

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.

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TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE

ANIMAL SERVICES DIVISION

PREAMBLE

1. Sections Affected

R3-2-401
R3-2-401
R3-2-402
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R3-2-411
R3-2-502
R3-2-503
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R3-2-601
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R3-2-611
R3-2-613
R3-2-614
R3-2-616
R3-2-619
R3-2-621
R3-2-622

Rulemaking Action

Renumber
New Section
Renumber
Amend
Repeal
Amend
Amend
Amend
Amend
Amend
Amend
New Section
New Section
Repeal
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Amend
Repeal
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. §§ 3-1203, 3-1204, 3-1205.

Implementing statute: A.R.S. §§ 3-1203, 3-1204, 3-1205, 3-1451, 3-1454, 3-1455, 3-1456, 3-1745, 11-1002.

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

Notice of Rulemaking Docket Opening: 4 A.A.R. 2252, August 21, 1998.

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

Name: Shirley Conard, Rules Specialist
Address: Arizona Department of Agriculture
1688 West Adams, Room 235
Phoenix, Arizona 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420
E-mail: shirley.conard@agric.state.az.us

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

This rulemaking updates Article 4, Animal Disease Prevention and Control by removing specific reference to hog cholera and including it in the foreign animal disease category, revising the disease control requirements for feedlots, auction markets, rabies exposure, and exhibition swine; updates the incorporations by reference in Article 5, State-Federal Cooperative Disease Control Program and adding criteria for the control and eradication in cervidae not listed as restricted live wildlife by the Arizona Game and Fish Department; and updates the official health certificate and swine importation requirements in Article 6, Health Requirements Governing Admission of Animals.

R3-2-401. Definitions. The definitions for "biologicals" and "free area" have been added to set the parameters of medical preparations that must be approved for distribution by the State Veterinarian and to explain the isolated feedlot area where cattle are not restricted.

R3-2-402. Mandatory Disease Reporting by Veterinarians and Veterinary Laboratories. This Section has been updated to incorporate all List A and B diseases established in the Office of International Epizootics. The rulemaking requires that the State Veterinarian is notified by veterinarians and laboratories performing diagnostic services on animals when diagnosing any Office of International Epizootics' List A and B diseases. The rule separates those diseases that are immediately (within 4 hours) reportable (chronic wasting disease, all List A diseases and certain List B diseases) from those that only need to be reported on a monthly basis. The immediately reportable diseases must be reported whether they are suspected or diagnosed, while the diseases that must be reported on a monthly basis must be diagnosed using the criteria. The rule specifies that the reporting is made by telephone within 4 hours of diagnosing or suspecting chronic wasting disease or a List A disease and the List B diseases named in the rule, and by facsimile by the end of the month for the remainder of the List B diseases.

The rule also incorporates the diagnosis criteria required for List B.

R3-2-403. Individual Identification of Swine at Market. This Section clarifies the information required to be kept by auctions when selling swine and requires that this information be submitted monthly to the State Veterinarian.

R3-2-404. Importation, Manufacture, Sale and Distribution of Biologicals and Semen. This rulemaking requires any person importing, manufacturing, selling or distributing biologicals to obtain permission from the State Veterinarian for biologicals and specifies the origin of boar semen.

R3-2-405. Depopulation of Animals Infected with a Foreign Disease. This Section is updated to allow the State Veterinarian to order the depopulation of any animal infected with, or exposed to, a foreign animal disease.

R3-2-407. Equine Infectious Anemia. This rulemaking changes the time requirement for branding positives to 14 days from the date the State Veterinarian is notified of a positive test; adds a time requirement of 10 days after positive equine are branded for the equine to be euthanized, sent to slaughter, or housed in a screened stall; and requires that foals from positive mares be quarantined and tested at 6 months of age. Foals testing positive at 6 months of age would be handled as any equine testing positive.

R3-2-408. Disposition of Livestock Exposed to Rabies. This Section is updated to incorporate by reference the handling methods established in the *Compendium of Animal Rabies Control* published by the National Association of State Public Health Veterinarians.

R3-2-409. Rabies Vaccines for Animals. This Section updates the incorporation by reference which lists the vaccines used in animals in Arizona.

R3-2-410. Restricted Swine Feedlots. This Section establishes the operating conditions for a restricted swine feedlot.

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R3-2-411. Exhibition Swine. This Section requires that exhibition swine be inspected by a Department livestock officer or inspector within 30 days before the exhibition unless the exhibition swine are moved directly to the exhibition from an out-of-state origin.

The Department will issue an inspection certificate required for entry into any exhibition. Because swine frequently lose the USDA metal eartag during shipment, the metal eartag identification requirements has been eliminated and replaced with the universal swine ear-notch system. A premises of origin identification number may be applied either as a tattoo or as a tamper-proof eartag.

Swine may be imported only from a Stage IV or V state or from a qualified negative herd from California. Native swine must be inspected by a Department livestock officer or inspector before exhibition and proof of origination must be provided to a Department inspector.

Exhibit officials are required to confirm the presence of the Department-issued certificate of inspection or, if moving directly to exhibition from an out-of-state origin, a health certificate on which is listed a prior import permit and documentation of testing for pseudorabies (if applicable).

R3-2-503. Brucellosis Control and Eradication Procedures. This Section updates the referenced document for brucellosis eradication and control procedures and adds a similar referenced document for brucellosis eradication and control procedures used in Cervidae. The Section specifies that these procedures apply only to Cervidae not listed as restricted live wildlife by the Arizona Game and Fish Department.

R3-2-504. Pseudorabies Procedures for Eradication. The incorporation by reference document has been updated in this Section.

R3-2-601. Definitions. The terms "animal," "Cervidae," and "macaque" have been added.

R3-2-605. Quarantine for Animals Entering Illegally. A time requirement for compliance with an order from the State Veterinarian requiring animals to be returned to the state of origin has been added, and offers additional options available to the State Veterinarian of consigning animals to a quarantined or designated feedlot, or to slaughter. The Section has been updated to allow the Department to gather animals regardless of where they are located and to sell enough animals to pay the expenses of the Department.

R3-2-606. Official Health Certificate. This Section has been updated to list all information required on a health certificate. In addition, the Section requires a statement of the scrapie status of sheep. This rule eliminates the use of a USDA metal eartag to identify swine and substitutes ear-notch identification that conforms to the universal swine ear-notch system. Documentation of the pseudorabies status of the state of origin is required and for documentation of the pseudorabies qualified negative herd number, if applicable. The rule requires a statement on health certificates for swine indicating that the swine are to be quarantined on arrival and tested for pseudorabies no sooner than 15 days nor later than 30 days after arrival. The quarantine and retest requirement statement applies to all swine that are not moving directly to exhibition, except for swine from pseudorabies Stage V states and for swine consigned to a restricted swine feedlot.

R3-2-607. Permit Number. This Section has been updated for clarity, understanding and to meet the requirements of the Governor's Regulatory Review Council and the Style Manual of the Office of the Secretary of State. The rule-making eliminates the use of mail to obtain an import permit, since all permits are currently issued by telephone.

R3-2-611. Transporter Duties. This Section has been updated for clarity, understanding and to meet the requirements of the Governor's Regulatory Review Council and the Style Manual of the Office of the Secretary of State.

R3-2-613. Swine. This rulemaking allows swine, whether for exhibition or commercial use, to originate from a pseudorabies Stage IV or V state, and from a pseudorabies qualified negative herd from California. No pseudorabies test is required before movement. Swine consigned to restricted swine feedlots must originate from nothing less than a pseudorabies monitored feeder pig herd in a Stage II or Stage III state. Swine from pseudorabies qualified negative herds in California and swine from Stage IV states are subject to the quarantine and test requirements. The pseudorabies test for these swine is 15 - 30 days after entry. Swine from herds in California that are not pseudorabies qualified negative and any swine from a Stage I, II, or III state, may not enter Arizona under any circumstances or for any purpose. The following table summarizes the swine requirements:

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Pseudorabies (PRV) State Status	May Enter Arizona for Show or Commercial Purposes	PRV Test Required Before Movement	PRV Test Required 15 - 30 Days after Entry
STAGE I	NO	DOES NOT APPLY	N/A
STAGE II	NO	DOES NOT APPLY	N/A
STAGE III	NO	DOES NOT APPLY	N/A
PRV QUALIFIED NEGATIVE HERD FROM CALIFORNIA	YES	NO	YES
STAGE IV	YES	NO	YES
STAGE V (FREE)	YES	NO	NO

This rulemaking also requires that exhibition swine moving directly to the exhibition from a pseudorabies Stage IV state or from a qualified negative herd in California and will remain in the state after the exhibition, be held in quarantine and tested negative for pseudorabies no sooner than 15 days nor later than 30 days after entry.

R3-2-614, Goats and Sheep. This Section adds a requirement that all rams 6 months of age or older be tested negative for *Brucella ovis* within 30 days of entry or originate from a certified brucellosis-free flock.

R3-2-616, Cats and Dogs. This Section adds a requirement for a health certificate on both dogs and cats and a rabies vaccination on cats. Rabies is already required on dogs entering the state.

R3-2-619, Game, furbearing and wild animals. The information in this Section deals specifically with the Arizona Game and Fish Department and has no bearing on the Department's rules.

R3-2-621, Non-Restricted Live Wildlife Cervidae. This Section deals with the importation of Cervidae not listed as restricted live wildlife by the Arizona Game and Fish Department. It requires a health certificate, individual metal eartag identification, 1 or 2 negative tests for tuberculosis depending on the status of the herd of origin, and a negative test for brucellosis.

R3-2-622, Monkeys. This Section deals with the importation of macaque monkeys. It requires a health certificate, individual identification by tattoo or microchip, a negative test for Simian Herpes B virus and a negative test for tuberculosis.

6. **A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material.**

None.

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

Not applicable.

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

A. *The Arizona Department of Agriculture.*

The Department will devote an estimated 20 hours per month to receiving and tabulating the diseases reported as referenced in R3-2-402. A list will be compiled monthly and forwarded to the USDA. This task will be assigned to 1 of the Assistant State Veterinarians.

The Department will spend an estimated 10 to 20 hours designing and ordering the "Department-issued certificate of inspection of exhibition swine" as referenced in R3-2-410. An additional 20 to 40 hours will be spent by veterinarians in the Office of the State Veterinarian to train Livestock Inspectors/Officers to identify swine and inspect paperwork submitted by the owners for the inspection.

The Department will spend additional Livestock Inspector/Officer time conducting the inspections of exhibition swine as required in R3-2-411. It is estimated that there are approximately 1,800 swine exhibited at county fairs in the state. Thus, there will be an additional 1,800 inspection certificates per year issued by Livestock Inspectors/Officers. Providing swine originate from Stage V states and a post importation pseudorabies test is not required for exhibition inspection, the swine imported as a group may be inspected as a group. Although the majority of exhibition swine are

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imported in groups, only 1/3 is estimated to originate from Stage V states. Because exhibition inspection of Stage V swine can be done in groups, this will reduce the number of actual inspection calls. Each individual inspection is estimated to take approximately 5 to 10 minutes once the swine is restrained by the owner.

By collecting information on animal diseases required to be reported in R3-2-402, the Department will be able to report the presence, and more importantly, the absence of diseases of concern to the international community. This will enhance the state livestock industry's ability to market their products internationally. For instance, Russia will not import meat products from states where there have been cases of Vesicular Stomatitis, 1 of the diseases on the mandatory disease reporting list. Arizona is currently free from this disease and by collecting, tracking and making this information available on a monthly basis, the Department will make it easier for companies to market their meat products in the international marketplace.

R3-2-613 will enhance the Department's ability to ensure that the state remains free of pseudorabies by reducing the risk level of imported swine. R3-2-613 restricts the origin of imported swine to states classified as Stage IV, Stage V, or Qualified Negative (QN) herds in California. These are low risk sources for swine. California is specifically named for QN herds because the remainder of our neighboring states are Stage V. QN herds in Stage I, II, and III states in the eastern U.S. are a higher risk for pseudorabies because they must transit that state where there may be many herds under quarantine for pseudorabies. Pseudorabies is highly contagious and has been reported to spread to another herd by the wind. Even though swine originate from a QN herd in a Stage I, II, or III state should be free of the disease, they may be exposed in transit through the state of origin as well as any other Stage I, II, or III states through which they must pass to enter Arizona.

R3-2-411 will also enhance the Department's ability to ensure the state remains free of pseudorabies by requiring inspection of all exhibition swine by a Livestock Inspector/Officer before being allowed to exhibit. Because transporters of swine, especially those transporting small numbers in private trucks and trailers, frequently do not stop at our interstate ports-of-entry, and because there is no other required inspections by Livestock Inspectors/Officers for swine as there are for horses and cattle, the only critical control point for ensuring exhibition swine have entered the state with proper health paperwork and pseudorabies testing is the swine exhibit. Although it might be suggested that the Department could focus the exhibition inspection by Livestock Inspectors/Officers at the exhibits, exhibition swine are brought in to the state well in advance of the exhibit. This increases the opportunity for illegally imported infected swine to spread the disease within the state before being moved to the exhibit. The Department is focusing pseudorabies preventative measures on exhibition swine because the last outbreak of pseudorabies, although occurring in a commercial operation, was likely due to an infected swine from exhibit moved to a packing plant co-located on the premises of the commercial operation.

R3-2-614 will enhance the Department's ability to prevent the introduction of sheep brucellosis by requiring a negative test for *Brucella ovis*, the variety that infects sheep, before entry. Previously, the Department only required that rams be examined for evidence of infection. Because evidence of infection can be missed, a negative test will ensure that brucellosis infected breeding rams, the sex that spreads the disease in sheep, are not imported.

R3-2-503 and R3-2-621 will enhance the Department's ability to prevent the introduction of brucellosis and tuberculosis to the state's cattle population. By adopting the USDA procedures publication for brucellosis control and eradication in Cervidae in R3-2-503, and by adding entry requirements for the importation of Cervidae in R3-2-621, the risk of importing brucellosis and tuberculosis will be reduced markedly, and will enhance the Department's ability to deal with a problem should it be introduced.

R3-2-606 will enhance the Department's ability to prevent the introduction of scrapie infected sheep, a transmissible spongiform encephalopathy related to bovine spongiform encephalopathy, a disease that is foreign to the United States. By requiring a statement regarding the flock of origin's scrapie status and the animals' scrapie exposure status, the risk of introduction of scrapie infected sheep will be reduced.

B. *Political Subdivision.*

Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.

C. *Businesses Directly Affected By the Rulemaking.*

R3-2-402 requires that veterinary practitioners and laboratories that perform diagnostic services for veterinary practitioners report certain animal diseases. Veterinarians and laboratories already maintain records on animal disease however, it will be necessary for them to report this information to the State Veterinarian. This information must be reported either within 4 hours of diagnosis, for those diseases that are foreign to the United States such as Food and Mouth Disease, those for which there is a current national eradication program such as brucellosis, or those that are a

serious public health risk such as rabies, or by the end of the month for the remainder of the diseases listed in this rule.

R3-2-403 requires auction markets to submit monthly information on swine that are sold through the market. This rule already required markets to keep records as to the identity, origin, and destination of the swine sold at auction. However, the updated rule requires that this information be transmitted to the State Veterinarian monthly.

R3-2-407 now sets a time limit on when the owner of an equine infected with Equine Infectious Anemia must comply with 1 of the 3 options already outlined in the rule. Namely, within 10 days of being branded by the State Veterinarian as infected with EIA, the owner must have the animal humanely destroyed, consigned to slaughter, or placed in a(n) (insect proof) screened stall 200 yards away from other equine. Those owners of infected equine choosing to use the latter option will be required to build a facility meeting the requirements listed in the rule in a very short period of time. Quick disposition of the infected equine is important because of the significant risk of transmission of the disease to other equine while disposition of the animal is being arranged.

R3-2-410 sets physical, procedural, and reporting requirements for feedlots feeding swine that have a higher risk of pseudorabies infection. Currently, under written agreement between the Department, the producer, and the USDA Area-Veterinarian-In-Charge, restricted feedlots such as these are meeting the requirement that are now listed in R3-2-410.

R3-2-411 requires exhibitors, such as 4-H and FFA participants, to obtain an exhibition certificate from a Department Livestock Inspector/Officer. The rule requires that these entities make contact with the local Livestock Inspector/Officer to make arrangements for the inspection. In addition, this rule sets specific individual identification of exhibition swine requirements that will necessitate some out-of-state swine sources to eartag their swine, and to obtain and use a premises identification. Eartagging is a simple procedure, accepted nationally, that requires the purchase of an implement costing less than \$20. The premises identification is available through the state livestock health official and may be applied as a tattoo, or as a tamper proof eartag. Tattoos application instruments cost approximately \$30. Tamper proof eartags cost less than \$1.00 each and the reusable applicator approximately \$35. Requirement of exhibition swine to be individually identified enables staff veterinarians, practicing veterinarians, and Livestock Inspectors/Officers to confirm that swine matches the identification listed on test charts, health certificates, and bills of sale. This rule also requires exhibit officials to deny entry to the show of any swine that are not accompanied by the inspection certificate issued by a Livestock Inspector/Officer. Exhibit officials will have to check the paperwork on all incoming swine to ensure compliance.

R3-2-605 expands the options available to contain and eliminate potentially diseased animals that enter the state illegally. Previously, the only option available was for the State Veterinarian to request that the animals be returned to the state of origin. This rule now allows the State Veterinarian to require that the owner of illegal imports return the animals to the state of origin, to have them slaughtered, or to send them to a quarantined feedlot. In addition, this rule previously allowed the Department to gather and dispose of illegal imports, at the owner's expense, if they were turned out on Arizona ranges and the owner refused to comply with the State Veterinarian's order to return them to the state of origin. Because illegal imports may be turned out on other than Arizona ranges, the rule now allows the Department to gather and dispose of illegal imports, at the owner's expense, regardless of where they are located.

R3-2-606 requires individual identification of swine in the same manner as stated above in R3-2-411.

R3-2-613 restricts the source of imported swine. Previously, swine could originate from any state, regardless of their pseudorabies risk status, providing certain health requirements were met. Because this still represented a risk for the introduction of pseudorabies, a disease that has been eradicated from Arizona, restriction of the source of the swine will nearly eliminate a risk of disease reintroduction. This restriction will impact those commercial swine operations and swine exhibitors that source their swine from Stage I, II, and III states. It will require that for these people, sources in Stage IV and V states, states with low or no risk of disease, be located. Because all or nearly all states are expected to be at Stage IV or V by the end of the year 2000, any difficulty experienced by commercial operators and exhibitors regarding locating approved sources of swine should be short lived.

R3-2-613 also requires retesting of certain classes of imported swine for pseudorabies. Previously, all swine were required to be retested regardless of origin. This rule now recognizes the fact that swine from Stage V states are an extremely low risk for pseudorabies and consequently eliminates the requirement for retesting these animals. A retest for pseudorabies will continue to be required on swine from Stage IV states and QN herds in California.

R3-2-614 now requires owners of breeding rams to have them tested for *Brucella ovis* prior to shipping to Arizona. This test generally costs less than \$10 per animal plus veterinarian fees.

D. *Private and public employment.*

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Private and public employment is not directly affected by the implementation and enforcement of this rulemaking.

E. *Consumers and the Public.*

Because some animal diseases are transmissible to man, consumers and the public are directly affected by this rule package through the prevention and control of animal diseases, such as brucellosis and tuberculosis, that are transmissible to humans.

This rule package may also indirectly impact consumers and the public. This rule package focuses on the animal disease preventive, containment, and eradication procedures used by the Department. Diseased livestock cost the livestock owner through death loss, through decreased meat, milk, and egg production, and through decreased athletic performance. Additional costs to the livestock owner also result from additional testing required by states should animal disease control efforts be insufficient to prevent Arizona from becoming "infected" with animal diseases. These costs are passed on to the public through increased cost of animal products.

F. *State Revenues.*

This rulemaking will have no impact on state revenues.

9. 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: Shirley Conard
Address: Arizona Department of Agriculture
1688 West Adams, Room 235
Phoenix, Arizona 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420
E-mail: shirley.conard@agric.state.az.us

10. The time, place, and nature of the proceedings for the making, 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: October 18, 1999
Time: 1 p.m.
Location: Arizona Department of Agriculture
1688 West Adams, Room 206
Phoenix, Arizona 85007
Nature: Public Hearing

Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement must be received by 4 p.m., October 19, 1999. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the department's coordinator, Patrick Stevens, (602) 542-4316 (voice) or 1-800-367-3839 (TDD Relay). Requests should be made as early as possible to allow time to arrange the accommodation.

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

None.

12. Incorporations by reference and their location in the rules:

R3-2-402. Office of International Epizooties List A and List B diseases.
R3-2-402. The National Animal Health Reporting System Manual, January 1, 1999.
R3-2-408. The National Association of State Public Health Veterinarians' Compendium of Animal Rabies Control, 1999, Part III, Section 5.
R3-2-409. The National Association of State Public Health Veterinarians' Compendium of Animal Rabies Control, 1999, Part II.
R3-2-503(A) The USDA publication, Brucellosis Eradication - Uniform Methods and Rules, effective February 1, 1998.

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R3-2-503(C) The USDA publication, Brucellosis in Cervidae: Uniform Methods and Rules, effective September 30, 1998, and the May 14, 1999, revision.

R3-2-504. The USDA publication, Pseudorabies Eradication, State-Federal-Industry Program Standards, effective January 1, 1999.

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

No.

14. The full text of the rules follows:

TITLE 3. AGRICULTURE

**CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION**

ARTICLE 4. ANIMAL DISEASE PREVENTION AND CONTROL

Section

R3-2-401. Definitions

~~R3-2-401.~~ ~~R3-2-402.~~ ~~Mandatory disease reporting by veterinarians~~ Disease Reporting by Veterinarians and Veterinary Laboratories

~~R3-2-403. Prohibition of live hog cholera virus~~

~~R3-2-402.~~ ~~R3-2-403.~~ Individual identification of swine at market Identification of Swine at Market

~~R3-2-404. Prohibition of live virus hog cholera vaccine~~ Importation, Manufacture, Sale, and Distribution of Biologicals and Semen

~~R3-2-405. Requirements for depopulation of hog cholera infected premises~~ Depopulation of Animals Infected with a Foreign Disease

~~R3-2-407. Equine Infectious Anemia~~

~~R3-2-408. Disposition of livestock showing symptoms or exposed to rabies~~ of Livestock Exposed to Rabies

~~R3-2-409. Specifying types of rabies vaccines for animals~~ Rabies Vaccines for Animals

~~R3-2-410. Restricted Swine Feedlots~~

~~R3-2-411. Exhibition Swine~~

ARTICLE 5. STATE-FEDERAL COOPERATIVE DISEASE CONTROL PROGRAM

Sections

~~R3-2-502. Payment to Owners for Cattle Depopulated from Herds Infected with Tuberculosis~~

~~R3-2-503. Brucellosis Control and Eradication Procedures~~

~~R3-2-504. Pseudorabies Control and Eradication Procedures~~ for Eradication

ARTICLE 6. HEALTH REQUIREMENTS GOVERNING ADMISSION OF ANIMALS

Sections

~~R3-2-601. Definitions~~

~~R3-2-605. Quarantine for animals entering illegally~~ for Animals Entering Illegally

~~R3-2-606. Official health certificate~~ Health Certificate

~~R3-2-607. Permits~~ Number

~~R3-2-611. Duties of transporters~~ Transporter Duties

~~R3-2-613. Requirements for importation of swine~~ Swine

~~R3-2-614. Requirements for importation of goats and sheep~~ Goats and Sheep

~~R3-2-616. Requirements for dogs and cats~~ Dogs and Cats

~~R3-2-619. Game, furbearing and wild animals~~

~~R3-2-621. Non-Restricted Live Wildlife Cervidae~~

~~R3-2-622. Monkeys~~

ARTICLE 4. ANIMAL DISEASE PREVENTION AND CONTROL

R3-2-401. Definition

The following term applies to this Article:

“Biologicals” means the medical preparations made from living organisms and their products, including serums, vaccines, antigens and antitoxins.

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“Free area” means pens in a feedlot that are isolated from all other restricted feeding pens and have separate loading and unloading chutes and handling facilities, no common fence or gate, and a minimum of 8-foot alleys. A free area site does not share water or feeding facilities that are accessible to restricted areas.

R3-2-401-R3-2-402. Mandatory disease reporting by veterinarians Disease Reporting by Veterinarians and Veterinary Laboratories

All veterinarians, licensed, accredited, institutional, state or federal, shall, when a diagnosis of the following named infectious or contagious animal diseases is made within the state of Arizona, report this to the Livestock Board and, with Livestock Board approval, any additional diseases that need be added to the list from time to time by the State Veterinarian when considered essential to the livestock industry: All veterinarians and laboratories performing diagnostic services on animals shall notify the State Veterinarian:

1. At (602) 542-4293, within 4 hours of diagnosing or suspecting any Office of International Epizooties List A disease, updated May 1995, which is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State, Chronic Wasting Disease, or the following List B diseases:
 - Anthrax
 - Aujeszky's Disease
 - Babesiosis
 - Bovine Brucellosis
 - Bovine Tuberculosis
 - Bovine Spongiform Encephalopathy
 - Contagious Caprine Pleuropneumonia
 - Caprine and Ovine Brucellosis
 - Contagious Equine Metritis
 - Dourine
 - Enterovirus Encephalomyelitis
 - Equine Infectious Anaemia
 - Equine Piroplasmosis
 - Equine Viral Encephalomyelitis
 - Equine Viral Arteritis
 - Epizootic Lymphangitis
 - Fowl Typhoid
 - Glanders
 - Heartwater
 - Horse Pox
 - Infectious Haematopoietic Necrosis of fish
 - Nairobi Sheep Disease
 - Ovine Epididymitis
 - Paratuberculosis
 - Porcine Brucellosis
 - Pullorum Disease
 - Q Fever
 - Rabies
 - Scrapie
 - Screwworm
 - Spring Viraemia of carp
 - Surra
 - Theileriosis
 - Trypanosomiasis
 - Viral Haemorrhagic Septicaemia of fish
2. By facsimile at (602) 542-4290 by the end of the month, after diagnosing any Office of International Epizooties List B disease, updated May 1995, not specified in subsection (1). This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State.
3. The Epizooties List B notification specified in subsection (2) shall follow the reporting criteria listed in the National Animal Health Reporting system Manual, January 1, 1999. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State.
4. Hog Cholera.

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2. Swine Brucellosis.
3. Bovine Brucellosis.
4. Bovine Tuberculosis.

~~R3-2-403. Prohibition of live hog cholera virus~~

~~The importation, manufacture, sale or use of live hog cholera virus into or within the state of Arizona is hereby prohibited.~~

~~R3-2-402.~~R3-2-403. Individual identification of swine at market** **Identification of Swine at Market****

~~All feeder and breeder~~ Except for swine auctioned at a fair, an auction owner shall individually identify all swine in Arizona moving through markets auctions or other concentration points in intrastate and interstate commerce shall be individually identified and a record kept as to origin and destination, and shall submit the following information, monthly, to the State Veterinarian:

1. The name of the owner;
2. The name of the buyer;
3. The farm of origin;
4. The destination of the swine; and
5. The individual identification of each swine.

~~R3-2-404. Prohibition of live virus hog cholera vaccine~~ **Importation, Manufacture, Sale, and Distribution of Biologicals and Semen**

- ~~A. The sale, purchase or use of living hog cholera virus vaccines within the state of Arizona is prohibited. The State Veterinarian is empowered to authorize the official use of Modified Live Virus Vaccines if deemed necessary.~~
- ~~B. Official vaccination using killed or inactivated hog cholera vaccine or use of hog cholera serum or antibody concentrate shall be permitted until such time as the State Veterinarian restricts its use to conform to the provisions of the National Hog Cholera Eradication Program.~~
- ~~C. Any person violating the provisions of the Swine Biologic regulation with a resultant outbreak of hog cholera shall cause the swine to be subject to only one-half the usual appraised indemnity and the owner shall be subjected to the penalties provided by law.~~
- A. Any person importing, manufacturing, selling, or distributing any biological intended for diagnostic or therapeutic treatment of animals and poultry shall request, in writing, for permission from the State Veterinarian.
- B. The State Veterinarian may deny approval of the importation, manufacture, sale, or distribution of any biological that will interfere with the State disease control program.
- C. Semen shall originate only from boars in pseudorabies Stage IV or V states.

~~R3-2-405. Requirements for depopulation of hog cholera infected premises~~ **Depopulation of Animals Infected with a Foreign Disease**

~~When Hog Cholera a foreign animal disease is officially diagnosed, in a swine herd, it shall be required that immediate depopulation and disposal the State Veterinarian may order the owner to immediately depopulate and dispose of all infected and exposed swine animals on the premises be accomplished in cooperation with the USDA APHIS when necessary, to prevent the spread of contagion or infection among livestock and poultry.~~

R3-2-407. Equine Infectious Anemia

- A. The Arizona official test for equine infectious anemia, known as Swamp Fever or EIA, is either the agar-gel immunodiffusion test, known as the Coggins Test, or the Competitive Enzyme-Linked Immunosorbent Assay test, known as the CELISA test. The test shall be performed in a laboratory approved by APHIS and required samples shall be drawn by an accredited veterinarian, the State Veterinarian, the State Veterinarian's designee, or a USDA APHIS veterinarian.
- B. Disposal of equine testing positive.
 1. When an Arizona equine tests positive to EIA the State Veterinarian shall be notified by the testing laboratory immediately by telephone.
 2. The EIA positive equine shall be quarantined to the premises where tested, segregated from other equine, and shall not be moved unless authorized by the State Veterinarian. The equine shall be retested by the State Veterinarian, the State Veterinarian's designee, or a USDA APHIS veterinarian.
 3. Within 14 days of ~~testing positive~~ being notified of a positive test conducted pursuant to subsection (B)(2), the equine shall be branded by the State Veterinarian on the left side of the neck with "86A" not less than 2 inches in height.
 4. ~~The EIA positive equine may be humanely destroyed, consigned to slaughter at a slaughtering establishment, or confined to a screened stall marked "EIA Quarantine" at least 200 yards from other equine. If consigned to slaughter, the equine shall be accompanied by a Permit for Movement of Restricted Animals form, VS 1-27, issued by the State Veterinarian, the State Veterinarian's designee, or a USDA APHIS veterinarian.~~
Within 10 days after being branded, the EIA positive equine may be:
 - a. Humanely destroyed.
 - b. Confined to a screened stall marked "EIA Quarantine" at least 200 yards from other equine, or

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- c. Consigned to slaughter at a slaughtering establishment. If consigned to slaughter, the equine shall be accompanied by a Permit for Movement of Restricted Animals, VS 1-27, issued by the State Veterinarian, the State Veterinarian's designee, or a USDA APHIS veterinarian.
- 5. Offspring of mares testing EIA positive shall be quarantined and tested at 6 months of age. Offspring testing positive shall be handled as prescribed in subsection (B)(4).
- ~~5-6.~~ At the time a quarantine under this Section is effective, and the EIA positive equine is located on premises other than those of the owner, the State Veterinarian may authorize movement of the EIA positive equine to the owner's premises. If the owner lives in another state, the equine may be moved to that state with the permission of the Chief livestock health official of the state and USDA APHIS.
- C. The State Veterinarian may require testing of any equine exposed to EIA positive equine within the last 6 months of exposure. Expenses for this testing shall be paid by the owner.
- D. The owner of any equine found to be positive for EIA shall not be indemnified for any loss caused by the destruction and loss of value of the equine.

R3-2-408. Disposition of ~~livestock showing symptoms or exposed to rabies~~ Livestock Exposed to Rabies

- ~~A. Livestock bitten by a known rabid animal may be:~~
 - ~~1. Immediately destroyed, or~~
 - ~~2. Confined in strict quarantined enclosures or corrals meeting the approval of state regulatory officials for a period of 180 days or such further period of time as may be deemed necessary by said official.~~
- ~~B. Livestock bitten by a suspected rabid animal shall:~~
 - ~~1. Be quarantined in a manner as determined proper by state regulatory officials until such time as said official shall deem it safe to release said quarantine.~~
- ~~C. Livestock showing symptoms suggestive of rabies shall:~~
 - ~~1. Be quarantined as specified in (B)(1) above and shall not be destroyed unless the livestock be so uncontrollable due to circumstance or nature that to protect human life and/or other livestock, it be necessary in the opinion of a state regulatory official that the animal be destroyed and tissues harvested for laboratory procedures.~~

Livestock bitten by a known or suspected rabid animal shall be handled using the methods prescribed in the National Association of State Public Health Veterinarians' Compendium of Animal Rabies Control, 1999, Part III, Section 5. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.

R3-2-409. ~~Specifying types of rabies vaccines for animals~~ Rabies Vaccines for Animals

All animals in Arizona vaccinated against rabies in Arizona shall be vaccinated in accordance with as prescribed in Part II of the "the National Association of State Public Health Veterinarians' Compendium of Animal Rabies Vaccines Control", 1999, Part II, 1988, prepared by the National Association of State Public Health Veterinarians. This material is incorporated herein by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.

R3-2-410. Restricted Swine Feedlots

- A. The State Veterinarian may approve restricted swine feedlots for feeding swine from herds not known to be infected with pseudorabies and not tested for pseudorabies before importation providing the imported swine meet all requirements in Article 6. Swine moved from a restricted swine feedlot shall be transported directly to a state or federal slaughter facility for immediate slaughter.
- B. No breeding swine shall be located on the restricted swine feedlot or within ¼ mile of the feedlot.
- C. If pseudorabies is diagnosed in swine at a restricted swine feedlot, the feedlot shall be immediately quarantined and the feedlot shall not receive any additional shipments of swine until the herd is declared free of pseudorabies or all swine are depopulated from the premises and the premises are cleaned and disinfected.
- D. The restricted swine feedlot owner or agent shall submit monthly feedlot records to the State Veterinarian, listing origin, health certificate number, permit number, slaughter destination, and shipping date.

R3-2-411. Exhibition Swine

- A. In addition to meeting the requirements in Article 6, all swine not moved directly to the exhibition in Arizona shall be inspected by a Department livestock officer or inspector within 30 days after entry.
- B. Exhibit officials shall deny entry to any swine not accompanied by the following documents:
 - 1. Imported swine moving directly to the exhibition. An official health certificate as specified in R3-2-606 and an import permit as specified in R3-2-607;
 - 2. Imported swine not moved directly to exhibition. A Department issued certificate of inspection of exhibition swine containing the following:
 - a. The name, address, telephone number and signature of the owner;
 - b. The name of the inspector and the date, time and location of the inspection;

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- c. The individual identification of the swine, using an earnotch, that conforms to the universal swine earnotch system, and the premises identification number using a tattoo, or producer furnished tamper-proof eartag that conforms to the USDA National Premises Identification System.
 - 3. Native Arizona swine. A Department-issued certificate of inspection of exhibition swine containing the following:
 - a. The name, address, telephone number and signature of the owner;
 - b. The name of the inspector and the date, time and location of the inspection;
 - c. The individual identification of the swine, using an earnotch that conforms to the universal swine earnotch system, and the premises identification number using a tattoo, or producer furnished tamper-proof eartag that conforms to the USDA National Premises Identification System.
- C. Department issued certificate of inspection of exhibition swine. The owner shall provide the Department with:
 - 1. Imported swine.
 - a. The certificate of veterinary inspection listing import permit and individual identification of the swine, using an earnotch that conforms to the universal swine earnotch system, and the premises identification using a tattoo, or a producer furnished tamper-proof eartag that conforms to the USDA National Premises Identification System;
 - b. If from a Stage IV state or a qualified negative herd in California, documentation of a negative pseudorabies test conducted 15 to 30 days after entry.
 - 2. Native swine.
 - a. A bill of sale listing:
 - i. The name of the seller and buyer; and
 - ii. The individual identification of the swine, using an earnotch that conforms to the universal swine earnotch system, and the premises identification using a tattoo, or a producer furnished tamper-proof eartag that conforms to the USDA National Premises Identification System; and
 - iii. The date of the sale; or
 - b. Verification that the swine has been raised in Arizona; and the individual identification of the swine, using an earnotch that conforms to the universal swine earnotch system, and the premises identification using a tattoo, or a producer furnished tamper-proof eartag that conforms to the USDA National Premises Identification System.

ARTICLE 5. STATE-FEDERAL COOPERATIVE DISEASE CONTROL PROGRAM

~~R3-2-502. Payment To Owners For Cattle Depopulated From Herds Infected With Tuberculosis~~

- ~~A. The state shall pay owners a tuberculosis depopulation indemnity of \$100.00 for each purebred animal and \$50.00 for each grade stock animal.~~
- ~~B. The tuberculosis indemnity claims against the state are payable subject to Director approval and availability of funds.~~

R3-2-503. Brucellosis Control and Eradication Procedures

- A. Procedures for brucellosis control and eradication in cattle and bison be as prescribed in the USDA publication, Brucellosis Eradication – Uniform Methods and Rules, effective May 6, 1992, and revised February 16, 1993 and June 16, 1994 effective February 1, 1998. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.
- B. Procedures for brucellosis control and eradication in swine shall be as prescribed in the USDA publication, Swine Brucellosis Control/Eradication, State-Federal-Industry – Uniform Methods and Rules, revised February 1995. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.
- C. Procedures for brucellosis control and eradication in Cervidae not listed as restricted live wildlife in R3-2-406, be as prescribed in the USDA publication, Brucellosis in Cervidae: Uniform Methods and Rules, effective September 30, 1998, and the May 14, 1999 revision. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.

R3-2-504. Pseudorabies ~~Control and Procedures for Eradication Procedures~~

Procedures for pseudorabies control and eradication in swine shall be as prescribed in the USDA publication, Pseudorabies Eradication, State-Federal-Industry Program Standards, effective January 1, 1996 1999. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Secretary of State.

ARTICLE 6. HEALTH REQUIREMENTS GOVERNING ADMISSION OF ANIMALS

R3-2-601. Definitions

- 1. “Animal” means livestock, feral swine, ratites, bison, water buffalo, oxen, llama, and any exotic mammal not regulated as restricted live wildlife by the Arizona Game and Fish Department.
- 2. “Breeding swine” means any swine having the potential to breed, and includes gilts, sows, and boars.
- 3. “Cervidae” means a family of cervids that include deer, moose, elk, reindeer, and caribou.

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- 1-4. "Dairy cattle" means cattle of dairy breeds or dairy types used for the production of milk or milk products for human consumption.
- 2-5. "Designated feedlot" means a confined drylot area under state quarantine that has been approved and licensed by the State Veterinarian and is maintained for finish feeding of cattle or bison that do not meet the brucellosis or tuberculosis import test requirements.
- 3-6. "Health certificate" means a legible record that is issued by a VS animal health official, state animal health official, or accredited veterinarian at the point of origin of a shipment of animals, conforms to the requirements of R3-2-606, and is written on a form approved by the chief animal health official of the state of origin or an equivalent form of the USDA attesting that the animal described has been inspected and found to meet the Arizona entry requirements.
7. "Macaque" means any monkey of the genus *Macaca* in the family *Ceropithecidae*.
- 4-8. "Permit number" means an official serialized number issued by the State Veterinarian's Office that conforms to the requirements of R3-2-607 and allows the regulated movement of certain animals into Arizona.
- 5-9. "Specifically approved stockyard" means a stockyard specifically approved by VS and the State Veterinarian for receiving cattle and bison from other states other than brucellosis-reactor, brucellosis-suspect, and brucellosis-exposed cattle or bison.

R3-2-605. ~~Quarantine for animals entering illegally~~ For Animals Entering Illegally

- A. ~~Animals entering the state of Arizona without a valid health certificate or permit number, or both if required, or in violation of any rules of the Livestock Board Section under A.A.C. Title 3, Chapter 2, shall be held in quarantine at the risk and expense of the owner until released by an authorized representative of the State Veterinarian. Quarantine Animals under quarantine for noncompliance of this Article may be released only after the State Veterinarian has been is satisfied, by appropriate testing, dipping, or observation period, that the animals under quarantine as a result of noncompliance with rules of the Board are not a threat to the livestock industry.~~
- B. ~~Imported animals failing to meet all entry requirements may be requested to be returned to the state of origin at the discretion of the State Veterinarian. The State Veterinarian may request that imported animals failing to meet entry requirements be returned to the state of origin, consign them directly to slaughter, or to a quarantined or designated feedlot within 2 weeks of the request. Any extensions to this time-frame shall be approved in writing by the State Veterinarian.~~
- C. ~~If the violation is related to livestock turned on Arizona ranges, the Board upon recommendation of the State Veterinarian If the owner or owner's agent fails to comply with a request to return the animals to the state of origin within the time-frame required in subsection (B), the Department shall require that the livestock to be immediately gathered at the owner's risk and expense to avoid exposure of Arizona livestock. Such testing, retesting or dipping of the animals as required may be ordered. Return to state of origin, consignment directly to slaughter or consignment to a quarantined feed lot is optional to the owner if testing and retesting at the owner's expense is not mutually agreeable. If the owner fails to comply with directives, the Board shall arrange with dispatch the necessary help to do the work. If the The owner refuses to shall immediately pay the expenses no later than 5 days after receipt of the bill, or an auction of sufficient livestock to pay the just expenses shall be held within ten 10 days at a regular livestock auction market. Should further If additional expenses occur due to lack of cooperation by the owner or his the owner's agent(s), the Director shall order the further sale of livestock shall be ordered by the Board.~~

R3-2-606. ~~Official health certificate~~ Health Certificate

- A. ~~Health certificates are An official health certificate shall be valid for not more than 30 days after the date of issue, except where otherwise noted in this Article, and may not be issued unless the animals described thereon comply with Arizona entry requirements, and the health certificate contains and shall contain:~~
1. ~~The names and addresses of the consignor and consignee, shipper and receiver;~~
 2. ~~The place of origin of shipment;~~
 3. ~~The shipment's its final destination;~~
 4. ~~Cattle.~~
 - a. ~~The number of animals covered by the document, and an accurate description and individual identification of each animal, including the official eartag number or registration tattoo, registration brand, or the registration number of a breed association recognized by VS, except steers, spayed heifers, or "F" branded heifers consigned to a restricted feedlot; and~~
 - b. ~~The health status of the animals, including dates and results of inspections, dipping, tests and vaccinations required by Arizona; and~~
 - c. ~~The method of transportation. (Individual identification is not required for steers or "S" branded cattle consigned to a quarantined feedlot.)~~
 5. ~~Swine.~~
 - a. ~~Verification that the swine have been inspected within 10 days before the shipment.~~
 - b. ~~A statement that:~~
 - i. ~~The swine have never been fed garbage, and~~

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- ii. The swine have not been vaccinated for pseudorabies.
 - c. Except for feeder swine consigned to a restricted swine feedlot.
 - i. A list of the individual permanent identification for each exhibition swine, using an ear notch that conforms to the universal swine ear notch system or for each commercial swine, using other individual identification, and the premises identification using a tattoo, or producer furnished tamper-proof eartag that conforms to the USDA National Premises Identification System;
 - ii. The validated brucellosis-free herd number and last test date for swine originating from a validated brucellosis-free herd;
 - iii. The pseudorabies status of the state of origin;
 - iv. The pseudorabies qualified negative herd number, if applicable.
 - d. Except for feeder swine consigned to a restricted swine feedlot, swine moving directly to an exhibition, and swine from a farm of origin in a state recognized by USDA-APHIS as a pseudorabies Stage V state, a statement that the swine shall be quarantined on arrival and kept separate and apart from all other swine until tested negative for pseudorabies no sooner than 15 days nor later than 30 days after entry.
 - e. Feeder swine consigned to a restricted swine feedlot. Swine shall be identified by premises of origin using a tattoo or producer furnished tamper-proof eartag that conforms to the USDA National Premises Identification System.
- 6. Sheep and goats. A statement certifying that the sheep or goats are not infected with bluetongue, nor exposed to scrapie or originate from a scrapie infected or source flock.
- B. ~~It must indicate the health status of the animals involved, including dates and results of inspections, dipping, tests and vaccinations required by the state of Arizona. Additions, deletions, unauthorized or uncertified changes inserted or applied to a health certificate renders the certificate null and void. Uncertified photocopies of health certificates are invalid instruments.~~
- C. ~~The veterinarian issuing the health certificate must shall certify that the animals shown thereon on the health certificate are free from evidence of any infectious, contagious or communicable disease or known exposure thereto.~~
- D. ~~Accredited veterinarians who are approved by the chief livestock official of the state of origin and accredited veterinarians in the employ of the U.S. Department of Agriculture USDA may inspect animals for entry into the state of Arizona.~~

R3-2-607. Permits Number

- A. ~~A permits number may be obtained from the Office of the State Veterinarian, 1688 West Adams, Rm. 321, Phoenix, AZ 85007 or by calling (602) 255-4196 542-4293, and will be issued in the name of the person or entity in Arizona receiving the animal(s).~~ Persons Any person applying for a permits number shall provide the following information:
 - 1. The names and addresses of the consignor and consignee, shipper and receiver;
 - 2. The number and kind of animals;
 - 3. The origin of shipment;
 - 4. The shipment's final destination;
 - 5. The method of transportation; and
 - 6. Any such other information as required by the State Veterinarian may require.
- B. ~~Permits A permit number are is valid for no longer than 15 calendar days from the date of issuance unless otherwise specified.~~
- C. ~~Permits A permit number will shall be issued provided the animals shown thereon listed on the permit are in compliance with these rules this Article. However, in order to To cope with changing disease conditions, the State Veterinarian may refuse to issue a permit number or may require meeting additional conditions not specifically set forth established in these rules for its issuance as deemed this Article if necessary to protect livestock animal health in Arizona.~~
- D. ~~To facilitate the movement of animals required to enter Arizona by permit if the prerequisites have been met, a permit number may be issued by telephone. The permit number so issued must shall be affixed or written on the health certificate, brand inspection certificate and any other official documents in this fashion as follows: "Arizona Permit No. _____" followed by the serialized number.~~
- E. ~~If the State Veterinarian finds that any person has The State Veterinarian may refuse to grant a future permit number to any person directly associated with the following violations:~~
 - 1. ~~given Giving false information in connection with concerning a permit number for transportation of animals, or~~
 - 2. ~~failed Failing to fulfill the conditions of a permit number, or~~
 - 3. ~~fails Failing to obtain a permit number, as required, the State Veterinarian may refuse to grant future permits to such person, or others directly associated with such violations.~~

R3-2-611. Duties of transporters Transporter Duties

- A. ~~All owners and operators of railroads, trucks, airplanes, or other conveyances used in the transportation of transporting animals into or through the state of Arizona must assure that each consignment or shipment is in conformity with the applicable statutes and regulations of the state of destination and that each Arizona consignment is accompanied by an~~

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~~official shall possess a valid health certificate; or by a permit number issued by the State Veterinarian, of Arizona or by both, when so required. Such health certificate or permit, or both, must~~ These documents shall be attached to the waybill, ~~accompanying the shipment~~ or be in the possession of the ~~attendant vehicle driver, or person~~ in charge of the animals. When a single health certificate and permit number is issued for animals being moved in more than 1 vehicle, the driver of each vehicle shall possess the original or a certified copy of the permit number and the health certificate.

- B. All railroad cars, trucks, airplanes, or other conveyances used in the transportation of animals into or through the state of Arizona ~~must shall~~ be maintained in a clean and sanitary condition ~~insofar as is reasonable~~.
- C. The owners and operators of railroads, trucks, airplanes, or other conveyances ~~which who~~ transport animals into ~~this the~~ state in violation of this ~~subsection must properly~~ Section shall clean and disinfect the conveyance in which ~~such the~~ animals were illegally brought into the state. The cleaning and disinfection ~~must shall~~ be performed under the supervision of an authorized representative of the Office of the State Veterinarian or of the U.S. Department of Agriculture USDA.
- D. All owners and operators of railroads, trucks, airplanes, or other conveyances ~~must shall conform to applicable~~ follow the USDA requirements, rules regulations of the ~~Livestock Board Department and~~ the Arizona Commerce Commission, and Arizona statutes of the state of Arizona in transporting or moving any in the humane transport of animals into, within, or through the state of Arizona.

R3-2-613. Requirements for importation of swine Swine

- A. Swine may enter the state of Arizona provided they are transported under permit and moved in conformity with R3-2-602 through R3-2-611 and are accompanied by an official health certificate of the state of origin issued by an accredited veterinarian attesting that:

- 1. The swine have been inspected within ten days of date of shipment.
- 2. The swine are free from evidence of any infectious, contagious or communicable disease, or known exposure thereto.
- 3. Each swine is identified by cartag, and such identification is recorded on the health certificate.
- 4. The swine have never been fed garbage.
- 5. The swine originate from a state free of any USDA quarantine for any swine disease.

The owner of swine entering Arizona, or the owner's agent, shall comply with the requirements of Article 6 and the following conditions:

- 1. Pay the expenses incurred to quarantine, test, and retest the imported swine;
- 2. Obtain an official health certificate as specified in R3-2-606 and permit as specified in R3-2-607.

- B. With regards to brucellosis, all breeding swine four months of age and over must: Brucellosis test requirements for breeding swine imported into Arizona from other states.

- 1. Be Breeding swine shall originate from a validated swine brucellosis-free ~~swine~~ herd or from a ~~validated swine~~ brucellosis-free state; or
- 2. Enter only after a negative result to a brucellosis test, performed not more than Breeding swine shall test negative for brucellosis within 30 days prior to before entry.

- C. With regards to pseudorabies: Pseudorabies test requirements for swine imported into Arizona from other states. All swine shall:

- 1. All breeding swine three months of age and over must:
 - a. Not originate from a known infected or exposed herd.
- 1.b. Be shipped directly from the farm of origin in a state recognized by USDA-APHIS as a pseudorabies Stage IV or Stage V state, a pseudorabies qualified negative herd from California, or from a pseudorabies monitored feeder pig herd in a pseudorabies Stage II or Stage III state if consigned to a restricted swine feedlot, tested negative within 30 days prior to entry into Arizona or originate from a Qualified Pseudorabies Free Herd.
- 2. If from a pseudorabies qualified negative herd from California, be tested negative for pseudorabies within 30 days before entry if moving directly to exhibition.
- 3.e. Be tested not less than 15 days or more than 30 days after entry into Arizona regardless of origin. Except for feeder swine consigned to a restricted swine feedlot, swine moving directly to exhibition, and swine from a farm of origin in a state recognized by USDA-APHIS as a pseudorabies Stage V state, remain under import quarantine and isolation at the location specified on the import permit and health certificate, with the following restrictions, until tested negative for pseudorabies no sooner than 15 days or later than 30 days after entry:
 - d. Be isolated for at least 30 days with the following stipulations:
 - a.i. Isolation unit The area of isolation shall not be in close proximity and shall not be accessible to normal traffic flow; to straying pigs, other livestock, pets, or working dogs, nor be accessible to normal traffic flow.
 - b.ii. Equipment, tools and implements shall not be moved from isolation pens ~~to be and~~ used at other pens.
 - c.iii. A means of disinfection shall be maintained for anyone required to work with other livestock or the main herd.
 - d.iv. Distance The distance between isolation and other swine pens shall be not less than 200 feet and shall be ~~at least~~ double fenced to prevent exposure to accidental strays.

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- ~~e.v. Quarantined release of isolated and tested or retested breeding stock shall be documented by the releasing veterinarian or livestock official. The State Veterinarian shall document the release of imported quarantined swine after proof of a negative pseudorabies test is received.~~
- ~~e.f. Imported swine showing suspect or positive on first test after arrival may be either held for retest or sold for slaughter within 30 days. Swine showing a positive second test after arrival must be slaughtered within 15 days after notice of positive test results. Imported quarantined swine testing positive after entry shall be shipped directly to a state or federal slaughter establishment within 15 days after the positive identification and shall be accompanied by a USDA-VS Form 1-27. The remainder of exposed animals shall be quarantined until the herd is declared free of the disease, or all exposed animals are depopulated and the premises clean and disinfected.~~
2. ~~All feeder swine:~~
- ~~a. May be consigned to a restricted swine feedlot for feeding, handling, receiving and maintenance of untested swine. Such feedlots may only be established when approved by the State Veterinarian. Sales from such restricted swine feedlots shall be for immediate slaughter only.~~
- ~~i. Restricted swine feedlots are permitted to procure swine from suppliers where pseudorabies is not known to be present. This excludes pseudorabies vaccinated swine and swine herds with a history of infection within the past year.~~
- ~~b. Feeder swine consigned to areas other than restricted swine feedlots are required to meet the same requirements for pseudorabies as breeding swine.~~
3. Exhibition swine moving directly to exhibition from qualified negative herds in California, or from a herd in a Stage IV state, shall, if remaining in the state, be held under import quarantine at a location disclosed by the exhibitor within 3 days of the end of the exhibition, until tested negative for pseudorabies no sooner than 15 days or later than 30 days after entry with the restrictions identified in R3-3-613(C)(2)(a) through (C)(2)(f).

R3-2-614. Requirements for importation of swine Goats and Sheep

- A. ~~Goats of various breeds or crossbreeds are required to enter under permit and with a health certificate in conformity with R3-2-602 through R3-2-611, certifying that they have not been infected with or exposed to bluetongue. The owner of goats and sheep entering Arizona, or the owner's agent, shall comply with the requirements of Article 6 and pay the expenses incurred to quarantine, test and retest the goats and sheep.~~
- B. ~~Sheep are required to enter under a permit, with a health certificate in conformity with R3-2-602 through R3-2-611. Breeding rams.~~
- ~~1. Breeding rams shall be certified as individually examined and free of gross lesions of ram epididymitis.~~
- ~~2. Rams with palpable evidence of epididymitis shall not be shipped to Arizona.~~
- ~~2. Breeding rams 6 months and older shall test negative for Brucella ovis within 30 days of entry or originate from a certified brucellosis-free flock.~~
- ~~3. Sheep with known infection or exposure to bluetongue shall not be shipped to Arizona.~~

R3-2-616. Requirements for dogs and cats Cats and Dogs

- A. ~~Dogs entering the state of Arizona are required to be apparently healthy. Those animals originating from an area or state where a rabies quarantine is in effect are required to move only under special permit from the Office of the Arizona State Veterinarian.~~
- B. ~~Dogs four months of age or older shall be accompanied by an official Rabies Vaccination Certificate stating the dog has been vaccinated against rabies, identified by proper identification tag and the vaccination is current for the type vaccine used.~~
- C. ~~Cats have no requirements if apparently healthy.~~
- Dogs and cats shall be accompanied by a health certificate that documents the animal is currently vaccinated against rabies according to the requirements of the National Association of State Public Health Veterinarians' Compendium of Animals Rabies Control, incorporated by reference in R3-2-408.

R3-2-619. Game, furbearing and wild animals

Game, furbearing and wild animals are subject to the laws, rules and regulations of the Arizona Game and Fish Department, 2222 West Greenway Road, Phoenix, AZ 85023, phone (602) 942-3000.

R3-2-621. Non-Restricted Live Wildlife Cervidae

The owner of non-restricted live wildlife Cervidae entering Arizona, or the owner's agent, shall comply with the requirements in Article 6 and the following conditions:

1. Pay the expenses incurred to quarantine, test, and retest the imported non-restricted live wildlife cervids;
2. Ensure that each non-restricted live wildlife cervid is individually identified on the health certificate by a USDA metal eartag;
3. Tuberculosis testing.

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- a. Except for non-restricted live wildlife Cervidae from a tuberculosis accredited-free herd, a tuberculosis qualified herd, or a tuberculosis monitored herd, ensure that non-restricted live wildlife Cervidae are tested negative twice for tuberculosis no less than 90 days apart with the 2nd test conducted within 90 days before the date of entry;
 - b. Test non-restrictive live wildlife Cervidae originating from a tuberculosis qualified or monitored herd for tuberculosis once within 90 days before entry.
4. Brucellosis testing.
- a. Certified brucellosis-free cervid herd. No testing required.
 - b. Brucellosis-monitored cervid herd. All sexually intact non-restricted live wildlife Cervidae 6 months of age or older shall be tested negative for brucellosis within 90 days before entry.
 - c. Other cervid herds. Sexually intact non-restricted live wildlife Cervidae 6 months of age or older shall be tested negative for brucellosis within 30 days before entry. A retest shall be conducted within 90 days after entry.

R3-2-622. Monkeys

Except for R3-2-607, the owner or owner's agent of macaque entering Arizona shall comply with Article 6 and the following conditions:

1. Each macaque shall have negative test results for Simian Herpes B virus performed not more than 30 days before entry into Arizona. If the macaque is less than 2 months of age, it shall be accompanied by a document issued and signed by an accredited veterinarian in the state of origin attesting that the biologic maternal parent of the macaque has tested negative for Simian Herpes B virus not more than 50 days before the macaque's arrival in Arizona.
2. Each macaque shall be tested negative for tuberculosis within 30 days of movement into Arizona. Animals less than 3 months of age shall be accompanied by a health certificate with a statement attesting that no macaques housed within a circumference of 300 ft. have exhibited symptoms of or tested positive for tuberculosis within 90 days.
3. Each macaque shall be permanently and uniquely identified with either a tattoo or microchip and the identification noted clearly on the health certificate and any accompanying document.

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE

PLANT SERVICES DIVISION

PREAMBLE

1. **Sections Affected**

R3-4-737	<u>Rulemaking Action</u>
R3-4-811	Amend
	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. § 3-107(A)(1), 3-445, 3-487.

Implementing statute: A.R.S. § 3-445, 3-448, 3-487.
3. **A list of all previous notices appearing in the Register addressing the adopted rule:**

Notice of Rulemaking Docket Opening: 5 A.A.R. 2389, July 23, 1999.
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Shirley Conard, Rules Specialist
Address:	Arizona Department of Agriculture 1688 West Adams, Room 235 Phoenix, Arizona 85007
Telephone:	(602) 542-0962
Fax:	(602) 542-5420
E-mail:	shirley.conard@agric.state.az.us
5. **An explanation of the rule, including the agency's reasons for initiating the rule:**

This rulemaking amends the container labeling rules in Articles 7 and 8 to make clear that containers shall not bear

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false or misleading statements.

6. **A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material.**

None.

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

Not applicable.

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

A. *The Arizona Department of Agriculture.*

The Department is not economically affected by the implementation of this rulemaking.

B. *Political Subdivision.*

Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.

C. *Businesses Directly Affected By the Rulemaking.*

Many retail establishments and producers demand that products used by their stores be shipped in containers displaying the establishment's or producer's own name, such as Safeway, Basha's, and Dole. This rulemaking allows shippers to accommodate these retail establishments and producers by giving shippers an option of labeling containers with their customer's name, address, and logo if the shipper's also includes an identifying code. This identifying code is a tracking mechanism recently implemented by the industry and is used to trace shipments.

The rule also allows that commodities used for processing may be transported on pallets or in cartons bearing labeling other than that of the commodity within the container. This exception allows the shipper to use surplus pallets or cartons.

D. *Private and public employment.*

Private and public employment is not directly affected by the implementation and enforcement of this rulemaking.

E. *Consumers and the Public.*

Consumers and the public are not directly affected by the implementation and enforcement of this rulemaking.

F. *State Revenues.*

This rulemaking will have no impact on state revenues.

9. **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: Shirley Conard

Address: Arizona Department of Agriculture
1688 West Adams, Room 235
Phoenix, Arizona 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420

E-mail: shirley.conard@agric.state.az.us

10. **The time, place, and nature of the proceedings for the making, 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: October 18, 1999

Time: 10:00 a.m.

Location: Arizona Department of Agriculture
1688 West Adams, Room 206
Phoenix, Arizona 85007

Arizona Administrative Register
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Nature: Oral Proceeding

Written comments on the proposed rules or preliminary economic, small business and consumer impact statement must be received by 4:00 p.m., October 18, 1999. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the department's coordinator, Patrick Stevens, (602) 542-4316 (voice) or 1-800-367-3839 (TDD Relay). Requests should be made as early as possible to allow time to arrange the accommodation.

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

None.

12. Incorporations by reference and their location in the rules:

None.

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

No.

14. The full text of the rules follows:

TITLE 3. AGRICULTURE

**CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION**

ARTICLE 7. ~~FRUITS~~ FRUIT AND ~~VEGETABLES~~ VEGETABLE STANDARDIZATION

Section

R3-4-737. Container Labeling for Fruit and Vegetables

ARTICLE 8. CITRUS FRUIT STANDARDIZATION

Section

R3-4-811. Container Labeling for Citrus Fruit

ARTICLE 7. ~~FRUITS~~ FRUIT AND ~~VEGETABLES~~ VEGETABLE STANDARDIZATION

R3-4-737. Container Labeling for Fruit and Vegetables

A. All containers shall bear in plain sight and plain letters on 1 outside panel the following:

1. Shipper or customer identification:

a. The name of the shipper; and

~~2-b.~~ The city, state, and zip code of the shipper; or

c. The name, address, and logo of the customer; and

d. The shipper's identifying code.

~~3-2.~~ The common or generic name of the commodity in each container; and

~~4-3.~~ The count, measure, or net weight of the commodity contained in each container, except for bulk containers.

B. No container shall bear any false or misleading statement.

C. Unless containers are reused by the shipper or customer whose name and address appears on the container, all markings or labels shall be removed or obliterated from the container before commercial reuse.

D. The information required in subsection (A) is not required for pallets or containers used to transport fruit or vegetables to a processing plant provided the pallets or containers are clearly marked "FOR PROCESSING ONLY." Fruit or vegetables transported to a processing plant may be packed on pallets or in containers bearing labels for commodities other than that commodity within the container.

ARTICLE 8. CITRUS FRUIT STANDARDIZATION

R3-4-811. Container Labeling for Citrus Fruit

A. All containers shall bear in plain sight and plain letters on 1 outside panel the following:

1. Shipper or customer identification:

a. The name of the shipper; and

~~2-b.~~ The city, state, and zip code of the shipper; or

c. The name, address, and logo of the customer; and

d. The shipper's identifying code.

~~3-2.~~ The common or generic name of the commodity in each container; and

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Notices of Proposed Rulemaking

- 4-3. The count, measure, or net weight of the commodity contained in each container, except for bulk containers.
- B.** Unless containers are reused by the shipper or customer whose name and address appears on the container, all markings or labels shall be removed or obliterated from the container before commercial reuse.
- C.** The information required in subsection (A) is not required for pallets or containers used to transport citrus fruit to a processing plant provided the pallets or containers are clearly marked "FOR PROCESSING ONLY." Citrus fruit transported to a processing plant may be packed on pallets or in containers bearing labels for commodities other than that commodity within the container.

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 6. OFFICE OF COMMODITY DEVELOPMENT AND PROMOTION

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| Article 1 | New Article |
| R3-6-101 | 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. § 3-107(A)(1)
Implementing statute: A.R.S. § 3-102(B)(4)
- 3. A list of all previous notices appearing in the Register addressing the adopted rule:**
Notice of Rulemaking Docket Opening: 5 A.A.R. 2058, June 25, 1999.
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- Name: Shirley Conard, Rules Specialist
- Address: Arizona Department of Agriculture
1688 West Adams, Room 235
Phoenix, Arizona 85007
- Telephone: (602) 542-0962
- Fax: (602) 542-5420
- E-mail: shirley.conard@agric.state.az.us
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
This rulemaking establishes a certificate that designates specific products manufactured or distributed and sold in Arizona.
- 6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material.**
None.
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
- 8. The preliminary summary of the economic, small business, and consumer impact:**
- A. *The Arizona Department of Agriculture.*
The Department is providing a service to the exporter and any fees resulting from this rulemaking will pay the administrative costs to produce the certificates.
- B. *Political Subdivision.*
Political subdivisions of this state are not directly affected by the implementation of this rulemaking.
- C. *Businesses Directly Affected By the Rulemaking.*

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Any person who exports a product and needs to verify that product was manufactured or distributed in Arizona will benefit from this rulemaking. The impact is unknown and depends upon the number of shipments exported to countries requiring the certification.

D. *Private and public employment.*

Private and public employment is not directly affected by the implementation of this rulemaking.

E. *Consumers and the Public.*

Consumers and the public are not directly affected by the implementation of this rulemaking.

F. *State Revenues.*

This rulemaking will have no impact on state revenues.

9. **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: Shirley Conard
Address: Arizona Department of Agriculture
1688 West Adams, Room 235
Phoenix, Arizona 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420
E-mail: shirley.conard@agric.state.az.us

10. **The time, place, and nature of the proceedings for the making, 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: October 19, 1999
Time: 10 a.m.
Location: Arizona Department of Agriculture
1688 West Adams, Room 206
Phoenix, Arizona 85007
Nature: Oral Proceeding

Written comments on the proposed rules or preliminary economic, small business and consumer impact statement must be received by 4:00 p.m., October 19, 1999. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the department's coordinator, Patrick Stevens, (602) 542-4316 (voice) or 1-800-367-3839 (TDD Relay). Requests should be made as early as possible to allow time to arrange the accommodation.

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

None.

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

None.

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

TITLE 3. AGRICULTURE

CHAPTER 6. OFFICE OF COMMODITY DEVELOPMENT AND PROMOTION

ARTICLE 1. MARKETING

Sections

R3-6-101. Certificate of Free Sale

ARTICLE 1. MARKETING

R3-6-101. Certificate of Free Sale

- A.** Any person manufacturing or distributing consumable products sold in Arizona, may apply to the Department for a Certificate of Free Sale. Applications from a multilevel or network marketing company shall be accepted only from the parent company. The application shall contain:
1. The following information:
 - a. The name, address, telephone, and facsimile number of the company;
 - b. The name of contact person for the company;
 - c. A list of the consumable products manufactured or distributed in the United States;
 - d. The printed name and signature of the responsible party; and
 - e. The country of importation.
 2. The fee prescribed in subsection (B);
 3. Copies of 3 paid, recent invoices or bills-of-lading for 3 different U.S. buyers that includes the buyers' telephone numbers shall be included with the application to substantiate that the products are sold and consumed in the U.S.
- B.** Fees.
1. Certificate of Free Sale: \$25 for each 100 products requested, plus the cost of delivery;
 2. Reprints of previously issued certificates, if requested within 3 months of the original date of issue: \$1 per page, plus the cost of delivery.

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 1. STATE BOARD OF DIRECTORS FOR COMMUNITY COLLEGES OF ARIZONA

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R7-1-706 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute and the statutes the rules are implementing:**
- Authorizing statute: A.R.S. 15-1424
- Implementing statute: A.R.S. 15-1424
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
- Notice of Rulemaking Docket Opening: 5 A.A.R. 2936, August 27, 1999.
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- Name: Thomas J. Saad
- Address: State Board of Directors for Community Colleges of Arizona
3225 North Central Avenue, Suite 1220
Phoenix, AZ 85012
- Telephone: (602) 255-4037
- Fax: (602) 279-3464
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
- The rule defines the types of community college teaching certificates issued; the minimum requirements for each certificate; the duration and process for renewal of certificates; and, competencies to be addressed in the community college course which is required for certification.
- 6. A reference to any study that the agency proposes to rely on its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
- None

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

The new section will not diminish the authority of college districts. They have been operating under similar, but less formal, provisions.

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

The proposed rule will not adversely impact small business or consumers.

9. 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: Thomas J. Saad
Address: State Board of Directors for Community Colleges of Arizona
3225 N. Central Ave., Suite 1220
Phoenix, AZ 85012
Telephone: (602) 255-4037
Fax: (602) 279-3464

10. 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:

Oral Proceedings/public hearing is scheduled as follows:

Date: November 19, 1999
Time: 1 p.m.
Location: Eastern Arizona College, Thatcher, Arizona

11. Any other matters prescribed by statute that are applicable to the specific agency:

None

12. Incorporations by reference and their location in the rules:

None

13. Full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 1. STATE BOARD OF DIRECTORS FOR COMMUNITY COLLEGES OF ARIZONA

ARTICLE 7. INSTRUCTION, FACULTY, AND STAFF

Section
R7-1-706. Certification Standards

ARTICLE 7. INSTRUCTION, FACULTY, AND STAFF

R7-1-706. Certification Standards

A. ~~Five~~ Six types of community college teaching certificates may be issued

1. The Lifetime Certificate

The Minimum requirements for a Lifetime Certificate are:

a. A Master's degree or higher degree, earned pursuant to subsection (C) of this section with a minimum of 18 graduate semester hours in the field to be taught.

b. The Arizona Community College Course requirement in subsection (D) of this section.

2. The 3 categories of regular certificates and the minimum requirements for each are as follows:

a. Regular Certificate (SIX (6) year term) ~~((A)(1)(a))~~:

i. A Master's degree or higher degree, earned pursuant to subsection (C) of this Section with a minimum of 24 semester hours of upper division and/or graduate credit in the field discipline to be taught;

ii. The Arizona Community College Course requirement in subsection (D) of this Section.

b. Regular Occupational I Certificate (Six (6) year term) ~~((A)(1)(b))~~ (Occupational teaching fields only):

i. A Bachelor's degree, earned pursuant to subsection (C) of this Section with a minimum of 3 years of directly related occupational experience in the field to be taught;

ii. The Arizona Community College Course requirement in subsection (D) of this Section.

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- c. Regular Occupational II Certificate (Six (6) year term) ~~((A)(1)(e))~~ (Occupational teaching fields only):
 - i. An Associate's degree, earned pursuant to subsection (C) of this Section or a minimum of 64 semester hours and, in addition, a minimum of 5 years of directly related occupational experience in the field to be taught, ~~or~~
 - ii. A valid Arizona license or Arizona certificate in the field to be taught; or valid certification in the field to be taught issued by a national, state, professional, or specialized accrediting body, listed in the 2000 Higher Education Directory, Eighteenth Edition, published by Higher Education Publications, Inc.
 - iii. The Arizona Community College Course requirement in subsection (D) of this Section.
 - 23. A Special Certificate ~~((A)(2))~~ may be issued to an individual employed to teach fewer than 12 credits per semester with the following qualifications:
 - a. Has a Bachelor's degree or higher degree, earned pursuant to subsection (C) of this Section or a minimum of 5 years of directly related experience in the occupational field to be taught, ~~or~~
 - b. Has a ~~regular~~ valid Arizona license or a Arizona certificate in the field to be taught; or valid certificate certification in the field to be taught; and issued by a national, state, professional or specialized accrediting body, listed in the 2000 Higher Education Directory, Eighteenth Edition, published by Higher Education Publications, Inc. and
 - c. Has completed ~~or is enrolled in~~ the Arizona Community College Course required by subsection (D) of this Section.
 - d. An individual who holds a Special Certificate may be granted permission to teach 12 or more credits per semester, if such permission is requested by the Chief Executive Officer or Chief Academic Officer of the college or college district and justification is provided that demonstrates it is not feasible for the college to secure the services of a person qualified for a Regular Certificate.
 - 34. An Internship Certificate ~~((A)(3))~~ may be issued to an applicant with the following qualifications:
 - a. Has, or is a candidate for, a master's degree in an academic field, or holds, or is a candidate for, a Bachelor's degree in an occupational field, from an institution accredited by 1 of the Regional Accrediting Associations.
 - b. Applicant has been recommended for, and admitted to, an intern program conducted by an institution accredited by 1 of the Regional Accrediting Associations.
 - c. Has completed ~~or is enrolled in~~ the Arizona Community College Course required by subsection (D) of this section.
 - 45. A Provisional Certificate ~~((A)(4))~~ may be issued if the individual meets the requirements of the Lifetime Certificate as defined in (A)(1) or Regular Certificates as defined in (A)(42)(a), (A)(42)(b), or (A)(42)(c) but does not meet the Arizona Community College Course requirement in subsection (D) of this Section.
 - 56. Pursuant to A.R.S. § 15-1425(3), a District Specific Certificate ~~((A)(5))~~ may be issued as follows:
 - a. A community college district may request in writing certification for a person who cannot meet certification requirements in the desired teaching discipline but who has acquired the knowledge and skills to instruct in a specific field through experience or alternative educational experiences and justification is provided that demonstrates it is not feasible for the college to secure the services of a person qualified for a Regular Certificate.
 - b. An individual who holds a District Specific Certificate shall:
 - i. Teach fewer than 12 credits per semester only in the district originating the request for certification.
 - ii. Teach 12 or more credits per semester if requested by the Chief Executive Officer or Chief Academic Officer of the college or college district.
 - iii. Meet the Community College Course requirement in subsection (D) of this Section.
- B. Community college teaching certificates may be renewed as follows:**
- 1. The Lifetime Certificate as defined in (A)(1) is valid for Life unless revoked.
 - 42. Regular Certificates as defined in ((A)(42)(a), (A)(42)(b), and (A)(42)(c)) are ~~permanent unless revoked~~ valid for 6 years and may be renewed.
 - 23. Special Certificates as defined in ((A)(23)) ~~may be renewed at the end of~~ are valid initially for 2 years and may be renewed for a 6-year periods ~~and may be renewed every 6 years thereafter.~~
 - 34. Internship Certificates as defined in ((A)(34)) are valid for a ~~period of 1 semester or six (6) months~~ year and may not be renewed.
 - 45. Provisional Certificates as defined in ((A)(45)) are valid for 2 years and ~~are nonrenewable~~ may not be renewed.
 - 56. District Specific Certificates as defined in (A)(56) ~~may be renewed at the end of~~ are valid initially for 2 years and may be renewed for a 6-year periods ~~and may be renewed every 6 years thereafter.~~
- C. Degrees or credits shall be earned and received from an institution accredited by 1 of the Regional Accrediting Associations. Law schools or colleges must be accredited by the American Bar Association. However, degrees and credits earned from a foreign institution shall be evaluated for equivalency to credits earned in an accredited institution on the basis of an analysis provided by a ~~F~~foreign ~~T~~ranscript ~~E~~valuation ~~A~~gency designated by the State Board.**
- D. Community College Course requirement**

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1. The required Community College Course ~~required~~ for the Lifetime and Regular certificates is a community college course, offered by an Arizona university or community college district. This course shall address the following competencies and shall be of such length and rigor as to warrant the awarding of 3 semester credit hours:
 - a. History of the Community College;
 - b. Philosophy/Mission/Purpose of the Community College;
 - c. Governance and Organizational Structure of the Arizona Community Colleges;
 - d. Current Community College Issues;
 - e. Student Characteristics and Student Services;
 - f. Financing Arizona Community Colleges;
 - g. Teaching, Learning, and Assessment;
 - h. Curriculum;
 - i. Community College Faculty Roles.
 2. A person who has successfully completed a community-college course at an out-of-state college or university or who has taught 1 year full-time or 2 years part-time at a regionally accredited community college outside of Arizona shall be exempt from taking the Arizona course provided the Chief Executive Officer of the college district and the Certification Office of the State Board recommend exemption and the State Board determines that the course and/or experience have provided the person with an orientation to community college teaching substantially equivalent to that provided by the required course.
 3. The Community College Course requirement for the Special Certificate as defined in ~~in~~ ~~(A)(23)~~ and the District Specific Certificate as defined in ~~in~~ ~~(A)(56)~~ may be satisfied by completion of an orientation about the Arizona Community College system. The method employed shall be determined by the Chief Executive Officer of each community college district and the content shall be based upon section D.1.
 4. The State Board shall systematically collect evaluative input from course completers and report the results to the course providers so that course providers and the State Board may continuously improve the quality and effectiveness of the course.
- E. A community college district may establish qualifications in addition to those required by the State Board as long as they do not discriminate on the basis of sex, race, religion, creed or national origin, and as long as they apply equally to all faculty members in a particular discipline, vocation or program.
- F. Certification fees (including evaluation and renewal) shall be established by the State Board and the fee schedule made available to any interested person.
- G. Each community college district shall annually, prior to September 1, provide the State Board a report detailing its use of District Specific Certificates during the previous academic year.
1. The report shall include the following elements:
 - a. A listing of individuals teaching with District Specific Certificates;
 - b. The discipline in which the District Specific Certificate for the individual has been issued;
 - c. The course taught by the individual.
 2. The State Board shall review the results of these reports to determine if the use of District Specific Certificates might affect confidence in transfer or accreditation standards.
- H. An individual may teach a class or classes offered by a community college under the jurisdiction of the State Board without further certification by the State Board where the community college documents that each of the following conditions is simultaneously satisfied:
1. The individual is a member in good standing of the faculty of a college or university beyond the authority of the State Board.
 2. The college or university is accredited by a Regional Accrediting Association.
 3. The individual is acting within the scope of employment with the college or university.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)

ARIZONA LONG-TERM CARE SYSTEM

PREAMBLE

1. Sections Affected

R9-28-101
R9-28-104

Rulemaking Action

Amend
Amend

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R9-28-105	Amend
R9-28-106	Amend
R9-28-412	Repeal
R9-28-412	New Section
R9-28-413	New Section
R9-28-414	New Section
R9-28-415	New Section
R9-28-416	New Section
R9-28-417	New Section
R9-28-418	New Section
R9-28-501	Repeal
R9-28-501	New Section
R9-28-507	Amend
R9-28-508	Repeal
R9-28-508	New Section
Article 6	Repeal
Article 6	New Article
R9-28-601	Repeal
R9-28-601	New Section
R9-28-602	Repeal
R9-28-602	New Section
R9-28-603	Repeal
R9-28-603	New Section
R9-28-604	Repeal
R9-28-604	New Section
R9-28-605	Repeal
R9-28-605	New Section
R9-28-606	Repeal
R9-28-606	New Section
R9-28-607	Repeal
R9-28-607	New Section
R9-28-608	Repeal
R9-28-608	New Section
R9-28-609	Repeal
R9-28-610	Repeal
R9-28-713	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. §§ 36-2932(G) and 36-2932(M)

Implementing statute: A.R.S. § 36-2940 (Delayed effective date 10/1/00)

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 5 A.A.R. 1541, May 21, 1999

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

Name: Cheri Tomlinson, Federal and State Policy Administrator

Address: AHCCCS Administration, Office of Policy Analysis and Coordination
801 East Jefferson Street, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

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

For the 1st time since the inception of the Arizona Long-Term Care System (ALTCS), the Arizona Health Care Cost Containment System (AHCCCS) Administration is conducting a statewide competitive bid process for the provision of long-term care services for persons who are elderly or physically disabled.

This rule change is due to a statutory change which rewrote A.R.S. § 36-2940 to have a delayed effective date of

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October 1, 2000. All program contractors will be selected by competitive bid for the contract period starting October 1, 2000.

6. **A reference to any study that the agency proposes to rely on in its evaluation of or justification for proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

None.

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

A.R.S. § 36-2940 requires the Administration to competitively bid the program contractor request for proposal statewide. Prior to this amendment, Maricopa and Pima counties were mandated program contractors. The counties of Cochise, Pinal, and Yavapai had the right of 1st refusal because of their program contractor status prior to January 1, 1994; the remainder of the counties could have bid to be a program contractor. These rules do not apply to the Department of Economic Security, Division of Developmental Disabilities (DES/DDD) who serves Medicaid persons who are developmentally disabled.

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

The rules directly affect members, providers, current program contractors, and potential program contractors. The anticipated result will be that the Administration will have multiple bidders for all geographic service areas (GSAs). In addition, the Administration may have multiple program contractors in the urban GSAs to conform with federal laws. Due to these changes, members and providers may have a change in program contractor. The extent of the impact, as measured in member and provider satisfaction terms as well as financial terms, can not be projected because this is the 1st time the ALTCS program has been competitively bid statewide.

9. **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: Cheri Tomlinson, Federal and State Policy Administrator

Address: AHCCCS Administration, Office of Policy Analysis and Coordination
801 East Jefferson Street, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

10. **The time, place, and nature of the proceedings for the making, 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: October 27, 1999

Time: 9 a.m.

Location: AHCCCS
701 East Jefferson Street, Gold Room
Phoenix, AZ 85034

Location: ALTCS: Arizona Long-Term Care System
110 South Church, Suite 3250
Tucson, AZ 85701

Location: ALTCS: Arizona Long-Term Care System
3480 East Route 66
Flagstaff, AZ 86004

Nature: Video-conference oral proceeding.

The Administration will consider written comments received before 5 p.m., October 27, 1999, at the following location:

Name: Cheri Tomlinson, Federal and State Policy Administrator
AHCCCS Administration, Office of Policy Analysis and Coordination
801 East Jefferson Street, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

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Fax: (602) 256-6756

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

None.

12. Incorporations by reference and their location in the rules:

Description	Date	Location
42 U.S.C. 1396r(h)	August 5, 1997	R9-28-608(B)
42 CFR, 488, Subpart F	May 17, 1999	R9-28-608(B)

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ARIZONA LONG-TERM CARE SYSTEM**

ARTICLE 1. DEFINITIONS

Sections

- R9-28-101. General Definitions
- R9-28-104. Eligibility and Enrollment Related Definitions
- R9-28-105. Program Contractor and Provider Standards Related Definitions
- R9-28-106. Program Contracts and Procurement Process Related Definitions

ARTICLE 4. ELIGIBILITY AND ENROLLMENT

Sections

- ~~R9-28-412. Enrollment with an ALTCS Program Contractor~~
- R9-28-412. General Enrollment
- R9-28-413. Enrollment with an EPD Program Contractor
- R9-28-414. Enrollment with the DD Program Contractor
- R9-28-415. Enrollment with a Tribal Program Contractor
- R9-28-416. Enrollment with the ALTCS FFS Program
- R9-28-417. Notification Requirements
- R9-28-418. Disenrollment

ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

Sections

- ~~R9-28-501. General Provisions~~
- R9-28-501. Reserved
- R9-28-507. Program Contractor General Requirements
- ~~R9-28-508. Program Contractor Standards – Submittal of Comprehensive Plan for Delivery of Services~~
- R9-28-508. Reserved

ARTICLE 6. PROGRAM CONTRACTS AND PROCUREMENT PROCESS

Sections

- ~~R9-28-601. General~~
- ~~R9-28-602. Contracts~~
- ~~R9-28-603. Subcontracts~~
- ~~R9-28-604. Request for Proposals (RFP); Contract Award~~
- ~~R9-28-605. Contract or Proposal Protests; Appeals~~
- ~~R9-28-606. Contract Amendments; Mergers; Reorganizations~~
- ~~R9-28-607. Contract Sanctions~~
- ~~R9-28-608. Reserved~~
- ~~R9-28-609. Specialty contracts~~
- ~~R9-28-610. Hospital Rate Negotiations~~

ARTICLE 6. REQUEST FOR PROPOSALS AND CONTRACT PROCESS

Sections

- R9-28-601. General Provisions
- R9-28-602. Request for Proposals (RFP); Contract Award
- R9-28-603. Contract or Proposal Protests; Appeals
- R9-28-604. Contracts
- R9-28-605. Subcontracts
- R9-28-606. Specialty Contracts
- R9-28-607. Contract Amendments; Mergers; Reorganizations
- R9-28-608. Contract Suspension, Denial, Modification, Termination, or Sanction

ARTICLE 7. STANDARDS FOR PAYMENTS

Sections

- R9-28-713. Hospital Rate Negotiations

ARTICLE 1. DEFINITIONS

R9-28-101. General Definitions

A. Location of definitions. Definitions applicable to Chapter 28 are found in the following:

Definition	Section or Citation
1. "211"	R9-28-104
2. "217"	R9-28-104
3. "236"	R9-28-104
4. "Administration"	A.R.S. § 36-2931
5. "AFDC"	R9-22-101
6. "Aggregate"	R9-22-107
7. "AHCCCS"	R9-22-101
8. "AHCCCS hearing officer"	R9-22-108
9. <u>9.</u> "Algorithm"	<u>R9-28-104</u>
9-10. <u>10.</u> "ALTCS"	A.R.S. § 36-2932
10-11. <u>11.</u> "ALTCS acute care services"	R9-28-104
11-12. <u>12.</u> "Alternative HCBS setting"	R9-28-101
12-13. <u>13.</u> "Ambulance"	R9-22-102
13-14. <u>14.</u> "Appeal"	R9-22-108
14-15. <u>15.</u> "Bed hold"	R9-28-102
15-16. <u>16.</u> "Behavior intervention"	R9-28-102
16-17. <u>17.</u> "Billed charges"	R9-22-107
17-18. <u>18.</u> "Capped fee-for-service"	R9-22-101
18 <u>19.</u> "Case management plan"	R9-28-101
19 <u>20.</u> "Case manager"	R9-28-101
20 <u>21.</u> "Case record"	R9-22-101
21 <u>22.</u> "Categorically eligible"	A.R.S. § 36-2934
22 <u>23.</u> "Certification"	R9-28-105
23 <u>24.</u> "CFR"	R9-28-101
24 <u>25.</u> "Clean claim"	A.R.S. § 36-2904
25 <u>26.</u> "Community Spouse"	R9-28-104
26 <u>27.</u> "Community Spouse Resource Deduction"	R9-28-104
27- <u>27.</u> "Comprehensive plan for delivery of services"	R9-28-105
28. "Contract"	R9-22-101
29. "Contractor"	R9-22-101
30. "County of fiscal responsibility"	R9-28-107
31. "Covered services"	R9-22-102
32. "CPT"	R9-22-107
33. "CSRD"	R9-28-104
34. "Day"	R9-22-101
35. <u>35.</u> "DES Division of Developmental Disabilities" A.R.S. § 36-551	
35 <u>36.</u> "Developmental disability"	A.R.S. § 36-551
36 <u>37.</u> "Diagnostic services"	R9-22-102
37 <u>38.</u> "Disenrollment"	R9-22-117

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38 39. "DME"	R9-22-102
39 40. "Eligible person"	A.R.S. § 36-2931
40 41. "Emergency medical services"	R9-22-102
41 42. "Encounter"	R9-22-107
42 43. "Enrollment"	R9-22-117
43 44. "Estate"	A.R.S. § 14-1201
44 45. "Facility"	R9-22-101
45 46. "Factor"	R9-22-101
46 47. "Fair consideration"	R9-28-104
47 48. "FBR"	R9-22-101
48 49. "Grievance"	R9-22-108
50. "GSA"	<u>R9-22-101</u>
49 51. "Guardian"	R9-22-116
50 52. "HCBS"	A.R.S. §§ 36-2931 and 36-2939
51 53. "Home"	R9-28-101
52 54. "Home health services"	R9-22-102
53 55. "Hospital"	R9-22-101
54 56. "ICF-MR"	R9-28-101
55 57. "IHS"	R9-28-101
56 58. "IMD"	42 CFR 435.1009
57. "Inspection of care"	R9-28-105
58 59. "Institutionalized"	R9-28-104
60. "Interested Party"	<u>R9-28-106</u>
59 61. "JCAHO"	R9-28-101
60 62. "License" or "licensure"	R9-22-101
61 63. "Medical record"	R9-22-101
62 64. "Medical services"	R9-22-101
63 65. "Medical supplies"	R9-22-102
64 66. "Medically eligible"	R9-28-104
65 67. "Medically necessary"	R9-22-101
66 68. "Member"	A.R.S. § 36-2931
67 69. "MMMNA"	R9-28-104
68 70. "NF"	42 U.S.C. 1396r(a)
69 71. "Noncontracting provider"	A.R.S. § 36-2931
70 72. "Occupational therapy"	R9-22-102
71 73. "PAS"	R9-28-103
72 74. "PASARR"	R9-28-103
73 75. "Pharmaceutical service"	R9-22-102
74 76. "Physical therapy"	R9-22-102
75 77. "Physician"	R9-22-102
76 78. "Post-stabilization services"	42 CFR 438.114
77 79. "Practitioner"	R9-22-102
78 80. "Primary care provider"	R9-22-102
79 81. "Primary care provider services"	R9-22-102
80 82. "Prior authorization"	R9-22-102
83. "Prior period coverage"	<u>R9-28-101</u>
84. "Prior-quarter period"	<u>R9-28-101</u>
84 85. "Private duty nursing services"	R9-22-102
82 86. "Program contractor"	A.R.S. § 36-2931
83 87. "Provider"	A.R.S. § 36-2931
84 88. "Prudent layperson standard"	42 U.S.C. 1396u-2
85 89. "Quality management"	R9-22-105
86 90. "Radiology"	R9-22-102
87 91. "Reassessment"	R9-28-103
88 92. "Redetermination"	R9-28-104
89 93. "Referral"	R9-22-101
90 94. "Reinsurance"	R9-22-107
91 95. "Representative"	R9-28-104
92-96. "Respiratory therapy"	R9-22-102

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93 97. "Respite care"	R9-28-102
94 98. "RFP"	R9-22-105
95 99. "Room and board"	R9-28-102
96 100. "Scope of services"	R9-22-102
97 101. "Speech therapy"	R9-22-102
98 102. "Spouse"	R9-28-104
99 103. "SSA".	P.L. 103-296, Title I
100 104. "SSI"	R9-22-101
101 105. "Subcontract"	R9-22-101
102 106. "Utilization management"	R9-22-105
103 107. "Ventilator dependent"	R9-28-102

B. General definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning:

1. "AHCCCS" is defined in 9 A.A.C. 22, Article 1.
2. "ALTCS" means the Arizona Long-Term Care System as authorized by A.R.S. § 36-2932.
3. "Alternative HCBS setting" means a living arrangement approved by the Director and licensed or certified by a regulatory agency of the state, where a member may reside and receive HCBS including:
 - a. For a person with a developmental disability (DD) specified in A.R.S. § 36-551:
 - i. Community residential setting defined in A.R.S. § 36-551;
 - ii. Group home defined in A.R.S. § 36-551;
 - iii. State operated group home defined in A.R.S. § 36-591;
 - iv. Family foster home defined in 6 A.A.C. 5, Article 58;
 - v. Group foster home defined in 6 A.A.C. 5, Article 59;
 - vi. Licensed residential facility for a person with traumatic brain injury specified in A.R.S. § 36-2939(C); and
 - vii. Behavioral health service agency specified in A.R.S. § 36-2939(B)(2) and 9 A.A.C. 20, Articles 6, 7, and 8 for Levels I, II, or III;
 - b. For a person who is elderly or physically disabled (EPD), provided the facility, setting, or institution is registered with AHCCCS:
 - i. Adult foster care homes defined in A.R.S. § 36-401; and as authorized in A.R.S. § 36-2939; and an assisted living home or a residential unit, as defined in A.R.S. § 36-401, and as authorized in A.R.S. § 36-2939;
 - ii. Licensed residential facility for a person with a traumatic brain injury specified in A.R.S. § 36-2939(C); and
 - iii. Behavioral health service agency specified in A.R.S. § 36-2939(C) and 9 A.A.C. 20, Articles 6, 7, and 8 for levels I and II; and
 - iv. Alzheimer's treatment assistive living facility demonstration pilot project as specified in Laws 1999, Ch. 313, § 35.
4. "Case management plan" means a service plan developed by a case manager that involves the overall management of a member's or an eligible person's care, and the continued monitoring and reassessment of the member's or the eligible person's need for services.
5. "Case manager" means a person who is either a degreed social worker, a licensed registered nurse, or a person with a minimum of 2 years of experience in providing case management services to a person who is elderly and physically disabled or has developmental disabilities.
6. "CFR" means Code of Federal Regulations, unless otherwise specified in this Chapter.
7. "Contract" is defined in 9 A.A.C. 22, Article 1.
- ~~8. "Contractor" is defined in 9 A.A.C. 22, Article 1~~
- ~~98.~~ "Day" is defined in 9 A.A.C. 22, Article 1.
9. "DES Division of Developmental Disabilities" is defined in A.R.S. § 36-551.
10. "Disenrollment" is defined in 9 A.A.C. 22, Article 1.
11. "Eligible person" ~~has the meaning~~ is defined in A.R.S. § 36-2931.
12. "Enrollment" is defined in 9 A.A.C. 22, Article 1.
13. "Facility" is defined in 9 A.A.C. 22, Article 1.
14. "Factor" is defined in 9 A.A.C. 22, Article 1.
15. "HCBS" means home and community based services defined in A.R.S. §§ 36-2931 and 36-2939.
16. "Home" means a residential dwelling that is owned, rented, leased, or occupied at no cost to a member, including a house, a mobile home, an apartment, or other similar shelter. A home is not a facility, a setting, or an institution, or a portion and any of these, licensed or certified by a regulatory agency of the state as a:
 - a. Health care institution defined in A.R.S. § 36-401;
 - b. Residential care institution defined in A.R.S. § 36-401;
 - c. Community residential facility defined in A.R.S. § 36-551; or

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- d. Behavioral health service facility defined in 9 A.A.C. 20, Articles 6, 7, and 8.
17. "Hospital" is defined in 9 A.A.C. 22, Article 1.
- ~~18.~~ "GSA" is defined in 9 A.A.C. 22, Article 1.
- ~~18~~19. "ICF-MR means an intermediate care facility for the mentally retarded and is defined in 42 CFR 435.1009 and 440.150.
- ~~19~~20. "IHS" means the Indian Health Service.
- ~~20~~21. "JCAHO" means the Joint Commission on Accreditation of Healthcare Organizations.
- ~~24~~22. "License" or "licensure" is defined in 9 A.A.C. 22, Article 1.
- ~~22~~23. "Medical record" is defined in 9 A.A.C. 22, Article 1.
- ~~23~~24. "Medical services" is defined in 9 A.A.C. 22, Article 1.
- ~~24~~25. "Medically necessary" is defined in 9 A.A.C. 22, Article 1.
- ~~25~~26. "Member" ~~has the meaning is defined~~ in A.R.S. § 36-2931.
- ~~26~~27. "NF" means nursing facility and is defined in 9 A.A.C. 22, Article 1.
- ~~27~~28. "Non-contracting provider" ~~has the meaning is defined~~ in A.R.S. § 36-2931.
29. "Prior period coverage" means the period of time from the 1st day of the month of application or the 1st eligible month whichever is later to the day a member is enrolled with the program contractor. The program contractor receives notification from the Administration of the member's enrollment.
30. "Prior-quarter period" means the 3 calendar months immediately preceding the month of application during which a member may be eligible for services covered under this Chapter, retroactively under federal law and under A.R.S. § 36-2937(B).
- ~~28~~31. "Program contractor" ~~has the meaning is defined~~ in A.R.S. § 36-2931.
- ~~29~~32. "Provider" ~~has the meaning is defined~~ in A.R.S. § 36-2931.
- ~~30~~33. "Referral" is defined in 9 A.A.C. 22, Article 1.
- ~~34~~34. "SSA" means Social Security Administration defined in P.L. 103-296, Title I.
- ~~32~~35. "SSI" is defined in 9 A.A.C. 22, Article 1.
- ~~33~~36. "Subcontract" is defined in 9 A.A.C. 22, Article 1.

R9-28-104. Eligibility and Enrollment Related Definitions

Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning:

1. "211" means 42 CFR 435.211.
2. "217" means 42 CFR 435.217.
3. "236" means 42 CFR 435.236.
4. "ALTCS acute care services" means services, under 9 A.A.C. 22, Articles 2 and 12, that are provided to a person who meets ALTCS eligibility requirements in 9 A.A.C. 28, Article 4 but who lives in an acute care living arrangement described in R9-28-406(B) or who is not eligible for long-term benefits, described in R9-28-409(D), due to a transfer without receiving equal compensation.
5. "Algorithm" means a mathematical formula used by the Administration to assign a member to an EPD program contractor when the member does not make a choice and does not meet the assignment-decision process.
- ~~56.~~ "Community spouse" means the husband or wife of a an institutionalized person who has entered into a contract of marriage, recognized as valid by Arizona, and who does not live in a medical institution.
- ~~67.~~ "Community Spouse Resource Deduction" means the amount of a married couple's resources that are excluded in the eligibility determination to prevent impoverishment of the community spouse, determined under R9-28-410(B).
- ~~78.~~ "CSRSD" means Community Spouse Resource Deduction defined in R9-28-104(6).
- ~~89.~~ "Fair consideration" means income, real or personal property, services, or support and maintenance equal to the fair market value of the income or resources that were transferred.
910. "Institutionalized" means residing in a medical institution or receiving or expecting to receive HCBS that prevent the person from being placed in a medical institution determined by the ALTCS Pre-Admission Screening (PAS) under R9-28-103.
- ~~1011.~~ "Medically eligible" means meeting the ALTCS medical eligibility criteria under 9 A.A.C. 28, Article 3.
- ~~112.~~ "MMMNA" means Minimum Monthly Maintenance Needs Allowance.
- ~~1213.~~ "Redetermination" means a periodic review of all eligibility factors for a recipient.
- ~~1314.~~ "Representative" means a person other than a spouse or a parent of a dependent child, who applies for ALTCS on behalf of another person.
- ~~1415.~~ "Spouse" means either someone who is legally married under Arizona law, a person who is eligible for Social Security benefits as the spouse of another person, or a person who lives with another person of the opposite sex and the couple represents themselves in their community as husband and wife.

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R9-28-105. Program Contractor and Provider Standards Related Definitions

Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning:

1. "Certification" means a voluntary process by which a federal or state regulatory entity grants recognition to an individual, facility, or organization which has met certain prerequisite qualifications specified by the regulatory entity and which may assume or use the word "certified" in his, her, or its title or designation to perform prescribed health professional tasks.
2. "Comprehensive plan for delivery of services" means the plan that program contractors submit to the Director as prescribed in A.R.S. § 36-2940.
3. "Inspection of care" means an annual review of members and eligible persons residing in ICF-MRs, behavioral health residential treatment centers, inpatient psychiatric facilities for individuals less than age of 21, and IMDs to ensure appropriate placement, utilization, and quality of care.
4. "Quality management" is defined in 9 A.A.C. 22, Article 1.
5. "Utilization management" is defined in 9 A.A.C. 22, Article 1.

R9-28-106. Program Contracts and Procurement Process Related Definitions

Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning: "~~RFP~~" means request for proposal and is defined in 9 A.A.C. 22, Article 1. "Interested Party" means an actual or prospective offeror whose economic interest may be affected substantially and directly by the issuance of a request for proposals, the award of a contract, or the failure to award a contract.

ARTICLE 4. ELIGIBILITY AND ENROLLMENT

~~R9-28-412. Enrollment with an ALTCS Program Contractor~~

- ~~**A.** Enrollment with appropriate ALTCS program contractor. As soon as a decision is reached that a person is eligible for ALTCS benefits, a person shall be enrolled under A.R.S. § 36-2933 with either:~~
- ~~1. The DES Division of Developmental Disabilities if a person is developmentally disabled;~~
 - ~~2. An ALTCS tribal contractor if the person is a Native American living on the reservation of a tribe participating as an ALTCS tribal contractor;~~
 - ~~3. An ALTCS program contractor; or~~
 - ~~4. ALTCS fee for service if there is no ALTCS tribal or program contractor and the person is not developmentally disabled.~~
- ~~**B.** Effective date of ALTCS enrollment for a person not enrolled with an acute care health plan.~~
- ~~1. With the exception of prior quarter eligibility under R9-28-401(G), a person shall be enrolled with the appropriate program contractor, as determined by subsection (A), retroactive to the 1st day of the month in which the person became eligible for the ALTCS program.~~
 - ~~2. Prior quarter eligibility benefits, specified in R9-28-401(G), are covered by the Administration on a fee for service basis.~~
- ~~**C.** Effective date of ALTCS enrollment for a person enrolled with an acute care health plan. If a person is eligible for AHCCCS acute care program and is approved for ALTCS coverage, disenrollment with a contractor who provides services specified in R9-22-101 and enrollment with the ALTCS tribal or program contractor is effective on the date that the ALTCS approval is posted on the AHCCCS Prepaid Medical Management Information System (PMMIS). The contractor in which the person is enrolled is responsible for AHCCCS covered services until that date.~~
- ~~**D.** Notification to the ALTCS tribal or program contractor. A contractor shall be notified whenever a person is enrolled or disenrolled with that contractor. Notification shall include the person's name, identification number, and the effective date of enrollment or disenrollment.~~
- ~~**E.** Responsibilities of ALTCS tribal or program contractors.~~
- ~~1. The ALTCS program contractor is responsible for all AHCCCS covered services provided to an enrolled person until the person is disenrolled.~~
 - ~~2. An eligible and enrolled person shall be assigned a case manager by the ALTCS program contractor.~~
 - ~~3. The ALTCS tribal contractor is responsible for the coordination of services specified in the tribe's intergovernmental agreement (IGA) with the Administration.~~
 - ~~4. The ALTCS tribal or program contractor shall notify the Administration if an ALTCS eligible person has any change that may affect eligibility including:~~
 - ~~a. Residential address;~~
 - ~~b. County of residence;~~
 - ~~c. Facility; or~~
 - ~~d. Death.~~
- ~~**F.** Disenrollment.~~

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1. ~~An eligible person who dies shall be disenrolled from the ALTCS tribal or program contractor effective the day after the date of death.~~
2. ~~An eligible person who loses ALTCS eligibility for any other reason shall be disenrolled following the receipt of appropriate notification under R9-28-411.~~

R9-28-412. General Enrollment

- A.** Program contractors. The Administration shall enroll each ALTCS member with 1 of the following ALTCS program contractors or the FFS program as specified in A.R.S. § 36-2933:
1. An elderly and physically disabled (EPD) program contractor.
 2. The developmentally disabled (DD) program contractor.
 3. A tribal program contractor, or
 4. The AHCCCS fee-for-service program.
- B.** Annual enrollment. If an ALTCS member is elderly or physically disabled and lives in a GSA served by more than 1 program contractor, a member may change program contractors during the annual enrollment choice period.

R9-28-413. Enrollment with an EPD Program Contractor

- A.** A member's enrollment when there is 1 EPD program contractor. The Administration shall enroll an ALTCS elderly or physically disabled member with the 1 EPD program contractor assigned to that GSA.
- B.** New member who makes a choice of an EPD program contractor on or after October 1, 2000. The Administration shall provide a new member an opportunity to choose an EPD program contractor, if an ALTCS member is elderly or physically disabled, and lives in a GSA served by more than 1 EPD program contractor.
- C.** New member who makes no choice of an EPD program contractor on or after October 1, 2000. The Administration shall enroll an elderly or physically disabled new member that lives in a GSA and has more than 1 EPD program contractor and who does not choose an EPD program contractor according to the following:
1. Criteria. The Administration will prioritize enrollment based on continuity of care and determine which EPD program contractor a member will be enrolled with according to the following criteria, including but not limited to:
 - a. A member's living arrangement, and
 - b. A member's primary care practitioner.
 2. Algorithm. The Administration shall enroll a member through an algorithm as specified in contract, when a member has a choice of more than 1 EPD program contractor and the criteria in subsection (C)(1) does not apply.
- D.** A member enrolled with an EPD program contractor prior to October 1, 2000, and is enrolled in the system after October 1, 2000.
1. Choice. The Administration shall request an existing member who resides in a GSA that has more than 1 EPD program contractor to choose an EPD program contractor.
 2. A member makes no choice. If a member does not make a choice, the Administration will continue enrollment with a member's existing EPD program contractor, if the existing EPD program contractor is awarded a contract. If an existing EPD program contractor is not awarded a bid, a member will be enrolled with an EPD program contractor as specified in Section (C).

R9-28-414. Enrollment with the DD Program Contractor

- A.** A member's DD program contractor. The Administration shall enroll a member with the DES Division of Developmental Disabilities as specified in A.R.S. § 36-2940, if an ALTCS member is eligible for services for the developmentally disabled services.
- B.** Native American on and off reservation. The Administration shall enroll a Native American ALTCS member who is developmentally disabled, regardless of residence, with the DES Division of Developmental Disabilities, regardless if a member is considered to be residing on or off reservation.

R9-28-415. Enrollment with a Tribal Program Contractor

- A.** On-reservation. The Administration shall enroll a Native American ALTCS member who is elderly or physically disabled with the ALTCS tribal program contractor as specified in A.R.S. § 36-2932 if a person:
1. Lives on-reservation of a tribe participating as an ALTCS tribal program contractor, or
 2. Lived on-reservation of a tribe participating as an ALTCS tribal program contractor immediately prior to placement in an off-reservation NF or alternative HCBS setting.
- B.** Off-reservation. The Administration shall enroll a Native American ALTCS member who is elderly or physically disabled with an EPD program contractor under R9-28-413, if a member lives off-reservation, and has no on-reservation status as specified in subsection (A)(2).

R9-28-416. Enrollment with the FFS Program

- A.** No tribal or EPD program contractor in GSA. The Administration shall enroll an ALTCS elderly or physically disabled member who resides in an area with no ALTCS tribal program contractor or EPD program contractor in the AHCCCS FFS program as specified in A.R.S. § 36-2945.

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- B.** Prior-quarter period. The Administration shall enroll a member in ALTCS FFS program if a member is eligible during the prior-quarter period for that period as specified in A.R.S. § 36-2937.
- C.** Prior period coverage. The Administration shall enroll a member in AHCCCS fee-for-service program if a member is eligible for ALTCS services only during prior period coverage.

R9-28-417. Notification Requirements

- A.** Administration responsibilities. The Administration shall notify a member's program contractor whenever a member is enrolled or disenrolled from the ALTCS program. The Administration shall include the following in the notification:
 - 1. A member's name,
 - 2. A member's identification number,
 - 3. A member's effective date of enrollment or disenrollment, and
 - 4. A member's share-of-cost on a monthly roster.
- B.** Program contractor's responsibilities. The program contractor shall notify the Administration if an ALTCS member has any changes that may affect eligibility including but not limited to:
 - 1. A change in residential address;
 - 2. A change in medical or functional condition;
 - 3. A change in living arrangement including:
 - a. Alternative HCBS setting,
 - b. Home,
 - c. Nursing facility, or
 - d. Other living arrangement not specified in this subsection;
 - 4. Change in resource or income; or
 - 5. Death.

R9-28-418. Disenrollment

The Administration shall disenroll an ALTCS member the last day of the month following receipt of appropriate notification under R9-28-411 except under the following situations:

- 1. The Administration shall disenroll an ALTCS member who dies. A member's last day of enrollment shall be the date of death.
- 2. The Administration may disenroll a member immediately if requested.
- 3. The Administration shall disenroll a member effective the date of the hearing decision if ALTCS benefits have been continued pending an eligibility appeal decision and the discontinuance is upheld, as specified in 9 A.A.C. 28, Article 8.

ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

R9-28-501. General Provisions

- ~~**A.** An eligible person or member may receive the covered services specified in Article 2 of this Chapter. A program contractor shall provide and coordinate services for a member enrolled with the program contractor. The Administration shall provide and coordinate ALTCS covered services to an eligible person or member in counties where there is no program contractor. The Department of Economic Security, in its role as a program contractor, shall provide and coordinate services to an eligible person or member with developmental disabilities, as defined in A.R.S. § 36-551.~~
- ~~**B.** To participate in the ALTCS program, through a program contractor or directly through the Administration, a provider of ALTCS covered services shall be registered with the Administration.~~

R9-28-501. Reserved

R9-28-507. Program Contractor General Requirements

- A.** To participate in the ALTCS program, through a program contractor or directly through the Administration, a provider of ALTCS-covered services shall be registered with the Administration.
- ~~**AB.** ALTCS program contractors shall ensure that providers of service meet the requirements of this Article.~~
- ~~**BC.** Each ALTCS program contractor shall maintain member service records. These shall include, at a minimum, a case management plan, medical records, encounter data, grievances, complaints, and service information for each ALTCS member. A program contractor shall ensure that all member service records are retained for 5 years from the date of final payment or, for records relating to costs and expenses to which the Administration has taken exception, 5 years after the date of final disposition or resolution of the exception. A program contractor shall provide ALTCS member service records or copies of member service records to the Administration upon request.~~
- ~~**CD.** An ALTCS program contractor shall produce and distribute information materials to each enrolled ALTCS member or designated representative within ~~40~~ 12 days after receipt of notification of enrollment from the Administration. The information, which shall be approved by the Administration before distribution, shall include:
 - 1. A description of all available covered services as specified in contract;~~

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2. An explanation of service limitations and exclusions;
3. An explanation of the procedure for obtaining services, including a notice stating that the program contractor is liable only for those services authorized by an ALTCS member's case manager;
4. An explanation of the procedure for obtaining emergency services; ~~and~~
5. An explanation of the procedure for filing a grievance and appeal; ~~and~~
6. An explanation of when plan changes may occur as specified in contract.

- ~~DE.~~ An ALTCS program contractor shall submit encounter reports on services rendered to each member within 120 days after the month of service, except for services with Medicare coverage, which shall be submitted within 180 days after the month of service.
- ~~EF.~~ An ALTCS program contractor or subcontractor shall collect the member's share of cost and report the amount collected as specified in their contract to the program contractor or Administration, if necessary.
- ~~FG.~~ An ALTCS program contractor shall monitor a trust fund account for an institutionalized ALTCS member to verify that expenditures from the member's trust fund account are in compliance with federal regulations.
- ~~GH.~~ A program contractor shall ensure that an institutionalized ALTCS member who is transferred to an acute facility for services is, whenever possible, returned to the original institution upon completion of acute care.
- ~~HI.~~ A program contractor shall ensure that an institutionalized ALTCS member who is granted therapeutic leave is returned to the same bed in the original institution upon completion of the therapeutic leave.
- ~~IJ.~~ A Program contractors program contractor shall ensure that services are provided paid according to under A.A.C. R9-22-705.
- ~~K.~~ An EPD program contractor shall meet the marketing provisions in R9-22-505.

~~R9-28-508. Program Contractor Standards – Submittal of Comprehensive Plan for Delivery of Services~~

~~A program contractor shall annually submit a comprehensive plan for delivery of services under the ALTCS program as specified in the RFP during bid years or the RFP amendment during renewal years. The program contractor shall ensure that the comprehensive service delivery plan describes the methods and procedures to be used by the program contractor in complying with the standards defined in this Article, and in providing services to an eligible person or member.~~

R9-28-508. Reserved

ARTICLE 6. PROGRAM CONTRACTS AND PROCUREMENT PROCESS

~~R9-28-601. General~~

- ~~A. The Administration shall establish contracts to provide services under ALTCS with qualified program contractors in conformance with the requirements in this Article.~~
- ~~B. Contracts and subcontracts entered into as specified in this Article are public records on file with the Administration.~~
- ~~C. Except as otherwise provided by law, this Article applies to the expenditure of all public monies, including federal assistance monies, by the Administration for ALTCS services.~~
- ~~D. The Director may conduct an investigation of a person who has ownership or management interests in an offeror or an affiliated organization of the offeror. The Administration shall have in effect conflict of interest safeguards with respect to an officer and an employee of the state with responsibilities relating to contracts and the contract procurement process specified in 42 U.S.C. 1396u-2, as of August 5, 1997, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.~~
- ~~E. All information contained in a proposal is confidential so as to avoid disclosure of contents to competing offerors during the process of discussions. The Administration shall open proposals for public inspection after contract award, unless upon an offeror's written request for nondisclosure, the Director makes a determination that disclosure is not in the best interest of the state.~~
- ~~F. Failure of an offeror to supply information required by the RFP is a basis for rejecting the offerors proposal.~~
- ~~G. Disclosure by an offeror of the terms of its proposal to another offeror or to any other individual before contract award is prohibited and may be grounds for rejecting the disclosing offeror's proposal.~~
- ~~H. The Administration shall retain all contract records for 5 years and dispose of these as specified in A.R.S. § 41-2550.~~
- ~~I. A contractor shall not knowingly have a director, an officer, a partner, or a person with ownership of more than 5% of a contractor's equity who has been debarred or suspended by any federal agency as specified in 42 U.S.C. 1396u-2, as of August 5, 1997, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.~~
- ~~J. The Administration shall certify a contractor as a risk bearing entity as specified in A.R.S. § 36-2932, as specified in RFP and contract, and as specified in 42 U.S.C. 1396b(m), as of August 5, 1997, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.~~

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~~R9-28-602. Contracts~~

Each contract between the Administration and a program contractor shall be in writing and contain at least the information listed:-

1. ~~The method and amount of compensation or other consideration to be received by the program contractor;~~
2. ~~The name and address of the program contractor;~~
3. ~~The population to be covered by the contract;~~
4. ~~The amount, duration, and scope of services to be provided or for which compensation will be paid;~~
5. ~~The term of the contract, including the beginning and ending dates, as well as methods of extension, renegotiation, and termination;~~
6. ~~A provision that the Director or the Secretary of the U.S. Department of Health and Human Services may evaluate, through inspection or other means, the quality, appropriateness, or timeliness of services performed under the contract;~~
7. ~~A description of the member services, medical and cost recordkeeping systems, and a provision that the Director or the Secretary of the U.S. Department of Health and Human Services may audit and inspect any of the program contractor's records that pertain to services performed and determinations of amounts payable under the contract. These records shall be maintained by the program contractor for 5 years from the date of final payment or, for records relating to costs and expenses to which the Administration has taken exception, 5 years after the date of final disposition or resolution of the exception;~~
8. ~~A provision that the program contractor maintains all forms, records, and statistical information required by the Director for purposes of audit and program management. These materials, including files, correspondence, and related information pertaining to services rendered or claims for payments, are subject to inspection and copying by the Administration and the U.S. Department of Health and Human Services during normal business hours at the place of business of the individual or organization maintaining the materials;~~
9. ~~A provision that the program contractor safeguard confidential information as required by 42 CFR 431, Subpart F;~~
10. ~~The functions that may not be subcontracted;~~
11. ~~A provision that the program contractor arrange for the collection from all probable sources of 1st and 3rd party liability except for uninsured and underinsured motorist insurance, 1st and 3rd party liability insurance, and tortfeasors;~~
12. ~~A provision that the program contractor not bill or attempt to collect from a member for any covered service except as may be authorized by statute or this Chapter;~~
13. ~~A provision that the contract not be assigned or transferred without the prior written approval of the Director;~~
14. ~~The procedures for enrollment or re-enrollment of the members;~~
15. ~~The procedures and criteria for terminating the contract;~~
16. ~~A provision that any cost-sharing requirements imposed for services furnished to members are in accordance with 42 CFR 447.50 through 447.58 as of December 19, 1990, which are incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments;~~
17. ~~A provision that specifies the actuarial basis for computation of capitation fees, if applicable;~~
18. ~~A provision for terminating enrollment;~~
19. ~~A provision for choosing a health professional;~~
20. ~~A provision that the program contractor provide for an internal grievance procedure that:~~
 - a. ~~Is approved in writing by the Administration;~~
 - b. ~~Provides for prompt resolution; and~~
 - c. ~~Ensures the participation of individuals with authority to require corrective action.~~
21. ~~A provision that the program contractor maintain a comprehensive internal quality management system consistent with ALTCS rules;~~
22. ~~A provision that the program contractor submit marketing plans, procedures, and materials to the Administration for approval before implementation;~~
23. ~~A statement that all representations made by the program contractor or its authorized representative are truthful and complete to the best of its knowledge;~~
24. ~~A provision that the program contractor is responsible for all tax obligations, Workers' Compensation Insurance, and all other applicable insurance coverage, for itself and its employees, and that the Administration has no responsibility or liability for any of the taxes or insurance coverage of the program contractor or its subcontractors;~~
25. ~~A provision that the program contractor agrees to comply with all applicable federal and state statutes and rules;~~
26. ~~A provision that the program contractor report each member's case management plan and any changes in a manner prescribed by the Director;~~
27. ~~A provision that members needing therapeutic leave or bed hold days be returned to the same facility;~~
28. ~~A provision that the program contractor submit all RFPs for services to the Administration for review and written approval before issuance;~~

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29. A provision that the program contractor submit an annual plan in response to the annual contract renewal amendment as defined in A.R.S. § 36-2940 to the Administration;
30. An agreement to hold harmless and indemnify the state, the Director, the Administration, and members against claims, liabilities, judgments, costs, and expenses with respect to 1st and 3rd parties, which may accrue against the state, the Director, the Administration, or members, through the negligence, omission, or intentional conduct of the program contractor;
31. A provision that the program contractor establish and implement a plan for preventing fraud or abuse by members, providers, and noncontracting providers;
32. A provision that the program contractor comply with all 1st and 3rd party liability and coordination of benefits requirements established by state and federal rules;
33. A provision that the program contractor comply with financial and performance audit standards that satisfy R9-28-512 and R9-28-513;
34. A provision that the program contractor comply with inspection of care reviews;
35. A provision that the program contractor may forfeit payments if the program contractor fails to comply with the provisions of its contract or this Chapter;
36. A provision that the program contractor establish and submit to the Administration for approval a utilization control system plan that satisfies A.R.S. § 36-2947 and 9 A.A.C. 28, Article 5;
37. A provision that the program contractor develop and submit to the Administration for approval a plan for its case management system that satisfies R9-28-510;
38. A provision that the program contractor notify the Administration if a member is no longer eligible due to death or a move out of the state;
39. A provision that the program contractor comply with the uniform accounting system established by the Administration;
40. A provision that the program contractor may forfeit funds to the Administration to recompense it for federal sanctions or penalties placed on the Administration for errors made by the program contractor;
41. A provision that the program contractor suspend or reduce services upon notification by the Administration under A.R.S. § 36-2958;
42. A provision that the program contractor provide encounter reporting in the form and format prescribed by the Administration; and
43. A provision that if, at any time, federal monies are denied, not received, or become unavailable for any reason, the operation of ALTCS is suspended.

~~R9-28-603. Subcontracts~~

- A.** Approval. When a program contractor enters into any subcontract or amends any subcontract to provide covered services to ALTCS members, the subcontracts shall be subject to review and prior written approval by the Director. A subcontract does not alter the legal responsibility of a program contractor to the Administration to ensure that all activities under the contract are carried out.
- B.** Subcontracts. Each subcontract shall be in writing and include the requirements listed below:
1. A provision that the subcontract be governed by, and construed in accordance with all laws, rules, and contractual obligations of the program contractor;
 2. A provision to notify the Administration in the event the agreement with the program contractor is amended or terminated;
 3. A provision that assignment or delegation of the subcontract is void unless prior written approval is obtained from the Administration;
 4. A provision to hold harmless the state, the Director, the Administration, and members in the event the program contractor cannot or will not pay for covered services performed by the provider;
 5. A provision that the subcontract and subcontract amendments are subject to review and approval by the Administration as required in this Chapter and that a subcontract or subcontract amendment may be terminated, rescinded, or canceled by the Administration for a violation of this Chapter;
 6. A provision to hold harmless and indemnify the state, the Director, the Administration, and members against claims, liabilities, judgments, costs, and expenses with respect to 1st and 3rd parties, which may accrue against the state, the Director, the Administration, or members through the negligence, omission, or intentional conduct of the provider;
 7. The requirements contained in R9-28-602(A)(1) through (7), (9), (10), (14), (15), (17), and (23) through (25) with the term "provider" substituted wherever the term "program contractor" is used; and
 8. A provision that members are not held liable for payment to providers in the event of the program contractor's bankruptcy, in compliance with 42 CFR 434, Subpart C, June 27, 1995, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

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R9-28-604. Request for Proposals (RFP); Contract Award

- A.** The Director may cancel or reject any or all requests for proposals in whole or in part if it is deemed by the Director to be in the best interests of the State. The reason for cancellation or rejection shall be made part of the contract file.
- B.** RFP content. The Administration shall include the following items in a RFP:
1. The instructions and information to offerors concerning the proposal submission requirements, including:
 - a. The time and date set for the proposal submission deadline;
 - b. The address of the office at which proposals are to be received, and
 - c. The period during which the proposal shall remain open and any other special information;
 2. The service description, covered populations, geographic coverage, specifications, and a delivery or performance schedule;
 3. The contract terms and conditions, including bonding or other security requirements, if applicable;
 4. A provision for a 2nd round competitive procedure to request voluntary price reductions of bids from only those offerors that have been tentatively selected for award, if applicable;
 5. The factors to be used in the evaluation of proposals;
 6. The location of and method for obtaining documents that are incorporated by reference;
 7. A provision that the offeror acknowledge receipt of all RFP amendments issued by the Administration;
 8. The type of services required and a description of the work involved;
 9. The type of contract to be used and a copy of a proposed contract form or provisions;
 10. The estimated length of time during which service will be required;
 11. The minimum information that the proposal contain; and
 12. A provision that the offeror certify that submission of the proposal does not involve collusion or other anticompetitive practice.
- C.** Evaluation of proposals:
1. As provided in the RFP, the Administration may conduct discussions with responsible offerors that submit proposals determined to be reasonably susceptible to being selected for award. The Administration shall accord offerors fair treatment with respect to any opportunity for discussion and revision of proposals, and may permit revisions after submission and before award for the purpose of obtaining best and final offers. In conducting discussions, the Administration shall not disclose any information derived from proposals submitted by competing offerors.
 2. As part of its discussions, the Administration may conduct a 2nd round competitive procedure to request voluntary price reductions from offerors that have been tentatively selected for award, before the final award or rejection of proposals.
 3. If discussions are conducted under subsection (C)(1), the Administration may issue a written request for best and final offers. The request shall include the date, time, and place for the submission of best and final offers. Best and final offers shall be requested only once, unless the Administration makes a determination that it is advantageous to the state to conduct further discussions or change the state's requirements. The request for best and offers shall inform the offerors that if they do not submit a notice of withdrawal or a new offer, their immediate previous offer shall be construed as their best and final offer.
 4. The Administration shall base proposal evaluation on the evaluation factors in the RFP.
 5. The Administration shall provide written notice to offerors whose proposals are rejected. The rejection notice shall be made part of the contract file and public record.
- D.** Contract award:
1. In competitive counties, the Administration shall use the evaluation factors in the RFP to assess each proposal, and award a contract to the responsible and responsive offeror determined to be most advantageous to the state.
 2. Counties required by law to be program contractors, and counties that have exercised the right of 1st refusal, shall submit to the Administration a satisfactory comprehensive plan for delivery of services in response to the RFP.
 3. The contract file shall contain the basis on which the award is made. A contract shall not be awarded to any program contractor that will cause the System to lose any federal monies to which it is otherwise entitled.

R9-28-605. Contract or Proposal Protests; Appeals

- A.** Resolution of proposal protests. The procurement officer issuing a RFP under R9-28-604 shall have the authority to resolve proposal protests. Appeal from the decision of the procurement officer may be made to the Director under subsection (G). This Section does not apply to contracting between the Administration and the counties or the Arizona Department of Economic Security under A.R.S. § 36-2940.
- B.** Filing of a protest:
1. Any interested party may protest a RFP issued by the Administration, a proposed award, or an award of a contract by filing a protest with the procurement officer. "Interested party" means an actual or prospective offeror whose economic interest may be affected substantially and directly by the issuance of a request for proposals, the award of a contract, or the failure to award a contract. This Section does not apply to grievances related to contract performance. Grievances related to contract performance are governed by R9-28-803.

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2. Content of protest. A protest shall be in writing and include the following information:
 - a. The name, address, and telephone number of the protester;
 - b. The signature of the protester or its representative;
 - c. The request for proposals or contract number;
 - d. The legal and factual grounds of the protest, including copies of relevant documents; and
 - e. The relief requested.
- C.** Time for filing protests:
 1. Protests concerning improprieties in a request for proposals. Protests based upon alleged improprieties in the request for proposals that are apparent before the submission deadline for initial proposals shall be filed before that submission deadline.
 2. In cases other than those covered in subsection (C)(1), protests shall be filed within 10 days after the protester knows or should have known the basis of the protest, whichever is earlier.
- D.** Stay of procurements during the protest. If a protest is filed before the award of a contract, the award may be made, unless the Director makes a written determination that there is a reasonable probability the protest will be sustained and the stay of award of the contract is not contrary to the best interests of the state.
- E.** Decision by the procurement officer:
 1. The procurement officer shall issue a written decision within 14 days after a protest has been filed. The decision shall contain an explanation of the basis of the decision.
 2. Methods. The procurement officer shall furnish a copy of the decision to the protester, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
 3. The time limit for decisions in subsection (E)(1) may be extended by the Director for a reasonable time not to exceed 30 days. The procurement officer shall notify the protester in writing that the time for issuance of a decision has been extended and the date by which a decision will be issued.
 4. If the procurement officer fails to issue a decision within the time limit in subsections (E)(1) or (E)(3), the protester may proceed as if the procurement officer had issued a decision adverse to the protester.
- F.** Remedies:
 1. If the procurement officer sustains the protest in whole or part and determines that the request for proposals, proposed contract award, or contract award does not comply with applicable statutes and rules, the officer shall implement an appropriate remedy.
 2. Circumstances. In determining an appropriate remedy, the procurement officer shall consider all of the circumstances surrounding the procurement or proposed procurement including:
 - a. The seriousness of the procurement deficiency;
 - b. Degree of prejudice to other interested parties or the integrity of the procurement system;
 - c. Good faith of the parties;
 - d. Extent of performance;
 - e. Costs to the state;
 - f. Urgency of the procurement, and
 - g. Impact of the relief on the Administration's mission.
 3. Remedy. A remedy shall be deemed appropriate if it includes 1 or more of the following:
 - a. Decline to exercise an option to renew under the contract;
 - b. Terminate the contract;
 - c. Reissue the request for proposals;
 - d. Issue a new request for proposals; or
 - e. Award a contract consistent with procurement statutes and rules.
- G.** Appeals to the Director:
 1. An appeal from a decision entered or deemed to be entered by the procurement officer shall be filed with the Director within 5 days from the date the decision is received. The appellant shall also file a copy of the appeal with the procurement officer.
 2. Content of appeal. The appeal shall contain:
 - a. The information in subsection (B);
 - b. A copy of the decision of the procurement officer;
 - c. The precise factual or legal error in the decision of the procurement officer from which the appeal is taken; and
 - d. A request for hearing unless the appellant desires that the Director's decision be based solely upon the contract record as it then exists.
- H.** Stay of procurement during appeal. If a protest is filed before an award of contract and the award of the contract is stayed by the procurement officer under subsection (D), the filing of an appeal shall automatically continue the stay, unless the Director makes a written determination that award of the contract without delay is necessary to protect substantial interests of the state.

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- I.** Dismissal before hearing. The Director shall dismiss, upon a written determination, an appeal before scheduling a hearing if:
 - 1. The appeal does not state a valid basis for protest;
 - 2. The appeal is untimely under subsection (G); or
 - 3. The appeal is moot.
- J.** Hearing. Hearings requested under this rule shall be conducted as described in Article 8.

~~R9-28-606. Contract Amendments; Mergers; Reorganizations~~

- A.** If there is a proposed merger, reorganization, or change in ownership of a program contractor, the program contractor shall submit details of the proposed merger, reorganization, or change in ownership to the Administration for prior written approval by the Director. Additionally, if there is a proposed merger, reorganization, or change in ownership of a provider (A.R.S. §§ 36-2931 and 36-2901) that is related to or affiliated with the program contractor, the program contractor shall submit the details of the proposed merger, reorganization, or change in ownership to the Administration for prior written approval by the Director.
- B.** In those counties where the county is not required by law to be the program contractor, the Administration shall deem amendments to extend or modify the contract to have been accepted 60 days from the date of mailing by the Administration, even if the amendment has not been signed by the program contractor. If, within the 60 days, the program contractor notifies the Administration in writing that it refuses to sign the amendment, the Administration may initiate contract termination proceedings.
- C.** For counties and state agencies required by law to be a program contractor, the Administration shall deem amendments to extend or modify the contract to have been accepted 60 days from the date of mailing by the Administration, even if the amendment has not been signed by the mandated program contractor. If, within the 60 days, the program contractor notifies the Administration in writing that it refuses to sign the amendment, the disagreement will be considered a grievance and administered in accordance with Article 8.

~~R9-28-607. Contract Sanctions~~

- A.** General. Grounds for suspending, denying, refusing, or failing to renew, or terminating a contract or subcontract, or imposing monetary sanctions shall include, but not be limited to, the reasons listed below:
 - 1. Submitting any misleading, false, or fraudulent information with a claim for payment;
 - 2. Submitting false information for the purpose of obtaining greater compensation than that to which the program contractor or provider is legally entitled;
 - 3. Submitting inaccurate or incomplete representations in a proposal;
 - 4. Failing to disclose or make available to the Administration, or its authorized representatives, records of services provided to eligible persons or members and records of payment;
 - 5. Submitting false information for the purpose of obtaining authorization to provide services requiring authorization;
 - 6. Over providing services or delivering unnecessary services by inducing or otherwise causing an eligible person or member to receive services or items not required by the eligible person or member or by directly furnishing the services or items;
 - 7. Providing any service in violation of, not authorized by, or which is otherwise precluded by law;
 - 8. Breaching terms or conditions of a contract;
 - 9. Having a member of the board, administrator, manager, or participating physician convicted of a felony;
 - 10. Giving or accepting a rebate, kickback, fee, portion of a fee, or charge for referral of an eligible person or member;
 - 11. Violating any of the provisions of A.R.S. Title 36, Chapter 29; Title XIX of the Social Security Act, as amended; or any state or federal rule promulgated thereunder;
 - 12. Demonstrating an inability to perform contract obligations;
 - 13. Having substantially breached a previous or existing contract agreement with another state agency;
 - 14. Being previously found ineligible to participate in a federal or state assembled medical program by the Administration or any other state or federal governmental agency;
 - 15. Failing to reimburse providers for medically necessary institutional and HCBS within 30 days of the receipt of valid, clean claims, unless a different period is specified by contract, or failing to ensure that future claims will be timely paid;
 - 16. Failing to reimburse providers for medically necessary acute health care services within 60 days of receipt of valid, clean claims, unless a different period is specified by contract, or failing to ensure that future claims will be timely paid;
 - 17. Failing to reimburse providers for emergency medical services within 60 days of receipt of valid, clean claims, or failing to ensure that future claims will be timely paid;
 - 18. Failing to provide and maintain quality health care service to eligible persons and members, as determined by standards established by state and federal statutes;
 - 19. Endangering the health, safety, or well-being of an eligible person or member, either by omission or commission.

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20. ~~Becoming insolvent, filing proceedings in bankruptcy or reorganization under the United States Code, or assigning rights or obligations under the contract without the prior written consent of the Administration;~~
 21. ~~Failing or refusing to comply with the reporting or disclosure requirements;~~
 22. ~~Committing fraud or abuse or having a provider that commits fraud or abuse;~~
 23. ~~Having any person who has an ownership or controlling interest in the program contractor or provider, or is an agent or managing employee of the program contractor or provider convicted of a criminal offense related to involvement in any program under Medicare, Medicaid, or Title XX of the Social Security Act;~~
 24. ~~Failing to conform to and abide by the applicable laws or rules of the state of Arizona, the United States Federal Government, and the Administration;~~
 25. ~~Failing to comply with the approved utilization review plan;~~
 26. ~~Having a suspended or revoked professional license;~~
- B.** ~~Monetary sanctions. Monetary sanctions are imposed as follows:~~
1. ~~Except as provided in subsection (B)(2), the Administration shall withhold a percentage of a program contractor's capitation payment, commensurate with the;~~
 - a. ~~Nature;~~
 - b. ~~Term, and~~
 - c. ~~Severity of the violation;~~
 2. ~~If a program contractor provides inappropriate services to an eligible person or member, the Administration shall withhold an amount equal to the cost of the services from the program contractor's capitation payment;~~
 3. ~~The Administration shall provide a written notice to a program contractor specifying the monetary sanction, grounds for the sanction, and either the length of suspension of payment or the amount of payment to be withheld; and~~
 4. ~~Nothing contained in this Section shall be construed to prevent the Administration from imposing sanctions provided for by contract.~~
- C.** ~~Termination or suspension of a contract without cause. Termination or suspension of a contract, in whole or in part, without cause shall be effective 30 days after the Administration mails written notice of termination or suspension by certified mail, return receipt requested, to a program contractor.~~
- D.** ~~The Administration shall apply remedies for nursing facilities that do not meet requirements of participation in accordance with Section 1919(h) of the Social Security Act, effective December 19, 1989, and 42 CFR 488, Subpart F, September 28, 1995, incorporated by reference and on file with the Administration and the Office of the Secretary of State. These incorporations by reference contain no future editions or amendments.~~
- E.** ~~Notification. The Director shall provide written notice of intent to suspend, refuse to renew, or terminate a contract or sub-contract. The notice shall be provided to affected principals, enrolled members, and other interested parties and shall include the effective date of, and reason for, the action.~~

R9-28-608. Reserved

R9-28-609. Specialty contracts

The Director shall negotiate specialty contracts pursuant to A.A.C. R9-22-716.

R9-28-610. Hospital Rate Negotiations

- A.** ~~Program contractors that negotiate with hospitals for inpatient services shall reimburse hospitals for patient care in accordance with R9-22-715(A).~~
- B.** ~~If the Administration negotiates or contracts with hospitals on behalf of program contractors for discounted hospital rates, the negotiated discounted rates shall be included in contracts between program contractors and hospitals when in the best interest of the state.~~
- C.** ~~The Director shall apportion any cost avoidance in the hospital component of provider capitation rates between the Administration and program contractor. The Administration's portion of the cost avoidance shall be reflected in reduced capitation rates paid to program contractors.~~

ARTICLE 6. REQUEST FOR PROPOSALS AND CONTRACT PROCESS

R9-28-601. General Provisions

- A.** The Administration shall follow the provisions specified in 9 A.A.C. 22 Articles 4 and 6 for ALTCS members, subject to limitations and exclusions specified in that Article, unless otherwise specified in this Chapter. All references to the Administration also shall apply to ALTCS.
- B.** The Administration shall establish contracts to provide services as specified in A.R.S. § 36-2940.
- C.** All contract records shall follow the provisions of A.R.S. § 36-2932 and R9-22-603.

R9-28-602. Request for Proposals (RFP); Contract Award

The ALTCS RFP for an EPD program contractor serving members who are elderly or physically disabled shall be in accordance with A.R.S. § 36-2944 and R9-22-604.

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R9-28-603. Contract or Proposal Protests; Appeals

The ALTCS grievances related to contract performance shall be in accordance with R9-22-602, and all references in that rule shall apply to ALTCS.

R9-28-604. Contracts

All ALTCS contracts shall meet the requirements in accordance with A.R.S. §§ 36-2932 and 36-2944 and R9-22-402. In addition, the Administration may extend existing contracts as specified in the contract.

R9-28-605. Subcontracts

All ALTCS subcontracts shall be entered in accordance with A.R.S. § 36-2932 and R9-22-403, and all references in that rule shall apply to ALTCS.

R9-28-606. Specialty Contracts

The Director shall negotiate specialty contracts under R9-22-716.

R9-28-607. Contract Amendments; Mergers; Reorganizations

- A.** Any amendments, mergers or reorganizations regarding ALTCS shall be in accordance with R9-22-404.
- B.** The Administration shall deem amendments to extend or modify the contract shall be accepted by the program contractor 60 days from the date of mailing by the Administration, even if the amendment has not been signed by the program contractor or DES Division of Developmental Disabilities. If within the 60 days, the program contractor or DES Division of Developmental Disabilities notifies the Administration in writing that it refuses to sign the amendment, the Administration may initiate contract termination proceedings for program contractors. For DES Division of Developmental Disabilities the disagreement will be considered a grievance and administered under 9 A.A.C. 28, Article 8.

R9-28-608. Contract Suspension, Denial, Modification, Termination, or Sanction

- A.** The Administration shall follow the suspension, denial, modification, termination, or sanction provisions in accordance with R9-22-405 and R9-22-406, and all references in that rule.
- B.** The Administration shall apply remedies for a NF that does not meet requirements of participation under 42 U.S.C. 1396r(h) effective August 5, 1997, and 42 CFR 488, Subpart F, effective May 17, 1999, incorporated by reference and on file with the Administration and the Office of the Secretary of State. These incorporations by reference contain no future editions or amendments.

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-28-713. Hospital Rate Negotiations

- A.** A program contractor that negotiates with a hospital for inpatient services shall reimburse hospitals for a member's care under R9-22-715(A).
- B.** If the Administration negotiates or contracts with hospitals on behalf of program contractors for discounted hospital rates, the negotiated discounted rates shall be included in contracts between a program contractor and a hospital when in the best interest of the state.
- C.** The Director shall apportion any cost avoidance in the hospital component of provider capitation rates between the Administration and program contractor. The Administration's portion of the cost avoidance shall be reflected in reduced capitation rates paid to a program contractor.

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
R12-15-1201	Repeal
R12-15-1202	Repeal
R12-15-1203	Repeal
R12-15-1204	Repeal
R12-15-1205	Repeal
R12-15-1206	Repeal
Exhibit A	Repeal
R12-15-1201	New Section

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R12-15-1202	New Section
R12-15-1203	New Section
R12-15-1204	New Section
R12-15-1205	New Section
R12-15-1206	New Section
R12-15-1207	New Section
R12-15-1208	New Section
R12-15-1209	New Section
R12-15-1210	New Section
R12-15-1211	New Section
R12-15-1212	New Section
R12-15-1213	New Section
R12-15-1214	New Section
R12-15-1215	New Section
R12-15-1216	New Section
R12-15-1217	New Section
R12-15-1218	New Section
R12-15-1219	New Section
R12-15-1220	New Section
R12-15-1221	New Section
R12-15-1222	New Section
R12-15-1223	New Section
R12-15-1224	New Section
R12-15-1225	New Section
R12-15-1226	New Section
R12-15-1227	New Section
R12-15-1228	New Section
Table 1	New Table
Table 2	New Table
Table 3	New Table
Table 4	New Table
Table 5	New Table

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. § 45-105(B)(1)

Implementing Statute: A.R.S. § 45-1202(B)

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 5 A.A.R. 621, February 26, 1999.

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

Name: Dan Lawrence

Address: Arizona Department of Water Resources
500 North 3rd Street
Phoenix, Arizona 85004

Telephone: (602) 417-2445

Fax: (602) 417-2423

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

These rules establish reasonable standards consistent with accepted engineering practice. They designate the types of dams to which the rules apply; set forth a program for permitting construction of new dams and for the repair, alteration, enlargement, and removal of existing dams; establish requirements and owner responsibilities for operation, maintenance, and emergency action; and provide for enforcement.

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6. **A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

Not applicable.

7. **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.

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

SUMMARY

Arizona Revised Statutes § 45-105(B) and § 45-1202(C) require the Director to adopt rules and issue general orders to effectuate Title 45, Chapter 6, Article 6, Supervision of Dams, Reservoirs and Projects. The purpose of the proposed Dam Safety Procedures ("Rules") is to clarify the requirements of law as interpreted by the Department of Water Resources ("Department"). While there will be no major changes in the Department's administration of the dam safety program, the Rules will result in a better understood and more efficient program. In general, economic impacts on the Department and the groups affected by the Rules will be minor.

The primary group affected by the Rules will be dam owners. Dam owners include private individuals and public entities, such as state agencies, counties, cities, and towns. Also affected by the rules will be people working in the private sector, including engineering and other technical consultants and construction firms. Because the Rules make few changes to the safety of dams program currently administered by the Department, the major impact of the Rules will be improved communication and cost savings resulting from better planning and efficiency. Dam owners will be able to better plan and anticipate application requirements and costs. The private sector assisting in planning and construction will have access to more complete information regarding requirements and better informed clients seeking their services.

The following paragraphs describe changes made by the Rules that may result in economic impacts.

The Rules specify a schedule for dam inspections, which is equivalent to national standards. Although the schedule increases the frequency of inspections from current practice, the Department considers the schedule appropriate because the fees for inspections performed by the Department are minimal and protection of the public will be heightened. A.A.C. R12-15-151(B)(11). The Rules allow owners to use qualified engineers to conduct their own inspections in place of Department inspections. Dam owners whose staff engineers conduct their inspections will save money. The financial impact to the Department will be minimal because the increase in the number of inspections the Department conducts will be offset by the decrease due to owner inspections.

A new requirement of the rules will shift certain costs from the public to owners planning to construct a new dam or enlarge an existing one. Under the Rules, owners are required to demonstrate that the construction or enlargement will not increase the potential for flooding to people living near the spillway channel or within the reservoir area. This demonstration is likely to require the owner to purchase more land or a flood easement. The new costs borne by the owner would depend on land costs. Owners of existing dams will be required to demonstrate that they are taking reasonable actions to reduce the likelihood of flooding in these areas. There is a countervailing savings and greater protection to the members of the public residing in the area of potential flooding. The value of the savings is dependent on property values and flood frequencies.

The Rules require an analysis of the Inflow Design Flood ("IDF"), which determines the appropriate size for the spillway of a dam. The analysis will be based on the size of the population that would be at risk in the event of flooding. The IDF will remain the same for most dams. A few owners of existing dams will incur costs of enlarging the spillway. Spillway requirements for new and enlarged dams will be designed to protect the downstream population.

9. **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: Dan Lawrence
Address: Arizona Department of Water Resources
500 North 3rd Street
Phoenix, Arizona 85004
Telephone: (602) 417-2445
Fax: (602) 417-2423

10. 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 rules:

Persons may submit written comments in writing during business hours to the person identified in item #4 above until the close of the record.

An oral proceeding on the rules will be held at 10 a.m. on October 20, 1999, at the Department of Water Resources, 500 North 3rd Street, Phoenix 85004, in Conference Room A on the 3rd Floor. The record will be closed at 5 p.m. on October 27, 1999. In accordance with the Americans with Disabilities Act, persons with a disability may request a reasonable accommodation by contacting the Arizona Department of Water Resources office at (602) 417-2445.

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

Not applicable.

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

Not applicable.

13. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 12. DAM SAFETY PROCEDURES

Section

R12-15-1201. General provisions

R12-15-1202. Professional engineering requirement

R12-15-1203. Application procedure

R12-15-1204. Final inspection and license of approval

R12-15-1205. Plans and specifications

R12-15-1206. Construction control

Exhibit A. Application for the approval of the plans and specifications for the construction, enlargement, repair, alteration or removal of a dam and reservoir

R12-15-1201. Title and Authority

R12-15-1202. Purpose and Scope

R12-15-1203. Definitions

R12-15-1204. Exempt Structures

Table 1. Exempt Structures

R12-15-1205. Provision for Guidelines

R12-15-1206. Classification of Dams

Table 2. Size Classification

Table 3. Downstream Hazard Potential Classification

R12-15-1207. Application Process

R12-15-1208. Application Requirements to Construct, Reconstruct, Repair, Enlarge, or Alter High and Significant Hazard Potential Dams

R12-15-1209. Application Requirements to Remove or Breach a High or Significant Hazard Potential Dam

R12-15-1210. Application Requirements to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove Low Hazard Potential Dams

R12-15-1211. Application Requirements to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove Very Low Hazard Potential Dams

R12-15-1212. Requirements During Dam Construction of Low, Significant, and High Hazard Potential Dams

R12-15-1213. Requirements Following Completion of Construction of Significant and High Hazard Potential Dams

R12-15-1214. License of Approval

R12-15-1215. Application Package Requirements for High, Significant, and Low Hazard Potential Dams

R12-15-1216. Dam Design Requirements for High, Significant, and Low Hazard Potential Dams

Table 4. Inflow Design Flood

Table 5. Minimum Stability Factors of Safety

R12-15-1217. Actions Which Do Not Require Prior Approval of the Director

R12-15-1218. Safe Storage Level

R12-15-1219. Safety Inspections

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- R12-15-1220. Requirements for Existing Dams
- R12-15-1221. Owner's Responsibilities
- R12-15-1222. Emergency Action Plans (EAP)
- R12-15-1223. Right of Review
- R12-15-1224. Enforcement Authority
- R12-15-1225. Emergency Procedures
- R12-15-1226. Emergency Repairs
- R12-15-1227. Non-Emergency Repairs; Loans and Grants
- R12-15-1228. Index

ARTICLE 12. DAM SAFETY PROCEDURES

~~R12-15-1201. General Provisions~~

- ~~A. The State Engineer's office is located at 222 North Central Avenue, Suite 800, Phoenix, Arizona. All notices and contracts with the State Engineer shall be sent to and made at this address.~~
- ~~B. Forms with respect to these rules and regulations may be picked up or requested by mail at the address of the State Engineer. Copies of these rules will also be available at the office of the State Engineer. A copy of the application form is shown as Exhibit A following this Article.~~

~~R12-15-1202. Professional Engineering Requirement~~

- ~~A. The plans and specifications accompanying an application for construction of a new dam or alteration, repair, enlargement, or removal of an existing dam shall be prepared by or under the direction of a professional engineer registered under the laws of Arizona, having proficiency in civil engineering as related to dam technology.~~
- ~~B. Engineers of the United States Soil Conservation Service who design and construct dams for owners other than the United States are not required to be registered in Arizona for purposes of these rules.~~

~~R12-15-1203. Application Procedure~~

- ~~A. An application for the construction of a new dam or enlargement, repair, alteration, or removal of an existing dam shall be prepared in duplicate and sent to the State Engineer on forms furnished by the State Engineer.~~
- ~~B. The application shall include at least the following information:
 1. One complete set of plans and specifications prepared by a registered professional engineer (or U.S. Soil Conservation Service engineer).
 2. Geotechnical engineering data including the results of foundation and materials exploration.
 3. Engineering design data including basis assumptions as to loads and limiting stresses and as to methods of analyses for all structures, including the dam.
 4. Hydraulic engineering data used in determining capacity of spillways and outlet works and hydrologic data used in deriving required spillway capacity.~~
- ~~C. Upon completion of the project, the total cost shall be tabulated and the fee recomputed in accordance with the law. If the recomputed fee exceeds the fee paid with the application then the owner shall pay the difference between the fee already paid and the recomputed fee.~~
- ~~D. Plans for the proposed work shall be filed in the form of paper prints. Notification of any changes required by the State Engineer will be given to the applicant. Thereafter, the drawings designated for approval by the State Engineer shall be submitted in triplicate together with two sets of specifications. After approval by the State Engineer one set of signed prints and approved application shall be returned to the applicant, one set of the drawings shall be retained for the permanent state records of the State Engineer and the third set shall be used for construction.~~

~~R12-15-1204. Final Inspection and License of Approval~~

- ~~A. Upon completion of construction, the State Water Engineer shall be notified in writing and shall finally inspect the work as soon as practicable.~~
- ~~B. After final inspection by a field engineer, the applicant is required to file the following:
 1. Affidavit of cost of construction. Attach breakdown of costs, including engineering.
 2. Additional fee if final cost exceeds estimated cost, pursuant to Arizona Revised Statutes.
 3. As-constructed plans, in the form of paper prints.~~
- ~~C. A license of approval shall be issued by the State Engineer after payment of all fees and upon a finding that the dam and reservoir are safe to impound water. No water shall be stored nor shall the reservoir be used without written permission of the State Engineer, pending issuance of a license of approval.~~

~~R12-15-1205. Plans and Specifications~~

- ~~A. Engineering drawings shall be in sizes ranging from 22 inches by 36 inches to 28 inches by 42 inches. Letter size drawings are not permitted. Drawings shall be prepared on conventional drawing material such that clear, legible prints can be obtained. Submittal of blue line or black line prints for final approval and signature will be satisfactory. In preparing the~~

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drawings, each sheet shall contain, in addition to the normal title block in the lower right hand corner, space approximately 4" x 5" somewhere in proximity to the lower right hand corner for application of the State Engineer signature block.

- B.** The minimum requirements of maps and drawings for small dams consist of the following:
 - 1. Location map of the dam and the drainage basin above the structure.
 - 2. A topographic map of the dam, spillway, outlet works and the reservoir. The scale should be large enough to accurately locate the dam and appurtenances and to indicate cut and fill lines. Elevations should be to a real datum base, rather than an assumed elevation. Contour intervals should be compatible with height and size of the dam and its appurtenances. An area capacity curve of the reservoir can be shown on this sheet.
 - 3. Profile and section of the dam. The profile of the dam may be drawn to different horizontal and vertical scales. However, the maximum section of the dam should be drawn to a true scale. For a small dam the outlet conduit can be shown on the maximum section if this is typical of the proposed construction.
 - 4. Details of the outlet works. This should include the intake structure, the gate system, conduit details, the trashrack, and the downstream outlet structure. Details should be sufficiently complete to accurately lay out the structure and build it. Schematic drawings are not acceptable.
 - 5. Plan, profile, and control section of the spillway. This will also include details of any concrete work that may be contemplated. A complex control structure, a concrete chute, or an energy dissipating device for a terminal structure will require additional design details.
- C.** Drawings required for technical review of a major structure cannot be listed in detail because each dam is different. The following maps and drawings are required for the typical large structure:
 - 1. Drainage basin above the proposed dam.
 - 2. Location map for all foundation drill holes, auger holes, test pits, trenches, and borrow areas. Also, bench marks with elevations, reference points, permanent ties should be shown. These may be shown on a reservoir map.
 - 3. Log of foundation drill holes and auger holes.
 - 4. Topographic map of the damsite.
 - 5. A topographic map of the reservoir, with area and capacity curves.
 - 6. Plan, profile and sections of the dam, all at natural scales. Camber, crest details, interior drains, and zone details should be included.
 - 7. Foundation plan showing excavation with proposed grout and drain holes.
 - 8. Outlet works showing plan, profile, sections, and details.
 - 9. Spillway showing plan, profile, sections and details.
 - 10. Details of diversion scheme if applicable.
- D.** If there is question as to whether a dam is considered a small dam or a large dam, the owner may present any information he deems pertinent to the State Engineer and the State Engineer will then decide which category applied.
- E.** Specifications concerning the proposed method of construction shall be filed in duplicate with the application. The specifications shall include a detailed description of the work to be performed and a statement of the requirements for the various types of materials that will enter into the permanent construction, including, but not limited to, foundation preparation, placement of materials and concrete quality control. Also any special techniques should be carefully described.
- F.** If not included in the specifications, the construction schedule and a statement of the sequence of construction operations shall be filed in duplicate with and form a part of the application.

R12-15-1206. Construction Control

- A.** The owner is responsible for safety during and after completion of any construction of a new dam, enlargement, repair, alteration, or removal of an existing dam, and is responsible for inspections and completion of the work in accordance with the plans and specifications approved by the State Engineer.
- B.** The State Engineer shall determine that proper construction control is being exercised by the owner or the owner's engineer and any unsatisfactory condition shall be remedied by the owner or his engineer with the contractor.
- C.** The foundation of the dam shall be inspected by the State Engineer or his designee. The foundation shall not be covered over prior to such inspection and written approval of the foundation by the State Engineer or his designee. Inspection for the foundation for the outlet and spillway structures is also required and written approval of the State Engineer or his designee is required before covering over these foundations.
- D.** The State Engineer and his designee shall have access to the job for purposes of inspecting all phases of the construction, including, but not limited to, mechanical installations, concrete work, placement methods and strength test records.
- E.** Any deviations from the approved plans and specifications must be approved in writing by the State Engineer or his designee before proceeding therewith. Any problems encountered during construction which required any deviation from the plans and specifications approved by the State Engineer shall be immediately reported to the State Engineer.

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EXHIBIT A

STATE OF ARIZONA
OFFICE OF THE STATE WATER ENGINEER
SUPERVISION OF SAFETY OF DAMS

Application No. _____ Filed _____

(APPLICANT SHALL NOT FILL IN ABOVE BLANKS)

**APPLICATION FOR THE APPROVAL OF THE PLANS AND SPECIFICATIONS FOR THE
CONSTRUCTION, ENLARGEMENT, REPAIR, ALTERATION OR REMOVAL OF A DAM
AND RESERVOIR**

(This application involves in no way the right to appropriate water. To secure the right to appropriate water, application has to be made to the State Lands Department, Division of Water Rights on forms which will be furnished upon request.)

This application is for the _____ of the _____ Dam.
(CONSTRUCTION REPAIR, ALTERATION, ETC.)

LOCATION OF DAM

This dam is in _____ County, in the _____ 1/4, Sec. _____, Tp. _____

R. _____, G&SR, B&M, and is located on _____

tributary to _____ (CREEK, RIVER OR WATERSHED)

_____ CREEK OR RIVER

OWNER

Name _____

Address _____
STREET AND NUMBER, OR P.O. BOX

_____ CITY _____ STATE _____ ZIP _____ TELEPHONE _____

If this application is for construction of a new dam, complete all lines (1 thru 21) except Item 15. For alteration, repair, enlargement or removal of a dam, complete Items 15 thru 21, and those other items where a change is being made.

DESCRIPTION OF DAM AND RESERVOIR

1. Type of dam _____
(EARTH, ROCK, CONCRETE GRAVITY, CONCRETE ARCH)
2. Crest length _____ ft. Crest width _____ ft.
3. Slope, upstream _____ Slope, downstream _____
4. Dam crest elevation _____ ft. Spillway crest elevation _____
5. Dam height is _____ feet (Measured from original ground level at the downstream toe to the spillway crest.)
6. Volume of the material in dam _____ cubic yards.
7. Water surface elevation is _____ feet at the time of maximum spillway discharge.
8. Spillway (type, sizes and capacity) _____
9. Outlet (type, size and capacity) _____
10. Reservoir capacity at spillway crest elevation is _____ acre feet.
11. Reservoir surface area at spillway crest elevation is _____ acres.

(See Reverse Side)

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2. Establish a program for permitting of construction work for new dams and for the repair, alteration, enlargement, or removal of existing dams.
 3. Establish the requirements and owner responsibilities for developing and executing plans for operation, maintenance, and emergency action.
 4. Require dam owners to establish a program for the periodic inspection of their dams.
 5. Require the Director to develop and maintain engineering guidelines for the purpose of aiding dam owners and project engineers in developing design reports, construction drawings, specifications, construction quality assurance plans, operation and maintenance plans, instrumentation plans, emergency action plans, and in conducting dam safety inspections.
- B.** These Rules apply to any artificial barrier meeting the specifications of A.R.S. § 45-1201(1) as interpreted by A.A.C. R12-15-1204. These Rules apply to applications for review and approval for the construction of new dams and reservoirs; applications for review and approval for the repair, alteration, enlargement, or removal of existing dams and reservoirs, including breached and damaged dams; operation and maintenance of existing dams and reservoirs; and enforcement. Certain structures identified in A.A.C. R12-15-1204 are exempt from these Rules.
- C.** These Rules are applicable to all dams regardless of the Hazard Potential Classification, with the following exceptions:
1. A.A.C. R12-15-1208, R12-15-1209, and R12-15-1213 apply only to dams classified as high and significant hazard potential dams.
 2. A.A.C. R12-15-1210 applies only to dams classified as low hazard potential dams. Low hazard potential dams are exempt from the provision of A.A.C. R12-15-1208, R12-15-1209, R12-15-1211, R12-15-1213, and R12-15-1227.
 3. A.A.C. R12-15-1211 applies only to dams classified as very low hazard potential dams. Very low hazard potential dams are exempt from the provisions of A.A.C. R12-15-1208, R12-15-1209, R12-15-1210, R12-15-1212, R12-15-1213, R12-15-1215, R12-15-1216, and R12-15-1227.
 4. Dam design requirements in A.A.C. R12-15-1216(B) apply only to embankment dams.
 5. A.A.C. R12-15-1216(C) applies to other dams, including concrete dams.

R12-15-1203. Definitions

In addition to the definitions provided in A.R.S. § 45-1201, the following definitions are applicable to these Rules:

1. “Alteration or Repair of an Existing Dam or Appurtenant Structure” means to make different from the originally approved construction drawings and specifications, or current condition without changing the height or storage capacity of the dam or reservoir, except for ordinary repairs and general maintenance as defined in A.A.C. R12-15-1217.
2. “Appurtenant Structure” means any structure that is contiguous and essential to the safe operation of the dam including embankments, saddle dikes, outlet works and controls, diversion ditches, spillway and controls, access structures, bridges, and related housing at a dam.
3. “Classification of Dams” means the placement of dams into categories based upon an evaluation of the size and hazard potential, regardless of the condition of the dam.
4. “Concrete Dam” means any dam constructed of concrete, including arch, gravity, arch-gravity, slab and buttress, and multiple arch dams. A dam having only a concrete facing is not a concrete dam.
5. “Construction” means any activities performed by the owner or someone employed by the owner which are related to the construction, reconstruction, repair, enlargement, removal, or alteration of any dam, unless the context indicates otherwise. Construction is to be performed between approval of an application and the issuing of a License of Approval.
6. “Dam Failure Inundation Map” means a map depicting the maximum area downstream from a dam which would be flooded in the event of the worst condition failure of a dam.
7. “Department” means the Arizona Department of Water Resources.
8. “Director” means the Director of the Arizona Department of Water Resources or the Director’s designee.
9. “Embankment Dam” means a dam which is constructed of earth or rock material.
10. “Emergency Spillway” means a spillway designed to safely pass the “Inflow Design Flood” routed through the reservoir. If the flow is controlled by gates, it is considered a controlled spillway. If the elevation of the spillway crest is the only control, it is considered an uncontrolled spillway.
11. “Engineer” means a Professional Engineer registered and licensed in accordance with Title 32, Chapter 1, Arizona Revised Statutes, and having proficiency in engineering as related to dam technology.
12. “Enlargement to an Existing Dam or Appurtenant Structure” means any alteration, modification, or repair which increases the vertical height of a dam or the storage capacity of the reservoir.
13. “Flashboards” means timber, concrete, or steel sections placed on the crest of a spillway to raise the retention water level but which may be quickly removed at time of flood either by a tripping device or by designed failure of the flashboards or their supports.
14. “Flood Control Dam” means a dam that uses all of its reservoir storage capacity for temporary impoundment of flood waters.

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15. “Hazard Potential” means the probable incremental adverse consequences that result from the release of water or stored contents due to failure or improper operation of a dam or appurtenances.
16. “Hazard Potential Classification” means a system that categorizes dams according to the degree of probable incremental adverse consequences of failure or improper operation of a dam. The Hazard Potential Classification does not reflect the current condition of the dam with regard to safety, structural integrity, or flood routing capacity.
17. “Height” means the vertical distance from the lowest elevation of the outside limit of the barrier at its intersection with the natural ground surface to the spillway crest elevation. For the purpose of determining jurisdictional status, the lowest elevation of the outside limit of the barrier may be the outlet pipe invert elevation if the outlet is constructed below natural ground and daylight at that point.
18. “Impound” means to cause water or a liquid to be confined within a reservoir such that it can be held with no discharge.
19. “Incremental adverse consequences” means under the same loading conditions, the difference in adverse consequences that would occur due to the failure or improper operation of the dam over those that would have occurred without failure or improper operation of the dam.
20. “Inflow Design Flood (IDF)” means the reservoir flood inflow magnitude that has been selected on the basis of size and Hazard Potential Classifications for emergency spillway design requirements of a dam.
21. “Intangible losses” means incremental adverse consequences to property which are not economic in nature, including those related to social, cultural, unique or resource-based values, including the loss of irreplaceable and unique historic and cultural features; long-lasting pollution of land or water; or long-lasting or permanent changes to the ecology, including fish and endangered species habitat identified by a public natural resource management or protection agency.
22. “Jurisdictional Dam” means any dam over which the Department of Water Resources exercises jurisdiction.
23. “Levee” means an embankment of earth, concrete, or other material used to prevent a watercourse from spreading laterally or overflowing its banks. Levees are incapable of impounding water.
24. “License” means License of Approval issued by the Director upon completion or enlargement of a dam pursuant to the requirements of A.R.S. § 45-1209.
25. “Lifeline losses” mean disruption of essential services such as water, power, gas, telephone, or emergency medical services.
26. “Liquid Borne Material” means mine tailings or other milled ore products transported in a slurry to a storage impoundment.
27. “Maximum Credible Earthquake (MCE)” means the most severe earthquake that is believed to be possible at a point on the basis of geologic and seismological evidence.
28. “Maximum Water Surface (MWS)” means the maximum elevation of the reservoir water level attained during routing of the Inflow Design Flood.
29. “Natural Ground Surface” means the undisturbed ground surface before excavation or filing, or the undisturbed bed of the stream or river.
30. “Outlet Works” means a closed conduit under or through a dam or through an abutment for the controlled discharge of the contents normally impounded by a dam and reservoir. Outlet works may be controlled or uncontrolled.
31. “Probable” means likely to occur; reasonably expected and realistic.
32. “Probable Maximum Flood (PMF)” means the flood runoff expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the region, including rain and/or snow where applicable. One-half PMF is that flood represented by the flood hydrograph with ordinates equal to one-half the corresponding ordinates of the PMF hydrograph.
33. “Probable Maximum Precipitation (PMP)” means the greatest depth of precipitation for a given duration that is theoretically physically possible over a particular size storm area at a particular geographical location at a particular time of year.
34. “Reservoir” means any basin that contains or is capable of containing water or other liquids impounded by a dam.
35. “Residual Freeboard” means the vertical distance between the maximum water surface elevation during the Inflow Design Flood and the minimum elevation of the top of the dam.
36. “Restricted Storage” means a condition placed on the License of Approval by the Director to reduce the safe storage level of a reservoir due to a safety deficiency.
37. “Saddle Dike or Saddle Dam” means any dam constructed on a topographically low area on the perimeter of a reservoir required to contain the reservoir to the maximum water surface elevation.
38. “Safe” means that a dam has sufficient structural integrity and flood routing capacity such that failure of the dam is unlikely.
39. “Safe Storage Level” means the maximum reservoir water surface elevation at which the Director has determined it is safe to impound water in the reservoir.
40. “Safety deficiency” means a condition at a dam that impairs or adversely effects the safe operation of the dam.

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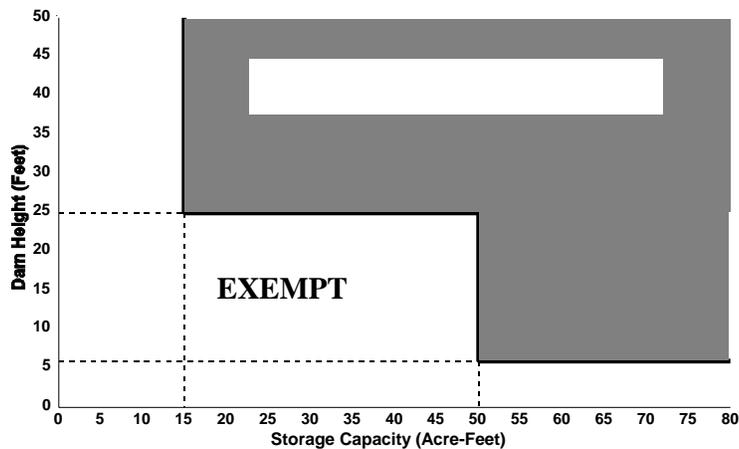
41. “Safety Inspection” means an investigation by an engineer or under the direction of an engineer for the purpose of assessing the safety of a dam and determining the safe storage level for a reservoir, which includes review of design reports, construction drawings, and previous safety inspection reports of the dam, spillways, outlet facilities, seepage control and measurement systems, and permanent monument or monitoring installations.
42. “Spillway Crest” means the highest elevation of the floor of the spillway along a centerline profile through the spillway.
43. “Storage capacity” means the maximum volume of water that can be impounded in the reservoir with no discharge of water, including an uncontrolled outlet that could become plugged. The storage capacity is reached when the water level is at the crest of the emergency spillway, or at the top of permanently mounted emergency spillway gates in the closed position. Dead storage below the natural ground is excluded.
44. “Surcharge Storage” means the additional water storage volume above the emergency spillway crest or closed gates up to the top of the dam.
45. “Total Freeboard” means the vertical distance between the emergency spillway crest and the top of the dam.
46. “Unsafe” means that safety deficiencies in the dam or spillway are assessed to be of such a nature that, if not corrected, they could result in failure of the dam with subsequent loss of human life and/or significant property damage.

R12-15-1204. Exempt Structures

The following structures are exempt from regulation by the Department:

- A.** Any artificial barrier identified as exempt on Table 1 and defined as follows:
1. Less than 6 feet in height, regardless of storage capacity.
 2. Fifteen acre-feet or less of storage capacity, regardless of height.
 3. Between 6 and 25 feet in height with a storage capacity less than 50 acre-feet.

Table 1. Exempt Structures



- B.** Dams owned by the federal government. Dams designed by the federal government for any non-federal entity or person that will subsequently be owned or operated by a person or entity defined as an owner in A.R.S. § 45-1201 are not exempt and shall be under the jurisdiction of the Director beginning with their design and construction.
- C.** Dams owned or operated by an agency or instrumentality of the federal government if a dam safety program at least as stringent as the State program is applicable to and enforced against such agent or instrumentality.
- D.** Transportation structures such as highway, road, and railroad fills which exist solely for transportation purposes. Those transportation structures designed, constructed, or modified with the intention of impounding water on an intermittent or permanent basis and which meet the definition of a dam as defined in A.R.S. § 45-1201 and interpreted by these Rules are not exempt and shall be under the jurisdiction of the Director.
- E.** Levees constructed adjacent to or along a watercourse whose primary purpose is to control floodwater.
- F.** Self-supporting concrete or steel water storage tanks.
- G.** Impoundments for the purpose of storing liquid borne material.
- H.** Release-contained barriers as defined by A.R.S. § 45-1201(5).

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R12-15-1205. Provision for Guidelines

The Department will develop and adopt substantive policy statements to serve as Dam Safety Guidelines to aid dam owners and engineers in complying with Department dam safety requirements.

R12-15-1206. Classification of Dams

The Department classifies dams both by size and by hazard potential.

A. Size Classification. Dams are classified by size as small, intermediate, or large. Size shall be calculated as prescribed by Table 2. Size classification shall be determined by either storage capacity or height, whichever results in the larger size.

Table 2. Size Classification

<u>Category</u>	<u>Storage Capacity (ac. ft.)</u>	<u>Height (ft.)</u>
<u>Small</u>	<u>50 to 1,000</u>	<u>25 to 40</u>
<u>Intermediate</u>	<u>greater than 1,000 and not exceeding 50,000</u>	<u>higher than 40 and not exceeding 100</u>
<u>Large</u>	<u>greater than 50,000</u>	<u>higher than 100</u>

B. Hazard Potential Classification

- 1.** Hazard Potential Classification shall be based on an evaluation of the probable present and future incremental adverse consequences that would result from the release of water or stored contents due to failure or improper operation of the dam or appurtenances, regardless of the condition of the dam. Primary Hazard Potential Classification factors are: probable loss of human life, economic and lifeline losses, and intangible losses identified by a public resource management or protection agency.
 - a. The probable incremental loss of human life determination is based primarily on the number of permanent structures for human habitation that would be impacted in the event of failure or improper operation of a dam. No probable loss of human life exists where persons are only temporarily in the potential inundation area where there are no residences or overnight campsites. No probable loss of life exists where the owner has control of access and provides an emergency action plan with a process for warning in the event of a dam failure.
 - b. The economic, lifeline, and intangible loss determinations are based on the probable property losses and interruption of services or incremental intangible losses that would likely result from failure or improper operation of a dam.
- 2.** The 4 Hazard Potential Classification levels are very low, low, significant, and high, listed in order of increasing probable adverse incremental consequences, as prescribed by Table 3.

Table 3. Downstream Hazard Potential Classification

<u>DOWNSTREAM HAZARD POTENTIAL CLASSIFICATION</u>		
<u>Hazard Potential Classification</u>	<u>Probable Loss of Human Life</u>	<u>Probable Economic, Lifeline, and Intangible Losses</u>
<u>Very Low</u>	<u>None expected</u>	<u>Economic and lifeline losses limited to owner's property or designated 100-year floodplain</u> <u>No intangible losses identified</u>
<u>Low</u>	<u>None expected</u>	<u>Low</u>
<u>Significant</u>	<u>None expected</u>	<u>Significant to high</u>
<u>High</u>	<u>Probable - One or more expected</u>	<u>Low to high</u> <u>(not necessary for this classification)</u>

- a. **Very Low Hazard Potential.** Failure or improper operation of a dam would result in no probable loss of human life and low economic and intangible losses. Losses would be limited to property owned or controlled pursuant to long-term lease by the dam owner or designated 100-year floodplain. No probable loss of life exists where there are no residences or overnight camp sites.
- b. **Low Hazard Potential.** Failure or improper operation of a dam would result in no probable loss of human life, low economic and intangible losses, and either no disruption of lifeline services or damages that are cosmetic or rapidly repaired. Property losses would be limited to private agricultural lands, equipment, and isolated buildings.

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- c. **Significant Hazard Potential.** Failure or improper operation of a dam would inundate an area with few residences and only transient industrial development, resulting in no probable loss of human life. Failure or improper operation of a significant hazard potential dam could cause significant to high economic loss, intangible damage with major mitigation required, and disruption or impact on lifeline facilities. Significant Hazard Potential Classification dams may be located in predominantly rural or agricultural areas or areas with population and significant infrastructure.
- d. **High Hazard Potential.** Failure or improper operation of a dam would directly cause probable loss of human life due to extensive residential, commercial, or industrial development. Although not necessary for this classification, the intangible losses could be large and potentially impossible to mitigate; critical lifeline services could be significantly disrupted; and property losses could be extensive.
- 3. The Hazard Potential Classification of each dam shall be determined initially by the applicant before filing an application for approval of construction of a dam. The applicant's determination shall be reviewed and approved by the Department early in the design process at pre-application meetings described in A.A.C. R12-15-1207(C).
- 4. The Hazard Potential Classification of each dam shall be reviewed and revised during each dam safety inspection in accordance with current conditions.

R12-15-1207. Application Process

- A.** Written approval by the Director is required prior to commencing the construction, reconstruction, repair, enlargement, removal, or alteration of any dam. Application requirements differ according to the hazard potential of the dam.
 - 1. Application requirements to construct, reconstruct, repair, enlarge, or alter a high or significant hazard potential dam are prescribed by A.A.C. R12-15-1208.
 - 2. Application requirements to remove or breach a high or significant hazard potential dam are prescribed by A.A.C. R12-15-1209.
 - 3. Application requirements to construct, reconstruct, repair, enlarge, alter, breach, or remove a low hazard potential dam are prescribed by A.A.C. R12-15-1210. Application process, requirements during construction, following completion of construction, and license of approval of low hazard potential dams are also prescribed by A.A.C. R12-15-1210.
 - 4. Application requirements to construct, reconstruct, repair, enlarge, alter, breach, or remove a very low hazard potential dam are prescribed by A.A.C. R12-15-1211. Application process, requirements during construction, following completion of construction, and license of approval of very low hazard potential dams are also prescribed by A.A.C. R12-15-1211.
- B.** An application shall be filed with the Director except under the following circumstances:
 - 1. The dam is exempt pursuant to A.R.S. § 45-1204 as interpreted by these Rules;
 - 2. A dam owner immediately starts repairs to an existing dam that are necessary to safeguard human life or property and the Director is notified without delay.
- C.** An applicant shall schedule pre-application conferences with the Department to discuss the requirements of these Rules and to resolve basic issues essential to the design of a dam while the design is in preliminary stages. The Director will view the dam site during the pre-application process. Among the issues for pre-application conferences are: the Hazard Potential Classification, the approximate Inflow Design Flood, the basic design concepts, and any requirements that will be waived by the Director. In addition the applicant may submit preliminary design calculations to the Department for review and comment. The Department shall comment as soon as practicable depending on the size of the proposal and the current workload.
- D.** Applications shall be reviewed as follows:
 - 1. Applications will be received by appointment. During this meeting the Department shall make a brief review of the application to determine that the application contains each of required items required by A.A.C. R12-15-1208, R12-15-1209, R12-15-1210, or R12-15-1211.
 - 2. Following receipt of an application submitted pursuant to A.A.C. R12-15-1208, R12-15-1209, or R12-15-1210, the Director shall complete an administrative review as prescribed in A.A.C. R12-15-401(1) and notify the applicant in writing whether the application is administratively complete. If the application is not administratively complete, the notification shall include a list of additional information which is required to complete the application.
 - 3. After finding the application submitted pursuant to A.A.C. R12-15-1208, R12-15-1209, or R12-15-1210 administratively complete, the Director shall complete a substantive review as prescribed in A.A.C. R12-15-401(3) and notify the applicant in writing of the Director's approval or disapproval. If during this review period, the Director determines that there are defects in the application that impact dam safety, a written notice of the defects shall be sent to the applicant.
 - 4. An applicant may request in writing that the Director expedite the review of an application through employment of an expert consultant on a contract basis pursuant to A.R.S. § 45-104(D). The Director shall establish on-call contracts with expert consultants to facilitate the process of expediting review. The Director may retain a consultant to review all or a portion of the application as necessary to expedite the process in response to an owner's request or in order to

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comply with time frame rules. Before conducting the review, the consultant shall provide the Director and the applicant with a proposed time schedule and cost estimate. If the time schedule expedites the review sufficient for the needs of the applicant and the estimated cost is acceptable, the applicant may agree to the expedited review. If an applicant requests an expedited review of an application pursuant to this subsection and the Director employs a consultant, the applicant shall pay to the Department the cost of the consultant's services in addition to any other application fees that the applicant is required to pay. The Director retains the authority to review and approve, disapprove, or modify the findings and recommendations of the consultant.

5. No application shall be approved in less than 10 days from its receipt.
 6. If the Director disapproves the application, 1 copy shall be returned with a statement of the Director's objections.
 7. If an application is approved, revised drawings and specifications that incorporate any required changes shall be submitted to the Director in triplicate.
 - a. One set of final construction drawings and specifications with the Department's approval stamp and the approved application shall be returned to the applicant to be retained on site during construction;
 - b. One set of final construction drawings and specifications with the Department's approval stamp shall be retained for permanent State record; and
 - c. The 3rd set of final construction drawings and specifications with the Department's approval stamp shall be retained for use by the Department during construction.
 8. Application approval shall be granted under conditions and limitations which the Director deems necessary to safeguard human life and property. The conditions of approval may include:
 - a. No foundations or abutments shall be covered by the material of the dam until the Department has been given notice and a reasonable time to inspect and approve them.
 - b. Construction shall be started within 1 year from the date of approval.
 - c. The safe storage level for existing dams being reconstructed, repaired, enlarged, altered, or removed.
- E.** When an application for the construction of a new dam, or enlargement, repair, alteration, or removal of an existing dam is approved, it is valid for a 1-year period during which construction must begin.
 1. If construction does not begin within 1 year, the approval is void.
 2. Upon written request and good cause shown by the owner, the time for commencing construction may be extended.
 3. If the time frame for commencing construction is extended, construction shall not commence before the Director reviews the application for changes and grants approval.
- F.** An applicant shall not commence construction prior to receiving written approval of the Director.

R12-15-1208. Application Requirements to Construct, Reconstruct, Repair, Enlarge, or Alter High and Significant Hazard Potential Dams

The application package to construct, reconstruct, repair, enlarge, or alter for a high or significant hazard potential dam shall include the following, unless waived in writing by the Director. The application package shall be prepared by or under the direction of an engineer as defined in A.A.C. R12-15-1203(10).

- A.** A completed Application prepared in duplicate on forms provided by the Director.
- B.** A Design Information Summary or Checklist of items required for a complete application prepared in duplicate on forms provided by the Director.
- C.** An initial Application Fee based on the total estimated project cost, computed in accordance with A.R.S. § 45-1204 and A.A.C. R12-15-151(B)(11).
- D.** A detailed estimate of project costs. The project costs shall include all costs associated with construction of the dam and appurtenant works. Preliminary investigations and surveys, engineering design, supervision of construction, and any other engineering costs shall be included in the project construction costs.
- E.** Two complete sets of Construction Drawings as prescribed by A.A.C. R12-15-1215(A).
- F.** Two complete sets of Construction Specifications as prescribed by A.A.C. R12-15-1215(B).
- G.** An Engineering Design Report which includes information needed to evaluate all aspects of the design of the dam and appurtenances, including references with page numbers, to support any assumptions used in the design, as prescribed by A.A.C. R12-15-1215(C). The Design Report shall recommend a safe storage level for existing dams being reconstructed, repaired, enlarged, or altered.
- H.** A Construction Quality Assurance (CQA) Plan clearly defining all aspects of construction supervision.
- I.** A description of the use for the impounded or diverted water and appropriate proof of a right to impound that water. This proof shall take the form of a permit to store and/or appropriate in accord with A.R.S. §§ 45-152 and 45-161.
- J.** Information from which the Director can determine that the applicant has the financial capability to construct, operate, and maintain the dam in a safe manner. The applicant may demonstrate financial capability in the following ways:
 1. Post a performance bond for the entire cost of the proposed construction work.
 2. Provide a long-term budget plan and evidence of financing prepared using customary accounting principles.If the applicant does not have evidence which can be verified by an independent audit of the financial capability to construct, operate, and maintain the dam in a safe manner, the Director may require a performance bond.

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- K. An Emergency Action Plan as prescribed by A.A.C. R12-15-1222.
- L. An Operation and Maintenance (O&M) Plan to accomplish the annual maintenance.
- M. An Instrumentation Plan to evaluate the performance of the dam in accordance with A.A.C. R12-15-1221(C).
The Director may allow the items specified in subsections (K), (L), and (M) to be submitted during construction but they must be approved prior to receiving permission to store.

R12-15-1209. Application Requirements to Remove or Breach a High or Significant Hazard Potential Dam

The application package to remove or breach a high or significant hazard potential dam shall include the following unless waived in writing by the Director:

- A. The removal or breach construction drawings and specifications shall be prepared by or under the direction of an engineer as defined in A.A.C. R12-15-1203(10).
- B. The dam shall be excavated down to the level of the natural ground at the maximum section. The breach shall be of sufficient width to pass the greater of:
 - 1. The 100-year flood at a depth of less than 5 feet, or
 - 2. The 100-year flood at a normal flood depth of not more than 2 feet at a distance of 2,000 feet downstream of the dam. This provision shall not be construed to require more than total removal of the dam regardless of the flood magnitude.
- C. The sides of the breach shall be excavated to a slope which is stable but not steeper than 1 horizontal to 1 vertical.
- D. The breach shall be designed to prevent silt which has previously been deposited on the reservoir bottom and the excavated material from the breach from washing downstream.
- E. Before breaching the dam, the reservoir shall be emptied in a controlled manner which will not endanger lives or damage downstream properties.
- F. The construction drawing or drawings for the breach of a dam shall include the location, dimensions, and lowest elevation of the breach.
- G. Reduction of high and significant downstream hazard potential dams to nonjurisdictional size may be approved by letter in lieu of the requirements of A.A.C. R12-15-1207 under the following circumstances:
 - 1. The owner shall submit a completed application form and construction drawings for the repair or alteration and the appropriate specifications, which were prepared by or under the direction of an engineer as defined in A.A.C. R12-15-1203(10).
 - 2. The construction drawings and specifications shall contain sufficient detail to enable a contractor to bid on and complete the project.
 - 3. Upon completion of an alteration to nonjurisdictional size, the engineer shall file as-constructed drawings and specifications.
- H. Information from which the Director can determine that the applicant has the financial capability to remove the dam in a safe manner. The applicant may demonstrate financial capability in the following ways:
 - 1. Post a performance bond for the entire cost of the proposed construction work.
 - 2. Provide a long-term budget plan and evidence of financing prepared using customary accounting principles.If the applicant does not have evidence which can be verified by an independent audit of the financial capability to remove the dam in a safe manner, the Director may require a performance bond.

R12-15-1210. Application Requirements to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove Low Hazard Potential Dams

- A. An application package to construct, reconstruct, repair, enlarge, or alter a low hazard potential dam shall include the following, unless waived in writing by the Director:
 - 1. An application filed in duplicate on forms provided by the Director.
 - 2. An initial application fee computed in accordance with A.R.S. § 45-1204 and A.A.C. R12-15-151(B)(11). The application fee shall be based upon the total estimated project costs.
 - 3. A detailed estimate of project costs. The project costs shall include all costs associated with construction of the dam and appurtenant works. Preliminary investigations and surveys, engineering design, supervision of construction, and any other engineering costs shall be included in the project construction costs.
 - 4. The seal and signature of the responsible engineer in accordance with Title 32, Chapter 1, Arizona Revised Statutes.
 - 5. A statement by the responsible engineer which classifies the dam as low hazard in accordance with A.A.C. R12-15-1206(B). The statement shall demonstrate both of the following:
 - a. That the failure or improper operation of the dam would result in no probable loss of human life. The demonstration may include an emergency action plan for persons who may be in the area that would be inundated in the event of failure or improper operation of the dam.
 - b. That failure or improper operation of the dam would not result in significant incremental adverse consequences or significant intangible losses.
 - 6. Two complete sets of Construction Drawings as prescribed by A.A.C. R12-15-1215(A).
 - 7. Two complete sets of Construction Specifications as prescribed by A.A.C. R12-15-1215(B).

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8. An Engineering Design Report which includes information needed to evaluate all aspects of the design of the dam and appurtenances, including references with page numbers, to support any assumptions used in the design, as prescribed by A.A.C. R12-15-1215(C).
 9. A Construction Quality Assurance (COA) Plan clearly defining all aspects of construction supervision.
 10. Information from which the Director can determine that the applicant has the financial capability to construct, operate, and maintain the dam in a safe manner. The applicant may demonstrate financial capability in the following ways:
 - a. Post a performance bond for the entire cost of the proposed construction work.
 - b. Provide a long-term budget plan and evidence of financing prepared using customary accounting principles. If the applicant does not have evidence which can be verified by an independent audit of the financial capability to construct, operate, and maintain the dam in a safe manner, the Director may require a performance bond.
 11. A statement by the owner warranting that it will prohibit access of unauthorized persons to the area that would be inundated in the event of failure or improper operation of the dam.
- B.** An application package for the breach or removal of a low hazard potential dam shall include the following, unless waived in writing by the Director:
1. An application filed in duplicate on forms provided by the Director providing the following information:
 - a. The name and address of the owner of the dam or the agent of the owner.
 - b. A description of the proposed removal.
 - c. The proposed time of beginning and completing the removal.
 2. An initial application fee computed in accordance with A.R.S. § 45-1204 and A.A.C. R12-15-151(B)(11). The application fee shall be based upon the total estimated project costs.
 3. A statement by the responsible engineer which shall demonstrate both of the following:
 - a. That the dam will be excavated to the level of natural ground at the maximum section; and
 - b. That the opening made by the removal shall be of sufficient width to pass the greater of:
 - i. The 100-year flood at a depth of less than 5 feet, or
 - ii. The 100-year flood at a normal flood depth of not more than 2 feet at a distance of 2,000 feet downstream. This provision shall not be construed to require more than a total removal of the dam regardless of flood magnitude.
 4. The sides of the breach shall be excavated to a slope which is stable but not steeper than 1 horizontal to 1 vertical.
 5. A detailed estimate of project costs. The project costs shall include all costs associated with the removal of the dam and appurtenant works. Preliminary investigations and surveys, engineering design, supervision of removal, and any other engineering costs shall be included in the project costs.
 6. The Director may waive certain requirements set forth in A.A.C. R12-15-1207 and subsection (A) of this Section upon review and approval of a written request signed by the applicant. A project for the reduction of a low downstream hazard potential dam to nonjurisdictional size is exempt from the provisions of A.A.C. R12-15-1207. Owners shall submit written notice of their intent to reduce a low downstream hazard potential dam to nonjurisdictional size to the Director at least 60 days before the date of construction.
- C.** Within 45 days after receipt of an application package as prescribed by subsection (A) or (B) of this section, the Director shall either:
1. Determine that the dam meets the low Hazard Potential Classification; or
 2. Issue a written notice that the dam does not meet the low Hazard Potential Classification.
- The Hazard Potential Classification is normally determined during the pre-application meeting or site visit.
- D.** The Director's determination that the proposed dam does not meet the low hazard classification is an appealable agency action and subject to administrative and judicial review pursuant to Title 41, Chapter 6, Article 10, Arizona Revised Statutes.
- E.** Following receipt of an application package as prescribed by subsection (A) or (B), the Director shall notify the applicant in writing whether the application is administratively complete as required by A.A.C. R12-15-401(1).
- F.** The Director shall issue a written notice approving or disapproving the application after issuing the notice required by subsection (E) and completion of a substantive review. If during the review period the Director determines that there are defects in the application that affect the safety of the dam, a written notice of the safety defects shall be sent to the applicant as required by A.A.C. R12-15-401(3).
- G.** No application shall be approved in less than 10 days.
- H.** If the Director disapproves the application, 1 copy shall be returned with a statement of the Director's objections.
- I.** If an application is approved, revised drawings and specifications that incorporate any required changes shall be submitted to the Director in triplicate:
1. One set of final construction drawings and specifications with the Department's approval stamp and the approved application shall be returned to the applicant to be retained on site during construction;
 2. One set of final construction drawings and specifications with the Department's approval stamp shall be retained for permanent State record; and

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3. The 3rd set of final construction drawings and specifications with the Department's approval stamp shall be retained for use by the Department during construction.
- J.** Application approval shall be granted under conditions and limitations which the Director deems necessary to safeguard human life and property. The conditions of approval may include:
 1. Construction shall be started within 1 year from the date of approval.
 2. No foundations or abutments shall be covered by the material of the dam until the Department has been given notice and reasonable time to inspect and approve them.
- K.** An applicant shall not commence construction prior to receiving written approval of the Director as prescribed in subsection (F) of this section.
- L.** Requirements during construction or removal of a low hazard potential dam shall conform to A.A.C. 12-15-1212.
- M.** Upon completion of construction, the owner shall notify the Department in writing. The dam and reservoir shall not be used before issuance of a license unless the Director issues written permission.
- N.** Within 90 days after completion of the construction, reconstruction, repair, enlargement, or alteration of a low hazard potential dam, the following shall be filed by the owner or under the direction of the owner, unless waived in writing by the Director:
 1. An affidavit of the actual cost of construction, reconstruction, repair, enlargement, or alteration of the dam. The affidavit shall be supported by a detailed accounting of the costs, including all engineering costs.
 2. An additional fee or refund request computed in accordance with A.R.S. § 45-1209 and A.A.C. R12-15-151(B)(11) based on the actual cost of construction, reconstruction, repair, enlargement, or alteration.
 3. A brief completion report summarizing the salient features of the project, including a description of the causes for any changes or deviations from the approved application package prepared by the engineer who supervised the construction, in accordance with Title 32, Chapter 1, Arizona Revised Statutes.

The engineer shall certify all of the following:

 - a. That the dam has been designed and constructed in compliance with basic principles of dam construction currently being practiced in the industry;
 - b. That the dam has adequate structural integrity and flood routing capacity consistent with its Hazard Potential Classification as constructed; and
 - c. That the as-constructed drawings and the report accurately represent the construction of the dam.
 4. As-constructed drawings prepared and sealed by the engineer who supervised the construction. The drawings shall be maintained by both the owner and the engineer.
- O.** Upon submittal to the Director of the information prescribed in subsection (N) and receiving the Director's written approval, the owner may operate the dam and appurtenant works. Within 30 days after receipt of the information, the Director shall issue to the owner either a License of Approval or a notice that the dam and appurtenant works shall not be operated. The License of Approval may include conditions of operation, including:
 1. The safe storage level of the reservoir.
 2. The dam shall be operated and maintained so it shall not constitute a danger to human life and property.
 3. The conditions resulting in the low hazard classification shall be maintained throughout the life of the project.
 4. The owner shall certify the low hazard classification every 5 years.
- P.** Within 90 days after completion of the removal of a low hazard potential dam, the following shall be filed by the owner or under the direction of the owner, unless waived in writing by the Director:
 1. An affidavit of the actual cost of removal of the dam. The affidavit shall be supported by a detailed accounting of the costs, including all engineering costs.
 2. An additional fee or refund request computed in accordance with A.R.S. § 45-1209 and A.A.C. R12-15-151(B)(11) based on the actual cost of removal.
 3. A brief completion report, including a description of the causes for any changes or deviations from the approved application package prepared by the engineer who supervised the construction, in accordance with Title 32, Chapter 1, Arizona Revised Statutes. The engineer shall certify that the as-removed drawings and the report accurately represent the removal of the dam.
 4. As-removed drawings prepared and sealed by the engineer who supervised the removal. The drawings shall be maintained by both the owner and the engineer.

Upon submittal to the Director of the information prescribed in subsection (L) and receiving the Director's written approval of the completed work, the dam shall be removed for jurisdiction.
- Q.** Repairs necessary to safeguard human life and property of a low hazard potential dam may be commenced immediately. The Director shall be notified as soon as reasonably possible and in all cases within 10 days of commencing the required repairs.

R12-15-1211. Application Requirements to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove Very

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Low Hazard Potential Dams

- A.** An application package to construct, reconstruct, repair, enlarge, or alter a very low hazard potential dam shall include the following, unless waived in writing by the Director:
1. An application filed in duplicate on forms provided by the Director providing the following information:
 - a. The name and address of the owner of the dam or the agent of the owner.
 - b. The location, type, size, and height of the proposed dam and appurtenant works.
 - c. The storage capacity of the reservoir associated with the proposed dam.
 - d. The means, plans, and specifications by which the stream or body of water is to be dammed, by-passed, or controlled during construction.
 - e. The proposed time of beginning and completing construction.
 - f. A description of the use for the impounded or diverted water and proof of a right to impound that water.
 2. An initial application fee computed in accordance with A.R.S. § 45-1204 and A.A.C. R12-15-151(B)(11). The application fee shall be based upon the total estimated project costs.
 3. A detailed estimate of project costs. The project costs shall include all costs associated with construction of the dam and appurtenant works. Preliminary investigations and surveys, engineering design, supervision of construction, and any other engineering costs shall be included in the project construction costs.
 4. The seal and signature of the responsible engineer in accordance with Title 32, Chapter 1, Arizona Revised Statutes.
 5. A statement by the responsible engineer which classifies the dam as very low hazard in accordance with A.A.C. R12-15-1206(B). The statement shall demonstrate both of the following:
 - a. That the failure or improper operation of the dam would result in no probable loss of human life. The demonstration may include an emergency action plan for persons who may be in the area that would be inundated in the event of failure or improper operation of the dam.
 - b. That failure or improper operation of the dam would not result in significant incremental adverse consequences or significant intangible losses because the dam has a size classification of either small or medium pursuant to A.A.C. R12-15-1206(A) and any off-site release would result only in impacts to undeveloped land within the designated 100-year floodplain where there is low probability of future development in the potential area of impact.
 6. Drawings with the following details: a plan view and maximum section of the dam, the outlet works and the spillway plan, profile and cross section.
 7. Specifications detailing the construction materials, testing criteria, and installation techniques.
 8. A statement by the owner warranting that it will prohibit access of unauthorized persons to the area that would be inundated in the event of failure or improper operation of the dam.
 9. The Director may waive the requirements for drawings and specifications for the proposed repair or alteration of a very low hazard potential dam.
- B.** An application package for the breach or removal of a very low hazard potential dam shall include the following, unless waived in writing by the Director:
1. An application filed in duplicate on forms provided by the Director providing the following information:
 - a. The name and address of the owner of the dam or the agent of the owner.
 - b. A description of the proposed removal.
 - c. The proposed time of beginning and completing the removal.
 2. An initial application fee computed in accordance with A.R.S. § 45-1204 and A.A.C. R12-15-151(B)(11). The application fee shall be based upon the total estimated project costs.
 3. A statement by the responsible engineer which classifies the dam as very low hazard in accordance with A.A.C. R12-15-1206(B). The statement shall demonstrate both of the following:
 - a. That the dam will be excavated to the level of natural ground at the maximum section; and
 - b. That the opening made by the removal shall be of sufficient width to pass the greater of:
 - i. The 100-year flood at a depth of less than 5 feet, or
 - ii. The 100-year flood at a normal flood depth of not more than 2 feet at a distance of 2,000 feet downstream.This provision shall not be construed to require more than a total removal of the dam regardless of flood magnitude.
 4. The sides of the breach shall be excavated to a slope which is stable.
 5. A detailed estimate of project costs. The project costs shall include all costs associated with the removal of the dam and appurtenant works. Preliminary investigations and surveys, engineering design, supervision of removal, and any other engineering costs shall be included in the project costs.
 6. A project for the reduction of a very low downstream hazard potential dam to nonjurisdictional size is exempt from the provisions of A.A.C. R12-15-1207. Owners shall submit written notice of their intent to reduce a very low downstream hazard potential dam to nonjurisdictional size to the Director at least 60 days before the date of construction.
- C.** Within 30 days after receipt of a complete application package as prescribed by subsection (A) or (B), the Director shall do 1 of the following:

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1. Determine that the dam meets the very low hazard classification and approve the application in writing. The Director may authorize immediate use of the dam upon completion of construction.
 2. Issue a written notice that the dam does not meet the very low hazard classification.
- D.** The Director's determination that the proposed dam does not meet the very low hazard classification is an appealable agency action and subject to administrative and judicial review pursuant to Title 41, Chapter 6, Article 10, Arizona Revised Statutes.
- E.** An applicant shall not commence construction prior to receiving written approval of the Director issued under subsection (C)(1).
- F.** Upon completion of construction, the owner shall notify the Department in writing. The dam and reservoir shall not be used before issuance of a license unless the Director issues written permission as prescribed in subsection (C)(1) of this section.
- G.** Within 90 days after completion of the construction, reconstruction, repair, enlargement, alteration, or removal of a very low hazard potential dam, the following shall be filed by the owner or under the direction of the owner, unless waived in writing by the Director:
1. An affidavit of the actual cost of construction, reconstruction, repair, enlargement, alteration, or removal of the dam. The affidavit shall be supported by a detailed accounting of the costs, including all engineering costs.
 2. An additional fee or refund request computed in accordance with A.R.S. § 45-1209 and A.A.C. R12-15-151(B)(11) based on the actual cost of construction, reconstruction, repair, enlargement, alteration, breach, or removal.
 3. A brief completion report summarizing the salient features of the project, including a description of the causes for any changes or deviations from the approved application package prepared by the engineer who supervised the construction, in accordance with Title 32, Chapter 1, Arizona Revised Statutes. The engineer shall certify:
 - a. That the dam has been designed and constructed in compliance with basic principles of dam construction currently being practiced in the industry;
 - b. That the dam has structural integrity and flood routing capacity as constructed; and
 - c. That the as-constructed drawings and the report accurately represent the construction of the dam.
 4. As-constructed drawings prepared and sealed by the engineer who supervised the construction. The drawings shall be maintained by both the owner and the engineer.
- H.** Within 30 days after receipt of the information, the Director shall issue to the owner either a License of Approval or a notice that the dam and appurtenant works shall not be operated because dam and appurtenant works do not qualify as very low hazard or were not built according to the submitted design. The License of Approval may include conditions of operation, including:
1. The safe storage level of the reservoir.
 2. The dam shall be operated and maintained such that the conditions resulting in the very low hazard classification shall be maintained throughout the life of the project.
 3. The owner shall certify in writing the very low hazard classification every 5 years.
 4. The owner shall prepare and maintain an emergency action and awareness plan for employees working downstream of the dam.
- I.** Repairs necessary to safeguard human life and property of a very low hazard potential dam may be commenced immediately. The Director shall be notified as soon as reasonably possible and in all cases within 10 days of commencing the required repairs.
- J.** The Department may periodically inspect construction to confirm that it is proceeding according to the approved design and to confirm that proper construction quality assurance is being exercised by the owner's engineer. The owner, or the owner's engineer under the direction of the owner, shall remedy any unsatisfactory condition with the contractor.
- K.** The Department shall have access to the dam site for purposes of inspecting all phases of construction, including the foundation, embankment and concrete placement, inspection and test records, and mechanical installations.

R12-15-1212. Requirements During Dam Construction of Low, Significant, and High Hazard Potential Dams

During construction at a significant or high hazard potential dam, an owner shall comply with the following requirements unless waived in writing by the Director:

- A.** Prior to commencement of construction activities, the owner shall invite to a preconstruction conference all involved regulatory agencies, the prime contractor, and all subcontractors. At this meeting the Department shall identify, to the extent possible, the key construction stages at which an inspection will be made. At least 48 hours prior to each key construction stage identified for inspection, the owner or the owner's engineer shall provide notice to the Department.
- B.** The owner and the owner's engineer shall oversee construction of a new dam, or enlargement, repair, alteration, or removal of an existing dam. Failure to perform the construction or removal in accordance with the construction drawings and specifications approved by the Director shall render the approval revocable. The owner's engineer shall be independent of the contractor.
- C.** A professional engineer having proficiency in engineering as related to dam technology shall supervise or direct the supervision of construction in accordance with the Construction Quality Assurance (CQA) Plan.

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- D. The owner's engineer shall submit summary reports of construction activities and test results according to a schedule approved by the Department.
- E. The owner or the owner's engineer shall immediately report to the Department any condition encountered during construction which requires a deviation from the approved plans and specifications.
- F. The owner or the owner's engineer shall promptly submit a written request for approval of any necessary change and sufficient information to justify the proposed change.
- G. Construction pursuant to a proposed change shall not commence without the written approval of the Director unless the change is a minor change. A minor change is a change that complies with the requirements of this Article and provides equal or better performance.
- H. Upon completion of construction, the owner shall notify the Department in writing. The Director shall make a final inspection as soon as practicable. The owner shall correct any deficiencies noted during the inspection as soon as possible.

R12-15-1213. Requirements Following Completion of Construction of Significant and High Hazard Potential Dams

Within 90 days after completion of the construction or removal work of a significant or high hazard potential dam and final inspection by the Department, the following shall be filed by the owner or under the direction of the owner, unless waived in writing by the Director.

- A. An affidavit of the actual cost of the construction. The affidavit shall be supported by a detailed breakdown of the costs, including all engineering costs.
- B. An additional fee or refund request based on the actual cost of the construction, computed in accordance with A.R.S. § 45-1209 and A.A.C. R12-15-151(B)(14).
- C. One set of full sized as-constructed drawings in the form of paper prints. If changes were made during construction, the owner shall file supplemental drawings showing the dam and appurtenances as actually constructed.
- D. Construction records, including grouting, materials testing, and locations and baseline readings for permanent bench marks and instrumentation, initial surveys, and readings.
- E. Photographs of construction from exposure of the foundation to completion of construction.
- F. A brief completion report summarizing the salient features of the project, including a description of the causes for any construction changes or deviations from the approved drawings and specifications which were made during the construction phase.
- G. A schedule for filling the reservoir of all significant and high hazard potential dams, specifying fill rates, water level elevations to be held for observation, and a schedule for inspecting and monitoring the dam. The owner shall monitor the dam monthly during the 1st filling.
- H. An operating manual for all significant and high hazard potential dams and their appurtenant structures. The manual shall include a process for dam inspections described in A.A.C. R12-15-1219. The operating manual shall include schedules for surveillance activities and baseline readings for any installed instrumentation which shall include:
 1. The frequency of monitoring.
 2. The data recording format.
 3. A graphical presentation of data, and
 4. The parties who will perform the work.

R12-15-1214. License of Approval

- A. Upon review and approval of the documents filed pursuant to A.A.C. R12-15-1213, finding that the construction at the dam has been completed in accordance with the approved plans and specifications and finding that the dam is safe, the Director shall issue a License of Approval. The License shall specify the safe storage level for the reservoir and may specify conditions for the safe operation of the dam. The dam and reservoir shall not be used before issuance of a license unless the Director issues written permission. Procedures for issuance of a License of Approval for low and very low hazard potential dams are prescribed in A.A.C. R12-15-1210(N) and A.A.C. R12-15-1211(H), respectively.
- B. A new License shall be issued in the following instances:
 1. Upon change of ownership of a dam.
 2. Upon change of the safe storage level.
 3. Upon expiration of time to appeal a Notice issued pursuant to A.A.C. R12-15-1224(B) of these Rules.
 4. Upon expiration of time to appeal an Order issued by the Director pursuant to A.A.C. R12-15-1224(D) of these Rules.
 5. Upon expiration of time to appeal an order of a court.

R12-15-1215. Application Package Requirements for High, Significant, and Low Hazard Potential Dams

Minimum requirements are set forth by the Director. Nothing in these Rules shall relieve the owner and engineer of their responsibilities for complete and adequate design of the dam and for including in the application all aspects of the design pertaining to the safety of the dam. The Director may waive or revise in writing any of these requirements.

- A. **Construction Drawing Requirements.** The construction drawings required by A.A.C. R12-15-1208(E)(5) and A.A.C. R12-15-1210(A)(6) shall include the following:

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1. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304 on each drawing.
2. One or more topographic maps of the dam, spillway, outlet works, and reservoir on a scale large enough to accurately locate the dam and appurtenances, to indicate cut and fill lines, and to show the property lines and ownership status of the land. Contour intervals shall be compatible with the height and size of the dam and its appurtenances as required to provide adequate design and construction details.
3. A reservoir area and capacity curve that reflect area in acres and capacity in acre-feet in relation to depth of water and elevation in the reservoir. The spillway invert and top of dam elevations shall be shown. The construction drawings shall also show the reservoir volume and space functional allocations. The construction drawings may include alternate scales as required for the owner's use.
4. Spillway and outlet works rating curves and tables at a scale or scales which allow determination of discharge rate (cfs) at both low and high flows as measured by depth of water passing over the spillway control section.
5. Location map showing the dam footprint and all exploration drill holes, test pits, trenches, adits, borrow areas, and bench marks with elevations, reference points, and permanent ties. This map shall use the same vertical and horizontal control as the topographic map.
6. Geologic information including 1 or more geologic maps, profile along the centerline, and other pertinent cross sections of the dam site, spillway or spillways, and appurtenant structures, aggregate and material sources, and reservoir area at 1 or more scales compatible with the site and geologic complexity, showing logs of exploration drill holes, test pits, trenches, and adits.
7. One or more plans of the dam to adequately delineate design and construction details.
8. Foundation profile along the dam centerline at a true scale where the vertical scale is equal to the horizontal scale, showing the existing ground and proposed finished grade at cut and fill elevations, including anticipated geologic formations. The foundation profile shall include any proposed grout and drain holes.
9. Profile and a sufficient number of cross sections of the dam to adequately delineate design and construction details. The drawings shall illustrate and show dimensions of camber, details of the top, core zone, interior filters and drains, and other zone details. The profile of the dam may be drawn to different horizontal and vertical scales if required for detail. A maximum section of the dam shall be included; it must be drawn to a true scale, where the vertical scale is equal to the horizontal scale. The outlet conduit may be shown on the maximum section if this is typical of the proposed construction.
10. One or more dam foundation plans showing excavation grades and cut slopes with any proposed foundation preparation, grout and drain holes, and foundation dewatering requirements.
11. Plan, profile, and details of the outlet works, including the intake structure, the gate system, conduit, trashrack, conduit filter diaphragm, conduit concrete encasement, and the downstream outlet structure. The drawings shall include all connection and structural design details.
12. Plan, profile, control section, and cross sections of the spillway, including details of any foundation preparation, grouting, or concrete work that is contemplated. A complex control structure, a concrete chute, or an energy dissipating device for a terminal structure shall require both hydraulic and structural design details.
13. Hydrologic data, drainage area and flood routing, and diversion criteria.

B. Construction Specification Requirements. The construction specifications required by A.A.C. R12-15-1208(F) and A.A.C. R12-15-1210(A)(7) shall include the following:

1. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304 on each page of specifications.
2. The statement that the construction drawings and specifications shall not be materially changed without the prior written approval of the Director.
3. A detailed description of the work to be performed and a statement of the requirements for the various types of materials and installation techniques that will enter into the permanent construction.
4. The statement that construction shall not be considered complete until the Director has accepted the construction in writing.
5. The statement that the owner's engineer shall control the quality of construction as specified in A.A.C. R12-15-1212(C).
6. The following construction information:
 - a. All earth and rock material descriptions, placement criteria, and construction requirements for all elements of the dam and related structures.
 - b. All concrete, grout, and shotcrete material and mix descriptions, placement, and consolidation criteria, temperature controls, and construction requirements for all elements of the dam and related structures.
 - c. Acceptable material criteria and testing, cleaning, and treatment. If foundation or curtain grouting is required, the specifications shall state the type of grout, grouting method, special equipment, recording during grouting, and foundation monitoring to avoid disturbance from grouting.

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- d. All materials testing that will be performed by the contractor for pre-qualification of materials for use, including special performance testing, such as water pressure tests in conduits. The Director shall accept materials that are pre-tested successfully and constructed in-place in accordance with specifications.
- e. A plan for control or diversion of surface water during construction. The frequency of storm runoff to be controlled during construction may be determined by the design engineer commensurate with the risk of economic loss during construction.
- f. Criteria for blast monitoring and acceptable blast vibration levels including particle velocities for the dam and other critical appurtenances. Monitoring equipment and monitoring locations must also be specified.
- g. Instrumentation material descriptions, placement criteria, and construction requirements. A statement that instrumentation shall be installed by experienced speciality subcontractors.

C. Engineering Design Report Requirements. The Engineering Design Report required by A.A.C. R12-15-1208(G) and A.A.C. R12-15-1210(A)(8) shall include the following:

- 1. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304.
- 2. A classification statement setting forth the classification of the proposed dam, or for the proposed enlargement of an existing dam or reservoir in accordance with A.A.C. R12-15-1206.
- 3. Hydrologic considerations, including calculations and a summary table of data used in determining the required emergency spillway capacity and freeboard, and design of any diversion or detention structures. The design report shall include input and output listings on both hard copy and diskette of any computer programs.
- 4. Hydraulic characteristics, engineering data, and calculations used in determining the capacities of the outlet works and emergency spillway. The design report shall include input and output listings on both hard copy and diskette of any computer programs.
- 5. Geotechnical investigation and testing of the dam site and reservoir basin. Results and analysis of subsurface investigations including logs of test borings and geologic cross sections.
- 6. Guidelines and criteria for blasting to be used by the contractor in preparing the blasting plan.
- 7. Details of the plan for control or diversion of surface water during construction.
- 8. Details of the dewatering plan for subsurface water during construction.
- 9. Testing results of earth and rock materials, including the location of test pits and the logs of these pits.
- 10. Discussion and design of the foundation blanket grouting, grout curtain, and grout cap based on foundation stability and seepage considerations.
- 11. Calculations and basic assumptions on loads and limiting stresses for reinforced concrete design. The design report shall include input and output listings on both hard copy and diskette of any computer programs.
- 12. A discussion and stability analysis of the dam including appropriate seismic loading, safety factors, and embankment zone strength characteristics. Analyses shall include both short-term and long-term loading on upstream and downstream slopes. The design report shall include input and output listings on both hard copy and diskette of any computer programs.
- 13. A discussion of seismicity of the project area and activity of faults in the vicinity. The design report shall utilize both deterministic and statistical methods and identify the appropriate seismic coefficient identified for use in analyses.
- 14. Discussion and design of the cutoff trench based on seepage and other considerations.
- 15. Permeability characteristics of foundation and dam embankment materials, including calculations for seepage quantities through the dam, the foundation, and anticipated in the internal drain system. The design report shall include input and output listings on both hard copy and on diskette of any computer programs. The design report shall include copies of flow nets, if utilized.
- 16. Discussion and design of internal drainage based on seepage quantity calculations. The design report shall include instrumentation necessary to monitor the drainage system and filter design calculations for protection against piping of foundation and embankment.
- 17. Erosion protection against waves and rainfall runoff for both the upstream and downstream slopes, as appropriate.
- 18. Discussion and design of foundation treatment to adequately compensate for geological weakness in the dam foundation and abutment areas and in the spillway foundation area.
- 19. Post-construction vertical and horizontal movement systems.

R12-15-1216. Dam Design Requirements for High, Significant, and Low Hazard Potential Dams

The following dam design requirements shall apply unless waived in writing by the Director:

A. General Requirements. These requirements apply to all dams, regardless of the type of dam.

- 1. **Emergency Spillway Requirements.** Emergency spillway requirements are as follows:
All dams shall have an emergency spillway unless exempted in writing by the Director. All spillways should be designed to avoid flooding in excess of the flooding that would have occurred in the same location under the same conditions prior to construction. All spillways shall be designed and installed in a manner acceptable to the Director and shall meet the following criteria:

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- a. The owner of a new or enlarged dam shall demonstrate that a spillway discharge would not result in incremental adverse consequences. In determining whether a spillway discharge of an existing dam would result in incremental adverse consequences, the Director shall evaluate whether the owner has taken any or all of the following actions: issuing public notice to downstream property owners, complying with flood insurance requirements, adopting emergency action plans, conducting mock flood drills, acquiring flow easements or other acquisitions of real property, or other actions appropriate to safeguard the dam site and flood channel.
 - b. All spillways excavated in soils or soft rock shall include a control structure to avoid head cutting and lowering of the spillway crest.
 - c. All spillways and channels shall have a minimum width of 10 feet and shall have suitable armor to prevent erosion during the design peak discharge.
 - d. Design provisions shall be made so that downstream spillway channel flows cannot encroach on the dam.
 - e. Spillways and outlets of flood control dams shall be able to pass all the flood water at a discharge rate as calculated on the basis of the spillway design flood.
 - f. Bridges or fences shall not be constructed across spillways unless approved in writing by the Director. The Director's approval may include conditions regarding the design and operation of the spillway and fencing.
 - g. Pipes or culverts shall not be considered emergency spillways unless accepted by the Director following review of the dam design and site characteristics.
2. Inflow Design Flood Requirements.
- a. Unless waived in writing by the Director, the Inflow Design Flood (IDF) requirements for determining the spillway minimum capacity are stated in Table 4:

Table 4. Inflow Design Flood

INFLOW DESIGN FLOOD (IDF)		
Dam Hazard Class	Dam Size Classification	IDF Magnitude
Very Low	All Sizes	100-year
Low	All Sizes	0.25 PMF
Significant	Small	0.25 PMF
	Intermediate	0.5 PMF
	Large	0.5 PMF
High*		

* For high hazard potential dams, the Inflow Design Flood shall vary from 0.5 PMF to the full PMF based on persons at risk and potential for downstream damage. Future conditions shall be considered.

- b. The Director may accept an IDF determined by an incremental damage assessment study in lieu of the above requirements.
 - c. The Director may accept site-specific PMP studies in determination of the Inflow Design Flood.
 - d. The Director may approve an existing dam built prior to promulgation of these Rules whose spillway does not pass the IDF requirements upon a showing by the owner's engineer that overtopping of the dam by floods which exceed the spillway capacity will not cause failure of the dam.
 - e. The total freeboard requirements for new or enlarged dams shall be 1 of the following, whichever is largest:
 - i. The sum of the IDF maximum water surface plus wave run up.
 - ii. The sum of the IDF maximum water surface level plus 3 feet.
 - iii. A minimum of 5 feet from the spillway crest to the top of the dam unless the Director approves less, as shown by the owner to be safe.
 - f. The total freeboard requirements for existing dams which were constructed prior to the promulgation of these Rules shall be 1 of the following, whichever is largest:
 - i. The computed height which will prevent overtopping by wave action with the reservoir at the spillway crest elevation.
 - ii. The maximum water surface required to pass the IDF.
 - iii. A minimum of 3 feet from the spillway crest to the top of the dam unless the Director approves less, as shown by the owner to be safe.
3. **Outlet Requirements.** All new or enlarged dams shall have a low level outlet capable of draining the reservoir to the sediment pool level which meets the following criteria unless waived in writing by the Director:

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- a. All outlets for high and significant hazard potential dams shall be 36 inches in diameter or larger. The minimum diameter for any outlet shall be 18 inches.
- b. All outlets for high and significant hazard potential dams shall have the capacity to evacuate 90 percent of the storage capacity of the reservoir within 30 days, excluding reservoir inflows.
- c. All outlets shall include current practice measures to reduce the potential for piping along the conduit.
- d. Outlet controls shall be accessible when the spillways are in use.
- e. All outlets shall be constructed of appropriate materials with due regard for loading condition, seismic forces, thermal expansion resistance to corrosion, and potential abrasion. The use of corrugated metal pipes and other thin-walled pipes will not be acceptable except as a form for a cast-in-place concrete conduit. Only precast reinforced concrete and cast-in-place reinforced concrete shall be allowed. The precast pipe should have a reinforced concrete bedding and should be backfilled with concrete up to the pipe springline. Both types of conduits should be installed or constructed in a trench. The bottom of the conduit trench should be at or lower than the bottom of the dam embankment cutoff trench at the point where the 2 cross. Cast-in-place conduits should be reinforced with at least 0.2 percent reinforcing steel, both longitudinally and transversely as hoops. The minimum thickness of concrete should be 8 inches. Expansion joints in the outlet conduit, spaced at a maximum of 32 feet, are required for compressible foundations.
- f. All outlets, with the exception of ungated outlets, shall have an operating or guard gate on the upstream end.
- g. The outlet conduit should be located near the base of 1 of the abutments on native competent material, preferably bedrock. The entire length of the conduit should be bedded on foundation materials of uniform density and consistency. If this is not possible, then the conduit should have the capability of deforming without cracking under differential settlement.
- h. Outlet conduits must have an upstream control device (gate or valve) capable of controlling the discharge through all ranges of flow. A trashrack in front of this control is required. The trashrack bars and supports should be designed for a minimum of 25 percent of the reservoir head to which they would be subjected if completely clogged. An air vent pipe is required just downstream of the control gate. An outlet conduit which is connected directly to a distribution system should have a blow-off valve at or near the downstream toe of the dam.
- i. All outlet conduits should be designed for internal pressure equal to the full reservoir head and for superimposed embankment loads, acting separately. Embankment loads should be computed in accordance with Marston's Theory. Internal liners of cast-in-place conduits should not be considered as adding structural strength unless concrete liners are used.

The Director may waive outlet requirements (1) and (2) for existing dams.

4. **Dam Site And Reservoir Area Requirements.** Dam site and reservoir area requirements for new and enlarged dams are as follows unless waived in writing by the Director:
 - a. The design of a new or enlargement of an existing dam shall not result in the inundation or wave damage of properties within the reservoir, except marina-type structures, during the IDF. The owner shall demonstrate that a reservoir storage during the IDF would not result in incremental adverse consequences. In determining whether a discharge would result in incremental adverse consequences, the Director shall evaluate whether the owner has taken any or all of the following actions: issuing public notice to downstream property owners, complying with flood insurance requirements, adopting emergency action plans, conducting mock flood drills, acquiring flow easements or other acquisitions of real property, or other actions appropriate to safeguard the dam site and flood channel. Permanent habitations shall not be allowed within the affected area below the spillway elevation.
 - b. The reservoir storage area shall be cleared of logs and debris or have other debris control measures in place unless this requirement is waived by the Director.
 - c. Borrow areas shall be located a safe distance from the upstream toe and the downstream toe of the dam to prevent a piping failure of the dam.
 - d. The top of the dam and appurtenant structures shall be accessible by equipment and vehicles for emergency operations and maintenance.
5. **Seismic Requirements.** Seismic design of dams shall include the following requirements unless waived in writing by the Director. There are no seismic design requirements for flood control dams.
 - a. A review of the seismic or earthquake history of the area around the dam within a radius of 100 miles to establish the relationship of the site to known faults and epicenters. The review shall include earthquakes that have occurred during historic time and the epicenter locations and magnitudes.
 - b. The location of active or potentially active faults that have experienced Holocene or Late Pleistocene displacement within a radius of 100 miles of the site.
 - c. The Maximum Credible Earthquake (MCE) shall be the design earthquake for storage dams with high or significant hazard potential.
 - d. The design earthquake for all other dams shall be determined on an individual basis using probabilistic methods acceptable to the Director.

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- e. Dams shall not be constructed on active faults unless evidence is presented to, and approved by, the Director, that the dam can safely withstand the anticipated offset.

B. Embankment Dam Requirements

- 1. **Geotechnical Requirements.** Unless waived in writing by the Director, geotechnical investigations shall include the following:
 - a. Evaluation of the stability of the foundation, dam, and slopes of the reservoir rim. Demonstration that sufficient material is available to construct the dam as designed.
 - b. Information on the geology of the local area and dam foundation including data on faults and fault history which may affect the dam, the seismicity of the area and region, and a seismic evaluation of the reservoir perimeter slide potential.
 - c. For all embankment dams, the following criteria shall be met for stability analyses under normal loading conditions.
 - i. The minimum stability factors of safety (FS) are stated in Table 5.

Table 5. Minimum Stability Factors of Safety

<u>STATIC EMBANKMENT CONDITION</u>	<u>MINIMUM STABILITY FACTOR OF SAFETY</u>
<u>End of Construction Case - upstream and downstream slopes</u>	<u>1.3</u>
<u>Steady State Seepage - upstream (critical partial pool) and downstream slope (full pool)</u>	<u>1.5</u>
<u>Instantaneous Drawdown - upstream slope</u>	<u>1.2</u>

- ii. All factors of safety shall be generated by methodology acceptable to the Director. The analysis shall include the effects of an isotropy. The seepage analysis shall use a ratio of horizontal permeability to vertical permeability of at least 10. If the material types and construction techniques will cause excessive stratification, the Director may require ratios of up to 100.
- iii. Tests modeling the conditions being analyzed shall be used to determine the strengths used in the stability analysis. The stability analysis shall provide total and effective stress strengths as appropriate for the different material zones and condition analyzed.
- iv. The analysis of the upstream slope stability for partial pool with steady seepage shall consider the reservoir level that provides the lowest factor of safety.
- v. For low and very low downstream hazard potential dams the Director may waive the requirements of a stability analysis if the owner or the owner's engineer demonstrates that conservative slopes and competent materials are included in the design.
- vi. Stability evaluations where residual strengths are used shall have a minimum factor of safety of 1.3.
- 2. For embankment dams the following general seismic analysis requirements apply:
 - a. Embankments, foundations, and abutments not subject to liquefaction:
 - i. For a maximum peak acceleration of 0.2g or less, or a maximum acceleration of 0.35g or less if the embankment consists of clay on a clay or bedrock foundation, a pseudo static coefficient which is at least 60 percent of the maximum peak bedrock acceleration at the site shall be used in the stability analysis. The minimum factor of safety in an analysis shall be greater than 1.0.
 - ii. For a maximum peak acceleration greater than indicated above, a deformation and settlement analysis shall be performed to estimate anticipated total crest movement. The evaluation shall be performed for both the upstream and downstream slopes of the dam using methods acceptable to the Director. Total crest movement shall consider potential accumulation of movement from both sides of the embankment. The minimum factor of safety against overtopping shall be 2.5, determined by dividing the total freeboard by the vertical settlement in feet.
 - b. Embankments, foundations, and abutments subject to liquefaction:
 - i. A liquefaction analysis shall be completed with enough detail to establish the boundaries of the liquefiable soils and the physical characteristics of the soil following liquefaction.
 - ii. A post-earthquake stability analysis shall be performed to show that the embankment is stable after liquefaction occurs with a minimum factor of safety of 1.2.
 - iii. Calculated deformation and settlement of the embankment's total crest movement shall result in a minimum factor of safety against overtopping of 3.0, determined by dividing the total freeboard by the settlement in feet.

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- c. Other, more sophisticated analytical procedures may be required by the Director where conditions such as high seismicity and low strength embankment and/or foundation soils warrant more detailed studies.
3. **Miscellaneous Design Requirements.** Miscellaneous Design Requirements for new or enlarged embankment dams are as follows, unless waived in writing by the Director:
- a. The design of all significant and high hazard potential dams shall include positive provisions for seepage control and for preventing internal erosion or piping due to subsidence fissures, embankment cracking, or other causes.
- b. Filter and permeability design for all chimney drains, filter blankets, toe drains, and outlet conduit filter diaphragms shall be approved by the Director. All internal filter zones shall be at least 6 feet wide.
- c. The use of geosynthetics shall not be permitted in a configuration where they serve as the sole defense against dam failure.
- i. The use of geotextiles and geonets as a filter or drain material shall be permitted only in locations that are easily accessible for repair or where their excavation cannot create an unsafe condition at the dam.
- ii. Geomembrane liners may be allowed under special conditions and in specific situations defined in guidelines available from the Director. The Director may impose conditions, including monitoring appropriate to the hazard classification, inspection, and necessary repairs every 5 years, or more frequently if conditions warrant.
- d. Underdrains and seepage collection pipes shall be constructed using non-corrodible materials capable of withstanding the anticipated loads. Underdrains shall have sufficient capacity for the expected drainage without the use of drainpipes. Seepage collection pipes shall be designed as a redundant feature with a capacity at least twice the expected drainage flows.
- e. The upstream slopes of all embankment dams that impound water for more than 30 days at a time shall be protected by armoring. If rock riprap is used it shall be well-graded, durable, and sized to withstand wave action and shall be placed on a well-graded pervious sand and gravel bedding or geotextile meeting appropriate filter criteria.
- f. The downstream slopes and groins of all embankment dams shall be protected from erosion.
- g. The width of the top of all embankment dams shall be, at a minimum, equal to the structural height of the dam divided by 5 plus 5 feet. The absolute minimum required shall be 12 feet and the maximum required shall be 25 feet.
4. **Utility Installation Requirements.** Utility installation requirements for embankment dams are as follows unless waived in writing by the Director:
Construction of utilities beneath or through an existing dam must be designed and installed by either open cuts or jacking and boring methods.
- C. **Requirements for Other Dams.** Design criteria based on design guidelines published by agencies of the federal government may be used for the design of other dams including concrete, roller compacted concrete, stone masonry, timber, inflatable rubber, and mechanically-stabilized earth dams. The U.S. Bureau of Reclamation, the U.S. Army Corps of Engineers, and the Federal Energy Regulatory Commission are 3 such agencies. The design criteria must be approved in advance by the Director. The Director may waive or revise any of the specific criteria of these agencies.

R12-15-1217. Actions Which Do Not Require Prior Approval of the Director

- A. General maintenance and ordinary repairs which do not require prior approval of the Director shall be those activities which do not impair or adversely effect the safety of the dam. These activities include:
1. Removal of brush or tall weeds.
 2. Cutting of trees and removal of slash from the embankment or spillway. Small stumps may be removed provided no excavation into the embankment occurs.
 3. Rodent control or extermination by trapping or other methods. Minor rodent damage may be repaired provided it does not involve excavation into the embankment that exceeds 2 feet and replacement materials are compacted as they are placed.
 4. Repair of erosion gullies less than 2 feet deep on the embankment or in the spillway.
 5. Surface grading of the top of the dam embankment or spillway to eliminate potholes and provide proper drainage provided that the freeboard is not reduced.
 6. Placement of additional riprap and bedding on the upstream slope, or in the spillway in areas which have sustained minor damage. Restoration of the original riprap protection where the damage has not yet resulted in erosion and weakening of the dam.
 7. Painting, caulking, or lubricating metal structures.
 8. Patching or caulking spalled or cracked concrete to prevent deterioration.
 9. Removing debris, rock, or earth from outlet conduits or spillway channels and basins.
 10. Patching to prevent deterioration within outlet works.
 11. Replacement of worn or damaged parts of outlet valves or controls to restore them to original or equivalent condition.
 12. Repair or replacement of fences intended to keep traffic or livestock off the dam or spillway.

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- B.** General maintenance and ordinary repair which may impair or adversely effect safety such as excavation into or near the toe of the dam, construction of new appurtenant structures for the dam, and repair of damage which has already significantly weakened the dam must be done in accordance with A.A.C. R12-15-1207. The determination of whether general maintenance and ordinary repair will impair or adversely effect safety shall be made by the Director.
- C.** Emergency actions not impairing or adversely effecting the safety of the dam may be taken before guidance can be provided by an engineer, and do not require prior approval of the Director. Emergency actions shall not excuse an owner's responsibility to promptly undertake a permanent solution as required for the dam's safety. Emergency actions include:
 - 1. Stockpiling materials such as riprap, earth fill, sand, sandbags, and plastic sheeting.
 - 2. Lowering the reservoir level by making releases through the outlet or a gated spillway, by pumping, or by siphoning. Where large releases are to be made, the Director shall be notified not later than 12 hours after the release began.
 - 3. Armoring eroded areas by placing sandbags, riprap, plastic sheeting, or other available material.
 - 4. Plugging leakage entrances on the upstream slope.
 - 5. Increasing freeboard by placing sandbags or temporary earth fill on the dam.
 - 6. Diverting flood waters to prevent them from entering the reservoir basin.
 - 7. Constructing training berms to control flood waters.
 - 8. Placing sandbag ring dikes or reverse filter materials around boils at the downstream toe to provide back pressure.
 - 9. Removing obstructions from outlet or spillway flow areas.
- D.** Emergency actions impairing or adversely effecting the safety of the dam require prior approval by the Director. Lowering the water level by excavating the spillway or embankment is prohibited unless failure is imminent.
- E.** For all high and significant hazard potential dams, the Emergency Action Plan shall be implemented in conjunction with any appropriate emergency actions at the dam.
- F.** The owner or the owner's engineer shall notify the Director immediately of any emergency condition that exists and any emergency action taken.

R12-15-1218. Safe Storage Level

The Director has the authority to determine the safe storage level for reservoir storage for each dam in the state. This includes storage levels of existing dams while they are being enlarged, repaired, altered, or removed. The elevation of the safe storage level shall be stated on the License of Approval issued to each owner. The reservoir owner shall not store water in excess of the level determined by the Director to be safe. The owner shall not place flashboards or other devices in the emergency spillway without 1st filing and receiving approval of an application for alteration of the dam in accordance with A.A.C. R12-15-1207.

R12-15-1219. Safety Inspections

- 1. Dam safety inspections shall be conducted annually or more frequently for all high hazard potential dams, triennially for all significant hazard potential dams, and once every 5 years for all low and very low hazard potential dams.
 - 2. An engineer shall be considered qualified to provide information to the Director regarding the safe storage level of a reservoir if the engineer meets the following qualifications:
 - a. An engineer, as defined by A.A.C. R12-15-1203(11);
 - b. Three years of experience in the field of dam safety; and
 - c. Actual experience in conducting safety inspections of dams.
 - 3. Dam safety inspections shall include:
 - a. Review of previous inspections, reports and drawings;
 - b. Site inspection of the dam, spillways, outlet facilities, seepage control, and measurement systems;
 - c. Inspection of permanent monument or monitoring installations, if any; and
 - d. Assessment of all parts of the dam which are related to the dam's safety.
 - 4. The engineer shall prepare an inspection report which describes the findings and lists actions the dam owner shall take to improve the safety of the dam to an acceptable level. The report shall include the engineer's recommendation of the safe storage level. The engineer shall use a report form approved by the Director.
- A. Inspections by the Owner**
- 1. An owner may provide, at the owner's expense, a safety inspection report to the Director regarding the safe storage level of a reservoir. The Director may utilize the owner's safety inspection report in lieu of a Director safety inspection report if the report is written by a qualified engineer. The owner's engineer must notify the Director and submit a written summary of the engineer's qualifications at least 14 days prior to the scheduled safety inspection.
 - 2. The Director may refuse to accept an inspection that does not conform with these Rules.
- B. Inspections by the Department**
- 1. The Director or the Director's authorized representative may enter at reasonable times upon private or public property and the owner shall permit such entry, where a dam, including a dam under construction, enlargement, repair, alteration, or removal, is located for any of the following:
 - a. To enforce the conditions of approval of the construction drawings and specifications of an application for construction, enlargement, repair, or removal.

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- b. To inspect a dam that is subject to these Rules.
- c. To investigate or assemble data to aid review and study of the design and construction of dams, reservoirs, and appurtenances or make watershed investigations to facilitate decisions on public safety as appropriate to fulfill the duties of A.R.S. § 45-1214.
- d. To ascertain compliance with these Rules and Title 45, Chapter 6, Arizona Revised Statutes.
2. Upon receipt of a complaint that a dam is endangering people or property:
 - a. The Director shall inspect the dam unless there is substantial cause to believe the complaint is without merit.
 - b. If the complainant files a complaint in writing and deposits with the Director an amount sufficient to cover the costs of the inspection, the Director shall make an inspection.
 - c. The Director shall provide a written report of the inspection to the complainant and the dam owner.
 - d. If an unsafe condition is found, the Director shall cause it to be corrected and shall return the deposit to the complainant. If the complaint was without merit the deposit shall be paid into the general fund.
3. The Director's authorized representative shall be an engineer registered as defined in A.A.C. R12-15-1203 or an employee of the Department under the direct supervision of an engineer as defined in A.A.C. R12-15-1203(11).
4. The Director may employ qualified on-call consultants to conduct inspections.
5. Inspections and investigations under subsection (A) shall comply with the requirements of A.R.S. § 41-1009.

R12-15-1220. Requirements for Existing Dams

The requirements of these Rules apply to existing dams, unless the Director determines that compliance is not necessary to safeguard human life and property and waives 1 or more of the requirements in writing.

R12-15-1221. Owner's Responsibilities

- A.** The owner bears the responsibility for the safe design, operation, and maintenance of the dam. It shall be the responsibility of the owner to operate, maintain, and regularly inspect a dam so that it shall not constitute a danger to human life or property. The dam owner is responsible for providing timely warning of problems at the dam. Development and maintenance of effective Emergency Action Plans and coordinating those plans with local officials are integral parts of that responsibility.
- B.** The owner is responsible for frequent observation of the owner's dam, as prescribed in the Emergency Action Plan for the dam.
 1. Frequency of observation shall increase when the reservoir is full, during heavy rains or flooding, and following an earthquake.
 2. Conditions which threaten the safety of the dam as described in A.A.C. R12-15-1225(A)(1) of these Rules shall be reported to the Director as soon as possible, but not later than 12 hours after discovery of the conditions.
 3. If dam failure appears imminent, the county sheriff or other emergency official shall be notified immediately.
 4. The owner shall be responsible for the safety of the dam and shall take action to lower the reservoir if it appears that the dam has weakened or is in danger of failing.
- C.** The owner of a dam is responsible for installing, maintaining, and monitoring instrumentation required to evaluate the performance of the dam. Site-specific instrumentation shall be required when the Director deems it necessary for monitoring specific performance to assess the safety of the dam when failure may endanger human life and property. Conditions which may require monitoring include land subsidence, earth fissures, embankment cracking, phreatic surface, seepage, and embankment movements.
- D.** The owner is responsible for adequate and timely maintenance and ordinary repairs of the dam. The owner shall establish an annual plan to inspect the dam and accomplish the maintenance and ordinary repairs as necessary to protect life and property. Inspections described in A.A.C. R12-15-1219 may be required by the Director.
- E.** When a change of ownership of a dam occurs, the owner shall notify the Department within 15 days and provide the mailing address and telephone number where the new owner can be contacted. Within 90 days following the transaction, the new owner shall provide the name and telephone number of the individual or individuals who will be responsible for operation and maintenance of the dam.

R12-15-1222. Emergency Action Plans (EAP)

- A.** Unless waived by the Director, owners of high and significant hazard potential dams shall prepare, maintain, and exercise Emergency Action Plans (EAP) for immediate defensive action to prevent failure of the dam and minimize threat to downstream development. An EAP shall contain the following:
 1. Notification chart showing the hierarchy for notification in an emergency situation, including priority of notifications. Notifications shall include local emergency response agencies, affected downstream populations, county emergency management agencies, and affected flood control districts.
 2. Description of the project and scope of the EAP.
 3. Delineation of the type of potentially unsafe conditions, evaluation procedures, and triggering events that require the initiation of partial or full emergency notification procedures based on the urgency of the situation.

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4. Delineation of areas of responsibility, particularly of the owners. The individuals responsible for notifications and declaring an emergency shall be clearly identified.
 5. Notification procedures specific for each emergency situation that is anticipated.
 6. Identification of emergency supplies and resources, equipment access to the site, and alternative means of communication. The EAP shall also identify specific preparedness activities required such as annual full or partial mock exercises and updates of the EAP.
 7. An inundation map showing the area that would be subject to flooding due to spillway flows and dam failures.
- B.** The owner shall use the Director's model EAP, which is available at no cost, or equivalent, for guidance in preparing the details of the components above.
- C.** The owner shall submit a copy of the proposed EAP to the Arizona Division of Emergency Management and all local emergency coordinators involved in the plan for review. The owner shall incorporate applicable recommendations from the above.
- D.** The owner shall review and update the EAP annually and more often if required to maintain an up to date plan. The owner shall send updated sections of the plan to persons and agencies holding copies of the plan within 15 days of an update.

R12-15-1223. Right of Review

- A.** An applicant or dam owner aggrieved by a decision of the Director regarding the determination of hazard classification, jurisdictional status, or the Director's application of these Rules to the applicant or dam owner's project or dam may seek review of an Appealable Agency Action pursuant to Article 10, Title 41, Arizona Revised Statutes.
- B.** An applicant or dam owner aggrieved by a decision of the Director that requires the exercise of professional engineering judgment or discretion or the assessment of risk to human life or property, such as the adequacy of an applicant's project documentation, dam design, safe storage level, requirements for existing dams, or maintenance, may seek review by a Board of Review pursuant to A.R.S. §§ 45-1210 and 45-1211.
- C.** The following actions are not subject to review:
1. Emergency measures taken pursuant to A.R.S. §§ 45-1212 or 45-1221.
 2. Agency decisions made pursuant to A.R.S. § 41-1009(E) or (F).
 3. Agency actions made exempt from review by law.

R12-15-1224. Enforcement Authority

- A.** A dam shall at all times be designed, constructed, operated, and maintained so that it shall not constitute a danger to human life or property, and the Department may, at any time, exercise any discretion with which it is vested or take any action necessary to prevent such danger. The Director may take any legal action which is proper and necessary for the enforcement of this chapter.
- B.** If the Director has cause to believe that a dam is unsafe or a person is violating or has violated a provision of these Rules or Arizona Revised Statutes, Title 45, Chapter 6, Article 1, the Director may issue a notice directing how the dam may be made safe or the violation may be corrected. A notice issued pursuant to this provision may be appealed as an Appealable Agency Action and an administrative hearing held pursuant to Arizona Revised Statutes, Title 41, Chapter 6, Article 10. If the notice is not appealed within 30 days after receipt of the notice, the notice becomes final and is incorporated as a condition of the License.
- C.** If the Director has cause to believe that a dam is unsafe or a person is violating or has violated a provision of these Rules or Arizona Revised Statutes, Title 45, Chapter 6, Article 1, the Director may initiate a contested case pursuant to Arizona Revised Statutes, Title 41, Chapter 6, Article 10 requesting an administrative hearing.
- D.** Following a written decision by an Administrative Law Judge, the Director shall issue a Decision and Order accepting, rejecting, or modifying the Administrative Law Judge's decision. Upon expiration of time to appeal, the Decision and Order becomes final and is incorporated as a condition of the License.
- E.** If the Director has cause to believe that a dam is unsafe or a person is violating or has violated a provision of these Rules or Arizona Revised Statutes, Title 45, Chapter 6, Article 1 the Director may commence an action or proceeding in a court of appropriate jurisdiction, subject to the following:
1. The Director may commence an action or proceeding in a court of appropriate jurisdiction only if:
 - a. The violation presents an emergency if appropriate steps are not taken without delay, or
 - b. The Director has cause to believe that use of the administrative procedure would be ineffective or that delay would ensue and a deterioration in the safety of the dam would occur.
 2. If the Director commences an action or proceeding it shall be brought in a court of appropriate jurisdiction in which:
 - a. The cause or some part thereof arose, or
 - b. The owner or person complained of does business, or
 - c. The person complained of resides.
 3. A person determined to be in violation of these Rules or Arizona Revised Statutes, Title 45, Chapter 6 or a license or order issued or adopted pursuant to them may be assessed a civil penalty in an amount not exceeding \$1,000 per day

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of violation. On the issue of the amount of the penalty, the Director may offer evidence relating to any of the following:

- a. The degree of harm to the public;
 - b. Whether the violation was knowing or willful;
 - c. The past conduct of the defendant;
 - d. Whether the defendant should have been on notice of the violation;
 - e. Whether the defendant has taken steps to cease, remove, or mitigate the violation; and
 - f. Any other relevant information.
4. A person who violates Arizona Revised Statutes, Title 45, Chapter 6, Article 1 regarding Supervision of Dams, Reservoirs, and Projects is guilty of a class 2 misdemeanor, and each day such violation continues constitutes a separate offense.

R12-15-1225. Emergency Procedures

A. The owner of a dam shall immediately notify the Department and responsible authorities in adjacent and downstream communities, including emergency management authorities, of a condition which may threaten the safety of the dam and take necessary actions to protect human life and property, including action required under an emergency action plan or order issued under these Rules.

1. A condition which may threaten the safety of a dam includes:
 - a. Sliding of upstream or downstream slopes or abutments contiguous to the dam.
 - b. Sudden subsidence of the top of the dam.
 - c. Longitudinal or transverse cracking of the top of the dam.
 - d. Unusual release of water from the downstream slope or face of the dam.
 - e. Other unusual conditions at the downstream slope of the dam.
 - f. Significant landslides in the reservoir area.
 - g. Increasing volume of seepage.
 - h. Cloudy seepage or recent deposits of soil at seepage exit points.
 - i. Sudden cracking or displacement of concrete in a concrete or masonry dam spillway or outlet works.
 - j. Loss of freeboard or dam cross section due to storm wave erosion.
 - k. Flood waters overtopping an embankment dam.
 - l. Spillway backcutting that threatens evacuation of the reservoir.
2. In case of an emergency, telephone calls should be directed to the Arizona Department of Public Safety's Emergency numbers at (800) 411-2336 or (602) 223-2000.

B. The Director may issue an emergency approval to repair, alter, or remove an existing dam if the Director finds that immediate remedial action is necessary to alleviate an imminent threat to human life or property.

1. The emergency approval shall be provided in writing on a form developed for this purpose.
2. The emergency approval may contain conditions as the Director determines appropriate.
3. The emergency approval is effective immediately for 30 days after notice is sent to the owner unless extended in writing by the Director. The Director shall also send notice to the county flood control district of the county in which the dam is located, all municipalities within 5 miles downstream of the dam, and any additional persons identified in the Emergency Action Plan for the dam.
4. The Director may institute legal or administrative proceedings that the Director deems appropriate for violations of the emergency approval or conditions of the emergency approval.

R12-15-1226. Emergency Repairs

A. Monies from the dam repair fund, established pursuant to A.R.S. § 45-1212.01, may be used to employ any remedial measures necessary to protect human life and property resulting from a condition which may threaten the safety of a dam if the dam owner is unable or unwilling to take such action and there is not sufficient time to issue and enforce an order.

B. The Section Manager of the Department's Dam Safety Section may authorize an expenditure not to exceed \$10,000 from the dam repair fund to apply remedial measures pursuant to A.R.S. § 45-1212. The expenditure of any additional funds must be approved by the Director.

C. All monies used from the dam repair fund shall constitute a lien against all property of the owner pursuant to A.R.S. § 45-1212.

R12-15-1227. Non-Emergency Repairs; Loans and Grants

A. The dam repair fund, established pursuant to A.R.S. § 45-1212.01, may be used as prescribed by this Rule to defray the costs of repairing dams which the Director determines to represent a threat to human life and property but which are not in an emergency condition.

B. Monies from the dam repair fund may be used for loans and grants to owners as provided in A.R.S. §§ 45-1218 and 45-1219.

C. To qualify for a loan or grant from the dam repair fund, the dam must be classified as unsafe by the Director.

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- D.** The Director may authorize grant funds for all or part of the cost of engineering studies or construction needed to mitigate the threat to human life and property created by the dam.
1. Grants shall be evidenced by a financial assistance agreement that defines the terms of financial assistance given.
 2. Grant disbursements from the fund shall be in accordance with the financial assistance agreement, which at a minimum shall be based on payment intervals as related to work progress and incurred expenses.
 3. Grants shall be prioritized based on a consideration of such factors as the potential for failure, the number of lives at risk, and the capability of the owner to pay a portion of the costs.
- E.** The Director may loan funds for engineering studies or for construction at the interest rates specified in A.R.S. § 45-1218.
1. Loans shall be evidenced by a loan repayment agreement between the dam owner and the Director. The loan repayment agreement shall be delivered to and held by the Department.
 2. Loans shall be prioritized based on a consideration of such factors as the potential for failure, the number of lives at risk, and the capability of the owner to pay a portion of the costs.

R12-15-1228. Index

The following index provides a quick reference to terminology used in the rules. The index contains key words and phrases that are found in the Sections listed with each entry.

<u>Term or phrase</u>	<u>Section</u>
<u>application</u>	<u>R12-15-1202(B), R12-15-1203(5), R12-15-1206(B)(3), R12-15-1207, R12-15-1208, R12-15-1209, R12-15-1210, R12-15-1211, R12-15-1215, R12-15-1218, R12-15-1219(B)(1)(a), R12-15-1223</u>
<u>culvert</u>	<u>R12-15-1216(A)(1)(g)</u>
<u>deficiency</u>	<u>R12-15-1203(46)</u>
<u>emergency</u>	<u>R12-15-1202(A)(3), R12-15-1203, R12-15-1206(B)(1)(a), R12-15-1208(K), R12-15-1210(A)(5)(a), R12-15-1211, R12-15-1215(C), R12-15-1216(A)(1) and (4), R12-15-1217, R12-15-1218, R12-15-1221, R12-15-1222, R12-15-1223(C)(1), R12-15-1224(E)(1)(a), R12-15-1225, R12-15-1226, R12-15-1227(A)</u>
<u>enforcement</u>	<u>R12-15-1202(B), R12-15-1224</u>
<u>freeboard</u>	<u>R12-15-1203(45), R12-15-1215(C)(3), R12-15-1216, R12-15-1217, R12-15-1225(A)(1)(j)</u>
<u>geosynthetics</u>	
<u>geomembrane</u>	<u>R12-15-1216(B)(3)(c)(ii)</u>
<u>geonets</u>	<u>R12-15-1216(B)(3)(c)(i)</u>
<u>geotextiles</u>	<u>R12-15-1216(B)(3)(c)(i)</u>
<u>geotechnical</u>	
<u>investigation</u>	<u>R12-15-1215(C)(5), R12-15-1216(B)(1)</u>
<u>requirements</u>	<u>R12-15-1216(B)(1)</u>
<u>high hazard potential</u>	<u>R12-15-1202(C)(2), R12-15-1206(B)(2)(d), R12-15-1207(A), R12-15-1208, R12-15-1209, R12-15-1212, R12-15-1213, R12-15-1215, R12-15-1216, R12-15-1217(E), R12-15-1219(1), R12-15-1222(A)</u>
<u>hydraulic characteristics</u>	<u>R12-15-1215(C)(4)</u>
<u>Inflow Design Flood (IDF)</u>	<u>R12-15-1203, R12-15-1207(C), R12-15-1216</u>
<u>inspection</u>	<u>R12-15-1202(A)(4), R12-15-1203(41), R12-15-1206(B)(4), R12-15-1211(K), R12-15-1212(A), R12-15-1213, R12-15-1216(B)(3)(c)(ii), R12-15-1219</u>

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<u>license</u>	<u>R12-15-1203, R12-15-1207(A)(4), R12-15-1210(M) and (O), R12-15-1211(C) and (H), R12-15-1214, R12-15-1218, R12-15-1224(B)</u>
<u>low hazard potential</u>	<u>R12-15-1202(C)(2), R12-15-1206(B)(2)(b), R12-15-1207(A)(3), R12-15-1210, R12-15-1215, R12-15-1216, R12-15-1219</u>
<u>maintenance</u>	<u>R12-15-1202(A)(3) and (4), R12-15-1203(1), R12-15-1208(L), R12-15-1216(A)(4)(d), R12-15-1217(A) and (B), R12-15-1221, R12-15-1222(A) and (D)</u>
<u>Maximum Credible Earthquake</u>	<u>R12-15-1203(27), R12-15-1216(A)(5)(c)</u>
<u>minimum stability factors of safety</u>	<u>R12-15-1216(B)(1)(c)(i)</u>
<u>outlet works</u>	<u>R12-15-1203(2) and (30), R12-15-1211(A)(6), R12-15-1215(A)(2) and (11), and (C)(4), R12-15-1217(A)(9), R12-15-1225(A)(1)(i)</u>
<u>permeability</u>	<u>R12-15-1215(C)(15), R12-15-1216(B)(1)(c)(ii) and (3)(b)</u>
<u>review</u>	<u>R12-15-1202, R12-15-1203(41), R12-15-1207, R12-15-1210(B)(6) and (D), R12-15-1211(D), R12-15-1214(A), R12-15-1216(A)(1)(g) and (5)(a), R12-15-1219(3)(a) and (B)(1)(c), R12-15-1222(C) and (D), R12-15-1223</u>
<u>safe storage level</u>	<u>R12-15-1203(39), R12-15-1207(D)(8)(c), R12-15-1208(G), R12-15-1210(O)(1), R12-15-1211(H)(1), R12-15-1214(A) and (B)(2), R12-15-1218, R12-15-1219(4), R12-15-1223(B)</u>
<u>seepage</u>	<u>R12-15-1203(41), R12-15-1215, R12-15-1216(B)(1)(c)(ii) and (3)(a), R12-15-1219(3)(b), R12-15-1221(C), R12-15-1225(A)(1)(g) and (h)</u>
<u>seismicity</u>	<u>R12-15-1215(C)(13), R12-15-1216(A)(5) and (B)(2)(c)</u>
<u>significant hazard potential</u>	<u>R12-15-1202(C)(1), R12-15-1206(B)(2)(c), R12-15-1207(A)(1) and (2), R12-15-1208, R12-15-1209, R12-15-1212, R12-15-1213, R12-15-1214(A), R12-15-1215, R12-15-1216, R12-15-1217(E), R12-15-1219(1), R12-15-1222(A)</u>
<u>spillway</u>	<u>R12-15-1203, R12-15-1211(A)(6), R12-15-1215, R12-15-1216, R12-15-1217, R12-15-1218, R12-15-1219(3)(a), 1222(A)(7), R12-15-1225(A)(1)(l)</u>
<u>topographic map</u>	<u>R12-15-1215(A)(2)</u>
<u>very low hazard potential</u>	<u>R12-15-1202(C)(3), R12-15-1206(B)(2)(a), R12-15-1207(A)(4), R12-15-1211, R12-15-1214(A), R12-15-1219(1)</u>
<u>violation</u>	<u>R12-15-1224, R12-15-1225(B)(4)</u>

NOTICE OF PROPOSED RULEMAKING

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

**CHAPTER 4. CORPORATION COMMISSION
SECURITIES**

PREAMBLE

1. **Sections Affected** **Rulemaking Action**
R14-4-140 Repeal
R14-4-140 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. §§ 44-1821 and 44-1845
Implementing statute: A.R.S. §§ 44-1844 and 44-1845
Constitutional authority: Arizona Constitution Article XV §§ 4, 6, and 13

3. **A list of all previous notices appearing in the Arizona Administrative Register:**
Notice of Rulemaking Docket Opening: 5 A.A.R. 2181, July 9, 1999

4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Cheryl T. Farson, General Counsel

Address: Arizona Corporation Commission, Securities Division
1300 W. Washington, Third Floor
Phoenix, AZ 85007-2996

Telephone: (602) 542-4242

Fax: (602) 594-7470

5. **An explanation of the rule, including the agency's reasons for initiating the rule:**
The Arizona Corporation Commission (the "Commission") proposes to repeal and replace Section R14-4-140 ("rule 140"). The Division proposes remaking rule 140 because of a recent amendment to federal rule 504. The proposed rule 140 will provide an exemption from registration of securities compatible with federal law and consistent with exemptions adopted by other states.

Proposed rule 140 provides an exemption from securities registration for sales to accredited investors if the issuer is also relying on the federal rule 504 exemption from federal registration. Federal rule 504 exempts from registration sales of certain issuers of up to \$1 million worth of securities in a 12-month period. In release no. 33-7644, the SEC amended federal rule 504 effective April 7, 1999. The amended rule 504 requires that, unless issuers exclusively either register on the state level or rely on state law exemptions that permit general solicitation and general advertising so long as sales are made only to accredited investors, issuers may not use general solicitation or general advertising and securities acquired in a federal rule 504 transaction will have the status of securities acquired in a transaction under section 4(2) of the Securities Act of 1933.

In August 1995, Arizona was the 1st state to adopt an exemption from registration that permits general solicitation and general advertising so long as sales are made only to accredited investors—the current rule 140. In April 1997, the North American Securities Administrators Association, Inc. ("NASAA"), adopted a model accredited investor exemption. Several of the states that have adopted an accredited investor exemption have based their exemptions on the NASAA model rule.

The Division anticipates that issuers may choose to conduct public offerings under the amended federal rule 504 and will register on the state level or will conduct the offering in states that have accredited investor exemptions. In order to provide consistency with the accredited investor exemptions in other states and to facilitate an issuer's reliance on accredited investor exemptions in several states, the Division proposes to remake rule 140 based on the NASAA model accredited investor exemption.

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6. **Reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:**
None.
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
The proposed rule will not diminish a previous grant of authority of any political subdivision of this state.
8. **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.
9. **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.
10. **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: November 2, 1999
Time: 10 a.m.
Location: Arizona Corporation Commission
1200 West Washington Avenue
Phoenix, Arizona 85007
Nature: Oral proceeding. Subsequent to the oral proceeding, the Arizona Corporation Commission will taken final action at an open meeting with respect to the making of the proposed rule.
11. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
None.
12. **Incorporations by reference and their location in the rules:**
Rule 504 of Regulation D (17 CFR 230.504 (1999))Subsection (A)(3)
13. **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

R14-4-140. ~~Exempt Public Offerings to Accredited Investors Repealed~~
R14-4-140. Accredited Investor Exemption

ARTICLE 1. IN GENERAL RELATING TO THE ARIZONA SECURITIES ACT

R14-4-140. Exempt Public Offerings to Accredited Investors Repealed

A. Definitions and terms. As used in this rule, the following terms shall have the meaning indicated:

1. “Accredited investor” shall have the meaning provided in R14-4-126.
2. “Business Day” shall mean any day other than a Saturday, Sunday, or day which is a legal holiday in the state of Arizona.
3. “Form D” shall mean Form D of Regulation D (17 CFR 239.500 (1994)) promulgated by the SEC under the Securities Act of 1933, which is incorporated by reference and is on file with the office of the Secretary of State.
4. “Rule 504” shall mean Rule 504 of Regulation D (17 CFR 230.504 (1994)) promulgated by the SEC under the Securities Act of 1933, which is incorporated by reference and is on file with the Office of the Secretary of State.
5. “Securities Act” shall mean the Arizona Securities Act.
6. “SEC” shall mean the United States Securities and Exchange Commission.

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- B.** Initial offers and sales of securities by an issuer in reliance on Rule 504 shall be exempt from the registration requirements of A.R.S. §§ 44-1841 and 44-1842, subject to the satisfaction of all of the following conditions:
1. The exemption from A.R.S. § 44-1842 shall be available for offers of an issuer made only by its employees, officers, and directors who were not retained for the primary purpose of making offers on behalf of the issuer and shall not be available for third parties or dealers retained by an issuer in connection with offers of the issuer.
 2. The sale of securities shall not exceed \$1,000,000 in any 12-month period.
 3. The issuer shall not be a development stage company with no specific business plan or purpose or a development stage company that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.
 4. Offers of securities must specify that sales shall be made only to accredited investors. Sales of securities shall be made exclusively to accredited investors.
 5. Any prospectus, offering memorandum, subscription documents, or other offering documents used in connection with the offer or sale of securities shall be filed with the Commission at least ten business days prior to the initial sale of securities.
 6. An opinion of counsel as to the validity of the issuance of the securities and the filing fee required by A.R.S. § 44-1861(E) shall be filed with the Commission at least ten business days prior to the initial sale of securities.
 7. Any advertisement, communication, or sales literature of any kind, published either manually or electronically, exhibited, or broadcast for radio or television must specify that sales shall be made only to accredited investors and shall be filed with the Commission at least five business days prior to the use thereof. All radio and television broadcasts must be scripted and all such scripts and a videotape of all scripted television broadcasts must be submitted to the Commission within the requisite time period.
 8. The following legend shall be set forth on the cover page of any offering documents, or any subscription documents if there are no other offering documents, printed in capital letters in bold-face Roman type at least as large as ten-point modern type and at least two points leaded:
“SUBJECT TO THE PROVISIONS OF ARIZONA ADMINISTRATIVE CODE R14-4-140, THESE SECURITIES MAY BE OFFERED AND SOLD BY THE ISSUER ONLY TO ACCREDITED INVESTORS AS DEFINED IN ARIZONA ADMINISTRATIVE CODE R14-4-126 AND MAY BE RE-OFFERED AND SOLD WITHIN ARIZONA FOR A THREE-YEAR PERIOD ONLY TO ACCREDITED INVESTORS. THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR THE ARIZONA CORPORATION COMMISSION, NOR HAVE THEY PASSED UPON THE MERITS OF OR OTHERWISE APPROVED THIS OFFERING. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.”
 9. The first sentence of the legend required by subsection (B)(8) shall be conspicuously set forth on the front of any certificate that represents a security issued or resold in accordance with this rule. Any certificate legend shall no longer be required upon the termination of any resale restrictions in accordance with subsection (F).
 10. A copy of any initial Form D required to be filed with the SEC shall be filed with the Commission within ten business days after filing the Form D with the SEC.
 11. At the time of sale, the issuer, or any of its predecessors, affiliates, directors, officers, general partners, or beneficial owners of 10% or more of any class of its equity securities, or any underwriter of the securities shall not fall within the disqualification of A.R.S. § 44-1901(G)(1) through (6).
 12. No later than 30 business days following the completion of any offering of securities, the issuer shall file with the Commission a certificate, signed by at least two of its authorized officers, partners or other authorized persons, stating that such authorized officers, partners or other authorized persons, in their official capacities for the issuer and after undertaking a reasonable investigation, believe that the issuer has complied with all of the requirements of this subsection (B).
- C.** The Director may, in the Director's discretion, waive any disqualification caused by subsection (B)(11).
- D.** Any disqualification caused by subsection (B)(11) shall cease to exist if any of the following occurs:
1. The basis for the disqualification has been removed by the jurisdiction creating it.
 2. The jurisdiction in which the disqualifying event occurred issues a written waiver of the disqualification.
 3. The jurisdiction in which the disqualifying event occurred declines in writing to enforce the disqualification.
- E.** Except for re-offers and resales registered under Articles 6 or 7 of the Securities Act, re-offers and resales of securities issued in accordance with subsection (B) shall be made in Arizona exclusively in accordance with subsection (E). Such re-offers and resales shall be exempt from the registration requirements of A.R.S. §§ 44-1841 and 44-1842, subject to satisfaction of all of the following conditions:
1. Re-offers of securities must specify that resales within Arizona shall be made only to accredited investors. Resales of securities within Arizona shall be made exclusively to accredited investors.
 2. The seller of securities shall reasonably believe that the initial sale of securities complied with subsection (B). A reasonable belief may be based on the certificate of the issuer billed in accordance with subsection (B)(12), provided that

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the seller of the securities did not know and, in the exercise of reasonable care, could not have known of any material misstatement or omission in such certificate.

3. Any advertisement, communication, or sales literature of any kind, published either manually or electronically, exhibited, or broadcast for radio or television must specify the resales shall be made only to accredited investors.
- F.** Any restrictions on re-offers or resales of securities imposed by subsection (E) shall terminate upon the earlier of:
1. Three years after the date of the filing of the certificate of the issuer required by subsection (B)(12);
 2. The registration, with the Commission under Articles 6 or 7 of the Securities Act or with the SEC under the Securities Act of 1933 or the Securities Exchange Act of 1934, of all or part of the same class of securities or any other class of the issuer's securities junior in rank to such class of securities.
- G.** The Director may revoke the availability of subsection (B) or (E) prior to any particular sale of securities under such subsections with respect to a particular issuer, seller, or transaction if the Director determines that there is a reasonable likelihood that the sale of the securities would work or tend to work a fraud or deceit upon the purchasers thereof. In the event the Director makes such a determination, the seller of the securities may request a hearing in accordance with the provisions of Article 11 of the Securities Act by notifying the Commission within ten days after notice of the Director's determination described in this subsection (G).
- H.** No action or inaction on the part of the Commission or the Director with respect to any offer or sale of securities undertaken pursuant to this rule shall be deemed to be a waiver of any condition of this rule nor shall it be deemed to be a confirmation by the Commission of the availability of this rule or the approval of any offering.
- Note. No specific information is required to be furnished to purchasers other than the legend required by subsection (B)(8). However, in view of the anti fraud provisions of federal securities laws and the Securities Act, issuers of securities should consider carefully the advisability of written disclosure of all material information and risks respecting the securities being offered to investors.

R14-4-140. Exempt Public Offerings to Accredited Investors

- A.** As used in this Section, the following terms shall have the meaning indicated:
1. "Accredited investor" shall have the meaning provided in R14-4-126.
 2. "Form D" shall mean Form D of Regulation D (17 CFR 239.500) promulgated by the SEC under the Securities Act of 1933.
 3. "Rule 504" shall mean Rule 504 of Regulation D (17 CFR 230.504 (1999)) promulgated by the SEC under the Securities Act of 1933, which is incorporated by reference and is on file with the office of the secretary of state. The incorporated material contains no later editions or amendments.
 4. "Securities Act" shall mean the Arizona Securities Act, A.R.S. §§ 44-1801 through 44-2126.
 5. "SEC" shall mean the United States Securities and Exchange Commission.
- B.** Offers and sales of securities by an issuer in compliance with Rule 504 shall be exempt from the registration requirements of A.R.S. §§ 44-1841 and 44-1842, subject to the satisfaction of the provisions of this Section. The exemption from A.R.S. § 44-1842 is available for the issuer's employees, officers, and directors who make offers or sales on behalf of the issuer if they were not retained for the primary purpose of making such offers or sales. The exemption from A.R.S. § 44-1842 is not available for 3rd parties or dealers.
- C.** This exemption is not available to a "blind pool offering" within the meaning of A.R.S. § 44-1801, an issuer that either has no specific business plan or purpose or whose business plan is to engage in a merger or acquisition with an unidentified entity or person, or an issuer that is excluded from the exemption pursuant to subsection (M).
- D.** Offers of securities must specify that sales shall be made only to accredited investors. Sales of securities shall be made exclusively to accredited investors.
- E.** The issuer shall reasonably believe, after inquiry, that each purchaser is buying the security for the purchaser's own account and not with the view to distribute, or for sale in connection with a distribution of, the security. Any resale of a security sold in reliance on this Section within 12 months of the initial purchase from the issuer, except a resale to an accredited investor or pursuant to a registration statement effective under A.R.S. Title 44, Chapter 12, Article 7, shall be presumed to be with a view to distribution and not for investment. Securities issued under this Section may only be resold pursuant to registration or an exemption under the Securities Act.
- F.** A general announcement of the proposed offering may be made by any means. The general announcement shall include only the following information, unless additional information is specifically permitted by the Director in writing.
1. The name, address, and telephone number of the issuer of the securities.
 2. The name, a brief description, and price, if known, of any security to be issued.
 3. A brief description of the issuer's business.
 4. The type, number, and aggregate amount of securities being offered.
 5. The name, address, and telephone number of the person to contact for additional information.
 6. A statement that discloses all of the following terms and conditions:
 - a. Sales will only be made to accredited investors.

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- b. No money or other consideration is being solicited or will be accepted in connection with the general announcement.
- c. The securities have not been registered with or approved by any state securities agency or the SEC and are being offered and sold under an exemption from registration.
- G. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this rule.
- H. In connection with an offer made under this Section, the issuer may provide information in addition to the general announcement under subsection (F) if such information meets 1 of the 2 following conditions:
 - 1. Is delivered through an electronic database that is restricted to persons who have been identified as accredited investors.
 - 2. Is delivered after the issuer reasonably believes, after inquiry, that the prospective purchaser is an accredited investor.
- I. No telephone solicitation shall be permitted unless prior to placing the call the issuer reasonably believes, after inquiry, that the prospective purchaser to be solicited is an accredited investor.
- J. The cover page of any offering documents, or any subscription documents if there are no other offering documents, shall include a conspicuous legend that states that:
 - 1. The securities may be sold only to accredited investors for investment and not in connection with a distribution.
 - 2. Investors may not resell the securities unless the securities are 1st registered or qualify for an exemption from registration.
 - 3. The securities have not been approved or disapproved by the SEC or the Arizona Corporation Commission nor have they passed upon the merits of or otherwise approved the offering.
- K. A legend regarding resale restrictions shall be conspicuously set forth on the front of any certificate that represents a security issued or resold in accordance with this rule. Any certificate legend shall no longer be required the earlier of the termination of any resale restrictions in accordance with this Section or 12 months after the initial purchase from the issuer.
- L. The issuer shall file with the Commission a copy of Form D within 15 calendar days after the 1st sale within or from Arizona, a consent to service of process, a copy of the general announcement, and the fee set forth in A.R.S. § 44-1861(G).
- M. This exemption is not available to an issuer if it, or any of its predecessors, affiliates, directors, officers, general partners, beneficial owners of 10% or more of any class of its equity securities, promoters, or any underwriter of the securities or any partner, director, or officer of such underwriter:
 - 1. Has been convicted within the 10 years preceding the filing of the notice required by this Section, or at any time thereafter prior to the termination of the offering, of a felony or misdemeanor involving racketeering or a transaction in securities, or of which fraud is an essential element.
 - 2. Is subject to an order, judgment, or decree of any court of competent jurisdiction entered within 5 years of the date of filing of the notice required by this Section, temporarily, preliminarily, or permanently enjoining or restraining any conduct or practice in connection with the sale or purchase of securities, or involving fraud, deceit, or racketeering.
 - 3. Has been subject to any state or federal administrative order or judgment in connection with the purchase or sale of securities entered within 5 years preceding the filing of the notice required by this Section, or at any time thereafter prior to the termination of the offering.
 - 4. Is subject to an order of any state or federal agency denying or revoking registration or licensure as a broker or dealer in securities or as an investment adviser or investment adviser representative, or is subject to an order denying or revoking membership in a national securities association registered under the Securities Exchange Act of 1934, or has been suspended for a period exceeding 6 months or expelled from membership in a national securities exchange registered under the Securities Exchange Act of 1934.
- N. Any disqualification caused by subsection (M) shall cease to exist if any of the following occurs:
 - 1. The basis for the disqualification has been removed by the jurisdiction creating it.
 - 2. The jurisdiction in which the disqualifying event occurred issues a written waiver of the disqualification.
 - 3. The jurisdiction in which the disqualifying event occurred declines in writing to enforce the disqualification.

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TITLE 15. REVENUE

CHAPTER 7. DEPARTMENT OF REVENUE

BINGO SECTION

PREAMBLE

1. Sections Affected
R15-7-501

Rulemaking Action
Repeal

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R15-7-607	Repeal
R15-7-609	Repeal
R15-7-610	Repeal
R15-7-613	Repeal
R15-7-614	Repeal
R15-7-615	Repeal
R15-7-616	Repeal
R15-7-618	Repeal
R15-7-619	Repeal
R15-7-620	Repeal

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

Authorizing statutes: A.R.S. §§ 5-402 and 41-1092.02.

Implementing statutes: A.R.S. §§ 5-402 and 41-1092.02.

3. List of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 5 A.A.R. 2389, July 23, 1999.

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

Name: Jaimie Lee, Tax Analyst

Address: Tax Research & Analysis Section
Arizona Department of Revenue
1600 W. Monroe
Phoenix, AZ 85007

Telephone: (602) 542-4672

Fax: (602) 542-4680

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

These rules deal with bingo hearing procedures. As a result of legislative changes, the Office of Administrative Hearings is now authorized to preside over bingo hearings. Therefore, the majority of these rules no longer fall within the Department's jurisdiction. In addition, the Department proposes to repeal R15-7-501 because the information is repetitive of statute.

6. Reference to any study that the agency proposes to rely on and its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

Not applicable.

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

Not applicable.

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

In accordance with A.R.S. § 41-1055(D)(3), the Department is not required to prepare an economic, small business, and consumer impact statement because the repeal of these rules decreases monitoring, recordkeeping or reporting burdens on agencies and licensees.

9. 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: Jaimie Lee, Tax Analyst

Address: Tax Research & Analysis Section
Arizona Department of Revenue
1600 W. Monroe
Phoenix, AZ 85007

Telephone: (602) 542-4672

Fax: (602) 542-4680

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10. 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:

The Department has not scheduled any oral proceedings. Written comments on the proposed repeals or preliminary economic, small business, and consumer impact statements may be submitted to the person listed above. Pursuant to A.R.S. § 41-1023(C), the Department will schedule oral proceedings if 1 or more individuals file written requests for oral proceedings within 30 days after the publication of this Notice.

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

None.

12. Incorporations by reference and their location in the rules:

None.

13. The full text of the rules follows:

TITLE 15. REVENUE

**CHAPTER 7. DEPARTMENT OF REVENUE
BINGO SECTION**

ARTICLE 5. SUSPENSION; REVOCATION; APPEALS

Sections

R15-7-501. ~~Suspension or revocation of license~~ Repealed

ARTICLE 6. HEARING AND APPEAL PROCEDURES

Sections

R15-7-607. ~~Memoranda~~ Repealed

R15-7-609. ~~Rescheduling of hearing~~ Repealed

R15-7-610. ~~Hearing before Hearing Officer~~ Repealed

R15-7-613. ~~Stipulation of facts~~ Repealed

R15-7-614. ~~Evidence~~ Repealed

R15-7-615. ~~Official notice~~ Repealed

R15-7-616. ~~Subpoena; deposition~~ Repealed

R15-7-618. ~~Hearing procedures~~ Repealed

R15-7-619. ~~Transcripts and records~~ Repealed

R15-7-620. ~~Decisions and orders~~ Repealed

ARTICLE 5. SUSPENSION; REVOCATION; APPEALS

R15-7-501. ~~Suspension or revocation of license~~ Repealed

~~The Department may suspend or revoke a bingo license for any violation of Title 5, Chapter 4, Arizona Revised Statutes, or any violation of the rules in this chapter.~~

ARTICLE 6. HEARING AND APPEAL PROCEDURES

R15-7-607. ~~Memoranda~~ Repealed

~~**A.** Unless a license has been summarily suspended under A.R.S. § 5-402(1), a licensee may file memoranda in duplicate no less than ten days before hearing. The Hearing Officer shall immediately transmit a copy of any memoranda filed to the licensing authority which shall then have five days from its date of receipt by the licensing authority to file a response.~~

~~**B.** A memorandum filed by mail shall be considered filed on the date shown on its postmark.~~

~~**C.** The Hearing Officer shall permit memoranda to be filed at any time prior to hearing when a license has been summarily suspended.~~

R15-7-609. ~~Rescheduling of hearing~~ Repealed

~~The hearing may be postponed or recessed for good cause shown, at the Hearing Officer's discretion, upon the written or oral request of the licensee or the licensing authority. Hearings shall be continued to a specified date, time and place.~~

R15-7-610. ~~Hearing before Hearing Officer~~ Repealed

~~The Hearing Officer designated by the Director of the Department shall preside at the hearing.~~

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R15-7-613. Stipulation of facts Repealed

The licensee and the licensing authority may file a joint stipulation stating the facts upon which they agree, the facts which are in dispute and the reasons for the dispute. The Hearing Officer may require the parties to file such a stipulation. The stipulation may be filed at any time prior to the date of hearing unless otherwise ordered by the Hearing Officer.

R15-7-614. Evidence Repealed

- A.** Oral evidence shall be taken only on oath or affirmation.
- B.** Each party may call and examine witnesses, introduce exhibits, cross examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, impeach any witness regardless of which party first called the witness to testify, and rebut the evidence against it. A party or its employees, agents or officers may be called by the opposing party and examined as if under cross examination. The Hearing Officer may examine a party or any person who is present.
- C.** The Hearing Officer shall be liberal in admitting evidence, but objections to the admission of and comments on the weakness of evidence shall be considered in assigning weight to the evidence. The Hearing Officer may deny admission of evidence which is considered irrelevant, untrustworthy or unduly repetitious.
- D.** Legible copies may, upon a showing of proper foundation, be admitted into evidence or substituted in place of the original documents.
- E.** The original records and files of the Department shall not be removed from its office for use as evidence or for other purposes.

R15-7-615. Official notice Repealed

- A.** The Hearing Officer may take official notice of the following as an admission of fact in the case:
 - 1. The records maintained by the Department.
 - 2. Applications, reports, and returns of whatever nature, filed with the Department for or on behalf of the licensee or any auxiliary, or for or on behalf of any lessor, lessee, grantor, grantee or similar contractor of the licensee.
 - 3. Any fact which may be judicially noticed by the courts of the state.
- B.** The parties may, at the hearing, contest any matters thus noticed.

R15-7-616. Subpoena; deposition Repealed

- A.** The Hearing Officer may, upon request or on the Hearing Officer's own initiative, cause to be issued subpoenas for the attendance of witnesses or for the production of books, records, documents and other evidence, and shall have the power to administer oaths. A subpoena requested by a party shall be served on behalf of and at the expense of the party requesting its issuance.
- B.** Any subpoena so issued shall be served and enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.
- C.** Upon written application the Hearing Officer may permit a deposition to be taken, in the manner and upon the terms designated by the Hearing Officer, of a witness who cannot be subpoenaed or who is unable to attend the hearing.

R15-7-618. Hearing procedures Repealed

- A.** The burden of proof shall be upon the licensee as to all issues of fact except in any proceeding for suspension or revocation of a license.
- B.** Each party to the proceeding shall have the right to be represented by counsel, to submit evidence at the hearing and to cross-examine witnesses.
- C.** The Hearing Officer may conduct the hearing in an informal manner.
- D.** If the Hearing Officer desires the submission of posthearing memoranda or information, the Hearing Officer shall direct the parties to comply within a reasonable period of time not to exceed 30 days.

R15-7-619. Transcripts and records Repealed

- A.** All oral proceedings will be transcribed by a recording device and the recorded tapes will be maintained in the office of the Department. A copy of the tapes will be furnished at no cost to a party requesting the tapes.
- B.** A request that the hearing be transcribed manually shall be made in writing to the Hearing Office at least five days in advance of the hearing. Such transcript shall be prepared at the expense of the requesting party unless otherwise provided by law.
- C.** Certified copies of records which the licensing authority is permitted by law to divulge shall be furnished to licensees upon written request. When certified copies of paper or records are requested, a reasonable charge shall be made.

R15-7-620. Decisions and orders Repealed

- A.** If the licensing authority and the licensee agree as to the resolution of a matter prior to the hearing, it shall be so stipulated in writing and submitted to the Hearing Officer; the petition shall be deemed withdrawn and the proposed action shall be adjusted accordingly. In that case, the Director of the Department shall issue an order of resolution and copies of the order shall be forwarded to the licensee and the licensing authority.

- ~~**B.** The Hearing Officer shall issue a proposed decision or order after reviewing the evidence.~~
- ~~**C.** All proposed decisions and orders of the Hearing Officer shall be in writing and shall include findings of fact and conclusions of law separately stated.~~
- ~~**D.** Notice of the proposed decisions or proposed order of the Hearing Officer shall be mailed to the licensee, return receipt requested. A copy of the proposed decision or proposed order shall be immediately forwarded to the licensing authority.~~