procedures:
1. The hearing officer shall hold a preconference meeting to ensure that all matters are clearly defined, to establish the proceedings that will be used for the hearing, and to set the time and dates for the hearing.
  - a2. The hearing officer shall preside at the hearing and shall conduct the proceedings in a fair and impartial manner to the end that all parties involved have an opportunity to:
    - ia. Present their evidence and confront, cross-examine and compel the attendance of witnesses;
    - ii. ~~Object to Prohibit~~ the introduction of any evidence at the hearing that has not been disclosed to all parties that party at least 5 business days before the hearing;
    - iii. Produce outside expert witnesses;
    - d. Be represented by legal counsel or and by individuals with special knowledge or training with respect to the problems of handicapped children with disabilities.
  - b3. The parents involved in the hearings shall must be given the right to:
    - ia. Have the child who is the subject of the hearing present;
    - ii. ~~Have Open~~ the hearing ~~conducted in to the public;~~
    - c. ~~Have In~~ cases where there are language differences, an interpreter shall be provided by the public agency.
  4. The hearing officer shall review all relevant facts concerning the identification, evaluation, the educational placement or the provisions of FAPE. This shall include any ~~Independent Education e~~valuation by an appropriate professional secured by the parent.
    - ia. The hearing officer shall determine whether the public agency LEA or SSI has met all requirements of federal and state law and regulations in developing the education placement plan.
    - ii. The hearing officer shall render a decision, which shall be binding on to all parties, unless appealed pursuant to this rule, except that in all cases any action taken must comply with current Arizona Revised Statutes and federal court decisions such as the Guadalupe Decision as to whether:
      - (1)i. The evaluation procedures utilized in determining the child's needs have been appropriate in nature and degree;
      - (2)ii. The diagnostic profile of the child on which the placement was based is substantially verified;
      - (3)iii. The child's rights have been fully observed;

- iv. The placement has been determined to be appropriate to the needs of the child;
  - (4)v. The placement of the child in the special education program is with the written consent of the parent or guardian.
  - iii. If the parent's primary language is other than English, the hearing officer shall appoint an interpreter.
165. The hearing officer's findings of fact and decision shall be in writing and shall be provided sent to the parents, the public education agency, the SEA and their respective representatives, and to the State Director of Special Education. The parent may choose to receive an electronic verbatim record of the hearing and electronic findings of fact and decision relative to the hearing in addition to the written findings of fact and decision. The hearing officer's findings of fact and Such decision shall be delivered by certified mail or by hand within 45 calendar days after the receipt of the request for the hearing. The State Director of Special Education, after deleting any personally identifiable information, shall transmit the hearing officer's written decision, including the findings of fact and conclusions of law, to the Special Education Advisory Committee of the State Board of Education and make such written decision, findings, and conclusions available to the public. The notification of the hearing officer's decision shall include a statement that either party may appeal the decision to the Office of Administrative Hearings Division of Special Education and that such appeal must be filed within 35 calendar days after receipt of the decision. An extension of time for filing the appeal may be granted by the Division of Special Education for cause.
6. The State Director of Special Education Exceptional Student Services, after deleting any personally identifiable information, shall make such written findings of fact and decision available to the public.
- I. Expedited hearing.**
1. An expedited hearing may be requested:
    - a. By the parent if the parent disagrees with the determination that the child's behavior was not a manifestation of the child's disability; or
    - b. By the parent if the parent disagrees with any decision regarding placement; or
    - c. By the public agency if the public agency maintains that it is dangerous for the child to be in the current placement during the pendency of the due process proceedings.
  2. Hearing officers for an expedited hearing shall be assigned by the SEA after review to determine that the hearing officer meets the standards specified in paragraph D(1) through D(4).
  3. The expedited hearing shall be conducted and the findings of fact and decision shall be issued within 10 calendar days.
  17. A written or electronic verbatim record of the impartial due process hearing shall be provided and on file in the LEA or SSI and made available for review to the parent, guardian, or surrogate upon the request of any of the involved parties.
  18. All written correspondence, including the copy of the hearing officer's decision mentioned above, shall be provided in English and the primary language of the home.

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19. ~~The decision of the hearing officer shall be binding on the parent, guardian or surrogate, and on the LEA or SSI, its employees and agents, subject only to administrative or judicial review.~~
20. ~~During the pendency of any administrative or judicial proceedings regarding a complaint, unless the agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement. If the complaint involves an application for initial admission to public school, the child, with the consent of his parents, must be placed in the public school program until the completion of all the proceedings.~~
21. Administrative appeal.
1. A The final administrative hearing appeal may be obtained through the Office of Administrative Hearings. Requests for appeal shall be submitted in writing through the SEA. Division of Special Education, Arizona Department of Education, which shall conduct an impartial review of the hearing.
- a. ~~Such an appeal shall be accepted only if it is initiated within 35 days after the decision of the hearing officer has been received by the parties. An extension of time for filing the appeal may be granted by the Division of Special Education for cause. Appeals must be forwarded to the Division of Special Education, Arizona Department of Education, 1535 West Jefferson, Phoenix, Arizona 85007.~~
- b. ~~The official conducting the review shall:~~
- ~~i. Examine the entire hearing record;~~
  - ~~ii. Ensure that the procedures at the hearing were consistent with the requirements of due process;~~
  - ~~iii. Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the procedures provided for in subsection (O) above shall be applied;~~
  - ~~iv. Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;~~
  - ~~v. Make an independent decision on completion of the review;~~
  - ~~vi. Give a copy of written findings and the decision to the parties.~~
- e. ~~The process as defined in subsections (Q) through (S) above shall be implemented in response to the administrative hearing appeal to the Division of Special Education.~~
- d2. The findings of fact and final decision of the administrative law judge hearing appeals officer shall be delivered by certified mail or by hand mailed to all parties to the hearing within 30 calendar days of the receipt of the a request for appeal a review. The State Director of Special Education Exceptional Student Services, after deleting any personally identifiable information, shall transmit the hearing officer's written decision, including the findings of fact and conclusions of law to the Special Education Advisory Committee of the State Board of Education and make such written findings of fact and decision, findings, and conclusions available to the public.
3. The decision of the administrative law judge shall be final at the administrative level. The notification of the decision shall contain notice to the parties that they have a right to judicial review.
22. ~~Any party aggrieved by the findings and decisions made in a hearing or in an appeal review has the right to judicial review. The decision of the administrative hearing appeals officer shall be final at the administrative level.~~
23. ~~An impartial due process hearing officer or an administrative hearing appeals officer may grant specific time extensions at the request of either party.~~

ARTICLE 6. CERTIFICATION

R7-2-618. Certification Time-frames

A. Administrative completeness review time-frame. The Department of Education, Certification Division ("Department") shall issue a written notice of administrative completeness or deficiencies to an applicant for certification within 120 days of receipt of the application.

1. If the Department determines that an application for certification is not administratively complete, the Department shall include a comprehensive list of the specific deficiencies in the written notice provided.
2. If the Department issues a written notice of deficiencies within the administrative completeness time-frame, the administrative completeness review time-frame and the overall time-frame are suspended from the date the notice is issued until the date that the Department receives the missing information from the applicant.
3. If the Department does not issue a notice of administrative completeness or deficiencies within 120 days of receipt of the application, the application is deemed administratively complete.
4. If the Department issues a timely written notice of deficiencies, the application shall not be complete until all requested information has been received by the Department.

B. Substantive review time-frame. Within 14 months after the completion of the administrative completeness review time-frame, the Department shall make a determination as to whether an application or applicant for certification meets all substantive criteria required by statute or rule.

1. During the substantive review time-frame, the Department may make 1 comprehensive written request for additional information. If the Department issues a comprehensive written request for additional information, the substantive review time-frame and the overall time-frame are suspended from the date the request is issued until the date that the Department receives the additional information from the applicant.
2. The Department and the applicant may mutually agree in writing to allow the Department to submit supplemental requests for additional information. If the Department issues a supplemental request by mutual written agreement for additional information, the substantive review time-frame and the overall time-frame are suspended from the date the request is issued until the date that the Department receives the additional information from the applicant.
3. Review by the Executive Committee of the Professional Practices Advisory Committee ("PPAC") or a hearing before the PPAC, pursuant to A.A.C. R7-2-1301 et seq., shall be completed within the substantive review time-frame.

C. Overall time-frame. The Department shall issue a written notice that the State Board of Education ("Board") has granted or denied a certificate no later than 22 months after receipt of an application for certification, unless the Department and the applicant have mutually agreed in writing to

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- extend the substantive review time-frame and the overall time-frame.
1. Written notice denying an application for certification shall include justification for the denial with references to the statutes or rules on which the denial is based and an explanation of the applicant's right to appeal the denial.
  2. The explanation of the applicant's right to appeal the denial shall include the number of days in which the applicant must file a protest challenging the denial and the name and telephone number of the Executive Director of the Board as the contact person who can answer questions regarding the appeals process.
- D.** By mutual written agreement, the Department and an applicant for certification may extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 5 months.
- E.** If the Department does not issue to an applicant written notice granting or denying a certificate within the overall time-frame or any extension mutually agreed upon in writing pursuant to this rule, the Department shall refund to the applicant all fees charged, excuse payment of any such fees that have not yet been paid and pay all penalties in accordance with A.R.S. §41-1077.
- F.** All written notices issued pursuant to this rule shall be to the last known address of the applicant and sent by regular, first-class mail. Such written notices shall be deemed "issued" on the day mailed from the Department.
- G.** By August 1 of each year, the Department shall report to the Executive Director of the Board the Department's compliance with the overall time-frames for the prior fiscal year. The Department shall include the number of certificates issued or denied within the time-frames specified in this rule and the dollar amount of all fees returned to applicants. The report shall also include the amount of all penalties paid to the state general fund due to the Department's failure to comply with the time-frames specified herein.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION**  
**CHAPTER 4. CORPORATION COMMISSION--SECURITIES**

**PREAMBLE**

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| <p>1. <u><b>Sections Affected</b></u><br/>R14-4-105</p> <p>2. <u><b>The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):</b></u><br/>Constitutional authority: Arizona Constitution Article XV §§ 4, 6, and 13<br/>Authorizing statute: A.R.S. § 44-1821(A)<br/>Implementing statute: A.R.S. §§ 44-1898(A), 44-1902(A)</p> <p>3. <u><b>The name and address of agency personnel with whom persons may communicate regarding the rulemaking:</b></u><br/>Name: Cheryl T. Farson, Associate General Counsel<br/>Address: Arizona Corporation Commission, Securities Division<br/>1300 West Washington, Third Floor<br/>Phoenix, Arizona 85007-2996<br/>Phone: (602) 542-4242<br/>Fax Number: (602) 594-7470</p> <p>4. <u><b>An explanation of the rule, including the agency's reasons for initiating the rule:</b></u><br/>A.A.C. R14-4-105 (the "Rule") currently requires that, as a condition of registration of a public offering, promotional securities held by promoters of a promotional stage corporation proposing to make a public offering of its securities be subject to an escrow agreement. Pursuant to such escrow agreement, certificates representing promotional securities of promoters may be held in an escrow account by an escrow agent for up to 4 years. The proposed amendment to the Rule replaces the escrow account with a requirement that such promotional securities be subject to a restrictive sales agreement for up to 3 years. The proposed amendment revises the provisions that define promotional stage corporation, promotional securities, and the terms of the restrictions placed upon the promotional securities. The purpose of the amendment is to balance the protection of investors with the opportunities that should be afforded to the investors and to the issuers.</p> <p>Promotional stage companies subject to the proposed amended rule would be those with no public market for their shares and no significant earnings. Significant earnings would be deemed to exist if the company has had earnings per share equal to (1) 5% of the public offering price per share for the prior fiscal year, (2) 4% of the public offering price per share for each of the prior 2 fiscal years, or (3) 3% of the public offering price per share for each of the prior 3 fiscal years.</p> <p>Promotional shares would be defined as those common shares obtained within 1 year of the date of the offering by promoters for consideration valued at less than 85% of the proposed offering price, common shares purchased within 2 years but not less than</p> | <p style="text-align: center;"><u><b>Rulemaking Action</b></u><br/>Amend</p> |
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1 year of the date of the offering by promoters for consideration valued at less than 75% of the proposed offering price, and common shares obtained within 3 years but not less than 2 years of the date of the offering by promoters for consideration valued at less than 65% of the proposed offering price. Promotional shares numbering in excess of 15% of the securities outstanding at the completion of the public offering held by promoters of the company would be subject to the restrictive sales agreement.

The Rule as amended would require that a legend would be placed upon the certificates representing the excess promotional shares and such shares could not be sold, transferred, or hypothecated for a period of 1 year. After 1 year, the shares would be released from the restrictive sales agreement at a rate of 1/8 of the number of restricted promotional shares over each of the next 8 quarters. Additionally, the shares would be released from the restrictive sales agreement if (1) for 60 consecutive trading days commencing at least 90 days after the date of the offering of the shares to the public the company's securities trade in a public market at a price of not less than 150% of the offering price, or (2) for 90 consecutive trading days at least 12 months after the date of the offering of the shares to the public the company's shares have traded in a public market at a price of not less than 110% of the offering price. The shares also could be released if the company had earnings per share equal to at least (1) 5% of the public offering price for that fiscal year, (2) 4% of the public offering price for that fiscal year and the prior fiscal year, or (3) 3% of the public offering price for that fiscal year and the 2 prior fiscal years.

The promotional securities would be released from the restrictive sales agreement if they became listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed on the Nasdaq National Market System. Promotional securities transferred by will or the laws of descent or by court order would be released from the restrictive sales agreement, however, promotional securities gifted to family members would remain subject to the agreement. Promotional securities transferred as a result of a tender offer, merger, or other acquisition by an unaffiliated 3rd party would remain subject to the agreement, unless a majority of shareholders approved the terms and conditions of the transaction and the shareholders received specified amounts and types of cash or securities.

Securities would be released from the restrictive sales agreement automatically and the restrictive legend could be removed upon the filing with the Commission by a promoter of a written representation of compliance with the release requirements or a certified copy of a court order.

5. **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:**

The amendment to the Rule is desirable to modify the current restrictions placed on promotional stock to reflect the current marketplace. The Rule as amended would assist businesses in capital formation in a manner that does not impose unduly burdensome restrictions and expenses and would provide Arizona investors with protected access to promotional stage company stock offerings. The amended Rule benefits issuers by relieving them of the expenses of escrow accounts and the loss of physical retention of their stock certificates and by modifying the restrictions placed upon promotional shares to reflect the financial condition of and the promoters' commitment to the company. The amended Rule adopts the concept, used by most underwriters in most public offerings, of a lockup of the promoters' shares for a specified period rather than escrowing the shares. This should make promoters more willing to register their offerings in Arizona. The amended Rule continues to protect the investing public from potential abuse of promoters seeking to personally profit by developing a public market in which to immediately sell their personal shares, which were acquired for less than the public offering price. Thus, the state's interest in promoting capital formation and investment opportunities should be advanced without any significant loss of authority to the Commission or protection to the investor.

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

Pursuant to A.R.S. § 41-1055(D)(3), the Commission is exempt from providing an economic, small business, and consumer impact statement.

7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Not applicable.

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: July 16, 1998

Time: 10 a.m.

Location: Arizona Corporation Commission  
1200 West Washington Avenue  
Phoenix, Arizona 85007

Nature: Oral proceeding

Close of record: Open meeting of the Arizona Corporation Commission at which the Commission considers the hearing officer's recommended order with respect to the rule.

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

None.

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**10. Incorporations by reference and their location in the rules:**

Subsection (B)(9) incorporates by reference the definitions of business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940, 15 U.S.C. § 80a-2(a)(48) (1997); employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(3) (Supp. 1998); and private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-2(a)(22) (1997).

**11. The full text of the rule follows:**

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS; SECURITIES REGULATION**

**CHAPTER 4. CORPORATION COMMISSION--SECURITIES**

**ARTICLE 1. IN GENERAL RELATING TO THE  
ARIZONA SECURITIES ACT**

Section

R14-4-105. Promotional securities; definitions

**ARTICLE 1. IN GENERAL RELATING TO THE  
ARIZONA SECURITIES ACT**

R14-4-105. Promotional securities; definitions

**A.** Promotional securities, held by promoters of a promotional stage corporation that proposes to make a public offering of its securities pursuant to Article 7 of Chapter 12, Title 44, Arizona Revised Statutes, shall be subject to a restrictive sales agreement in accordance with the provisions of this Section.

**AB.** General provisions As used in this Section, the following terms have the meaning indicated.

1. If shares were issued by a promotional or development stage corporation and it is no longer in such stage, then the escrow provisions of Paragraph B of this Rule shall not apply.

Securities will be treated as promotional securities that are issued to promoters of the corporation for a price less than 85% of the consideration for which such securities are proposed to be sold to the public or issued for services rendered, patents, copyrights or other intangibles, the value of which has not been established to the satisfaction of the Commission by appraisals, by evidence of amounts paid by others for substantially similar services or property, by evidence of a bona fide offer to purchase such services or property, or by other evidence.

2. Promotional securities shall ordinarily be limited in class to common shares, and such securities in an amount representing an ultimate right of participation in excess of 15 percent of the securities to be outstanding at the completion of the proposed public offering shall be subject to the escrow provision of Paragraph B of this Rule.

3. "Affiliate" means a person that directly or indirectly through 1 or more intermediaries, controls or is controlled by, or is under common control with the persons specified in Subsection A, Paragraph 5, below.

1. "Consideration" includes cash, services rendered, and tangible or intangible property.

4. "Earnings per share" shall be means fully diluted earnings computed in accordance with generally accepted accounting principles.

5. "Promoters of the corporation," means any person who meets any 1 of the following conditions:

a. Alone or in conjunction with 1 or more persons, directly or indirectly, founded, organized, or controls the issuer;

b. Directly or indirectly receives, as consideration for service and/or property rendered, 5% or more of any class of the issuer's equity securities or 5% or more of the proceeds from the sale of any class of the issuer's equity securities;

c. Is an officer, or directors of the issuer;

d. or parties owning, directly or indirectly, legally or beneficially owns ten percent (10%) or more of the issuer's outstanding shares of the corporation before or immediately following the public offering;

e. or any affiliate of the aforesaid persons. Directly or indirectly, through 1 or more intermediaries, controls or is controlled by, or is under common control with, a promoter as defined in subsections (B)(3)(a) through (d).

Promoters of the corporation shall does not include any unaffiliated institutional investor who purchased its shares more than one year prior to the date of the public offering or an otherwise unaffiliated institutional investor by virtue of having a representative on the Board of Directors of the company a person who receives either securities or proceeds solely as underwriting compensation and who is not a promoter under subsections (B)(3)(a), (c), (d), or (e), or an unaffiliated institutional investor.

6. "A promotional or development stage corporation" means a corporation which that has no public market for its shares and has no significant earnings.

5. "Promotional securities" means securities issued to a promoter, at any time during the 3-year period prior to the proposed public offering date, that meet the conditions of subsection (C). Promotional securities shall be limited to common stock unless securities other than common stock were issued for the primary purpose of evading this section.

6. "Public market" means a public place of exchange where securities are bought and sold, directly or through intermediaries. Public market excludes "thin markets" which that do not result in reliable prices. If doubt is raised as to the reliability of the market for an applicant issuer's shares, the Commission may consider the market history, the public trading volume, the spread between the bid and asked prices, the number of market makers, the public float, the pricing formula, the length of time included for trading listing on the NasdaqAS-

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- DAQ SmallCap<sup>SM</sup> National Marketing System, and other relevant factors.
7. "Restrictive sales agreement" means an agreement, in form and substance acceptable to the Commission, between a promotional stage corporation and a promoter, for the benefit of the shareholders of the corporation, entered into prior to the proposed public offering of the promotional stage corporation's securities, subjecting the promotional securities to a sales restriction for up to 3 years following the proposed public offering and including the terms contained in subsection (H).
8. "Significant earnings" shall be deemed to exist if the corporation's earnings record over the past two years, or the shorter period of its existence, demonstrates that the earnings test set forth in Subsection B, Paragraph 2, of this Rule is met based upon its shares outstanding immediately before the proposed public offering capitalized at the proposed public offering price. means earnings per share, based upon the issuer's shares outstanding immediately before the proposed public offering, of at least:
- a. 5% of the public offering price per common share for the prior fiscal year, or the period of the issuer's existence if less than 1 fiscal year;
  - b. 4% of the public offering price per common share for each of the prior 2 fiscal years; or
  - c. 3% of the public offering price per common share for each of the prior 3 fiscal years.
- Such test shall not be deemed the exclusive test for the determination of "significant earnings."
9. "An unaffiliated institutional investor" means any unaffiliated bank; investment company registered under the Investment Company Act of 1940, 15 U.S.C. § 80a-1 to 80a-64 (1997); or a business development company as defined in sSection 2(a)(48) of the Investment Company Act of 1940, 15 U.S.C. § 80a-2(a)(48) (1997), incorporated by reference; small business investment company licensed by the U.S. Small Business Administration under sSection 301 of the Small Business Investment Act of 1958, 15 U.S.C. § 681 (Supp. 1998); employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(3) (Supp. 1998) incorporated by reference; insurance company; private business development company as defined in sSection 202(a)(22) of the Investment Advisers Act of 1940, 15 U.S.C. § 80b-2(a)(22) (1997), incorporated by reference; or comparable business entity engaged as a substantial part of its business in the purchase and sale of securities and which that owns less than 20% of the securities to be outstanding at the completion of the proposed public offering. Copies of documents incorporated by reference do not contain any later amendments or editions, are on file in the Office of the Secretary of State, and are available from the Securities Division of the Corporation Commission and from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.
- C. Securities will be treated as promotional securities that are issued to promoters of the corporation for a price less than 85% of the consideration for which such securities are proposed to be sold to the public or issued valued at less than the following percentages of the proposed public offering price, in an amount that represents an ultimate right of participation in excess of 15% of the securities to be outstanding at the completion of the proposed public offering, shall be promotional securities.
1. For all securities issued to a promoter within 1 year prior to and including the date of the offering of securities to the public: 85%.
  2. For all securities issued to a promoter within 2 years but not less than 1 year prior to and including the date of the offering of securities to the public: 75%.
  3. For all securities issued to a promoter within 3 years but not less than 2 years prior to and including the date of the offering of securities to the public: 65%.  
for services rendered, patents, copyrights or other intangibles, the value of which has not been The value of consideration other than cash received by the issuer for shares shall be established to the satisfaction of the Commission's satisfaction by appraisals, by evidence of amounts paid by others for substantially similar services or property, by evidence of a bona fide offer to purchase such services or property, evidence of significant services rendered or contractually required to be rendered to the issuer, which may take into account the relevant experience, special skills, and other qualifications of the person rendering the service, or any other evidence. The value of noncash consideration that cannot be established to the satisfaction of the Commission shall be zero.
- D. A summary of the sales restriction terms shall be included in the offering documents, and a legend evidencing the sales restriction shall appear on each certificate representing the shares subject to the restriction.
- BE. Promotional securities subject to an eserow will be eserowed for a period up to four years. The eserow In the event that any of the following occurs during the term of the restrictive sales agreement, the promotional securities wishall be released in accordance with the following provisions subsection (G):
1. For 60 consecutive trading days commencing at least 90 days after the date of the offering of the securities to the public, the issuer's securities trade in a public market at a price of not less than 150% of the offering price per share.
  12. If ~~for~~ ninety (90) consecutive trading days at any time during the term of the eserow agreement commencing at least ~~twelve~~ (12) months after the date of the offering of the securities to the public, commencement of the term of the eserow, the Company issuer's share securities have traded in a public market at a price of not less than 110% of the initial offering price per share, then the eserow shall terminate, and all of the shares shall be released to the person, persons or entities then entitled thereto.
  - 3.2. If, at the end of ~~for~~ any two consecutive fiscal years within the eserow period the Company ending after the date of the offering of the securities to the public, the issuer has had earnings per share of at least:
    - a. equal to not less than 5% of the initial public offering price per common share for that fiscal year;
    - b. 4% of the public offering price per common share for that fiscal year and for the prior fiscal year, calculated independently, whether or not such prior fiscal year ended after the date of the offering of the securities to the public; or
    - c. 3% of the public offering price per common share for that fiscal year and for each of the 2 prior fiscal years, calculated independently, whether or not such prior fiscal years ended after the date of the offering of the securities to the public.

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- each of such two years, then the escrow shall terminate and all of the shares shall be released and delivered to the person, persons or entities then entitled thereto.
4. The securities subject to the restrictive sales agreement become listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed on the National Market System of the National Association of Securities Dealers Automated Quotations System.
  5. A bona fide tender offer or an offer to merge or otherwise acquire the issuer's equity securities by an unaffiliated purchaser, pursuant to a vote by the majority of the shareholders and in accordance with the following:
    - a. If the transaction occurs within 24 months of the effective date of the offering registered with the Commission, all public shareholders of the issuer will receive cash in the amount of at least 2 times the public offering price per share of equity securities at the effective date of the tender offer, merger, or other acquisition, or securities--listed or to be listed, or qualified in all respects for listing, on the New York Stock Exchange, the American Stock Exchange, or the National Market System of the National Association of Securities Dealers Automated Quotations System--in value equal to at least 2 times the public offering price per share of equity securities at the effective date of the tender offer, merger, or other acquisition.
    - b. If the transaction occurs more than 24 months after the effective date of the offering registered with the Commission, all public shareholders of the issuer will receive cash in the amount of at least 1 1/2 times the public offering price per share of equity securities, or securities in value equal to at least 1 1/2 times the public offering price per share of equity securities.
  6. The securities are transferred by will or pursuant to the laws of descent and distribution or by court order. In all such cases, only the securities so transferred shall be released from the terms of the restrictive sales agreement.
- 3F. If there has not been a release of escrowed the promotional share securities, or any part thereof, have not been released pursuant to Paragraphs 1. or 2. above subsections (E)(1) through (6), by the end of the second year of the escrow, then at the end of the 1st 12-month period after the date of commencement of the restrictive sales agreement, over each of the next 8 calendar quarters, Commission shall release one eighth 1/8 of the escrowed promotional shares shall be released from the restrictive sales agreement and the restrictive legend may be removed from the certificates representing such shares over each of the next eight calendar quarters. There is no filing requirement in connection with the securities released under this subsection.
4. The shares in escrow may be transferred by will or pursuant to the laws of descent and distribution or through appropriate legal proceedings but in all cases the shares shall remain in escrow and subject to the terms of the escrow agreement. In addition, upon the death of a promoter, such promoter's escrowed shares may be hypothecated, subject to all of the terms of the escrow agreement, to the extent necessary to pay the expenses of the estate. The securities in escrow may be transferred by gift to family members, provided the shares
- remain subject to the terms of escrow. Securities in escrow may not be pledged to secure a debt.
5. A summary of the terms of the escrow shall be included in the offering documents and in subsequent annual reports to shareholders.
  6. The escrow agent must be satisfactory to the Commission and the escrow agent may not be affiliated with any promoter.
- G. Rights of participants
1. The shares held under an escrow agreement required as a condition to registration of a public offering shall not have any right, title, interest, or participation in the assets of the corporation in the event of dissolution, liquidation, merger, consolidation, reorganization, sale of assets, exchange or any transaction or proceeding which contemplates or results in the distribution of the assets of the corporation, until the holders of all shares not escrowed have been paid, or have had irrevocably set aside for them an amount equal to one hundred percent (100%) of the purchase price per share in the public offering, adjusted for stock splits and stock dividends. Subsequently, the escrowed shares shall be entitled to receive an amount per share equal to the one hundred percent (100%) paid to or set aside for the non-escrowed shares and thereafter, all shares shall participate on a pro rata basis. A merger, consolidation, or reorganization may proceed on terms and conditions different than those stated above if a majority of shares held by persons other than promoters approve the terms and conditions by vote at a meeting held for such purpose.
  2. Shares held under an escrow agreement shall continue to have all voting rights to which those shares are entitled. Any dividends paid on such shares shall be paid to the escrow agent and held pursuant to the terms of the escrow agreement. The escrow agent shall treat such dividends as assets of the corporation available for distribution under the provisions of Subsection C. Paragraph 1. The escrow agent shall place the dividends in an interest bearing account. The dividends and interest earned thereon will be disbursed in proportion to the number of shares released from the escrow.
- All certificates representing stock dividends and shares resulting from stock splits form escrowed shares shall be delivered to the escrow agent to be held pursuant to the escrow agreement.
- D.G. Promotional securities shall automatically be rReleased of securities in escrow from the restrictive sales agreement and the restrictive legend may be removed from the share certificates upon the filing with the Commission of any 1 of the following:
1. Petitions requisitions release of securities in escrow will be considered:
    - a. The terms and conditions of Subsection B. Paragraph 1. have been satisfactorily demonstrated to have been met or; With respect to subsections (E)(1), (2), or (4), a written representation from the promoter indicating compliance with the applicable subsection;
    - b2. The terms and conditions of Subsection B. Paragraph 2. have been satisfied and the petition is With respect to subsection (E)(3), a written representation from the promoter indicating compliance with such subsection accompanied by financial statements, prepared in accordance with generally accepted accounting principles applied on a consistent basis and audited and reported

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- upon by an independent certified public accountant, that indicate compliance with the subsection;
3. Petitions may be submitted pursuant to Subsection B, Paragraph 3. With respect to subsection (E)(5), a written representation from the promoter indicating compliance with such subsection accompanied by any offering materials relating to the specified transaction; or
  24. Requirements of Subsection D, Paragraph 1. Subparagraphs a. through c. above do not apply if there is an order of a court of competent jurisdiction which orders the release or transfer of such promotional securities, a certified copy of an instrument of distribution filed with a court of competent jurisdiction, or a written representation from the issuer stating that the securities were transferred pursuant to a will or the laws of descent and distribution.
- H. The restrictive sales agreement shall include the following terms and conditions:
1. Except as otherwise provided in the agreement, the promotional securities shall not be transferred, sold, pledged, hypothecated, or encumbered nor shall the issuer recognize any attempted transfer, sale, pledge, hypothecation, or encumbrance for 3 years following the conclusion of the proposed offering;
  2. The number of promotional securities subject to the restriction;
  3. The identity of owners of the promotional securities;
  4. The terms of release under subsections (E), (F), and (G);
  5. Any profits realized by a promoter who sells promotional securities in violation of the restrictive sales agreement shall inure to and be recoverable by the issuer;
  6. Promotional securities may be transferred by gift to family members, not more remote than 1st cousins, or to trusts or similar instruments of which the promoter is the beneficiary for estate-planning purposes, provided the securities remain subject to the terms of the restrictive sales agreement;
  7. Promotional securities may be transferred by any method or transaction approved by a majority of the shareholders other than the promoters, provided the securities shall remain subject to the terms of the restrictive sales agreement;
  8. Holder of promotional securities shall continue to have all voting and other rights to which they are entitled by ownership of the promotional securities; and
  9. All certificates representing stock dividends from promotional securities and all securities resulting from stock splits from promotional securities shall be subject to the terms of the restrictive sales agreement.
- I. A breach of the restrictive sales agreement by a promoter shall be deemed a violation of this Section by such promoter.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 4. BANKING DEPARTMENT**

**PREAMBLE**

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| <p>1. <b><u>Sections Affected</u></b><br/>R-20-4-107<br/>Table A</p> | <p><b><u>Rulemaking Action</u></b><br/>New Section<br/>New Table</p> |
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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 and 41-1073  
Implementing statute: A.R.S. §§ 6-123, 6-203, 6-381, 6-408, 6-506, 6-854, 6-603, 6-704, 6-814, 6-903, 6-943, 6-974, 6-1204, 6-1303, 6-1402, 32-1021, 41-1072, *et seq.*, and 44-282.
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: John P. Hudock, Esq.  
Address: Banking Department  
2910 North 44th Street, Suite 310  
Phoenix, Arizona 85018  
Telephone: (602) 255-4421, Ext. 167  
Fax: (602) 381-1225
4. **An explanation of the rule, including the agency's reasons for initiating the rule:**  
This rule was necessitated by a change in the Administrative Procedure Act in the 1995 legislative session. The legislature created A.R.S. § 41-1073 that requires adoption of time-frames during which the agency will grant or deny each type of license it issues. The department published the docket opening on this rule making in 3 A.A.R. 3424 on December 5, 1997.
5. **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.

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

A. The Banking department

The department estimates an \$8,000 expense for the creation of a tracking system. Thereafter, the cost will be \$5,000 per annum. Benefits will include an increase in the department's processing efficiency. Improved relations between the department and the regulated community will result from dependable time-frames.

B. Other Public Agencies

The State will incur costs associated with publishing rules.

C. Private Persons and Businesses Directly Affected

This group will benefit from a clearer understanding of specific time-frames for these decisions.

D. Consumers

This rule will have no measurable impact on consumers.

E. Private and Public Employment

This rule will have no measurable impact on employment.

F. State Revenues

This rule will not have an impact on state revenues.

**7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: John P. Hudock, Esq.  
Address: Banking Department  
2910 North 44th Street, Suite 310  
Phoenix, Arizona 85018  
Telephone: (602) 255-4421, Ext. 167  
Fax: (602) 381-1225

**8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

No oral proceedings are scheduled. The department will schedule an oral proceeding on the proposed rule if it receives written requests for a proceeding from at least 5 persons before July 5, 1998, pursuant to the provisions of A.R.S. ' 41-1023(C). Send requests to the department personnel listed above in this preamble. The department invites and will accept written comments on the proposed rule or the preliminary economic, small business, and consumer impact statement. Submit comments during regular business hours at the address listed above until the close of the record for this proposed rulemaking. The record will close for this proposed rulemaking on July 5, 1998, unless the department schedules an oral proceeding.

**9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**  
Not applicable.

**10. Incorporations by reference and their location in the rules:**  
None.

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

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 4. BANKING DEPARTMENT**

**ARTICLE 1. GENERAL**

Section

R20-4-107. Licensing Time-frames

Table A. Licensing Time-frames Table

**ARTICLE 1. GENERAL**

**R20-4-107. Licensing Time-frames**

A. As used in this rule, "Application" means a document specified or described in this Title requesting any permit, certificate, approval, registration, charter, or similar permission described in Table A, together with all supporting documentation required by statute or rule.

B. The time-frames set forth in Table A shall apply solely to Applications received by the department after the effective date of this rule. Each overall time-frame consists of an administrative completeness review time-frame, and a substantive review time-frame.

1. Within the administrative completeness review time-frame set forth in Table A, the department shall notify the applicant in writing whether the Application is complete. If the Application is incomplete, the notice shall specify the missing information or component.
2. Applicants advised that the submitted application is incomplete shall supply the missing information within 60 days after the date of the notice unless the superinten-

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dent, for good cause shown in writing before the expiration of the 60 day time limit, extends the period for completion of the Application. The administrative completeness review time-frame stops running on the date the department sends written notice of an incomplete application, and resumes when the department receives a complete Application. If the applicant fails to submit a complete Application within the specified time limit, the department shall reject the Application and close the file.

3. The substantive review time-frame begins to run when the department receives a complete Application.
4. Within the overall time-frame set forth in Table A the department shall send the applicant written notice of its decision, unless the time-frame is extended by mutual agreement pursuant to A.R.S. § 41-1075. If the depart-

ment denies an Application, it shall provide written justification for the denial and a written explanation of the applicant's right to a hearing or appeal pursuant to A.R.S. '41-1076.

5. The department shall calculate time limits prescribed in this rule in accordance with R20-4-1207(A).
- C. The time-frames established in this rule apply solely to actions taken by the department. The authority of any applicant or licensee to engage in business may be subject to further action or approval by other state or federal agencies.

Table A. Licensing Time-frames

<u>No.</u>	<u>License Type</u>	<u>Legal Authority</u>	<u>Administrative Completeness Review (Days)</u>	<u>Substantive Review (Days)</u>	<u>Overall Time-Frame (Days)</u>
1	Bank Initial Application	A.R.S. § 6-203, et seq. R20-4-211	45	45	90
2	Bank Trust Dept. Initial Application	A.R.S. § 6-381 A.R.S. § 6-203, A.R.S. § 6-204(C)	45	45	90
3	Savings & Loan Initial Application	A.R.S. § 6-401, et seq. A.R.S. § 6-408, R20-4-327	75	75	150
4	Credit Union Initial Application	A.R.S. § 6-501, et seq. A.R.S. § 6-506(A)	60	60	120
5	Trust Company Initial Application	A.R.S. § 6-851, et seq. A.R.S. § 6-854(A)	75	75	150
6	Consumer Lender Initial Application	A.R.S. § 6-601, et seq. A.R.S. § 6-603(C)	60	60	120
7	Debt Management Initial Application	A.R.S. § 6-701, et seq. A.R.S. § 6-704(A), R20- 4-602(A) R20-4-620(A)	30	30	60
8	Escrow Agent Initial Application	A.R.S. § 6-801, et seq. A.R.S. § 6-814	60	60	120
9	Mortgage Broker Initial Application	A.R.S. § 6-901, et seq. A.R.S. § 6-903(C)	60	60	120
10	Mortgage Banker Initial Application	A.R.S. § 6-941, et seq. A.R.S. § 6-943(D)	60	60	120
11	Commercial Mortgage Banker Initial Application	A.R.S. § 6-971, et seq. A.R.S. § 6-974(A)	60	60	120

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12	<i>Money Transmitter</i> Initial Application	A.R.S. § 6-1201, et seq. A.R.S. § 6-1204(A)	60	60	120
13	<i>Advance Fee Loan Broker</i> Initial Application	A.R.S. § 6-1301, et seq. A.R.S. § 6-1303(A)	30	30	60
14	<i>Premium Finance Co.</i> Initial Application	A.R.S. § 6-1401, et seq. A.R.S. § 6-1402(C)	60	60	120
15	<i>Collection Agency</i> Initial Application	A.R.S. § 32-1001, et seq. A.R.S. § 32-1021, R20-4-1502, R20-4-1530(A)	30	15	45
16	<i>Motor Vehicle Dealer</i> Dealer Application	A.R.S. § 44-281, et seq. A.R.S. § 44-282(B)	30	15	45
17	<i>Sales Finance Co.</i> Sales Finance Application	A.R.S. § 44-281, et seq. A.R.S. § 44-282(B)	30	15	45

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

**PREAMBLE**

**1. Sections Affected**

Article 2  
R20-5-201  
R20-5-223  
R20-5-224

**Rulemaking Action**

Amend  
Amend  
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):**

Authorizing Statute: A.R.S. § 23-921(B)  
Implementing Statute: A.R.S. §§ 23-961

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

Name: Douglas R. Newton, Division of Administration, Industrial Commission of Arizona  
Address: Industrial Commission of Arizona  
800 West Washington  
Phoenix Arizona 85007  
Telephone: (602) 542-5380  
Fax: (602) 542-3070

**4. An explanation of the rule, including the agency's reason for initiating the rule:**

In response to the legislative requirement of A.R.S. § 41-1073 to enact licensing time-frame rules, the Industrial Commission proposes to amend 20 A.A.C. 5, Article 2, to include time-frames for processing initial and renewal applications for authority to self-insure for workers' compensation. The Industrial Commission also proposes to amend the title of Article 2 to clarify that the requirements of Article 2 only apply to individual self-insurers and workers' compensation pools organized under A.R.S. §§ 11-952.01(B) and 41-621.01(A).

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

The proposed rule additions do not diminish a previous grant of authority of a political subdivision of this state.

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

The Industrial Commission does not anticipate any measurable economic impact on other agencies, political subdivisions, small businesses or consumers as a result of the proposed licensing time-frames. The Industrial Commission will incur costs associated with the rulemaking process.

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7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Douglas R. Newton, Division of Administration, Industrial Commission of Arizona  
Address: Industrial Commission of Arizona  
800 West Washington Street, Suite 303  
Phoenix, Arizona 85007  
Telephone: (602) 542-5380  
Fax: (602) 542-3070

8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: July 16, 1998  
Time: 9:30 a.m.  
Location: Industrial Commission of Arizona, 3rd Floor Conference Room  
800 West Washington Street  
Phoenix, Arizona 85007  
Nature: Oral and written comments will be accepted on or before the date set forth in this paragraph.

9. Any other matters prescribed by statute that are applicable to the specific rule or class of rules:

None.

10. Incorporation by reference and their location in the rules:

None.

11. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

~~ARTICLE 2. RULES OF THE INDUSTRIAL  
COMMISSION OF ARIZONA GOVERNING SELF-  
INSURANCE REQUIREMENTS FOR INDIVIDUAL  
EMPLOYERS AND WORKERS' COMPENSATION  
POOLS ORGANIZED UNDER A.R.S. §§ 11-952.01(B) AND  
41-621.01~~

Section

- R20-5-201. Definition of Self-insurer  
R20-5-223. Time-frames for Processing Initial and Renewal Applications for Authorization to Self-insure  
R20-5-224. Computation of Time

~~ARTICLE 2. RULES OF THE INDUSTRIAL  
COMMISSION OF ARIZONA GOVERNING SELF-  
INSURANCE REQUIREMENTS FOR INDIVIDUAL  
EMPLOYERS AND WORKERS' COMPENSATION  
POOLS ORGANIZED UNDER A.R.S. §§ 11-952.01(B) AND  
41-621.01~~

**R20-5-201. Definition of Self-insurer**  
"Self-insurer" or "self-insured" A self-insurer means an individual employer or a workers' compensation pool as defined in A.R.S. §§ 11-952.01(B) or 41-621.01(A) that has been authorized by the Commission to self-insure for workers' compensation.

**R20-5-223. Time-frames for Processing Initial and Renewal Applications for Authorization to Self-insure**

**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 if the application con-

tains the information required by A.R.S. § 23-961 and this Article.

- b. The Division shall inform an applicant by written notice whether the application is deemed complete within the time-frame provided in this subsection. If the application is incomplete, the Division shall include in its written notice to the applicant a complete list of the missing information.  
c. The Division shall deem the application withdrawn if an applicant fails to file a complete application within 45 days of being notified by the Division that its application is incomplete, unless the applicant obtains an extension to provide the missing information under subsection (D).

**2. Renewal application.**

- a. The Division shall review a renewal application for authority to self-insure within 20 days of receipt of the application to determine if the application contains the information required by A.R.S. § 23-961 and this Article.  
b. The Division shall inform a self-insurer by written notice whether the application is deemed complete within the time-frame provided in this subsection. If the application is incomplete, the Division shall include in its written notice to the self-insurer a complete list of the missing information.  
c. The Division shall deem the application withdrawn if a self-insurer fails to file a complete application within 45 days of being notified by the Division that its application is incomplete, unless the self-insurer obtains an extension to provide the missing information under subsection (D)

**B. Substantive review.**

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- 1. Initial application. Within 70 days after the Division deems an initial application complete, the Commission shall determine whether an initial application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall issue an order granting or denying authority to self-insure.
- 2. Renewal application. Within 40 days after the Division deems a renewal application complete, the Commission shall determine whether a renewal application for authority to self-insure meets the substantive criteria of A.R.S. §23-961 and this Article and shall issue an order granting or denying authority to self-insure.
- C. Overall review.
  - 1. Initial application. The overall review period shall be 90 days, unless extended under A.R.S. § 41-1072 et seq.
  - 2. Renewal application. The overall review period shall be 60 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 or renewal application, the applicant or self-insurer may obtain an extension to submit the missing information by filing a written request with the Division no later than 40 days after receipt of the

notice from the Division that the initial or renewal application is incomplete. The written request for an extension shall state the reasons the applicant or self-insurer is unable to meet the 45 day 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.

**R20-5-224. Computation of Time**

- 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 shall not be included. The last day of the period so computed shall be included unless it is a Saturday or 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 period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.
- B. Except as otherwise provided by law, the Commission may extend time limits prescribed by this Article for good cause.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 20. COMMERCE, BANKING AND INSURANCE**

**CHAPTER 6. DEPARTMENT OF INSURANCE**

**PREAMBLE**

- 1. **Sections Affected**  
R20-6-206
- Rulemaking Action**  
Amend
- 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. §§ 20-143 and 20-230  
Implementing statutes: A.R.S. § 20-230
- 3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Gregory Y. Harris  
Address: Arizona Department of Insurance  
2910 North 44th Street, Suite 210  
Phoenix, Arizona 85018  
Telephone: (602) 912-8456  
Fax: (602) 912-8452
- 4. **An explanation of the rule, including the agency's reasons for initiating the rule:**  
The need for this rule arises from the legislature's 1995 amendment of A.R.S. § 20-230. This statute permits the Director to adopt rules to address the manner in which retaliatory tax obligations and assessments will be calculated and collected. The Department has made the judgment that its current rule fails to satisfactorily implement the provisions of the statute distinguishing between "Arizona life insurers" and "other Arizona insurers". Therefore, the Department has determined that the rule should be amended to revise the definitions and implementation of these terms and to make technical corrections and necessary clarifications.
- 5. **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.
- 6. **The preliminary summary of the economic, small business and consumer impact:**  
Arizona law requires an insurance company domiciled in another state or country that does business in Arizona to pay a retaliatory tax if the out-of-state or foreign insurance company's domiciliary jurisdiction requires, in the aggregate, higher taxes from Arizona insurance companies doing business in that jurisdiction. The assessment is of the same type and amount imposed upon similar insurers of the other state or foreign country doing business in Arizona. The rule implements the portion of the law that

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also requires retaliation to address inequities arising from taxes imposed by another state's political subdivisions. The law's mandate, and not the rule, triggers the economic impact, if any, of this tax, which is intended, on balance, to be revenue neutral.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business and consumer impact statement:  
Name: Gregory Y. Harris  
Address: Arizona Department of Insurance  
2910 North 44th Street, Suite 210  
Phoenix, Arizona 85018  
Telephone: (602) 912-8456  
Fax: (602) 912-8452
8. The time, place and nature of the proceeding for the admission, amendment or repeal of the rule or, if no proceeding is scheduled, where, when and how persons may request an oral proceeding on the proposed rule:  
Date: Monday, July 13, 1998  
Time: 2 p.m.  
Location: Arizona Department of Insurance  
2910 North 44th Street, Suite 210  
Phoenix, Arizona 85018  
Nature: Oral proceeding. The Department will accept written comments received by 5 p.m. Monday, July 13, 1998, or postmarked no later than that date
9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
Not applicable.
10. Incorporation by reference and their location in the rules:  
Not applicable.
11. The full text of the rules follows:

**TITLE 20. COMMERCE, BANKING AND INSURANCE**

**CHAPTER 6. DEPARTMENT OF INSURANCE**

**ARTICLE 2. TRANSACTION OF INSURANCE**

Section

R20-6-206. Local or regional retaliatory tax information

**ARTICLE 2. TRANSACTION OF INSURANCE**

R20-6-206. Local or regional retaliatory tax information

- A. This rule is adopted pursuant to A.R.S. §§ 20-143 and 20-230.
- B. Definitions.
1. "Addition to the rate of tax" means the ~~retaliatory tax rate determined under Subsection E of this rule to be applied to foreign or alien insurers business, attributable to the local or regional taxes payable by domestic insurers as computed pursuant to A.R.S. § 20-230(A) and R20-6-206(E).~~
  2. "Alien insurer" has the meaning prescribed in A.R.S. § 20-201.
  3. "Arizona life insurer" means a domestic insurer authorized to issue life insurance policies in this state within the meaning of A.R.S. § 20-254 and/or annuities within the meaning of A.R.S. § 20-254.01 regardless of whether authorized to transact disability insurance in this state. ~~to the extent it writes life insurance under the laws of a foreign country or other state.~~
  4. "Department" means the Arizona Department of Insurance.
  5. "Director" has the meaning prescribed in A.R.S. § 20-102.

6. "Domestic insurer" has the meaning prescribed in A.R.S. § 20-203.
7. "Foreign insurer" has the meaning prescribed in A.R.S. § 20-204.
8. "Foreign or alien life insurer" means a foreign or alien insurer authorized to issue life insurance policies in this state within the meaning of A.R.S. § 20-254 and/or annuities within the meaning of A.R.S. § 20-254.01 regardless of whether authorized to transact disability insurance in this state.
9. "Local or regional taxes" means any tax, license or other obligation imposed upon domestic insurers or their agents by any:
  - a. city, county or other political subdivision of a foreign country or other state or;
  - b. combination of cities, counties or other political subdivisions of a foreign country or other state.
10. "Other Arizona insurer" means a domestic insurer authorized to transact 1 or more lines of insurance in this state but not authorized to transact life insurance or annuities in this state. ~~to the extent it writes any insurance other than life insurance under the laws of a foreign country or other state.~~
11. "Other foreign or alien insurer" means a foreign or alien insurer authorized to transact 1 or more lines of insurance in this state but not authorized to transact life insurance or annuities in this state.
12. "Other state" means any state in the United States, the District of Columbia and territories or possessions of the United States but excluding Arizona.

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- ~~13 11-~~ "Premium Tax and Fees Report", including the "Survey Of Arizona Domestic Insurers" and the "Retaliatory Taxes And Fees Worksheet", means the form prescribed by the Director and filed annually by insurers pursuant to A.R.S. §20-224.
- C. Scope. This rule applies to all foreign, alien and domestic insurers.
- D. Data to be Reported by Domestic Insurers. Each domestic insurer shall file a Survey of Arizona Domestic Insurers as part of its Premium Tax and Fees Report. The Survey shall report the following data for the calendar year covered by the insurer's Premium Tax and Fees Report with respect to each foreign country or other state in which the insurer was required to pay any local or regional taxes:
1. Total local or regional taxes ~~paid, payable in the foreign country or other state for the calendar year covered by the insurer's Premium Tax and Fees Report, and~~
  2. Total premiums taxed under the premium taxing statute of the foreign country or other state, as reported by the insurer in its premium tax report filed pursuant to the laws of the foreign country or other state, ~~received by the insurer taxable under the premium taxing statute of the foreign country or other state for the calendar year covered by the insurer's Premium Tax and Fees Report.~~
- E. Computation of Statewide and Foreign Countrywide Additions the Addition to the Rate of Tax. For each foreign country or other state that imposes a local or regional tax on domestic insurers, the Department shall compute an addition to the rate of tax separately for Arizona life insurers and for other Arizona insurers. The addition to the rate of tax payable by each category of Arizona domestic insurers shall be the quotient found by dividing: Arizona life insurers shall be calculated separately from the addition to the rate of tax payable by other Arizona insurers:
1. aggregate local or regional taxes reported as paid to the particular foreign country or other state by domestic insurers in each category for the calendar year covered by the Premium Tax and Fees Report by A domestic insurer may be both an Arizona life insurer and another Arizona insurer for purposes of this rule.
  2. aggregate statewide or foreign country wide premiums taxed under the premium taxing statute of the particular state or foreign country reported by domestic insurers in each category for the calendar year covered by the Premium Tax and Fees Report. The addition to the rate of tax computed for Arizona life insurers shall be applied to the life insurance premiums received by foreign or alien insurers taxable under the laws of Arizona.
  3. The addition to the rate of tax computed for other Arizona insurers shall be applied to any premiums other than life insurance premiums received by foreign or alien insurers taxable under the laws of Arizona.
- F. Publication of the Addition to the Rate of Tax. The Department shall publish the addition to the rate of tax determined under A.R.S. § 20-230(A) and this rule, based upon the survey information gathered from domestic insurers for the preceding calendar year pursuant to Subsection (D). The Department shall publish this information annually, on or before November 1, and in the Retaliatory Taxes and Fees Worksheet of the Premium Tax and Fees Report. Each foreign or alien insurer shall use the addition to the rate of tax published each year by the department to calculate and report its retaliatory obligation in the Premium Tax and Fees Report next filed in accordance with A.R.S. § 20-224, August 31 based upon the survey information gathered annually from domestic insurers pursuant to Subsection (D). The Department shall also publish the addition to the rate of tax with the instructions to the schedule of retaliatory taxes and fees included in the Premium Tax and Fees Report.
- G. Foreign and Alien Insurers' Report of the Effect of the Addition to the Rate of Tax. Each foreign or alien insurer domiciled in a foreign country or other state for which the Department has published an addition to the rate of tax shall include in the "State or Country of Incorporation" column of its the Retaliatory Taxes And Fees Worksheet for an amount equal to its premiums from insurance transacted in Arizona that would be subject to taxation under the laws of its domiciliary jurisdiction, during the calendar year covered by its Premium Tax and Fees Report, total premiums received by the insurer in Arizona that would be taxed under the laws of its domiciliary jurisdiction, as reported in the "State or Country of Incorporation" column of its Premium Tax and Fees Report multiplied by the applicable addition to the rate of tax. Each insurer shall report the effect of the addition to the rate of tax using the information first published by the Department for the calendar year covered by the insurer's premium Tax and Fees Report.
- H. Contest of Computation. A foreign or alien insurer subject to this rule may preserve the right to contest the computation of the addition to the rate of tax by submitting a notice of appeal pursuant to Title 41, Chapter 6, Article 10 before or at the time the retaliatory tax is paid, written demand for hearing pursuant to A.R.S. §20-161 before or at the time the retaliatory tax is paid. Subject to A.R.S. § 20-162, the filing of a notice of appeal demand for hearing to contest the computation of the applicable addition to the rate of tax does not relieve a foreign or alien insurer of the obligation to make timely payment of the retaliatory tax, and does not stay accrual of any applicable interest and penalties.
- I. Effective Date. This rule is effective when published by the Office of the Secretary of State and applies to Premium Tax and Fees Reports filed by all insurers for the calendar year in which the rule becomes effective 1995 and all subsequent years.