

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first 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. 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 making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 17. ARIZONA NAVIGABLE STREAMBED ADJUDICATION COMMISSION

PREAMBLE

1. Sections Affected

	<u>Action</u>
R12-17-101	Amend
R12-17-102	Repeal
R12-17-103	Repeal
R12-17-103	New Section
R12-17-104	Amend
R12-17-105	Amend
R12-17-106	Repeal
R12-17-106.01	New Section
R12-17-106.02	New Section
R17-17-106.03	New Section
R12-17-107	Amend
R12-17-107.01	New Section
R12-17-108	Repeal
R12-17-108.01	New Section
R12-17-109	Amend
R12-17-110	Repeal
R12-17-111	Repeal
R12-17-112	Amend
R12-17-113	New Section

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

Authorizing statute: A.R.S. § 37-1121

Implementing statute: A.R.S. § 37-1122(A)(1)

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

Notice of Rulemaking Docket Opening: 9 A.A.R. 1562, May 23, 2003

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

Name: George Mehnert

Address: 1700 W. Washington, Suite 304
Phoenix, AZ 85007

Telephone: (602) 542-9214

Fax: (602) 542-9220

E-mail: streams@mindspring.com

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

The rules for the Arizona Navigable Stream Adjudication Commission are being updated to meet all modern legal requirements and to comport with changes in statutes relating to Commission operations including watercourse navigability hearings and public trust value hearings.

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

The Commission will not rely on any study for this rulemaking.

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 the state:

Not applicable

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

There is no known economic, small business, or consumer impact.

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:

An interested person may communicate with the Commission official listed in item #4 concerning the economic, small business, and consumer impact.

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:

Any person may request an oral proceeding within 30 days of the date of publication of this Notice in the *Register*.

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 12. NATURAL RESOURCES

CHAPTER 17. ARIZONA NAVIGABLE STREAMBED ADJUDICATION COMMISSION

ARTICLE 1. HEARINGS

Section

R12-17-101.	Definitions
R12-17-102.	Scope of Rules and Waiver <u>Repealed</u>
R12-17-103.	Filing and Service of Papers <u>Hearing Log</u>
R12-17-104.	Computation of Time
R12-17-105.	Petition to Modify Priority <u>Priorities</u>
R12-17-106.	Notice of Hearing on Watercourse Navigability <u>Repealed</u>
R12-17-106.01.	<u>Evidence</u>
R12-17-106.02.	<u>Notice of Appearance as a Party</u>
R12-17-106.03.	<u>Practice Before the Commission</u>
R12-17-107.	Conduct of Hearings
R12-17-107.01.	<u>Recording of Hearings</u>
R12-17-108.	Appearance and Practice Before the Commission <u>Repealed</u>
R12-17-108.01.	<u>Post-hearing Legal Memoranda</u>
R12-17-109.	Extension of Time
R12-17-110.	Conferences and Procedural Orders <u>Repealed</u>
R12-17-111.	Evidence <u>Repealed</u>
R12-17-112.	Decisions <u>Final Determinations</u>
R12-17-113.	<u>Judicial Review</u>

ARTICLE 1. HEARINGS

R12-17-101. Definitions

In this Chapter:

~~A. "Attorney General" means the duly elected, qualified and acting Attorney General and his duly appointed assistants.~~

1. "Aggrieved Person" means a person who disagrees with the priorities established by the Commission for holding hearings under A.R.S. § 37-1123(E).

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- ~~B.2.~~ “Chairperson” means the Chairperson or, ~~in~~ during his or her absence, the Vice Chairperson of the Arizona Navigable Stream Adjudication Commission.
3. “Close date” means the date on which the Commission completes all action relating to the navigability or non-navigability of a watercourse including Commission hearings, filing of post-hearing legal memoranda, determinations relating to public trust values, and court decisions relating to appeals of Commission determinations.
4. “Commission” means the Arizona Navigable Stream Adjudication Commission established by A.R.S. § 37-1121.
5. “Determination date” means the date on which the Commission determines a watercourse was navigable or non-navigable on February 14, 1912.
6. “Hearing” means either a hearing to determine the navigability or non-navigability of a watercourse or watercourses, or a hearing to determine the public trust values associated with a watercourse or watercourses.
7. “Hearing date” means the date on which a hearing is held before the Commission.
8. “Open date” means the date on which the Commission sets a hearing regarding the navigability or non-navigability of a watercourse on February 14, 1912.
- ~~D.9.~~ “Party” means the State Land Department and any person who has filed a notice of appearance with the Commission within the time prescribed by these rules.
- a. A person who signs the Commission “Sign-In Sheet” at a particular hearing, and who designates by checking the appropriate box on the “Sign-In-Sheet” that he or she is appearing as a party.
- b. A person who notifies the Commission in writing on or prior to the hearing date that he or she wishes to be a party.
- c. A person who files a post hearing opening legal memorandum and/or response legal memorandum in accordance with these rules.
- ~~C.10.~~ “Person” ~~includes~~ means any public or private corporation, company, partnership, firm, association, club, or organization; ~~the Federal Government~~ federal government and any of its agencies and departments; ~~the state and any of its agencies and departments or political subdivisions;~~ ~~and~~ an Indian tribe or tribal organization; ~~as well as~~ and a natural person.

R12-17-102. Scope of Rules and Waiver Repealed

~~These rules shall be liberally construed to secure just and speedy determination of all matters presented to the Commission. If good cause appears, the Commission or Chairperson may waive application of these rules when waiver would not conflict with the law and would not affect substantial interests of the parties.~~

R12-17-103. Filing and Service of Papers Hearing Log

- ~~A.~~ Filing with the Commission. All papers required or permitted to be filed with the Commission in any proceeding shall be submitted with the Secretary of the Commission. Filing may be accomplished by mail addressed to the Secretary of the Arizona Navigable Stream Commission, Arizona State Land Department, 1616 West Adams, Phoenix, Arizona 85007. Filings shall not be timely unless the papers are received by the Secretary within the time fixed for filing, except if filing is made by mailing, then filing shall be deemed timely if the papers are postmarked prior to midnight of the day fixed for filing.
- ~~B.~~ Number of copies. Unless otherwise specifically provided by a particular rule or order of the Commission, an original and five copies of all papers shall be filed with the Secretary.
- ~~C.~~ Service of all papers. Unless otherwise specifically provided by a particular rule or order of the Commission, copies of all papers filed by any party shall, at or before the time of filing, be served on all parties to the proceeding. Service on a party represented by counsel shall be made on counsel.
- ~~D.~~ Manner of service. Service of all papers under these rules (except subpoenas which must be personally served) shall be made by personal service or by mail to the last known address.
- ~~E.~~ Docket of proceedings. A docket of all proceedings shall be maintained by the Secretary and each proceeding shall be assigned a number and all papers filed in such proceeding shall be entered in the docket.
- ~~A.~~ The Commission shall maintain a hearing log as a record of all Commission hearings, and shall assign a hearing number to each hearing the Commission sets regarding a particular watercourse.
- ~~B.~~ The hearing log shall include a hearing number, open date, hearing name, determination date, and close date.

R12-17-104. Computation of Time

~~In computing any period of time prescribed or allowed by these rules, or by order of the Commission, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day. When a period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.~~

~~All times shall be computed by following Rule 6(a) of the Arizona Rules of Civil Procedure.~~

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R12-17-105. Petition to Modify ~~Priority~~ Priorities

- ~~A.~~ When a petition to modify the priorities established by the Commission pursuant to A.R.S. § 37-1123(D) has been filed with the Commission, the matter shall be noticed for consideration at the next Commission meeting.
- ~~B.~~ The petition shall state the petitioner's name, mailing address and telephone number and shall identify with specificity the watercourse or reach sought to be granted expedited consideration. The petition shall state the petitioner's position regarding each of the factors the Commission must consider in setting priorities pursuant to A.R.S. § 37-1123(D).
- ~~C.~~ Any person may oppose or support the petition to modify priorities when the petition is before the Commission on the agenda. At such time as the Chairperson may designate, each person desiring to be heard shall give his name, address and telephone number and shall state his position for the record. If any attorney, other than the Attorney General, appears on behalf of a client, he shall advise the Commission of his name, address and telephone number and give the same information regarding the person on whose behalf he appears and presents a position.
- ~~D.~~ The Commission shall grant or deny the petition on the record and shall state the reasons therefor.
- A. A person who is aggrieved by the undetermined navigability status of a watercourse may petition the Commission to modify the hearing priorities established by the Commission under A.R.S. § 37-1123(E) at any time prior to the date for which the hearing is scheduled for the watercourse the aggrieved person believes should commence at an earlier date.
- B. Within 30 days following receipt of a petition, the Commission shall meet to consider the petition and determine whether to modify the priorities.

R12-17-106. Notice of Hearing on ~~Watercourse Navigability~~ Repealed

- ~~A.~~ At least 60 days before any public hearing under A.R.S. § 37-1126(B), the Commission shall serve notice to each record owner or lessee of property located within the bed of a watercourse or a reach of a watercourse that is the subject matter of the hearing, and to any person who has requested a notice of hearing on the subject watercourse, by mail addressed to the last known post office address.
- ~~B.~~ The notice by publication required pursuant to A.R.S. § 37-1126(B) shall be published for three consecutive weeks.
- ~~C.~~ In addition to the matters included in a notice of hearing issued pursuant to A.R.S. § 41-1061(B), the Commission shall include a statement directing any person intending to appear as a party at the hearing to comply with the requirements of R12-17-108.

R12-17-106.01. Evidence

- A. The Commission shall maintain all documentary and other physical evidence submitted in connection with each hearing.
- B. All persons who submit evidence to the Commission shall do so in accordance with A.R.S. § 37-1123.
- C. The Commission shall consider all physical evidence submitted to the Commission prior to August 9, 2002 that relates to the navigability or non-navigability of a particular watercourse or watercourses to be admitted as evidence, and such evidence does not need to be re-submitted.
- D. Persons are encouraged to submit physical evidence to the Commission in person or by mail addressed to the Commission office, on or before the date published under A.R.S. § 37-1123(B)(3), however, evidence may be submitted as late as at the hearing for which the evidence is intended.
- E. Any person may review physical evidence that has been submitted for a hearing, and may arrange to have copies made, at the requestor's expense, of those items that can be copied.
- F. A person who objects to the admission or exclusion of an item of physical evidence shall make the objection on the record at the public hearing at which the item of evidence is offered, following which the Commission shall either admit the evidence, decline to admit the evidence, or take the matter under advisement for later determination.
- G. The Commission Chair shall announce the time at each hearing following which physical evidence and testimony will no longer be accepted for consideration by the Commission for that hearing.
- H. All testimony and physical evidence should be relevant to the matter being heard.
- I. Wherever possible, all documentary evidence submitted to the Commission shall be submitted to the Commission single-sided and on 8 1/2 x 11 inch paper.
- J. PowerPoint and other computer generated hearing presentations shall be submitted to the Commission as a paper printout of the presentation slides as part of the physical evidence submission.
- K. An original and seven copies of documentary evidence shall be submitted to the Commission.
- L. All physical evidence accepted by the Commission, including but not limited to maps, charts, photographs and transparencies, and audio tapes and video tapes, are the property of the Commission and of the state of Arizona.

R12-17-106.02. Notice of Appearance as a Party

A person may appear as a party regarding a particular hearing either by providing notice to the Commission in writing prior to or at the hearing that he or she wishes to appear as a party, by appearing at the hearing and completing the appropriate information on the hearing "Sign-In-Form" that relates to appearing as a party, or by filing a post hearing opening legal memorandum and/or response legal memorandum in accordance with these rules.

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R12-17-106.03. Practice Before the Commission

- A. The Commission shall provide an opportunity for public comment at each of its public meetings. A person who comments at a Commission meeting shall limit the comment to an item that is on the meeting agenda and for a time established by the Chairperson.
- B. The Chairperson may exclude any person from a hearing or meeting if the person disrupts or obstructs a hearing, or willfully refuses to comply with an order of the Chairperson.

R12-17-107. Conduct of Hearings

- ~~A. The Chairperson shall regulate the course of the hearing in an impartial manner. The Commission may consult with the Attorney General during the hearing. The Chairperson and all parties may question witnesses in the order determined by the Commission or the Chairperson.~~
- ~~B. Transcription of hearings. All hearing shall be electronically recorded, or the Chairperson may, at the request a party or on his own motion, order the hearing to be stenographically reported. The original transcript of the official record of any hearing, if available, or the original tape of the electronic record, if not transcribed, shall be filed with the Commission as a part of the record.~~
- ~~C. Filing of motions. Motions calling for a determination of any matter of law shall be submitted with the Commission in writing. Any party may file a written opposition to such motion within seven days, unless otherwise ordered by the Chairperson. The Chairperson may permit oral motions during a hearing.~~
- ~~D. Rulings on motions. The Chairperson may rule on procedural motions but all other motions must be ruled upon by the Commission as a whole.~~
- ~~E. Consolidation. By order of the Chairperson, proceedings involving a common question of law or fact may be consolidated for hearing of any or all matters in issue where such consolidation may tend to avoid unnecessary cost or delay.~~
- A. The Chairperson shall conduct each hearing in an impartial manner.
- B. A party may appear at a Commission hearing on its own behalf or by counsel. A partnership may appear through a partner or attorney. A company, firm, association, club, or organization may appear through a designated officer or attorney. A federal, state, county, or local government agency may appear through its attorney or other official who may legally represent the agency.
- C. The Chairperson may exclude incompetent, irrelevant, or unduly repetitious testimony and documentary or other physical evidence. If any Commissioner objects to a ruling regarding the exclusion of evidence, then the entire Commission shall vote on the ruling.
- D. The Commission may consult with its attorney during a hearing.
- E. Any person who testifies at a hearing has the right to be represented by counsel.
- F. The Chairperson shall determine the order in which persons will testify and may establish time limits for testimony.
- G. The Chairperson, all other Commission members, the Commission attorney, and all parties present or their attorneys, may question witnesses who testify at a hearing in the order and for a duration determined by the Chairperson.
- H. The Chairperson may rule on procedural motions. If any Commissioner objects to a ruling on a procedural motion, then the entire Commission shall vote on the motion.
- I. A motion involving matters of law or fact shall be ruled on by the Commission as a whole.
- J. By order of the Chairperson, proceedings involving a common question of law or fact may be consolidated for hearing if the consolidation may tend to avoid unnecessary cost or delay.

R12-17-107.01. Recording of Hearings

- A. Each hearing will be either audio tape recorded or recorded by a court reporter when it is practical to do so. As part of the hearing record the Commission shall retain the original audio tape recordings and/or the court reporter's transcript of the hearing, where either method is used.
- B. A person may obtain duplicate copies of audio tape recordings of a hearing by requesting a copy of the audio tapes and by supplying the Commission an appropriate number and type of blank audio tapes.
- C. A person may obtain a copy of a court reporter transcript by making arrangements directly with the court reporter.
- D. The Commission will not provide a transcript of hearing audio tape recordings.

R12-17-108. Appearance and Practice Before the Commission Repealed

- ~~A. A person may appear in a hearing in his own behalf or by counsel. A partnership may appear through a partner; other organizations may appear through a designated officer, and the Department may appear through a designated officer or its attorney.~~
- ~~B. At least 30 days prior to the date set for hearing, any person notified of the hearing by mail who intends to appear and participate in the hearing shall file with the Commission and serve on the Department a notice of appearance and intention to participate. A person notified by publication shall file and serve such notice no later than five days after the last publication date of the notice of hearing. All notices filed pursuant to this rule shall state the name, address and telephone number of the person filing the notice and of his attorney, if represented, and a concise statement of the position taken regarding navigability of the watercourse and the public trust values associated therewith.~~

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- ~~C.~~ The notice of appearance shall include the following information:
 - 1. A list of all witnesses to be called to testify on behalf of the party and a summary of the testimony to be given by each witness; and
 - 2. An index identifying all exhibits to be offered on behalf of the party.
- ~~D.~~ Two bound and indexed copies of all documentary exhibits shall be filed with the notice of appearance. Within the filing deadlines specified in subsection (B) above, any person may file and serve the parties with a notice of filing documents and provide the Commission with two bound and indexed copies of documents for consideration by the Commission. Copies of Exhibits are not required to be served on other parties but may be examined and copies requested during regular hours of business. Without filing a notice of appearance or copies of exhibits, the Department may call as a witness any consultant or staff member who is identified as having participated in collecting and documenting the evidence transmitted to the Commission and may rely on any document transmitted to the Commission pursuant to A.R.S. § 37-1125. If the Department intends to call additional witnesses or to offer exhibits in addition to those provided pursuant to A.R.S. § 37-1124(B), it shall meet the requirements placed on persons appearing after notice by mail. Any party may file a list of rebuttal witnesses and two bound and indexed copies of rebuttal exhibits five days prior to the date of hearing.
- ~~E.~~ Order of appearance. The Chairperson shall designate the order in which parties shall introduce their evidence.
- ~~F.~~ Other appearances. Notwithstanding other provisions of these rules, the Chairperson may provide any person an opportunity to make a statement on matters relevant and material to the issues being addressed at the hearing at a time designated by the Chairperson. Such statements shall be under oath or affirmation and subject to cross-examination. All parties shall be provided an opportunity to rebut statements and documentary filings of nonparties.
- ~~G.~~ Improper conduct. Conduct at any hearing which in the discretion of the Commission is deemed improper shall be grounds for exclusion from the hearing. Improper conduct includes willful noncompliance with an order of the Chairperson and willful disruption or obstruction of any hearing.

R12-17-108.01. Post-hearing Legal Memoranda

- ~~A.~~ After hearing all testimony, the Chairperson shall declare the hearing concluded for receipt of testimony or other evidence. Each party has 30 days from the conclusion of the hearing to file an opening legal memorandum with the Commission setting forth its arguments. A party shall serve a copy of its opening legal memorandum upon all other parties to the hearing, and shall file proof of service with the Commission. If the Commission does not receive any timely filed opening legal memoranda, it shall deem the matter to be at issue.
- ~~B.~~ A party may file a response legal memorandum with the Commission within 20 days after service of the opening legal memorandum. A party shall serve a copy of its response legal memorandum upon all other parties appearing before the Commission at the hearing, and shall file proof of service with the Commission. If the Commission does not receive any timely filed response legal memoranda, it shall deem the matter to be at issue.
- ~~C.~~ Except by permission of the Commission an opening legal memorandum may not exceed 25 typewritten pages and a response legal memorandum may not exceed 15 typewritten pages.

R12-17-109. Extension of Time

~~Except as otherwise provided by law, the Chairperson, on application of a party or on his own motion and for good cause, may extend any time limits prescribed by these rules or postpone the commencement of the hearing to a mutually satisfactory date and location.~~

On the Chairperson's own motion or a party's motion, the Chairperson may waive or change any time limits prescribed by these rules or may postpone the commencement of or continue a hearing to a future date and time or different location for good cause, except as otherwise provided by law.

R12-17-110. Conferences and Procedural Orders Repealed

~~The Chairperson, on application of a party or on his own motion and upon written notice to all parties, may issue and sign procedural orders without convening the Commission. In his discretion, a conference may be held with the parties prior to any ruling on any procedural matter.~~

R12-17-111. Evidence Repealed

- ~~A.~~ Presentation and admission of evidence. All witnesses at the hearing shall testify under oath or affirmation. Parties shall have the right to be represented by counsel and present oral or documentary evidence and conduct cross-examination. The Commission shall receive relevant, probative, and material evidence and the Chairperson shall rule upon offers of proof. Objection to the admission or exclusion of evidence must be made on the record and shall state the grounds upon which the objection is based. The Chairperson may limit and exclude all irrelevant, immaterial or unduly repetitious evidence.
- ~~B.~~ Rules of evidence. Pursuant to A.R.S. § 41-1062(A), the Chairperson may conduct a hearing in an informal matter and without adherence to the rules of evidence required in judicial proceedings.
- ~~C.~~ Discovery. Parties do not have the right to conduct discovery for the presentation of evidence except as otherwise provided for in A.R.S. § 41-1062(A)(4) and this rule.

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- D.** Official notice. The Commission may take official notice of any matter that might be judicially noticed by a superior court of the state of Arizona, any matter in the public official records of the Department, or any matter that is peculiarly within the knowledge of the Department as an expert body.
- E.** Subpoenas and motions to quash:
1. In connection with any hearing, the Chairperson, upon written application of a party or on his own motion, may issue subpoenas requiring the attendance and testimony of witnesses or the production of documentary or other tangible evidence, or both.
 2. Pursuant to A.R.S. § 41-1062(A)(4), the Chairperson, on written application of a party or on the Commission's motion, may permit a deposition to be taken. No deposition may exceed four hours absent express authorization from the Chairperson.
 3. Any application for a subpoena or to take a deposition shall state:
 - a. The case number and the time and place where the witness is expected to appear and testify;
 - b. The name and address of the witness;
 - c. With reasonable particularity, the documents or other tangible evidence, if any, sought; and
 - d. Shall include a showing that the facts sought to be established are relevant, material and not unduly repetitious. An application to take a deposition shall also include a showing that the testimony or materials sought cannot otherwise be obtained through reasonable efforts.
 4. Process issued by the Chairperson may be served by such person and in such manner as authorized by the Arizona Revised Statutes.
 5. Any person to whom a subpoena is directed may, prior to the time specified therein for compliance but in no event more than five days after the date of service of such subpoena, move the Chairperson to quash or modify the subpoena, accompanying such motion with a brief statement of reasons therefor. The Chairperson shall then rule on the motion to quash.

R12-17-112. Decisions Final Determinations

- A.** Final determination. Except as otherwise provided by law, within 30 days after the conclusion of a hearing conducted pursuant to A.R.S. § 37-1128(A), the Commission shall render a decision in writing and shall include findings of fact and conclusions of law that clearly state the basis and reasoning for the decision. Pursuant to A.R.S. § 37-1128(A), all decisions of the Commission shall be final and there shall be no right to rehearing before the Commission.
- B.** initial notice of final determination. In addition to immediately notifying the Department as required by A.R.S. § 37-1128(B), the Commission shall provide a copy of its final determination to all parties and may provide copies of its final determination to any person who has requested a copy of the final determination from the Commission. No deadline for seeking judicial review established by A.R.S. § 37-1129(A) shall be affected by any notice provided by the Commission.
- A.** Based on the preponderance of the evidence, the Commission shall make a final determination of navigability regarding each watercourse under A.R.S. § 37-1128.
- B.** Within 90 days after final determination that a watercourse was navigable under A.R.S. § 37-1128 the Commission shall hold a hearing regarding any public trust values associated with the watercourse.
- C.** A to determine public trust values shall proceed under these rules for all hearings.
- D.** Following each hearing related to public trust values the Commission shall issue a public report of the public trust values determined to be associated with the watercourse.

R12-17-113. Judicial Review

A.R.S. § 37-1129 governs judicial review of each determination of navigability or non-navigability and of each public report of public trust values made by the Commission.

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TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

PREAMBLE

- 1. Sections Affected**

R20-4-1601	Amend
R20-4-1602	Amend
R20-4-1603	Repeal
R20-4-1604	Repeal
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 6-123(2)
Implementing statutes: A.R.S. §§ 6-123(3) and 6-145(A)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 8 A.A.R. 3760, August 30, 2002
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: John P. Hudock
Address: State Banking Department
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018
Telephone: (602) 255-4421, ext. 167
Fax: (602) 381-1225
E-mail: jhudock@azbanking.com
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

These Sections govern the acquisition of control of Arizona financial institutions. On November 7, 2000, the Council approved the Department's five-year rule review report. In that report, the Department promised to revise or repeal several Sections of Article 16. This rulemaking is to fulfill that promise.

The Department will amend R20-4-1601 to improve the clarity of the definitions, to tighten the writing style, and to conform the definitions to modern rulewriting standards.

The Department will amend R20-4-1602 to permit filing of the same application documents used with federal banking regulators.

The Department will repeal R20-4-1603 because it is inconsistent with federal statutes and regulations, it is not enforced, and it does not accurately describe the Department's modern practices.

The Department will repeal R20-4-1604 because it is not enforced, and it does not accurately describe the Department's modern practices.
- 6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The Department did not review any study relevant to the proposed rule.
- 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 Banking Department**

The Department will incur the costs of completing this rulemaking and of putting the revised Sections into effect. It expects to receive the offsetting benefits of a more modern set of regulations accurately describing current best practices, and a resultant ease of communication with all licensees.

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B. Other Public Agencies

The state will incur normal publishing costs incident to rulemaking.

C. Private Persons and Businesses Directly Affected

Costs of services will not increase to any measurable degree; nor should these revisions increase the cost of doing business in compliance with these Sections.

D. Consumers

No measurable effect on consumers is expected.

E. Private and Public Employment

The Department expects no measurable effect on private and public employment.

F. State Revenues

This rulemaking will not change 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: John P. Hudock
Address: State Banking Department
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018
Telephone: (602) 255-4421, ext. 167
Fax: (602) 381-1225
E-mail: jhudock@azbanking.com

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:

No oral proceeding is scheduled. The Department will schedule an oral proceeding on the proposed rule if it receives a written request for a proceeding within 30 days after the publication date of this notice, under the provisions of A.R.S. § 41-1023(C). Send requests for an oral proceeding to the Department personnel listed in items #4 and #9. The Department invites and will accept written comments on the proposed rule or the preliminary economic, small business, and consumer impact statement. Submit comments during regular business hours, at the address listed in item #9, until the close of the record for this proposed rulemaking. The record will close on the 31st day following publication of this notice, unless the Department schedules an oral proceeding.

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

Not applicable

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

There is no material incorporated by reference in these rules.

13. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 16. ACQUISITION OF CONTROL OF FINANCIAL INSTITUTIONS

Section

R20-4-1601. Definitions
R20-4-1602. Application for Approval to Acquire Control of Financial Institution
R20-4-1603. ~~Amendment or Supplement to Application~~ Repealed
R20-4-1604. ~~Certificate of Service~~ Repealed

ARTICLE 16. ACQUISITION OF CONTROL OF FINANCIAL INSTITUTIONS

R20-4-1601. Definitions

In this Article, unless the context otherwise requires:

- 1. "Acquiring party" means ~~the a person or persons who intend~~ intends to acquire control of a bank, trust company, savings and loan association, or controlling person ~~so as to require approval of the Superintendent pursuant to Title 6,~~

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Chapter 1, Article 4, Arizona Revised Statutes under A.R.S. §§ 6-141 through 6-153.

2. "Acquisition of control" ~~shall have~~ has the meaning set forth ~~stated~~ in A.R.S. § 6-141.
3. "Affiliate" means a person that directly, or indirectly through one or more intermediaries, ~~controls or is controlled by, or is under common control with, the person specified.~~
4. "Bank" means a person which is required to possess or possesses a permit issued by the Superintendent pursuant to Title 6, Chapter 2, Arizona Revised Statutes has the meaning stated in A.R.S. § 6-101(2).
5. "Control" means ~~direct or indirect ownership of or power~~ has the meaning stated in A.R.S. § 6-141(2).
 - a. To vote 15% or more of the outstanding voting securities of another entity, or
 - b. To control in any manner the election of a majority of the directors of another entity. For the purposes of determining the percentage of voting securities owned, controlled or held by a person, there shall be aggregated of the voting securities attributed to such person the voting securities owned, held or controlled by any affiliate of such person, or by any officer, partner, employee or agent of such person, or by any person, or by any spouse, parent or child of such person.
6. "Controlling person" has the meaning stated in A.R.S. § 6-141.
6. "Person" ~~shall have~~ has the meaning set forth ~~stated~~ in A.R.S. § 6-141.
7. "Savings and loan association" means a person ~~which is~~ required to possess ~~or possesses~~ a permit issued by the Superintendent pursuant to Title 6, Chapter 3, Arizona Revised Statutes under A.R.S. §§ 6-401 through 6-497.
8. "Superintendent" means the Superintendent of Banks or his authorized agent has the meaning stated in A.R.S. § 6-101(16).
9. "Target company" means ~~the a~~ a bank, savings and loan association, trust company, or controlling person, ~~the control of which is to be acquired by the an~~ an acquiring party.
10. "Trust company" means a person which is required to possess or possesses a certificate issued by the Superintendent pursuant to Title 6, Chapter 8, Arizona Revised Statutes has the meaning stated in A.R.S. § 6-851.
11. "Voting security" means ~~any security presently entitling the owner or holder of such security to vote for the election of directors of another entity, excluding in the case of a savings and loan association, votes attributable to savings accounts. A specified percentage of outstanding voting securities means such amount of the outstanding voting securities as entitles the holder or holders of such securities to cast that specified percentage of the aggregate votes which the holders of all the outstanding voting securities are entitled to cast~~ has the meaning stated in A.R.S. § 6-141(5).

R20-4-1602. Application for Approval to Acquire Control of Financial Institution

- ~~A:~~ Application for approval to acquire control of a bank, trust company, a savings and loan association or controlling person pursuant to Title 6, Chapter 1, Article 4, Arizona Revised Statutes, ~~shall be made by filing with the Superintendent an original and two copies of an application as provided in this rule.~~
- ~~B:~~ The application shall be in writing or printed on 8 1/2 x 14 inch paper and the first page shall be in the following form:

APPLICATION FOR APPROVAL TO ACQUIRE CONTROL OF FINANCIAL INSTITUTION

Application is hereby made to the Superintendent of Banks pursuant to Title 6, Chapter 1, Article 4, Arizona Revised Statutes, for approval to acquire control of the financial institution or controlling person described below. This application is made based upon the information contained herein and the attachments hereto and upon such information as may hereafter be submitted on behalf of the applicant as an amendment to this application or otherwise.

Name of acquiring party/applicant

Name of target company

Name of financial institution concerned
(if other than target company)

Date of application

- ~~C:~~ Commencing on the second page, the application shall contain the following information in the sequence indicated:
 1. The name and address of the acquiring party and if other than a natural person, the name and address of each director, partner and executive officer of the acquiring party.
 2. The name and address of each affiliate of the acquiring party and a description of the relationship between the acquiring party and each affiliate.

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3. ~~An informative description of the business operations of the acquiring party and its affiliates during the past five years or such lesser period as such person and any predecessor thereof shall have been in existence. In addition, describe any proceedings wherein the acquiring party or any affiliate was placed in bankruptcy or receivership or wherein its corporate charter was revoked or wherein its license or permit to engage in any business was suspended or revoked.~~
4. ~~The name and address of the target company and the state of incorporation. If the target company is a controlling person, include the name and address of the financial institution concerned which is controlled by this controlling person.~~
5. ~~The date upon which the acquiring party intends to first make a tender offer for, request or invite a tender offer for, offer to exchange securities for or acquire in the open market or otherwise the security referred to in A.R.S. § 6-144 or the date upon which the acquiring party entered into a conditional agreement to acquire said security and the date by which the acquiring party expects to complete his acquisition of said security.~~
6. ~~The number of shares of the security referred to in A.R.S. § 6-144 which the acquiring party proposes to acquire and the total number of shares of the voting security of the target company the acquiring party will directly or indirectly control once the proposed acquisition is completed.~~
7. ~~The terms of any offer, request, invitation, exchange or acquisition to be made by the acquiring party.~~
8. ~~The source, nature and amount of the consideration used or to be used in making the acquisition of the security referred to in A.R.S. § 6-144, a full description of any transaction wherein funds were or are to be obtained for the purpose of the acquisition, including the identity of the persons furnishing the funds, and any arrangements, agreements or understandings of such persons, and a complete description of all such funds obtained directly or indirectly from the target company or any affiliate thereof.~~
9. ~~A full description of all extensions of credit made or contemplated to be made within the next three months to the acquiring party by the target company or any affiliate thereto.~~
10. ~~A full description of any plans or proposals which the acquiring party may have to liquidate, merge, consolidate or sell the assets of the target company or any affiliate thereof or to make any material change in the corporate structure, business or management of the target company or affiliate thereof.~~
11. ~~The number of shares of each class of any voting security of the target company or any affiliate thereof, which the acquiring party or any affiliate thereof owns, controls or has a beneficial interest in or in which the acquiring party or any affiliate thereof has a right to acquire ownership, control or a beneficial interest. With regard to such securities which the ownership, control or beneficial interest therein was acquired during the twelve calendar months preceding the filing of this application, include the date of such acquisition, the name and address of the transferor of the ownership, control or beneficial interest acquired, and the nature and amount of the consideration paid or agreed to be paid therefor.~~
12. ~~A full description of any recommendations to purchase any voting security of the target company or any affiliate thereof made during the twelve calendar months preceding the filing of this application by the acquiring party or any affiliate thereof, or by any other person based upon an interview or at the suggestion of the acquiring party or an affiliate thereof.~~
13. ~~A full description of any contracts, arrangements or understandings which the acquiring party has with any person with respect to any voting securities of the target company or any affiliate thereof, including but not limited to transfers of such securities, joint ventures, loan or option arrangement, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into, and shall include the details thereof.~~
14. ~~A full description of the terms of any agreement, contract or understanding made with any broker-dealer as to the solicitation of any voting security of the target company or any affiliate thereof, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with respect thereto.~~
15. ~~Any additional information the acquiring party believes is relevant to the application.~~
16. ~~A complete index of all attachments to the application.~~
- D.** Immediately following the information required under subsection (C), the application shall contain a separate verification signed by each acquiring party or its authorized representative.
 1. Where the acquiring party is a natural person, the verification shall be signed by the acquiring party and shall be in the following form completed in all respects:

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- 3. As attachment "C" financial statements prepared in accordance with generally accepted accounting principles regarding the earnings and financial condition of the acquiring party for a period ending not earlier than 90 days prior to the filing of the application.
 - 4. As attachment "D" copies of all solicitations, proxies, prospectus or other material to be used in making offers, requests, invitations, exchanges or acquisitions of the security referred to in A.R.S. 6-144, or if a conditional agreement has been executed, a copy of said agreement.
 - 5. As attachment "E" copies of all documents relevant to the matters described in paragraph (7) of the application.
 - 6. As attachment "F" copies of all documents relevant to the matters described in paragraph (8) of the application.
 - 7. As attachment "G" copies of all documents relevant to the matter described in paragraph (9) of the application.
 - 8. As attachment "H" copies of all documents relevant to the matter described in paragraph (10) of the application.
 - 9. As attachment "I" copies of all documents relevant to the matter described in paragraph (12) of the application.
 - 10. As attachment "J" copies of all documents relevant to the matter described in paragraph (13) of the application.
 - 11. As attachment "K" any additional documents the acquiring party believes are relevant to the application or which are referred to in the application and not previously included as an attachment, including copies of all applications or notices filed or proposed to be filed with federal regulatory agencies in connection with the proposed acquisition.
- F.** Where more than one document is included under a category as provided in subsection (E), each document shall be separately identified with the appropriate letter designation followed by consecutive numbers in parentheses [i.e., ATTACHMENT C(4)].
- G.** The Superintendent may require additional information in connection with any application filed under this rule.
- A.** An applicant for approval to acquire control of a bank, savings and loan association, or controlling person of a bank or savings and loan association, under A.R.S. §§ 6-141 through 6-153, shall file with the Superintendent copies of all application documents it has filed with the appropriate federal regulatory authorities in connection with the planned acquisition of control.
- B.** As used in this subsection, "executive officer" includes the chairman of the board, the president, each vice president, the cashier, the secretary, the treasurer, and every other person that participates in major policymaking functions of the applicant. An applicant for approval to acquire control of a trust company or controlling person of a trust company, under A.R.S. §§ 6-141 through 6-153 is required, under A.R.S. § 6-145(A), to supply all information the Superintendent may require. The Superintendent may require an applicant to supplement or amend its application in light of issues raised by the initial submission. The initial application shall consist of the following items.
- 1. A copy of the signed purchase agreement.
 - 2. The applicant's audited financial statement.
 - 3. A personal history statement, on a form supplied by the Department, for each executive officer and each director of the acquiring party.
 - 4. Each executive officer's and each director's audited financial statement.
 - 5. A fingerprint card for each executive officer and each director, and
 - 6. A copy of each executive officer's and each director's driver's license.

R20-4-1603. Amendment or Supplement to Application Repealed

- A.** An acquiring party desiring to amend or supplement an application filed with the Superintendent pursuant to R20-4-1602 shall file with the Superintendent an original and two copies of an amendment as provided in this rule.
- B.** The amendment shall be in writing or printed on 8 1/2 x 14 inch paper and the first page shall be in the following form:

AMENDMENT NUMBER _____
 TO APPLICATION FOR APPROVAL TO ACQUIRE
 CONTROL OF FINANCIAL INSTITUTION

The application for approval to acquire control of the financial institution described below filed with the Superintendent and dated is amended as provided hereafter:

 Name of acquiring party/applicant

 Name of target company

 Name of financial institution concerned
 (if other than target company)

 (Date of amendment)

- ~~C.~~ Commencing on the second page, the amendment shall contain a reference to the paragraph number of each provision in the application which is amended or supplemented followed by the amended or supplemental information.
- ~~D.~~ Immediately following the information required under subsection (C), the amendment shall contain a separate verification signed by each acquiring party as in the manner provided in R20-4-1602(D) for original applications, except that the word "amendment" shall be substituted for the word "application" in the verification.
- ~~E.~~ There shall be attached to the application, immediately following the verification, any documents intended to be added to the application and the identity of any documents previously filed which are intended to be deleted, together with a reference to the appropriate category as provided in R20-4-1602(E).

R20-4-1604. ~~Certificate of Service Repealed~~

~~The acquiring party/applicant shall file with any application filed under R20-4-1602 or any amendment filed under R20-4-1603 a certificate of service certifying that a true and correct copy of the application or amendment, together with attachments, was hand delivered or mailed by United States mail, postage prepaid, to the financial institution concerned.~~