

## NOTICES OF FINAL RULEMAKING

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

### NOTICE OF FINAL RULEMAKING

#### TITLE 12. NATURAL RESOURCES

#### CHAPTER 15. DEPARTMENT OF WATER RESOURCES

#### PREAMBLE

- 1. Sections Affected**  
R12-15-703.01
- Rulemaking Action**  
New Section
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**  
Authorizing statute: A.R.S. § 45-105(B)(1)  
Implementing statute: A.R.S. § 45-576
- 3. The effective date for the rule:**  
June 18, 2001
- 4. A list of all previous notices appearing in the Register addressing the final rule:**  
Notice of Rulemaking Docket Opening: 6 A.A.R. 1915, May 26, 2000  
Notice of Rulemaking Docket Opening: 6 A.A.R. 4511, December 1, 2000  
Notice of Proposed Rulemaking: 6 A.A.R. 4798, December 29, 2000
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Steve Rossi, Manager  
Office of Assured Water Supply  
  
Address: Arizona Department of Water Resources  
500 North Third Street  
Phoenix, AZ 85004  
  
Telephone: (602) 417-2460  
Fax: (602) 417-2423  
  
or  
  
Name: Charles L. Cahoy, Deputy Counsel  
Legal Division  
  
Address: Arizona Department of Water Resources  
500 North Third Street  
Phoenix, AZ 85004  
  
Telephone: (602) 417-2420  
Fax: 602-417-2415
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**  
The rule specifies how an applicant for an assured water supply may establish and maintain legal availability of Colorado River water or Central Arizona Project water leased from an Arizona Indian community. Under the current Assured Water Supply Rules, designated providers cannot realistically rely upon leased water for assured water supply purposes. The rule provides greater flexibility to designated providers using Colorado River water or Central Arizona Project water leased from an Arizona Indian community in meeting their assured water supply requirements, therefore allowing greater utilization of available Colorado River supplies to meet the growing needs of Arizona's

*Arizona Administrative Register*  
**Notices of Final Rulemaking**

---

municipalities. The rule balances the additional flexibility granted to designated providers against maintaining secure water supplies for those customers that depend on the water delivered by the providers.

Under A.R.S. § 45-576(A), found in Arizona's Groundwater Code, all persons proposing to offer subdivided lands for sale or lease in an active management area must establish that an "assured water supply" exists for the proposed subdivision. Active management areas ("AMAs"), the boundaries of which are established in the Groundwater Code, are the most heavily populated areas of the state and have experienced significant groundwater depletion. The state's five AMAs include the urban areas within Maricopa, Pima, Pinal, Santa Cruz, and Yavapai Counties. "Assured water supply" is partly defined by A.R.S. § 45-576(I) to mean that a sufficient supply of water is available to satisfy the water needs of the proposed use for at least 100 years. Accordingly, the Department's Assured Water Supply Rules mandate that an applicant for an assured water supply demonstrate physical, legal, and continuous availability for 100 years.

There are two methods by which a person who proposes to offer subdivided lands may comply with the requirements of the Assured Water Supply Rules: a person may apply for and obtain a certificate of assured water supply from the Department for a particular proposed subdivision; or, one may obtain a written commitment of water service for the proposed subdivision from a city, town, or private water company that has been designated by the Department as having an assured water supply (a "designated provider").

The determination of the 100-year supply for a designated provider is an ongoing process. If a designated provider pledges a 100-year lease of water to an assured water supply determination, the lease meets the 100-year requirement of the Assured Water Supply Rules upon its effective date. However, as time passes and the remaining term of the lease is less than 100 years, a designated provider must pledge backup supplies sufficient to compensate for time passage on the lease. For example, if one year has passed, the designated provider must acquire one year's worth of an additional water supply in order to maintain compliance with the 100-year availability requirement. Thus, designated providers must continually prove a "rolling" 100-year supply. The Department regularly reviews all designated providers' compliance with the Assured Water Supply Rules, and a designation may be revoked if the water provider no longer has sufficient backup supplies to compensate for passage of time on the lease.

In contrast, certificate applicants are required only to demonstrate a fixed 100-year supply. A Certificate of Assured Water Supply issued to a developer based upon water service from an undesignated provider is reviewed only in the initial application. Once the certificate is issued and lots have been sold, the certificate is no longer subject to revocation by the Department.

Water providers regulated by the Department have perceived the annual review of designated providers' water supply as penalizing designated providers that, by the nature of the designation instrument, must continually plan for a 100-year water supply. The Department initiated this rule in response to requests from municipalities who currently lease Colorado River water or Central Arizona water from Indian communities or who intend to do so in the future.

Under this rule, the leased water, alone or in combination with other water sources, must provide at least an initial 100-year water supply to the applicant for a certificate or designation of assured water supply. Once the initial 100-year supply is established, the Department ordinarily does not again review a certificate applicant's water supply. This rule also authorizes the Department to continue to accept the leased water as a legally available 100-year supply for designated providers through the fiftieth year of the lease. After 50 years, the designated provider must provide evidence to the Director of active and ongoing negotiations with the Indian community to either renew or re-negotiate the lease. Ten years are allowed to come to an appropriate agreement under the rule.

To ensure continued security of water supplies for the designated provider's customers, the designated provider must show that either no more than 15% of the total water supplies established as being physically, continuously, and legally available during any year are obtained through leases with Indian communities or that either a groundwater or non-groundwater source of water will be physically, continuously, and legally available at the end of the lease term to substitute for the leased water for the remainder of the 100-year period. Where no groundwater or non-groundwater sources are available to substitute for the leased water at the end of the lease, a designated provider under certain circumstances will be allowed to increase its projected use of Indian lease water during any given year to up to 20% of the total projected demand for that year.

**7. A reference to any study that the agency relied on in its evaluation of or justification for the 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:**

There were no specific studies relied upon in the development of this rule. There were several informal discussions and meetings, and the product of these meetings was a consensus "concept paper" which formed the basis of the rule proposal. The concept paper may be reviewed at the office of the Arizona Department of Water Resources, Office of Assured Water Supply, 500 North Third Street, Phoenix, Arizona 85004.

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

Not applicable

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

Arizona Revised Statutes § 45-576(H) requires the Director of the Department of Water Resources to adopt rules to carry out the purposes of that section, which deals with certificates and designations of assured water supply issued

*Arizona Administrative Register*  
**Notices of Final Rulemaking**

---

by the Department. On February 7, 1995, the Department adopted Assured and Adequate Water Supply Rules to implement the provisions of § 45-576. The purpose of the Assured Water Supply Rules is to ensure the availability of sufficient water supplies for a 100-year period for new development within Arizona's five AMAs. The current rules allow an applicant for an assured water supply to obtain a water source through a written contract or lease. The Director of the Department determines the term of years for which the proposed source is legally available based upon the number of years remaining in the lease. Entities designated by the Director as having an assured water supply must continually prove a 100-year supply, even as the remaining term of any lease or contract decreases. Thus, designation applicants cannot realistically rely upon such leased water.

Entities who will be affected by the rule include water providers, business water service customers, subdivision developers, cities and towns, Indian communities, and the general public within the state's five AMAs. Water providers (cities, towns, or private water companies) that either seek or maintain a designation of Assured Water Supply based partly upon water supplies leased from Indian communities will benefit from this rule, which defers the necessity of negotiations to renew the lease until the fiftieth year of the lease. All water service customers, including the general public, business service customers, and subdivision developers will benefit, because designated providers will be better able to obtain and more economically maintain a status of having an assured water supply. Cities and towns served by private water companies using the leased water could benefit from possible growth which would be restricted or halted without a secure and economical water supply. Indian communities leasing water to water providers will benefit from the clear terms provided in the rule under which the leases may be used in assured water supply determinations.

For some entities, the rule limits the amount of leased water that can be pledged for assured water supply purposes to 15%, and in some cases, 20% of the total 100-year supply. Thus, water providers and therefore business water service customers, subdivision developers, some municipalities, and the general public might be required to pay a higher price for water supplies other than those leased from an Indian community. However, under the current assured water supply rules, any use of the less expensive leased water to obtain and maintain a designation of assured water supply is not a workable alternative. Further, while allowing use of leased water supplies in excess of 15% or 20% might provide less expensive water supplies in the short term, a crisis could develop at the end of a lease term if 40% or 50% of a water provider's water supply were provided through that lease. And, customers could see a reduced cost of water if providers are able to defer or eliminate the annual requirement of obtaining supplies 100 years in advance.

Under subsection (C)(2) of the rule, a designated provider might be required to either join the Central Arizona Groundwater Replenishment District ("CAGRDR") or enter into a consent order with the Director of the Department agreeing to replace, through either replenishment or storage, groundwater used at the end of the lease term that is not allowable under another provision of the Assured Water Supply Rules. These options might impose additional costs upon a designated provider. However, both joining the CAGRDR to help prove and maintain an assured water supply and entering into a consent order with the Director for a violation of the current Assured Water Supply Rules are possibilities under the current rules. And, the cost of both options should be offset by the lower price of the leased water.

The Department expects the rule to cause no additional administrative burden or other costs to the Department beyond those associated with the current rules. Likewise, the Department anticipates no adverse effect on private or public employment, businesses or political subdivisions of the state directly affected by the rule. The Department anticipates no discernible effect on state revenues as a result of this proposed rule. No additional costs to small businesses are anticipated.

The rule was found to be the least costly and least intrusive option to provide greater flexibility for designated providers while maintaining secure supplies of water for customers. Other alternatives considered and rejected included delaying initiation of the renewal/re-negotiation process until the 60th, 70th, or 80th year of the lease. Additionally, the Department considered allowing a water provider to rely upon the leased water for 40% or 50% of the provider's total supply, instead of the 15% to 20% adopted in the rule. Both of these alternatives, however, would not provide as much protection to persons depending upon a water supply provided by a lease.

**10. A description of the changes between the proposed rule, including supplemental notices, and final rule:**

Minor grammatical and stylistic changes were made at the request of the Governor's Regulatory Review Council staff. The Department also made some changes to the proposed rule as a result of its staff review. The changes included minor grammatical and punctuation changes in order to improve the rule's clarity and consistency. Additionally, subsection (C)(1)(b) now recognizes that a lease with an Indian community might not have a renewal clause. Rather, the lease might be re-negotiated and re-issued as a new lease.

Two minor changes were made to the text of the proposed rule in response to written comments and comments received at the oral proceeding. Subsection (B)(1) is now written to also include extensions for blocks of water under a lease instead of renewal of the lease for the entire original amount of leased water. Subsections (B)(2)(c)(i) and (B)(2)(c)(ii) now provide a longer time-frame within which to both provide a supplemental water supply through long-term storage credits not yet accumulated and to accrue the long-term storage credits. In both instances, the time period has been extended from 10 to 20 years.

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

The Department received several comments from Del Webb Corporation, addressing the following subsections:

*Arizona Administrative Register*  
**Notices of Final Rulemaking**

---

1. R12-15-703.01(B)(1). The language as written states that the leased water is legally available only if the term of the lease has at least 100 years remaining from the year in which the assured water supply application is filed. This provision could be revised to include extensions of a lease for blocks of water where the entire lease will not be extended.

Response: The Department accepted the suggested change.

2. R12-15-703.01(B)(2)(c)(i) and (ii). Subsection (B)(2)(c)(iii) ensures that a supply of water will be physically, continuously, and legally available to the applicant for the time necessary to accrue the needed long-term storage credits. Therefore, both of these subdivisions are unnecessary. At a minimum, subsection (B)(2)(c)(i) should be deleted. In the alternative, Del Webb requests that the time-frame for both subsections (B)(2)(c)(i) and (B)(2)(c)(ii) be extended from 10 years to 15 or 20 years.

Response: The Department extended the time-frame for subsections (B)(2)(c)(i) and (B)(2)(c)(ii) from 10 years to 20 years.

3. R12-15-703.01(B)(2)(c)(vi). The Arizona Corporation Commission does not have jurisdiction to approve or deny a private water company the right to store water.

Response: The Department agrees that the Arizona Corporation Commission has no jurisdiction to approve or deny authority to store water. However, there are potential instances where a private water company will need to generate additional revenues through a rate increase or other mechanism that will require the Commission's approval. The language as written allows discretion to the Department by indicating that any necessary approval must be obtained from the Commission. The Department did not modify the language.

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

None

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

None

**14. Whether the rule was previously adopted as an emergency rule and, if so, whether the text was changed between adoption as an emergency and the adoption of this final rule:**

The rule was not previously adopted as an emergency rule.

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

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 15. DEPARTMENT OF WATER RESOURCES**

**ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY**

Section

R12-15-703.01. Assured Water Supply Requirement – Legal Availability of Central Arizona Project Water or Colorado River Water Leased from an Indian Community

**ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY**

**R12-15-703.01. Assured Water Supply Requirement - Legal Availability of Central Arizona Project Water or Colorado River Water Leased from an Indian Community**

**A.** In addition to the water supplies that the Director determines are legally available to an applicant under R12-15-703(D), the Director shall determine that Colorado River water or Central Arizona Project water leased from an Indian community is legally available to an applicant for a certificate or designation of assured water supply in an amount determined under this Section, if both of the following apply:

1. The water leased has a priority equal to or higher than Central Arizona Project municipal and industrial water.
2. The Indian community is expressly authorized by an Act of Congress to lease the water for use off Indian community lands.

**B.** For water that meets the requirements of subsection (A), the Director shall determine that there is a legally available supply of water for 100 years for the annual amount of water available under the lease, if either of the following apply:

1. The water upon which the assured water supply application is based is available under the lease for at least 100 years from any time during the year in which the applicant files the assured water supply application.
2. The term of the lease has less than 100 years remaining in the year in which the applicant files the assured water supply application, and the applicant establishes the availability of a supplemental water supply, that together with the leased water, provides a 100-year water supply. The supplemental water supply shall be one of the following supplies of water:

*Arizona Administrative Register*  
**Notices of Final Rulemaking**

---

- a. Groundwater, if the groundwater is physically, continuously, and legally available to the applicant under R12-15-703 and if the groundwater use is consistent with achieving the management goal under R12-15-705.
  - b. Water recovered through the use of long-term storage credits held by the applicant, if both of the following apply:
    - i. The water to be recovered through the use of long-term storage credits is physically and continuously available to the applicant under R12-15-703.
    - ii. If the applicant is to use the long-term storage credits before the beginning of the lease term, the applicant has obtained a recovery well permit that allows the applicant to recover water by redeeming the long-term storage credits.
  - c. Water recovered through the use of long-term storage credits that will be accrued by the applicant, if all of the following apply:
    - i. No more than 20 years of the applicant's supplemental water supply will be provided by the long-term storage credits.
    - ii. The applicant demonstrates to the Director that it will accrue the long-term storage credits within 20 years of the effective date of the designation or certificate by storing the water under an issued water storage permit at a permitted storage facility.
    - iii. The applicant has a supply of water to be stored that is physically, continuously, and legally available to the applicant under R12-15-703 for the time necessary to accrue the needed long-term storage credits.
    - iv. The water to be recovered through the use of long-term storage credits is physically and continuously available to the applicant under R12-15-703.
    - v. If the applicant is to use the long-term storage credits before the beginning of the lease term, the applicant has obtained a recovery well permit that allows the applicant to recover water by redeeming the long-term storage credits.
    - vi. If the applicant is a private water company, the Arizona Corporation Commission has granted any necessary approval to the applicant for the storage of the water.
  - d. Any other water that is physically, continuously, and legally available to the applicant under R12-15-703.
- C.** If the Director finds that the applicant has a legally available supply of water for 100 years under subsection (B) and designates the applicant as having an assured water supply, or if the Director previously determined that the applicant's Colorado River water or Central Arizona Project water leased from an Indian community was legally available for 100 years under R12-15-703(D) and designated the applicant as having an assured water supply, the Director shall determine that the city, town, or private water company designated as having an assured water supply continues to have a legally available supply of water for 100 years for the annual amount of water available under the lease, if both of the following apply:
- 1. One of the following apply:
    - a. The lease has at least 50 years remaining in its term.
    - b. The lease has at least 40 years remaining in its term, and the city, town, or private water company provides evidence to the Director of active and ongoing negotiations with the Indian community to renew or re-negotiate the lease.
  - 2. One of the following apply:
    - a. Of the total water supplies that the city, town, or private water company establishes as physically, continuously, and legally available under R12-15-703 and under this Section during any year, no more than 15% of those water supplies are obtained through leases with Indian communities.
    - b. Groundwater will be physically, continuously, and legally available to the city, town, or private water company under R12-15-703 at the end of the lease term to substitute for the leased water for the remainder of the 100-year period, and one of the following apply:
      - i. The projected use of groundwater is consistent with achieving the management goal under R12-15-705.
      - ii. The city, town, or private water company enters into a consent order with the Director under which the city, town, or private water company agrees to replace through replenishment or storage any groundwater used at the end of the lease term that is not consistent with achieving the management goal under R12-15-705. The city, town, or private water company shall agree in the consent order that its specific performance is the only remedy in event of default under the consent order.
    - c. A non-groundwater source of water will be physically, continuously, and legally available to the city, town, or private water company under R12-15-703 at the end of the lease term to substitute for the leased water for the remainder of the 100-year period.
    - d. The governing board or council of the city, town, or private water company submits to the Director a resolution requesting that the city, town, or private water company be allowed to increase its projected use of Indian lease water from 15%, as allowed by subsection (C)(2)(a) of this Section, to 20%, and the Director finds that all of the following apply:
      - i. Of the total water supplies that the city, town, or private water company establishes as physically, continuously, and legally available under R12-15-703 and this Section during any year, no more than 20% of those

- water supplies are obtained through leases with Indian communities.
- ii. Of the total water supplies that the city, town, or private water company establishes as physically, continuously, and legally available under R12-15-703 and this Section during any year, no more than 15% of those water supplies are obtained through any single lease with an Indian community.
  - iii. The city, town, or private water company does not meet the requirements of subsection (C)(2)(a), (b), or (c) of this Section.

## NOTICE OF FINAL RULEMAKING

### TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

#### CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

##### PREAMBLE

1. **Sections Affected**  
R19-3-208
1. **Rulemaking Action**  
New Section
2. **The specific authority for rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 5-504(B)  
Statutes rule implements: A.R.S. §§ 5-512(I), 5-515, 5-515.01
3. **The effective date of the rules:**  
June 19, 2001
4. **A list of all previous notices appearing in the Register addressing the final rule:**  
Notice of Rulemaking Docket Opening: 7 A.A.R. 922, February 16, 2001  
Notice of Proposed Rulemaking: 7 A.A.R. 974, February 23, 2001  
Notice of Public Information: 7 A.A.R. 1325, March 23, 2001
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Geoffrey Gonsler, Executive Director  
Address: 4740 E. University  
Phoenix, AZ 85034  
Telephone: (602) 921-4514  
Fax: (602) 921-4488
6. **An explanation of the rule, including the agency's reason for initiating the rule:**  
A.A.C. R19-3-201 through R19-3-207 are authorized by A.R.S. § 5-504 and prescribe the requirements and procedures for obtaining a license to sell Lottery game products, displaying promotional materials, and for the sale and payment of instant games and on-line games. The rules also establish procedures for license revocation, suspension, and renewal; hearing and appeal procedures; and compliance investigations. This amendment, which adds an additional Section, R19-3-208, establishes penalties as required by A.R.S. § 5-512(I), for the sale of a Lottery ticket or share to a person less than age 18 before June 1, 2003, to a person less than age 21 on or after June 1, 2003, or to a person using a public assistance voucher or an electronic benefits transfer card to purchase the ticket or share.
7. **A reference to any study that the agency relied on in its evaluation of or justification for the 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
8. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**  
Not applicable
9. **The summary of the economic, small business, and consumer impact:**
  - A. The Arizona State Lottery.  
Costs to the Lottery for this Section are included in the agency's appropriated budget. Relevant costs include background investigations for licensing and statutory compliance. The Lottery conducts approximately 1000 compliance investigations each year to determine, among other things, compliance with A.R.S. § 5-512(I), § 5-515, and § 5-515.01 regarding unlawful sale of lottery tickets. The Lottery will conduct specific compliance investigations as

*Arizona Administrative Register*  
**Notices of Final Rulemaking**

---

required by R19-3-208 only if a written complaint is made or if information indicating a violation comes to the Lottery's attention. Cost of a licensing investigation is approximately \$200 per location. There are additional costs of compliance investigations performed by the Lottery's investigators and administrative review by the Office of Administrative Hearings if a retailer files an appeal.

**B. Political Subdivisions.**

Political subdivisions of this state are not directly affected by the Retailer rules.

**C. Businesses Directly Affected by the Rulemaking.**

Businesses affected by this rule are those retailers who choose to apply for a Lottery license to sell Lottery game products to the public. The rules provide for licensing requirements, compensation paid to retailers for Lottery services and regulation of retailer conduct in selling and redeeming Lottery tickets. The Lottery paid retailers over \$16 million in commissions in fiscal year 2000. R19-3-208 provides for imposition of penalties not to exceed \$1,000 against a licensed retailer who violates A.R.S. § 5-515 or A.R.S. § 5-515.01. Only those retailers who sell a ticket to an underage person or to a person who uses either a public assistance voucher or an electronic benefits transfer card to purchase the ticket are affected by the new Section.

The amount of the civil penalties were established by the Lottery's Retail Advisory Committee (RAC). The RAC was established to evaluate the Retailer Rules and recommend revisions for improved retailer relations. The RAC is comprised of members from all segments of the Lottery retail market including convenience stores, grocery chains, independent grocers, gasoline stations, and independent sundries. Other members include individuals representing the Arizona Food and Marketing Alliance, Arizona License Beverage Association and the public. The recommendations from the Retailer Advisory Committee will have a substantial impact on the way retailers conduct business on behalf of the Lottery as well as on the way the Lottery manages its relationship with retailers. Therefore, the Lottery provided the services of a team of Lottery employees to the RAC to conduct research, analyze issues and prepare findings. The Lottery team includes the Corporate Accounts Manager, Director of Security, Audit Manager, Assistant Director of Administration, Licensing Supervisor, Promotions Manager, Tele-Marketing Manager, Communications Coordinator and the Director of Sales.

**D. Private and Public Employment.**

Private and public employees are not directly affected by this rule.

**E. Consumers and the Public.**

There are no costs to the public associated with the amendment of this rule.

**F. State Revenues.**

License fees and revenue generated by the sale of Lottery game tickets are distributed to those programs funded with Lottery monies. The Lottery collected \$10,000 in retailer license fees in fiscal year 2000. Transfers to State of Arizona funds were in excess of \$78 million. The Lottery experiences minimal rule violations and, therefore, does not expect the collection of civil penalties to have a major impact on state revenues. The Lottery anticipates less than five civil penalty collections annually. Civil penalties collected are paid directly into the General Fund and are not placed into the Lottery's separate fund.

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

No substantive changes have been made in the text of the adopted rule from that in the proposed rule. Minor grammatical and technical changes were made in response to comments from Council staff.

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

No comments were received by the agency.

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

Not applicable

**13. Incorporation by reference and their location in the rules:**

Not applicable

**14. Was this rule previously adopted in an emergency rule?**

No

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

**TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING**

**CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION**

**ARTICLE 2. RETAILERS**

Section  
R19-3-208. Penalties

**ARTICLE 2. RETAILERS**

**R19-3-208. Penalties**

- A.** The Director shall assess a civil penalty against a retailer for any of the following acts of the retailer:
1. Until June 1, 2003, offering to sell or selling a lottery ticket or share to any person who is less than 18 years of age;
  2. Beginning on June 1, 2003, offering to sell or selling a lottery ticket or share to any person who is less than 21 years of age;
  3. Selling a lottery ticket or share to a person who uses either a public assistance voucher issued by any public entity or an electronic benefits transfer card issued by the Arizona Department of Economic Security to purchase the ticket or share; or
  4. Selling a lottery ticket or share during the same transaction in which a person uses either a public assistance voucher issued by any public entity or an electronic benefits transfer card issued by the Arizona Department of Economic Security to purchase any goods in addition to the lottery ticket or share.
- B.** The Director shall on the written complaint of any person, and shall upon receipt of information indicating that a retailer has committed an act listed in subsection (A), investigate an act of the retailer listed in subsection (A). The Director shall give notice to the retailer as provided in A.R.S. §§ 41-1092.03 and 41-1092.04 of imposition of a civil penalty if the Director finds that the retailer has committed an act listed in subsection (A). The civil penalty for an act listed in subsection (A) is:
1. In an amount up to \$300 for the first violation within a 12-month period;
  2. In an amount more than \$300 and up to \$500 for the second violation within a 12-month period; and
  3. In an amount more than \$500 and up to \$1,000 for the third violation within a 12-month period.
- C.** A retailer against whom a penalty is assessed shall pay the penalty to the Lottery by the 31st day after the retailer receives notice of imposition of the civil penalty, if the retailer does not request a hearing as provided in subsection (D).
- D.** A retailer may request a hearing regarding imposition of a civil penalty. The procedures and requirements set forth in A.R.S. Title 41, Chapter 6, Article 10 apply to hearings under this subsection.
- E.** A decision of the Director accepting, modifying or rejecting the recommended decision of the Administrative Law Judge is a final administrative decision subject to judicial review under A.R.S. Title 12, Chapter 7, Article 6.
1. If the retailer decides not to seek judicial review of the Director's final administrative decision, the retailer shall pay the civil penalty to the Lottery by the 36th day after the retailer receives the Director's decision.
  2. If the retailer decides to seek judicial review of the Director's final administrative decision, the retailer shall pay the civil penalty to the Lottery by the 36th day after the date of the Superior Court's decision.
  3. If the retailer decides to appeal the Superior Court's decision, the retailer shall pay the civil penalty to the Lottery by the 36th day after the date of the decision on appeal.
  4. A retailer shall pay interest at the rate provided in A.R.S. § 44-1201 from the date final judgment assessing a civil penalty is entered until satisfaction of the judgment.