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 1. RADIATION REGULATORY AGENCY

[R05-59]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R12-1-541	Repeal
R12-1-542	Repeal
R12-1-1102	New Section
R12-1-1140	New Section
R12-1-1142	New Section
R12-1-1302	Amend
R12-1-1402	Amend
R12-1-1421	Amend
R12-1-1438	New Section
R12-1-1439	Repeal
R12-1-1439	New Section
Appendix C	New Appendix
Appendix D	New Appendix

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

Authorizing statute (general): A.R.S. § 30-654(B)

Implementing statutes (specific): A.R.S. §§ 30-657, 30-672, 30-673, and 30-683

3. The effective date of the rules:

April 3, 2005

4. A list of all previous notices appearing in the *Register* addressing the final rules:

Notice of Rulemaking Docket Opening: 10 A.A.R. 980, March 12, 2004
Notice of Proposed Rulemaking: 10 A.A.R. 954, March 12, 2004
Notice of Supplemental Proposed Rulemaking: 10 A.A.R. 2484, June 25, 2004
Notice of Oral Proceeding: 10 A.A.R. 2843, July 9, 2004

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

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6. An explanation of the rules, including the Agency's reasons for initiating the rulemaking:

New rules are going into Article 11. These rules are needed to complete the new rulemaking package, RMP-0056, that introduced a new Article 11. This rule package was approved by the Governor's Regulatory Review Council (G.R.R.C.) at the April 6, 2004 Council meeting.

In RMP-0056 the x-ray rules regarding industrial uses were moved to Article 11. This change was made to clarify and improve understandability by separating the requirements for x-ray and radioactive material into two separate articles. The radioactive material rules that relate to industrial radiography remain in Article 5. Because some of the rules in Article 5 were not opened in RMP-0056, the remaining x-ray rules in Article 5 are being moved to Article 11 in this package. The affected rules are R12-1-541 and R12-1-542. They are being moved to R12-1-1140 and R12-1-1142, respectively. Additionally, necessary x-ray related definitions are moved from Article 5 into a new definition rule R12-1-1102.

R12-1302, which contains registration and license categories used to determine fee charges, is being amended to correct cross references that changed because of amendments to Article 14 in a previous rulemaking package.

Article 14 is amended to list new standards for Intense Pulsed Light (IPL) devices and lasers used for medical purposes. R12-1-1402 is amended to add a new definition of "indirect supervision" that will be helpful in understanding the new light-based cosmetic surgery and hair removal requirements proposed in the other affected rules of Article 14. Of special interest and concern to affected users and patients are new standards that require operator supervision for use of these light emitting devices and training for Laser Safety Officers (LSO) and operators. The required training is listed in the newly proposed Appendices C and D.

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

None

8. 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

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

There is no economic burden associated with moving the rules from Article 5 to Article 11. The substance of the affected rules has not changed. Also, there is no new economic burden associated with the correction of the rule references in the category system located in R12-1-1302. There is an obvious economic implication associated with the proposed changes to Article 14. These costs are explained as follows:

Because of the potential public hazard associated with laser and IPL misuse, it is believed these rules are needed. The changes may present some increase in operating cost, if a user has not made an effort to stay abreast of training and industry safety. The actual cost associated with staying abreast of the new standards is unknown, however, it is believed to be minimal when compared to the cost of the machines that produce the nonionizing radiation and potential costs associated with resolving a court case if one of these devices is misused. Supervision and training for medical laser systems and IPL's is being finalized in this rule package. The annual cost to register a laser or an IPL system is $40. At this time in Arizona there are 220 medical laser registrants and less than 25 users of IPL systems that will be affected by the new rules. The Agency estimates that a training program for operators of lasers and IPL's will cost in the range of $750 to $2000. The Agency believes that most of this cost will be passed on to the patient or client who receives the laser or IPL treatment. As with tanning, improper use of these devices can result in severe burns that may be permanently disfiguring. Presently, a local cosmetic surgery provider estimates that an unlicensed provider will charge $800.00 to $1000.00 for a complete cosmetic surgery or hair removal procedure vs. $3000.00 to $5000.00 for a licensed medical provider. In most cases a procedure will involve multiple visits over a six-month period. Additionally, liability insurance for a licensed practitioner is approximately 10 times higher than the insurance costs for an unlicensed cosmetic surgery provider. Even though licensed practitioners are generally against the regulatory fees associated with Agency intervention, telephone surveys have disclosed that many believe the proposed rules, as a whole, are necessary to protect the public from unscrupulous and unqualified users.

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

A few minor changes are made to correct mistakes in word usage, punctuation, and rule format. The corrections are made at the request of the Radiation Regulatory Hearing Board (RRHB). Additionally, an incorporated reference in R12-1-1438(A)(1) refers the reader to the wrong listing in the Federal code. The rule refers the reader to 21 CFR 878.48 when it should have referred the reader to 21 CFR 801.109. It is believed this is nonsubstantive change because 21 CFR 878.48 does not exist and the fact that the correct Federal reference deals with device labeling requirements.

The following additional nonsubstantive changes are made by the Agency to clarify the rule package.

1. Because, all of the regulated procedures are cosmetic in nature, a regulated procedure other than "hair removal" should be designated "other cosmetic procedure", rather than simply "cosmetic procedure" which implies that "hair removal" is not a cosmetic procedure. Therefore, a definition for "other cosmetic procedure" is added to R12-1-1402, and appropriate changes are made throughout the package to reference "other cosmetic" procedures.

2. The definition of "operator" is amended to clarify the necessary training requirements that are implied in R12-1-1438 and described in detail in the appendices.

3. Substantive provisions located in the definition of "indirect supervision" are moved to R12-1-1438(A). It is believed this change is nonsubstantive because the requirements were listed in the definition.

4. R12-1-1438 is being divided into three subsections because the current final rule does not have an application section for other cosmetic procedures. With this change subsection (A) will contain the application requirements for all cosmetic procedures.

11. A summary of the comments made regarding the rules and the Agency response to them:

The comments from the public, both written and oral, have resulted in the following changes to the rules contained in this rulemaking package. Initially, the regulated community was in disagreement as to the level of medical supervision needed for light-based cosmetic procedures. In one case a physician wanted direct supervision by a licensed practitioner. After numerous discussions between the Agency and interested parties, the majority of the commenters and the Agency agreed on the level of indirect supervision for hair removal procedures proposed by the Agency. However, Kenneth L. Pettit, D.O. believes that direct supervision by a licensed practitioner provides the only safe means of providing laser and IPL hair removal service to the public. Although Dr. Pettit did not attend the public hearing, he did provide a report that supports his position for direct supervision in this rulemaking action.

In the report Dr. Pettit addresses many issues. He states that the Agency should not make a decision that will minimize financial hardship at the expense of public safety. The Agency believes that the chosen levels of supervision protect public health and safety, and that certain uses, like hair removal, expose the public to a lesser hazard than other types of light-based cosmetic procedures. His report provides a copy of a letter from the Arizona Medical Association (AMA) that supports direct supervision. However, the AMA position was drafted in April 2002, long before the current rule was drafted. At that time the Agency had not limited the rule to hair removal. The Agency has no indication that the AMA position remains the same with the new limited scope rule. As an attachment to his report, Dr. Pettit provides an American Society of Dermatology position paper and a survey that supports the need for physician involvement in laser and IPL-based procedures. The decision to limit the scope of supervision was a judgement call initiated by the Radiation Regulatory Hearing Board (RRHB) and supported by numerous members of the medical community, including two professional boards. It is important to note that the survey did determine there is a lack of regulatory oversight on the state level. It determined that 16 states do not have medical laser regulations. Arizona is one of the 16 states. The Agency believes the Society's position and survey supports the proposed regulations, with the exception of hair removal, which the Agency believes can be performed safely by trained operators functioning under indirect supervision of a licensed practitioner. The report was also supplemented with many examples of injury resulting from improper use of lasers. In one case, a doctor misused a laser device and the misuse resulted in minor injury. The Agency believes that for these devices, any person can cause injury if a laser or IPL device is improperly used. The Agency believes that the final rules provide reasonable assurance, to anyone wishing to undergo a light-based cosmetic procedure, that direct supervision will occur when necessary and that operators will be adequately trained before operating under indirect supervision of a licensed practitioner.

It is obvious from Dr. Pettit's report that he is very concerned for the safety of the persons who undergo hair removal procedures. The Agency agrees with his position with one exception, the Agency believes that hair removal procedures can be performed by trained operators functioning under the indirect supervision of a licensed practitioner. Yes, there are hazards associated with improper use of laser and IPL devices such as burns, scarring, and eye injury. However, the Agency, at the direction of the Radiation Regulatory Hearing Board, has chosen to allow a single procedure, hair removal, to be performed under indirect supervision, because the potential for injury is greatly diminished if performed in accordance with a licensed practitioner's protocol and the proposed rules. The Hearing Board is chaired by a radiation specialist, James Woolfenden, M.D. of the University of Arizona. Member Jonathan Levy, M.D., is also a radiation specialist. Member Aubrey Godwin, the Director of the Agency, is a certified health physicist. The members of the Hearing Board believe that hair removal can be performed safely if a candidate is selected by a licensed practitioner that has developed a procedure protocol and the radiation is applied by a person who has received adequate training, and whose technological expertise is overseen by the licensed practitioner. It is further believed that the nature, number, and severity of injuries associated with hair removal do not justify requiring the licensed practitioner to be present in the room while a hair removal procedure is being performed. Also, the operator can see the immediate results of the radiation on hair removal and can therefore easily decide when enough radiation has been applied to the treatment area. Also, as result of Dr. Pettit's concern, R12-1-1438 is amended to include a reference to other Arizona licensing and safety laws that may apply. The language that is added to this rule package makes it very clear that the most stringent law or rule will apply where applicable. Simply stated, the Agency's new rules provide a minimum level of protection that may be enhanced by other applicable Arizona laws.

Initially, the Agency proposed rules that would have required direct supervision of all laser and IPL (intense pulse light) procedures by a licensed practitioner. However, at the request of the RRHB, the supervision level was changed to indirect for hair removal procedures. The RRHB made this change because the Board members do not believe the hazard is great enough to require a higher level of supervision. This level of supervision is likewise supported by the Arizona Medical Board and the Arizona Board of Osteopathic Examiners.

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. Any material incorporated by reference and its location in the text:

Rule	Incorporation
R12-1-1438(A)(1)	21 CFR 801.109

14. Were the rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 1. RADIATION REGULATORY AGENCY

ARTICLE 5. SEALED SOURCE INDUSTRIAL RADIOGRAPHY

Section
R12-1-541. ~~Enclosed Radiography Using X-ray Machines~~ Repealed
R12-1-542. ~~Baggage Inspection Systems~~ Repealed

ARTICLE 11. INDUSTRIAL USES OF X-RAYS, NOT INCLUDING ANALYTICAL X-RAY SYSTEMS

Section
R12-1-1102. ~~Repealed~~ Definitions
R12-1-1140. ~~Reserved~~ Enclosed Radiography
R12-1-1142. ~~Reserved~~ Baggage Inspection Systems

ARTICLE 13. LICENSE AND REGISTRATION FEES

Section
R12-1-1302. License and Registration Categories

ARTICLE 14. REGISTRATION OF NONIONIZING RADIATION SOURCES AND STANDARDS FOR PROTECTION AGAINST NONIONIZING RADIATION

Section
R12-1-1402. Definitions
R12-1-1421. Laser Safety
R12-1-1438. ~~Repealed~~ Hair Removal and Other Cosmetic Procedures Using Laser and Intense Pulsed Light
R12-1-1439. ~~Additional Requirements for Medical Laser Applications~~ Laser and IPL Operator Safety Training
Appendix C. Hair Removal and Other Cosmetic Laser or IPL Operator Training Program
Appendix D. Laser Operator and Laser Safety Officer Training

ARTICLE 5. SEALED SOURCE INDUSTRIAL RADIOGRAPHY

R12-1-541. ~~Enclosed Radiography Using X-ray Machine~~ Repealed

~~**A.** Certified and certifiable cabinet x-ray systems, as defined in Article 1, are exempt from the requirements of Article 5, provided the following conditions are met:~~

~~1. The registrant shall make, or cause to be made, an evaluation of each certified and certifiable cabinet x-ray system, at intervals not to exceed 12 months, to determine conformance with the standards for certified and certifiable cabinet x-ray systems defined in Article 1. Records of the evaluations shall be retained for three years from the date of their creation; and~~

~~2. Physical radiation surveys shall be performed with a survey instrument appropriate for the energy range and levels of radiation to be assessed and calibrated within the preceding 12 months.~~

~~**B.** The registrant shall ensure that cabinet x-ray systems not exempted in subsection (A) comply with the recordkeeping requirements of this Article and the following special requirements:~~

~~1. Radiation levels measured at 5 centimeters (2 inches) from any accessible exterior surface of the enclosure shall not exceed 50 microsievert (0.5 milliroentgen) in one hour for any combination of technical factors (i.e., mA, kVp);~~

~~2. Access to the interior of the enclosure shall be possible only through interlocked doors or panels that allow production of radiation only when all interlocked doors or panels are securely closed. Opening any point of access shall result in immediate termination of radiation production, and subsequent reactivation of the x-ray tube shall only be possible at the control panel;~~

~~3. Visible warning signals that are activated only during production of radiation shall be provided at the control panel~~

~~and at each point of access to the interior of the enclosure;~~

4. ~~The registrant shall make, or cause to be made, evaluations of each x-ray system to determine conformance with this Article, before placing the x-ray system into use and thereafter at intervals not to exceed three months. Records of the evaluations shall be retained for two years, and~~
5. ~~Physical radiation surveys to satisfy the requirements of subsection (B)(4) shall be performed only with instrumentation meeting the requirements of R12-1-504.~~

~~C.~~ The registrant shall ensure that shielded room x-ray systems comply with the recordkeeping requirements of this Article and the following special requirements;

1. ~~Each x-ray room shall be so shielded that every location on the exterior meets the requirements for an "unrestricted area" as specified in R12-1-416;~~
2. ~~Access to the interior of a shielded x-ray room shall only be possible through doors or panels which are interlocked. Radiation production shall be possible only when all interlocked doors and panels are securely closed. Opening of any interlocked access points shall result in immediate termination of radiation production, and subsequent reactivation of the x-ray tube shall only be possible at the control panel;~~
3. ~~Each access point shall be provided with two interlocks, each on a separate circuit so that failure of one interlock will not affect the performance of the other;~~
4. ~~Visible warning signals activated only during production of radiation shall be provided at the control panel and at each point of access into the shielded room;~~
5. ~~The registrant shall make, or cause to be made, evaluations of each shielded room x-ray system before placing the system into use and thereafter at intervals not to exceed three months to determine compliance with this Article. Records of the evaluations shall be retained for two years.~~
6. ~~Radiation surveys performed to determine exposure shall be performed with instrumentation that meets the requirements of R12-1-504;~~
7. ~~Electrical interlocks and warning devices shall be inspected for proper operation at the beginning of each period of use, and records of the inspections shall be prepared and retained for two years;~~
8. ~~The registrant shall not permit any individual to operate an x-ray machine for shielded room radiography unless that individual has received a copy of, and instruction in, the operating procedures and has demonstrated competence in the safe use of the equipment;~~
9. ~~An individual shall not occupy the interior of any shielded room x-ray system during production of radiation; and~~
10. ~~The registrant shall provide personnel monitoring devices that meet the requirements of R12-1-523(C) to each shielded room x-ray machine operator, and require that each operator use the devices.~~
11. ~~The registrant shall maintain records of:~~
    a. ~~Quarterly inventories for mobile systems, as prescribed in R12-1-506; and~~
    b. ~~Utilization of all systems, as prescribed in R12-1-507.~~
12. ~~Records shall be maintained for three years from the date of the inventory or utilization.~~

~~D.~~ The registrant shall connect an enclosed radiography machine to the electrical system in a manner that will prevent a ground fault from generating x-radiation.

R12-1-542. ~~Baggage Inspection Systems~~ Repealed

~~A.~~ For x-ray systems designed to screen carry-on baggage at airlines, railroads, bus terminals, or similar facilities, a registrant shall station the operator at the control area in a position that permits surveillance of the ports and doors during generation of x-radiation to prevent exposure to passengers and other members of the public.

~~B.~~ For an exposure or preset succession of exposures of one-half second or greater duration, a registrant shall use a system that enables the operator to terminate the exposure or preset succession of exposures at any time.

~~C.~~ For an exposure or preset succession of exposures of less than one-half second duration, a registrant shall use a system that allows the operator to complete the exposure in progress, but prevent additional exposures.

~~D.~~ A registrant shall operate a baggage inspection system according to the manufacturer's instructions.

~~E.~~ A registrant shall not disconnect or otherwise tamper with the safety systems of a baggage inspection system, except for maintenance purposes.

~~F.~~ In addition to the requirements in this Section, registrants using a baggage inspection system shall meet the requirements in R12-1-541(A), (B), and (D).

ARTICLE 11. INDUSTRIAL USES OF X-RAYS, NOT INCLUDING ANALYTICAL X-RAY SYSTEMS

R12-1-1102. ~~Repealed~~ Definitions

"Access point" means any door or cover that is designed to be removed or opened for maintenance or service purposes, opened using tools, and used to provide access to the interior of a cabinet x-ray unit.

"Annual refresher safety training" means a review provided by the registrant for its employees on radiation safety aspects of industrial radiography. The review shall include, as applicable, the results of internal inspections, new procedures or equipment, new or revised statutes or rules, accidents, or errors that have occurred, and provide opportunities for employ-

ees to ask safety questions.
"Aperture" means any opening in the outside surface of a cabinet x-ray unit, other than a port, which remains open during generation of x-radiation.
"Door" means any barrier that is designed to be movable or opened for routine operation purposes, rather than opened using tools, and used to provide access to the interior of the cabinet x-ray unit.
"Ground fault" means an accidental electrical grounding of an electrical conductor.
"Hands-on experience" means the accumulation of knowledge or skill in any area relevant to radiography.
"Port" means any opening in the outside surface of a cabinet x-ray unit that is designed to remain open, during generation of x-rays, for conveying material that is being irradiated into and out of the cabinet, or for partial insertion of an object for irradiation if the dimensions of the object do not permit complete insertion into the cabinet x-ray unit.
"Practical examination" means a demonstration, through practical application of safety rules and principles of industrial radiography, which includes use of all radiography equipment and tests knowledge of radiography procedures.
"Radiographic operations" means all activities associated with use of a radiographic x-ray system. This includes performing surveys to confirm the adequacy of boundaries, setting up equipment, and conducting any activity inside restricted area boundaries.

R12-1-1140. ~~Reserved~~ Enclosed Radiography

A. The Agency has determined that any certified or certifiable cabinet x-ray system, as defined in Article 1, is exempt from the requirements of Article 11, provided that both of the following conditions are met:
1. The registrant makes, or causes to be made, an evaluation of each certified and certifiable cabinet x-ray system, at intervals that do not exceed 12 months, to determine whether the system conforms to the standards for certified and certifiable cabinet x-ray systems defined in Article 1. Records of each evaluation shall be maintained for three years from the date the record is created; and
2. The registrant performs a physical radiation survey with a survey instrument calibrated within the preceding 12 months and designed for the energy range and levels of radiation that will be assessed.

B. A registrant with a cabinet x-ray system that is not exempt under subsection (A) shall comply with the recordkeeping requirements of this Article and the following special requirements. The registrant shall:
1. Ensure that radiation levels measured at 5 centimeters (2 inches) from any accessible exterior surface of the enclosure do not exceed 50 microsievert (0.5 milliroentgen) in one hour for any combination of technical factors (i.e., mA, kVp);
2. Ensure that access to the interior of the enclosure is possible only through interlocked doors or panels that prevent production of radiation unless all interlocked doors or panels are securely closed. The registrant shall ensure that opening a door or panel results in immediate termination of radiation production and subsequent reactivation of the x-ray tube is only possible at the control panel;
3. Provide visible warning signals, activated only during production of radiation, at the control panel and at each access point to the interior of the enclosure;
4. Before using an x-ray system make, or cause to be made, an initial evaluation of the x-ray system to determine compliance with this Article, and subsequently evaluate the x-ray system at intervals that do not exceed three months. The registrant shall maintain a record of each evaluation for two years, and
5. Using instrumentation that complies with R12-1-1108, perform a physical radiation survey to satisfy the requirements of subsection (B)(4).

C. A registrant with a shielded room x-ray systems shall comply with the recordkeeping requirements of this Article and the following special requirements. The registrant shall:
1. Shield each x-ray room so that every location on the exterior meets the requirements for an "unrestricted area" as specified in R12-1-416;
2. Provide access to the interior of a shielded x-ray room only through doors or panels that are interlocked. The registrant shall ensure that radiation production is possible only when all interlocked doors and panels are securely closed, opening of any interlocked door or panel results in immediate termination of radiation production; and subsequent reactivation of the x-ray tube is only possible at the control panel;
3. Provide each access point with two interlocks, each on a separate circuit, so that failure of one interlock will not affect the performance of the other interlock;
4. Provide visible warning signals, activated only during production of radiation at the control panel and each access point to the shielded room;
5. Make, or cause to be made, an initial evaluation of each shielded room x-ray system to determine compliance with this Article, and subsequently evaluate the x-ray system at intervals that do not exceed three months. The registrant shall maintain a record of each evaluation for two years;
6. Perform radiation surveys to determine exposure with an instrument that meets the requirements of R12-1-1108;
7. Inspect electrical interlocks and warning devices for correct operation before each use, and maintain a record of each inspection for two years;
8. Not permit an individual to operate an x-ray machine for shielded room radiography unless the individual has

received a copy of, and instruction in, the operating procedures and demonstrated competence in the safe use of the equipment;

9. Ensure that an individual does not occupy the interior of any shielded room x-ray system during production of radiation;
10. Provide personnel monitoring devices that meet the requirements of R12-1-1130 to each shielded room x-ray machine operator, and require that each operator use the devices;
11. Maintain records of:
    a. Quarterly inventories for mobile systems, as prescribed in R12-1-1110; and
    b. Utilization logs for all systems, as prescribed in R12-1-1112; and
12. Maintain records for three years from the date of the quarterly inventory or utilization log.

D. A registrant shall connect an enclosed radiography machine to the electrical system in a manner that will prevent a ground fault from generating x-radiation.

R12-1-1142. ~~Reserved~~ Baggage Inspection Systems

A. For x-ray systems designed to screen carry-on baggage at airlines, railroads, bus terminals, or similar facilities, a registrant shall station the operator at the control area in a position that permits surveillance of the ports and doors during generation of x-radiation to prevent exposure to passengers and other members of the public.

B. For an exposure or preset succession of exposures of one-half second or greater duration, a registrant shall use a system that enables the operator to terminate the exposure or preset succession of exposures at any time.

C. For an exposure or preset succession of exposures of less than one-half second duration, a registrant shall use a system that allows the operator to complete the exposure in progress, but prevent additional exposures.

D. A registrant shall operate a baggage inspection system according to the manufacturer's instructions.

E. A registrant shall not disconnect or otherwise tamper with the safety systems of a baggage inspection system, except for maintenance purposes.

F. In addition to the requirements in this Section, a registrant using a baggage inspection system shall meet the requirements in R12-1-1140(A), (B), and (D).

ARTICLE 13. LICENSE AND REGISTRATION FEES

R12-1-1302. License and Registration Categories

A. No change
1. No change
2. No change
3. No change
4. No change

B. No change
1. No change
2. No change
3. No change
4. No change
5. No change
6. No change

C. No change
1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. No change
13. No change
14. No change
15. No change
16. No change
17. No change

D. No change

1. No change
   a. No change
   b. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. No change
13. No change
14. No change
15. No change
16. No change
17. No change
18. No change
19. No change

E. No change
1. No change
2. No change
3. No change
4. No change
5. No change
6. No change

F. No change
1. No change
2. No change
3. No change
4. No change
5. A laser light show registration authorizes the operation of a laser device subject to ~~R12-1-1440~~ R12-1-1441.
6. A medical laser registration authorizes the operation of one or more laser devices subject to ~~R12-1-1439~~ R12-1-1440.
7. A Class II surgical device registration authorizes the operation of one or more Class II surgical devices subject to ~~R12-1-1417~~ R12-1-1438. A device is designated as a Class II surgical device by the USFDA and is labeled as such by the manufacturer.
8. No change
9. No change
10. No change
11. No change
12. No change

ARTICLE 14. REGISTRATION OF NONIONIZING RADIATION SOURCES AND STANDARDS FOR PROTECTION AGAINST NONIONIZING RADIATION

R12-1-1402. Definitions

A. General definitions:
1. "Controlled area" No change
   ~~"Cosmetic procedure" means a method of using medical lasers or intense pulse light (IPL) devices approved by the Federal Food and Drug Administration (FDA), for the cosmetic purpose of spider vein removal, skin rejuvenation, non-ablative skin resurfacing, skin resurfacing, port wine stain removal, epidermal pigmented skin lesion removal, or tattoo removal~~.
2. "Direct supervision" No change
3. "Indirect supervision" means: for lasers or IPL devices used for hair removal procedures, there is at a minimum, responsible supervision and control by a licensed practitioner who is easily accessible by telecommunication.
4. "Licensed practitioner" No change
5. "Medical director" No change
6. "Nonexempt nonionizing source" No change

7. "Operator" means a person who is trained in accordance with this Article and knowledgeable about the control and function of a nonionizing device regulated under this Article.
8. "Other cosmetic procedure" means a method of using medical lasers or intense pulse light (IPL) devices approved by the Federal Food and Drug Administration (FDA), for the cosmetic purpose of spider vein removal, skin rejuvenation, non-ablative skin resurfacing, skin resurfacing, port wine stain removal, epidermal pigmented skin lesion removal, or tattoo removal; and does not include hair removal.

B. Laser definitions:
1. "Accessible emission limit (AEL)" No change
2. "Accessible radiation" No change
3. "Angular subtense" No change
4. "Aperture" No change
5. "Aperture stop" No change
6. "Certified laser product" No change
7. "CDRH" No change
8. "Classes of lasers" No change
9. "Collateral radiation" No change
10. "Continuous wave[2] (cw)" No change
11. "Cosmetic procedure protocol" means a delegated written authorization to select specific laser or IPL settings, initiate a laser or IPL procedure, and conduct necessary follow-up procedures.
12. "Demonstration laser" No change
13. "Embedded laser" No change
14. "Enclosed laser" No change
15. "Federal performance standards for light-emitting products" No change
16. "Human access" No change
17. "Incident" No change
18. "Integrated radiance" No change
19. "Irradiance" No change
20. "Laser" No change
21. "Laser energy source" No change
22. "Laser facility" No change
23. "Laser product" No change
24. "Laser protective device" No change
25. "Laser radiation" No change
26. "Laser Safety Officer (LSO)" No change
27. "Laser system" No change
28. "Limited exposure duration (T_{max})" No change
29. "Maintenance" No change
30. "Maximum permissible exposure (MPE)" No change
31. "Medical laser product" No change
32. "Operation" No change
33. "Protective housing" No change
34. "Pulse duration" No change
35. "Pulse interval" No change
36. "Radiance" No change
37. "Radiant energy" No change
38. "Radiant exposure" No change
39. "Radiant power" No change
40. "Rule of nines" No change
41. "Safety interlock" No change
42. "Sampling interval" No change
43. "Secured enclosure" No change
44. "Service" No change
45. "T_{max}" No change
46. "Uncertified laser product" No change

C. Radio frequency and microwave radiation definitions:
1. "Accessible emission level" No change
2. "Far field region" No change
3. "Maximum permissible exposure (MPE)"No change
4. "Near field region" No change

5. "Radio frequency controlled area" No change
6. "Radio frequency source" No change
7. "Radio frequency radiation" No change
8. "Root-mean-square (rms)" No change
9. "Safety device" No change

D. Ultraviolet, high intensity light, and intense pulsed light source definitions:
1. "EPA" No change
2. "FDA" No change
3. "High intensity mercury vapor discharge (HID) lamp" No change
4. "Intense pulsed light device (IPL)" means, for purposes of R12-1-1438, any lamp-based device that produces an incoherent, filtered, and intense light.
5. "Maximum exposure time" No change
6. "Protective sunlamp eyewear" No change
7. "Sanitize" No change
8. "Self-extinguishing lamp" No change
9. "Sunlamp product" No change
10. "Timer" No change
11. "Ultraviolet lamp" No change
12. "Ultraviolet radiation" No change
13. "User" No change

R12-1-1421. Laser Safety

A. No change
B. No change
C. No change
1. No change
2. No change
3. No change
4. No change
5. No change

D. No change
1. No change
2. No change
3. No change
4. No change
5. No change

E. A registrant shall provide the Laser Safety Officer with training that covers the subjects listed in Appendix D.

R12-1-1438. ~~Repealed~~ Hair Removal and Other Cosmetic Procedures Using Laser and Intense Pulsed Light

A. Registration. A person who seeks to perform hair removal or other cosmetic procedures shall apply for registration of any medical laser or IPL device that is a Class II surgical device, certified as complying with the labeling standards in 21 CFR 801.109, April 1, 2003, which is incorporated by reference, published by the Office of Federal Register National Archives and Records Administration, Washington, D.C. 20408, and on file with the Agency. This incorporation by reference contains no future editions or amendments. The applicant shall provide all of the following information to the Agency with the application for registration:
1. Documentation demonstrating that the licensed practitioner is qualified in accordance with this Section;
2. Documentation endorsed by the licensed practitioner, acknowledging responsibility for the minimum level of supervision required for hair removal procedures, as defined in R12-1-1402 under "indirect supervision";
3. Procedures to ensure that the registrant has a written order from a supervising, licensed practitioner before the application of radiation;
4. If authorized under this Section, procedures to ensure that, in the absence of a supervising, licensed practitioner, the registrant has established a method for emergency medical care and assumed legal liability for the service rendered by an indirectly-supervised operator; and
5. Documentation that the indirectly-supervised operator has participated in the supervised training required by this Section.

B. Hair Removal Procedures
1. If a registrant is using a medical laser or an IPL device that is a Class II surgical device, certified in accordance with the labeling standards in subsection (A), for hair removal procedures, the registrant shall:
   a. Ensure that the device is only used by a licensed practitioner or an operator who is working under the direct supervision of a licensed practitioner, or at minimum, an operator who is working under the indirect supervision

of a licensed practitioner.
b. Ensure that a licensed practitioner purchases or orders the Class II surgical device that will be used for hair removal procedures.
2. A registrant shall:
a. Not permit an individual to use a medical laser or IPL device for hair removal procedures unless the individual:
i. Completes an approved operator didactic training program of at least 40 hours duration. To successfully complete the training program, the individual shall pass a test that consists of a least 50 multiple choice questions on subjects covered with a minimum grade of 80%. The training program shall be provided by an individual who is a certified laser safety officer or is eligible, through training and experience, to apply for laser safety officer certification;
ii. Is directly supervised for at least 24 hours on the job by a licensed practitioner; and
iii. Performs or assists in at least 10 hair removal procedures. The individual shall obtain this hands-on experience under the direct supervision of a licensed practitioner;
b. Ensure that the operator follows written procedure protocols established by a licensed practitioner; and
c. Ensure that the operator follows any written order, issued by a licensed practitioner, which describes the specific site of hair removal.
3. A registrant shall maintain a record of each hair removal procedure protocol that is approved and signed by a licensed practitioner, and ensure that each protocol is reviewed by a licensed practitioner at least annually.
4. A registrant shall:
a. Maintain each procedure protocol onsite, and ensure that the protocol contains instructions for the patient concerning follow-up monitoring; and
b. Design each protocol to promote the exercise of professional judgement by the operator commensurate with the individual's education, experience, and training. The protocol need not describe the exact steps that a qualified operator should take with respect to a hair removal procedure.
5. A registrant shall require that a licensed practitioner observe the performance of each operator during actual procedures at intervals that do not exceed six months. The registrant shall maintain a record of the observation for three years from the date of the observation.
6. A registrant shall verify that a licensed practitioner is qualified to perform hair removal procedures by obtaining evidence that the licensed practitioner has received relevant training in physics, safety, surgical techniques, pre-operative and post-operative care and can perform these procedures within the relevant scope of practice, as defined by the practitioner's licensing board.
7. A registrant shall provide radiation safety training to all personnel involved with hair removal procedures, designing each training program so that it matches an individual's involvement in hair removal procedures. The registrant shall maintain records of the training program and make them available to the Agency for three years from the date of the program, during and after the individual's period of employment.

C. Other Cosmetic Procedures
1. If a registrant is using a medical laser or an IPL device that is a Class II surgical device, certified in accordance with the labeling, standards in subsection (A), for other cosmetic procedures, the registrant shall.
a. Ensure that the device is only used by a licensed practitioner or an operator who is working under the direct supervision of a licensed practitioner; and
b. Ensure that a licensed practitioner purchases or orders the Class II surgical device that will be used for other cosmetic procedures.
2. A registrant shall not permit an individual to use a medical laser or IPL device for other cosmetic procedures unless the individual:
a. Completes an approved operator didactic training program of at least 40 hours duration. To successfully complete the training program the individual shall pass a test that consists of at least 50 multiple choice questions on subjects covered with a minimum grade of 80%. The training program shall be provided by an individual who is a certified laser safety officer or is eligible, through training and experience, to apply for laser safety officer certification;
b. Is directly supervised for at least 24 hours on the job by a licensed practitioner; and
c. Performs or assists in at least 10 cosmetic procedures governed by subsection (C), for each type of procedure (for example: spider vein removal, skin rejuvenation, non-ablative skin resurfacing). The individual shall obtain this hands-on experience under the direct supervision of a licensed practitioner.
3. A registrant shall maintain a record of each protocol for a cosmetic procedure governed by subsection (C) that is approved and signed by a licensed practitioner, and ensure that each protocol is reviewed by a licensed practitioner at least annually. The registrant shall:
a. Maintain each protocol onsite, and ensure that the protocol contains instructions for the patient concerning follow-up monitoring; and
b. Design each protocol to promote the exercise of professional judgment by the operator commensurate with the

individual's education, experience, and training. The protocol need not describe the exact steps that a qualified operator should take with respect to a cosmetic procedure governed by subsection (C).

4. A registrant shall verify that a licensed practitioner is qualified to perform laser, IPL, and related procedures, by obtaining evidence that the licensed practitioner has received relevant training in physics, safety, surgical techniques, pre-operative and post-operative care and can perform these procedures within the relevant scope of practice, as defined by the practitioner's licensing board.
5. A registrant shall provide radiation safety training to all personnel involved with cosmetic procedures governed by subsection (C), designing each training program so that it matches an individual's involvement in each procedure. The registrant shall maintain records of the training program and make them available to the Agency for three years from the date of the program, during and after the individual's period of employment.

D. Persons governed by this Section shall also comply with other applicable licensing and safety laws.

R12-1-1439. ~~Additional Requirements for Medical Laser Applications~~ Laser and IPL Operator Safety Training

~~**A.** Each Class III and Class IV medical laser product shall incorporate the means for measurement of the level of laser radiation intended for human irradiation, with an error in measurement of no greater than +/- 20%, when calibrated in accordance with the laser product manufacturer's calibration procedure.~~

~~**B.** Medical lasers used for human irradiation shall be calibrated in accordance with the manufacturer's specified calibration procedure, at intervals not to exceed those specified by the manufacturer.~~

~~**C.** The licensee shall ensure that medical lasers shall not be used for human irradiation unless all applicable requirements of this Article are met.~~

~~**D.** In institutions where a number of different practitioners may use Class IIIb and Class IV lasers, a laser safety committee shall be formed to govern laser activity, establish use criteria, and approve operating procedures.~~

~~1. Membership on the committee shall include at least a representative of the Nursing staff, the Laser Safety Officer, a representative of institution management, and a representative of each medical discipline that utilizes the lasers.~~
~~2. The committee shall review actions by the Laser Safety Officer in hazard evaluation and the monitoring and control of laser hazards.~~
~~3. Users, and those ancillary personnel who may operate or assist in the operation of the lasers under the direction of the users, shall be approved by the committee.~~

~~**E.** For Class IIIb and IV lasers, the switch which controls patient exposure shall have a guard mechanism to prevent inadvertent exposure.~~

A. A person seeking to initiate a medical laser or IPL operator training program shall submit an application to the Agency for approval that contains a description of the training program. In addition the person shall submit a syllabus and a test that consists of at least 50 multiple choice questions on subjects covered. In the program materials, the person shall address the subjects in R12-1-1421 through R12-1444, Appendix C, and Appendix D, with emphasis on personnel and public safety.

B. The Agency shall review the application and other documents required by subsection (A) in a timely manner according to R12-1-1223.

C. The Agency shall maintain a list of approved laser or IPL training programs.

Appendix C. Hair Removal and Other Cosmetic Laser or IPL Operator Training Program

1. General Considerations. An applicant shall ensure that:
   a. The training program is specific to the medical laser or IPL device in use and the clinical procedures to be performed;
   b. Program content is consistent with facility policy and procedure and applicable federal and state law; and
   c. The training program addresses hazards associated with laser or IPL device use.
2. Technical Considerations. The applicant's training program shall cover all of the following technical subjects:
   a. Laser and IPL device descriptions
   b. Definitions
   c. Laser and IPL device radiation fundamentals
   d. Laser mediums, types of lasers, and other light-emitting devices – solid, liquid, gas, and IPL devices
   e. Biological effects of laser or IPL device light
   f. Damage mechanisms
      i. Eye hazard
      ii. Skin hazard (includes information regarding skin type and skin anatomy)
      iii. Absorption and wavelength effects
      iv. Thermal effects
   g. Photo chemistry
   h. Criteria for setting the Maximum Permissible Exposure (MPE) for eye and skin associated hazards
   i. Explosive, electrical, and chemical hazards
   j. Photosensitive medications
   k. Fire, ionizing radiation, cryogenic hazards, and other hazards, as applicable

3. Medical Considerations. The applicant's training program shall cover all of the following medical subjects:
   a. Local anesthesia techniques, including ice, EMLA® cream, and other applicable topical treatments
   b. Typical laser and IPL device settings for hair removal and cosmetic procedures
   c. Expected patient response to treatment
   d. Potential adverse reactions to treatment
   e. Anatomy and physiology of skin areas to be treated
   f. Indications and contraindications for use of pigment and vascular-specific lasers for cutaneous procedures
4. General Laser or IPL device safety. The applicant's training program shall cover the following general safety subjects:
   a. Laser and IPL device classifications
   b. Control measures (includes information regarding protective equipment)
   c. Manager and operator responsibilities
   d. Medical surveillance practices
   e. Federal and state legal requirements
   f. Related safety issues
      i. Controlled access
      ii. Plume management
      iii. Equipment testing, aligning, and troubleshooting

Appendix D. Laser Operator and Laser Safety Officer Training

1. Operators and personnel that work around lasers:
   a. Fundamentals of laser operation (for example: physical principles, construction, and other basic information)
   b. Bioeffects of laser radiation on the eye and skin
   c. Significance of specular and diffuse reflections
   d. Non-beam hazards of lasers (for example: electrical, chemical, and reaction byproducts)
   e. Ionizing radiation hazards (includes information regarding x-rays from power sources and target interactions, if applicable)
   f. Laser and laser system classifications
   g. Control measures
   h. Responsibilities of managers and operators
   i. Medical surveillance practices (if applicable)
   j. CPR for personnel servicing lasers with exposed high voltages, the capability of producing potentially lethal electrical currents, or both.
2. The LSO or other individual responsible for the safety program, evaluation of hazards, and implementation of control measures, or any others, if directed by management to obtain a thorough knowledge of laser safety:
   a. The subjects covered in subsection (1)
   b. Laser terminology
   c. Laser types, wavelengths, pulse shapes, modes, power and energy
   d. Basic radiometric units and measurement devices
   e. MPE levels for eye and skin under all conditions
   f. Laser hazard evaluations, range equations, and other calculations
3. Technical Considerations
   a. Laser and IPL device descriptions
   b. Definitions
   c. Laser and IPL device radiation fundamentals
   d. Laser mediums, types of lasers, and other light-emitting devices (includes information regarding diodes and solid, liquid, gas, and IPL devices)
   e. Biological effects of laser or IPL device light
   f. Damage mechanisms
      i. Eye hazard
      ii. Skin hazard (includes information regarding skin type and skin anatomy)
      iii. Absorption and wavelength effects
      iv. Thermal effects
   g. Photo chemistry
   h. Photosensitive medications
   i. Criteria for setting the Maximum Permissible Exposure (MPE) levels for eye and skin associated hazards
   j. Explosive, electrical, and chemical hazards
   k. Fire, ionizing radiation, cryogenic hazards, and other hazards as applicable

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

[R05-60]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R12-4-101	Amend
R12-4-104	Amend
R12-4-107	Amend
R12-4-115	Amend

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

Authorizing statute: A.R.S. § 17-231 for R12-4-104 and R12-4-107; and A.R.S. § 17-234 for R12-4-101 and R12-4-115.

Implementing statute: A.R.S. §§ 17-231(A)(3) and 17-234 for R12-4-104 and R12-4-107; and A.R.S. § 17-239 for R12-4-101 and R12-4-115.

3. The effective date of the rules:

April 2, 2005

4. A list of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: 10 A.A.C. 3762, September 10, 2004
Notice of Proposed Rulemaking: 10 A.A.C. 3742, September 10, 2004
Notice of Public Information: 10 A.A.C. 4124, October 8, 2004

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

Name: Carlos Ramirez, Rulewriter

Address: Arizona Game and Fish Department
2221 W. Greenway Rd. DORR
Phoenix, AZ 85023-4399

Telephone: (602) 789-3288 ext. 206

Fax: (602) 789-3677

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

The Department is amending its Article 1 rules dealing with definitions and general provisions to resolve two separate issues.

In response to a request from the public, the Department is making amendments to allow individuals to purchase a bonus point for the fall or spring hunt permit-tag draws. The Department realized that hunters were submitting applications into the draw and receiving hunt permit-tags, but were not always able to use them. Hunters were submitting applications for tags, because, although they knew that they were unable to use the tag due to a previous commitment of their time, they did not want to stop accumulating bonus points or lose any points that they had by not applying for the draw. Under R12-4-104, an individual loses all accumulated bonus points if the individual does not apply for at least five years. In order to resolve this situation and to ensure that tags would go to those hunters who would be able to use them, the Department proposed rulemaking that would allow an individual to purchase a bonus point for the combined cost of a hunting license (if the applicant did not already have one), the application administration fee of five dollars, and the fee for the hunt permit-tag for the species for which the bonus point would apply, as prescribed in R12-4-102. For example, a licensed resident hunter could purchase a bonus point for deer for five dollars plus $17.50 for a total of $22.50. In another example, an unlicensed non-resident hunter could purchase a bighorn sheep bonus point for $113.50 (the fee for a general non-resident hunting license), plus five dollars, plus $915 (the fee for a non-resident bighorn sheep tag), for a total of $1033.50. The Department proposed to attach the hunt permit-tag fee to the fee for a bonus point so that the bonus point system would not be overwhelmed with new participants.

However, the Department has now encountered significant resistance from the public. In response to this, the Department is now making amendments to the fee clause in R12-4-107 so that an individual may purchase a bonus point for the cost of a hunting license (if the individual does not already have one) and the five dollar administrative fee.

Under this Notice, the Department is also making amendments to R12-4-101 and R12-4-115 to reduce big game animal populations in habitats where their presence and population density is above management objectives. The most

prominent example of this situation is in Game Management Unit 12A, in the North Kaibab National Forest. The region has historically been a prominent habitat for deer and other less competitive wildlife species, such as buffalo. However, populations of elk have migrated into the region and established themselves as a competitive species for resources. The Department's management objective is to maintain elk populations at a level that will not impact habitat suitability or carrying capacity for deer. Unfortunately, elk populations are so scattered that the Department does not find it feasible to authorize hunt permit-tags to take the elk, because they are too difficult to locate, and it will create a poor wildlife opportunity for the public. In order to achieve its wildlife objectives, the Department is amending its rules to authorize a supplemental hunt to take place at the same time and location as a regular hunt. In order to be eligible to participate in this supplemental hunt, an individual must possess a hunt permit-tag to hunt for the time and area of the regular hunt. The Department's intention is to allow hunters who are already present in the area to take the other wildlife species if the hunters locate them. Eligible hunters may also purchase these restricted nonpermit-tags at a reduced fee, if the Department finds it is necessary. These restricted nonpermit-tags will be available only at a Department office in order to more effectively issue the nonpermit-tags to eligible hunters. By prescribing additional methods to authorize hunters to take impacting big game, the Department is able to achieve its wildlife objectives, be more reactive to these wildlife situations when they occur statewide, and provide more wildlife opportunities for the public.

The Department is also amending R12-4-115 to delete subsection (M) to comply with the recent court ruling in *Montoya v. Shroufe*, which has determined that the provision is unconstitutional.

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

None

8. 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

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

This rulemaking will impact the Department and the public. The Department may receive more revenue in hunting license sales as the fee for bonus points decreases, and from the purchase of restricted nonpermit-tags by those hunters who choose to take advantage of the supplemental hunts. The Department will likely experience increased operation costs as labor is expended to determine who is eligible to participate in the supplemental hunts. The regulated public will receive the greatest benefit, manifested in reduced fees for bonus points, reduced fees for supplemental hunt nonpermit-tags (if the Department feels doing so is necessary), and increased wildlife resource opportunities. The rulemaking will not affect political subdivisions, businesses or their revenues, public or private employment, or the state general fund. The Department has determined, though, that the benefits of the rulemaking outweigh whatever costs are associated with it.

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

Minor grammatical and formatting changes requested by G.R.R.C. staff.

11. A summary of the comments made regarding the rule and the agency response to them:

Written Comment: I fully support the reduction of the fee to purchase a bonus point.

Agency Response: The Department agrees.

Written Comment: I do not support amending the fee for a bonus point unless the Department raises the non-resident hunt permit-tag and license fees.

Agency Response: The objective of this rulemaking is not to limit opportunities for non-residents to participate in the bonus point system, but to comply with resident customer requests to amend the rule as proposed. In addition, the Department is unable to raise non-resident fees for tags or stamps as it has already amended the relevant rules to raise those fees to the statutory maximum.

Written Comment: I think allowing individuals to purchase bonus points gives an unfair advantage to those affluent individuals who have the income to purchase bonus points.

Agency Response: The Department holds that by reducing the fee to purchase a bonus point it is making the bonus point system more accessible to everyone.

Written Comment: How can a person with a pioneer license purchase a bonus point?

Agency Response: This rulemaking will not exclude any hunting license holder from purchasing a bonus point, including those who hold a pioneer license, which carries the same privileges as a Class F hunting license.

Written Comment: I am concerned that this rulemaking will not benefit resident hunters of this state.

Agency Response: The Department is proposing this rulemaking at the behest of resident hunters. The Department is pursuing other rulemaking to maintain resident hunting opportunities.

Written Comment: I support this rulemaking and would like to see it implemented immediately.

Agency Response: The Department cannot implement this rulemaking immediately as it does not meet the criteria for immediate effectiveness under Title 41.

Written Comment: I do not understand this rulemaking.

Agency Response: Please see item 6.

Written Comment: I do not support the purchase of bonus points, because it goes against the original intent of the bonus point system, which was to establish a means for rewarding those individuals who have applied for tags year after year.

Agency Response: The Department holds that this is consistent with the original intent of the bonus point system, because it allows those individuals who support the Department to obtain bonus points without affecting the draw. Routinely, people have applied for low draw odds hunts with the intent of obtaining bonus points, but have randomly drawn tags that they are not able to use, resulting in the tags going to waste.

Written Comment: I support the rulemaking, because it will facilitate the maintenance of an outside species and bring it within wildlife management objectives.

Agency Response: The Department agrees.

Written Comment: The only reason to do this is because you made an error when implementing this. The purchase of bonus points should never have been allowed.

Agency Response: The Department disagrees. The Department is amending the rules as stated in response to resistance from its regulated community to take advantage of the opportunity to purchase bonus points. The Department also holds that allowing the purchase of bonus points will allow individuals who may otherwise not be able to use a hunt permit-tag to retain their bonus points and not miss the chance to continue to accrue them.

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. Any materials incorporated by reference and its location in the rules:

Not applicable

14. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

Sections

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

R12-4-101. Definitions

A. In addition to the definitions provided in A.R.S. § 17-101, R12-4-401, and R12-4-501, the following definitions apply to this Chapter, unless the context otherwise requires:

1. "Artificial lures and flies" means man-made devices intended as visual attractants for fish and does not include living or dead organisms or edible parts of those organisms, natural or prepared food stuffs, artificial salmon eggs, artificial corn, or artificial marshmallows.
2. "Bonus point" means a credit that authorizes the Department to issue an applicant an additional computer-generated random number.
3. "Commission order" means a document adopted by the Commission that does any or all of the following: open, close, or alter seasons and open areas for taking wildlife; specify wildlife that may or may not be taken; set bag or possession limits for wildlife; or set the number of permits available for limited hunts.
4. "Crayfish net" means a net not exceeding 24 inches on a side or in diameter that is retrieved by means of a hand-held

line.

5. "Hunt area" means a game management unit, portion of unit, or group of units opened to hunting by a particular hunt number.
6. "Hunt number" means the number assigned by Commission order to any hunt area where a limited number of hunt permits is available.
7. "Hunt permits" means the number of hunt permit-tags made available to the public as a result of a Commission order.
8. "Hunt permit-tag" means a tag for a hunt for which a Commission order has assigned a hunt number.
9. "Identification number" means a number assigned to each applicant or licensee by the Department, as described in R12-4-111.
10. "License dealer" means a business authorized to sell hunting, fishing, and other licenses pursuant to R12-4-105.
11. "Live baitfish" means any species of live freshwater fish designated by Commission order as lawful for use in taking aquatic wildlife pursuant to R12-4-313.
12. "Management unit" means an area established by the Commission for management purposes.
13. "Minnow trap" means a trap with dimensions not exceeding 12 inches in depth, 12 inches in width and 24 inches in length.
14. "Muzzle-loading handgun" means a firearm intended to be fired from the hand, incapable of firing fixed ammunition, having a single barrel and single chamber, and loaded through the muzzle with black powder or synthetic black powder and a single projectile.
15. "Muzzle-loading rifle" means a firearm intended to be fired from the shoulder, incapable of firing fixed ammunition, having a single barrel and single chamber, and loaded through the muzzle with black powder or synthetic black powder and a single projectile.
16. "Nonpermit-tag" means a tag for a hunt for which a Commission order has not assigned a hunt number and the number of tags is not limited.
17. "Restricted nonpermit-tag" means a tag issued ~~to a hunter pool applicant~~ for a supplemental hunt under R12-4-115.
18. "Simultaneous fishing" means the taking of fish by two lines and not more than two hooks or two artificial lures or flies per line.
19. "Sink box" means a low floating device having a depression affording the hunter a means of concealment beneath the surface of the water.
20. "Tag" means the authorization that an individual is required to obtain from the Department under A.R.S. Title 17 and 12 A.A.C. 4 before taking certain wildlife.
21. "Waterdog" means the larval or metamorphosing stage of salamanders.
22. "Wildlife area" means an area established pursuant to 12 A.A.C. 4, Article 8.

B. If the following terms are used in a Commission order, the following definitions apply:

1. "Antlered" means having an antler fully erupted through the skin and capable of being shed.
2. "Bearded turkey" means a turkey with a beard that extends beyond the contour feathers of the breast.
3. "Buck antelope" means a male pronghorn antelope with a horn longer than its ear.
4. "Bull elk" means an antlered elk.
5. "Ram" means any male bighorn sheep, excluding male lambs.

R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Drawing

A. For the purposes of this Section, "group" means all applications contained in a single envelope or submitted electronically over the internet as part of the same application. No more than four individuals may apply as a group except that no more than two individuals may apply as a group for bighorn sheep. Nonresidents, see subsection R12-4-114(D).

B. An applicant applying for a hunt permit-tag or a bonus point shall apply using a Hunt Permit-tag Application Form, available at Department offices, the Department's internet web site, and license dealers. An applicant using the Hunt Permit-tag Application Form to apply for a hunt permit-tag or a bonus point shall also apply at times and locations established by the hunt permit-tag application schedule that is published annually by the Department and available at Department offices, the Department's internet web site, and license dealers.

C. An applicant shall sign the Hunt Permit-tag Application Form, or provide permission to another person to sign the application form for them. If applying electronically over the internet, an applicant shall attest to, or provide permission to another person to attest to, the information electronically provided.

D. Each applicant shall provide the following information on the Hunt Permit-tag Application Form:

1. Name, address, residency status, and date of birth;
2. The applicant's social security number, as required under A.R.S. §§ 25-320~~(K)~~ (N) and 25-502(K), and the applicant's Department identification number, if different from the social security number on the Hunt Permit-tag Application Form;
3. If licensed to take wildlife in this state, the number of the applicant's license for the year that corresponds with the applicable hunt number;
4. If not licensed for the year that corresponds with the applicable hunt number, complete the License Application portion of the Hunt Permit-tag Application Form, providing the applicant's name, Department identification number,

address, class of license for which application is made, residency status, length of Arizona residency (if applicable), date of birth, sex, weight, height, and color of hair and eyes; and

5. Each applicant under the age of 14 applying for a hunt other than big game and not required to have a license under A.R.S. § 17-335(B) shall indicate "juvenile" in the space provided for the license number on the Hunt Permit-tag Application Form.

E. Each applicant shall enclose as part of the hunt permit-tag application, fees as set in R12-4-102 for the following:

1. The fee for the applicable hunt permit-tag, unless the application is submitted electronically over the internet or telephone;
2. A permit application fee; and
3. If a license is requested, a fee for the license.

F. Each applicant shall enclose payment as part of the hunt permit-tag application, made payable, in U.S. currency, to the Arizona Game and Fish Department by certified check, cashier's check, money order, or personal check. If applying electronically over the internet or telephone, an applicant shall include as a part of the hunt permit-tag application, payment by valid credit card.

G. Each applicant shall apply for a specific hunt or a bonus point by the current hunt number. If all hunts selected by the applicant are filled at the time the application is processed in the drawing, the Department shall deem the application unsuccessful, unless the application is for a bonus point.

H. Each applicant shall make all hunt choices for the same genus within one application.

I. An applicant shall not include applications for different genera of wildlife in the same envelope.

J. All members of a group shall apply for the same hunt numbers and in the same order of preference. The Department shall not issue a hunt permit-tag to any group member unless sufficient hunt permit-tags are available for all group members.

K. Each applicant shall submit only one valid application per genus of wildlife for any calendar year, except:

1. If the bag limit is one per calendar year, an unsuccessful applicant may re-apply for remaining hunt permit-tags in unfilled hunt areas, as specified in the hunt permit-tag application schedule published annually by the Department.
2. For genera that have multiple hunts within a single calendar year, hunters that successfully draw a hunt permit-tag during an earlier season may apply for a later season for the same genus if they have not taken the bag limit for that genus during a preceding hunt in the same calendar year.
3. If the bag limit is more than one per calendar year, any person may apply as specified in the hunt permit-tag application schedule published annually by the Department for remaining hunt permit-tags in unfilled hunt areas.

L. A person shall not apply for a bighorn sheep or buffalo hunt permit-tag when that person has taken the bag limit for that species.

M. To participate in the bonus point system, an applicant shall comply with R12-4-107.

N. Any Hunt Permit-tag Application Form not prepared or submitted in accordance with this Section, or not prepared in a legible manner, is not valid and shall be rejected and all fees refunded. If the Department rejects an application from any member of a group, the Department shall reject all applications from the group.

O. Any hunt permit-tag issued for an application that is subsequently found not to be in accordance with this Section is invalid.

P. The Department shall mail hunt permit-tags to successful applicants. The Department shall return to an applicant designated "A" on the Hunt Permit-tag Application Form overpayments and hunt permit-tag and license fees received with an unsuccessful application. Permit application fees received with valid applications shall not be refunded. ~~Hunt permit-tag fees and license~~ License fees submitted with an application for a bonus point shall not be refunded.

Q. If the Director determines that Department error resulted in the rejection of an application, the Director may authorize additional hunt permit-tags or the awarding of a bonus point in order to correct the error, provided the issuance of additional permits will have no significant impact on the wildlife population to be hunted and the application for a hunt permit-tag would have otherwise been successful based on its random number. An applicant who is denied a hunt permit-tag or a bonus point under this procedure may appeal to the Commission as provided under A.R.S. Title 41, Chapter 6, Article 10.

R12-4-107. Bonus Point System

A. For the purpose of this Section, "bonus point hunt number" means the hunt number assigned by the Commission in a Commission Order for use by an applicant applying only for a bonus point for a genus identified in this Section.

B. The bonus point system grants each ~~person~~ individual one entry in each drawing for ~~elk, buffalo, bighorn sheep, antelope, or deer~~ antelope, bighorn sheep, buffalo, deer, or elk for each bonus point which that ~~person~~ individual has accumulated under this Section. Each bonus point entry is in addition to the entry normally granted by R12-4-104. When processing "group" applications, as defined in R12-4-104, the Department shall use the average number of bonus points accumulated by the ~~persons~~ individuals in the group, rounded to the nearest whole number. If the average is .5, the total will be rounded up to the next highest number.

C. The Department shall award one bonus point to each applicant who submits a valid Hunt Permit-tag Application Form if all of the following apply:

1. The application is unsuccessful in the drawing, or the application is for a bonus point only;

2. The application is not for hunt permit-tags left over after the drawing which are available on a first-come, first-served basis as prescribed in R12-4-114; and
3. The applicant, before the drawing, has purchased a hunting license valid for the year that corresponds with the applicable hunt number. The applicant shall either provide the hunting license number on the application or submit an application and fees for the license with the Hunt Permit-tag Application Form, indicating that the applicant is to be issued the license even if not drawn for a hunt permit-tag.

D. Each applicant who purchases ~~for~~ a bonus point only shall:
1. Submit a valid Hunt Permit-tag Application Form, as prescribed in R12-4-104, with the Commission-assigned bonus point hunt number for the particular genus as the first choice hunt number on the application. Placing the bonus point only hunt number as a choice other than the first choice or including any other hunt number on the application invalidates the application;
2. Include with the application, payment for ~~the applicable hunt permit-tag fee for the particular genus,~~ the permit application fee~~,~~ and ~~if a license is requested,~~ a fee for ~~the~~ a hunting license if the applicant does not already possess a license valid for the year for which the draw is conducted; and
3. Submit only one Hunt Permit-tag Application Form for the same genus for each season that bonus points are issued for that season.

E. Each bonus point accumulated is valid only for the genus designated on the Hunt Permit-tag Application Form.

F. Except for permanent bonus points awarded for hunter education, all of ~~a person's~~ an individual's accumulated bonus points for a genus are forfeited if:
1. The ~~person~~ individual is issued a hunt permit-tag for that genus in a computer drawing; or
2. The ~~person~~ individual fails to submit a Hunt Permit-tag Application Form for that genus for five consecutive years.

G. An applicant issued a first-come hunt permit-tag under R12-4-114(C)(2)(d) after the computer drawing does not lose bonus points for that tag, and a valid but unsuccessful applicant for a first-come hunt permit-tag remaining after the computer drawing does not gain a bonus point.

H. The Department shall award one permanent bonus point for each genus upon ~~a person's~~ an individual's first graduation from the Department's Arizona Hunter Education Course or for serving as a Department hunter education instructor.
1. The Department shall credit ~~a person~~ an individual who graduated after January 1, 1980, but before January 1, 1991, or ~~a person~~ an individual certified by the Department as an active hunter education instructor after January 1, 1980, with one permanent bonus point for each genus if the ~~person~~ individual provides the following information on a form available from the Department: Department identification number; name; address; residency status and length of Arizona residency, if applicable; date of birth; sex; weight; height; color of hair and eyes; and, for ~~a person~~ an individual other than an instructor, the month and year of graduation from the Department's Arizona Hunter Education Course.
2. An instructor or ~~a person~~ an individual who has graduated shall submit the required form 30 days before a drawing's application date deadline, specified in the hunt permit-tag application schedule, in order for the bonus point to be counted by the Department in that drawing.

I. The Department shall make an applicant's total number of accumulated bonus points available on the Department's web site or IVR telephone system. If the applicant disagrees with the total, the applicant shall provide previous notices or proof of compliance with this Section to prove Department error. In the event of an error, the Department shall correct the applicant's record.

J. The Department shall record bonus points under an applicant's Department identification number and the genus on the application. The Department shall not transfer bonus points between persons or genera.

K. The Department shall reinstate any bonus points forfeited for a successful hunt permit-tag application for military personnel, military reserve personnel, national guard personnel, or public agency employees who are unable to use a hunt permit-tag due to mobilization, activation, or required duty in response to a declared national or state emergency, or required duty in response to an action by the President, Congress, or a governor of the United States or its territories. Under A.R.S. § 17-332(E), no refunds for a license or hunt permit-tag will be issued to an applicant who applies for reinstatement of bonus points under this Section. To request that forfeited bonus points be reinstated under these circumstances, an applicant shall submit the following to the Arizona Game and Fish Department, Draw Section, ~~2222~~ 2221 W. Greenway Rd., Phoenix, AZ 85023:
1. A letter from the applicant requesting reinstatement of bonus points;
2. The hunt number for which the tag is valid;
3. Evidence of mobilization or duty status, such as a letter from the public agency or official orders;
4. An official declaration of a state of emergency from the public agency or authority making the declaration of emergency, if applicable;
5. The valid, unused tag, which must be received before the beginning date of the hunt for which the tag is valid, or evidence of mobilization or activation that precluded the applicant from submitting the tag before the beginning date of the hunt.

R12-4-115. Supplemental Hunts and Hunter Pool

A. For the purposes of this Section, the following definitions apply:

1. "Management objectives" means goals, recommendations, or guidelines contained in Commission-approved wildlife management plans, which include hunt guidelines, operational plans, or hunt recommendations;
2. "Hunter pool" means a file of applications for supplemental hunts; and
3. "Supplemental hunt" means a season established by the Commission for the following purposes:
   a. Take of depredating wildlife under A.R.S. § 17-239;
   b. Take of wildlife under an Emergency Season if the Commission adopts, amends, or repeals a Commission order for reasons constituting an immediate threat to the health, safety, or management of wildlife or its habitat or to public health or safety; or
   c. Take of wildlife under a population management hunt if the Commission has prescribed restricted nonpermit-tags by Commission order for the purpose of meeting management objectives because regular seasons are not, have not been, or will not be sufficient or effective to achieve management objectives.

B. For the purposes of authorizing a population management hunt, the Commission through Commission order shall open a season or seasons and prescribe a maximum number of restricted nonpermit-tags that the Director may issue under this Section.

C. The Director shall implement a population management hunt under the open season or seasons prescribed in subsection (B) if the Director finds that:
1. Regular seasons have not met or will not meet management objectives;
2. Take of wildlife is necessary to meet management objectives; and
3. Issuance of a specific number of restricted nonpermit-tags is likely to meet management objectives.

D. To implement a population management hunt under subsection (B), the Director shall do the following:
1. Select season dates, within the range of dates prescribed by the Commission through Commission order;
2. Select specific hunt areas, within the range of hunt areas prescribed by the Commission through Commission order;
3. Select the legal animal that may be taken from the list of legal animals prescribed by the Commission through Commission order;
4. Determine the number of restricted nonpermit-tags that will be issued from the maximum number of tags prescribed by the Commission through Commission order; and
5. Reduce restricted nonpermit-tag fees up to 75% for population management hunts if the normal fee structure will not generate adequate participation, either from applicants in the hunter pool, or from hunt permit-tag holders under subsection (G).

E. The Director shall not issue more restricted nonpermit-tags than the maximum number prescribed by the Commission through Commission order.

F. To participate in a supplemental hunt, a person shall obtain a restricted non-permit tag as prescribed by this Section. A restricted non-permit tag is valid only for the supplemental hunt for which it is issued.

G. If the season dates and open areas of the supplemental hunt prescribed by the Commission through Commission Order exactly match the season dates and open areas of another big game animal for which a hunt number is assigned and hunt permit-tags are issued through the draw, the Department shall make the restricted nonpermit-tags available only to the holders of the hunt permit-tags, and not the hunter pool.

H. To obtain a restricted nonpermit-tag under subsection (G), an applicant shall provide to a Department office the applicant's name, address, Department identification number, and hunt permit-tag number on a form prescribed by the Department.
   a. An applicant shall provide verification that he or she legally obtained a hunt permit-tag for the hunt described under subsection (G) by presenting the hunt permit-tag to a Department office for verification.
   b. An applicant shall not apply for or obtain a restricted nonpermit-tag to take wildlife in excess of the bag limit prescribed by the Commission.

I. The Department or its authorized agent shall maintain a hunter pool for supplemental hunts and shall randomly select applicants from the current hunter pool file for participation in a supplemental hunt, provided that the season dates and open areas of the supplemental hunt do not exactly match the season dates and open areas of another big game animal for which a hunt number is assigned and hunt permit-tags are issued through the draw.

J. When issuing restricted nonpermit-tags from the hunter pool, the Department or its authorized agent shall randomly select applicants from the current hunter pool file. The Department or its authorized agent shall attempt to contact each randomly-selected applicant by telephone at least three times during a 24-hour period. If an applicant cannot be contacted or cannot participate in the hunt, the Department or its authorized agent shall return the application to the hunter pool and draw another application. The Department or its authorized agent shall draw no more applications after the number of restricted nonpermit-tags prescribed in subsection (D)(4) or remaining under subsection (F) have been issued.

K. The Department shall purge and renew the hunter pool annually.

~~**G.** The Department or its authorized agent shall maintain a hunter pool for supplemental hunts. The hunter pool shall be purged and renewed annually. If the Commission establishes a supplemental hunt, and the number of hunters in the supplemental hunt must be limited, the Department or its authorized agent shall randomly select applicants from the current hunter pool file. The Department or its authorized agent shall attempt to contact each randomly-selected applicant by tele-~~

~~phone at least three times during a 24-hour period. If an applicant cannot be contacted or cannot participate in the hunt, the Department or its authorized agent shall return the application to the hunter pool and draw another application. The Department or its authorized agent shall draw no more applications after the number of restricted nonpermit tags prescribed in subsection (D)(4) have been issued.~~

~~H~~**L.** An applicant for a supplemental hunt shall submit the permit application fee prescribed in R12-4-102 along with the following information on a form available from the Department or its authorized agent:

1. Name, address, whether a resident or nonresident, and date of birth;
2. Daytime and evening telephone numbers; and
3. The species that the applicant would like to hunt if drawn.

~~I~~**M.** Neither a current hunting license number nor a fee or application for a hunting license is required with the supplemental hunt application form. The Department shall not accept group applications, as described in R12-4-104, for supplemental hunts.

~~J~~**N.** A hunter pool applicant who is drawn and who wishes to participate in a supplemental hunt shall submit the following to the Department to obtain a restricted nonpermit-tag:

1. The fee for the tag as prescribed by R12-4-102, or as prescribed by subsection (D)(5) if the fee has been reduced, and
2. The number of the applicant's hunting license, valid for the year of the supplemental hunt.

~~K~~**O.** The Department reserves a restricted nonpermit-tag for an applicant only for the period of time specified by the Department when contact is made with the applicant. A restricted nonpermit-tag not purchased within the specified period of time shall be issued to another applicant drawn from the current hunter pool as prescribed by this Section. The Department or its authorized agent shall remove from the current hunter pool the application of any successful applicant who does not purchase a tag after being contacted and agreeing to purchase the tag.

~~L~~**P.** The provisions of R12-4-104, R12-4-107, R12-4-114, and R12-4-609 do not apply to supplemental hunts. A supplemental hunt application submitted in accordance with this Section does not invalidate any application for a hunt permit-tag. The issuance of a restricted nonpermit-tag does not authorize an individual to exceed the bag limit established by the Commission for that calendar year.

~~M. The Department shall ensure that no more than 10% of the total available restricted nonpermit-tags issued for population management hunts are issued to nonresidents for the following hunts, except that if population management hunts have 10 or fewer available restricted nonpermit-tags, no more than one restricted nonpermit-tag shall be issued to a nonresident:~~

~~1. All hunts for bull elk, and~~
~~2. All hunts for antlered deer north of the Colorado River.~~

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY ENVIRONMENTAL REVIEWS AND CERTIFICATION

[R05-62]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

Article 1	Amend
R18-5-101	Amend
R18-5-104	Amend
R18-5-107	Amend
R18-5-109	Amend
R18-5-115	Amend

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

Authorizing statutes: A.R.S. §§. 49-104, 49-202, 49-203, 49-351, 49-352, 49-353 and 49-361

Implementing statutes: A.R.S. §§ 49-352, 49-361

3. The effective date of the rules:

April 2, 2005

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

Notice of Rulemaking Docket Opening: 10 A.A.R. 1319, April 2, 2004
Notice of Proposed Rulemaking: 10 A.A.R. 3257, August 20, 2004
Notice of Proposed Rulemaking (reprint): 10 A.A.R. 3367, August 27, 2004

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

Name:	Jon Fiegen
Address:	Arizona Department of Environmental Quality 1110 W. Washington St. (MC 5415B-2) Phoenix, AZ 85007
Telephone:	(602) 771-4596 or toll-free number in Arizona: (800) 234-5677
Fax:	(602) 771-4634
E-mail:	fiegen.jon@azdeq.gov

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

A. Background for Proposed Rules

The primary rationale for this rulemaking is to improve the operator certification program administered by the Arizona Department of Environmental Quality (ADEQ), which certifies operators of drinking water and wastewater facilities. The requirements relating to the certification of public water system operators come primarily from the federal Safe Drinking Water Act (SDWA), which seeks to ensure that drinking water supplied to consumers by public water systems is safe to drink, that consumers are confident that their water is safe to drink and that certified operators operate public water systems. The Environmental Protection Agency (EPA) promulgated final guidelines for the certification and recertification of water system operators in February 1999 (64 FR 5916 through 5921, February 5, 1999).

The amendments remove repetitive language, clarify requirements and add a five-year retention schedule for professional development hours for operators. One amendment makes a clarification in the classification of water treatment facilities. The amendments also make changes to ADEQ's enforcement authority. One amendment allows ADEQ to place an operator on either suspension or probation for violations. Prior to this amendment, A.A.C. R18-5-109 authorized ADEQ to revoke the certificate of an operator for one year for violations of A.A.C. R18-5-109. Since the creation of ADEQ in 1987 until September 2004, ADEQ had not revoked an operator certificate. The rule did not authorize any other corrective action for an operator. ADEQ has had no discretion to revoke a certificate for less than one year, even if, for example, ADEQ and the operator were to agree that a six-month revocation was a more appropriate sanction for the violations committed. For these reasons, ADEQ is amending this rule to authorize ADEQ to impose corrective actions that can respond more appropriately to a range of compliance and enforcement matters.

The statutory authority for this rulemaking comes from ADEQ's general rulemaking authority (A.R.S. §§ 49-104, 49-203), ADEQ's designation of responsibility for the federal Clean Water Act and Safe Drinking Water Act (A.R.S. § 49-202), ADEQ's authorization over potable water in public water systems (A.R.S. §§ 49-351, 49-353) and ADEQ's responsibility to certify operating personnel for water and wastewater facilities pursuant to A.R.S. §§ 49-352 and 49-361. There is also a federal incentive created by 42 U.S.C. 300j-12(a)(1)(ii), which states that the Environmental Protection Agency must withhold 20 percent of each state's capitalization grant unless that state has met the requirements of 42 U.S.C. 300g-8, relating to operator certification. The Department's primary purpose is to increase public health and safety by strengthening the operator certification program.

B. Section-by-Section Explanation of the Rules

R18-5-101 sets forth definitions for this Article.

R18-5-104 sets forth general requirements for the operation of water and wastewater facilities and specific requirements for the owners and operators of water and wastewater facilities.

R18-5-107 sets forth the requirements for certificate renewal for operators of water and wastewater facilities.

R18-5-109 sets forth the enforcement mechanisms the Department may employ with operators of water and wastewater facilities.

R18-5-115 sets forth the criteria for classifying the grades of water treatment and water distribution facilities.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not 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:

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:

The amendments do not diminish a previous grant of authority of a political subdivision of this state.

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

A. Identification of Rule

Title 18, Chapter 5, Article 1, "Classification of Treatment Plants and Certification of Operators."

B. Background and Summary

Arizona has a Safe Drinking Water program approved by the EPA that governs drinking water, public water systems and operators of public water systems. ADEQ also regulates wastewater facilities and wastewater facility operators. Under the current rule, ADEQ may only revoke the certificate of an operator for noncompliance**.** Possessing only operator certificate revocation authority creates a program with a "one-size-fits-all" enforcement mechanism. The expanded enforcement mechanism will provide ADEQ with greater flexibility and an increased ability to take corrective actions with water and wastewater facility operators that are appropriate to the violations committed.

The addition of probation and suspension can provide better protection of the public health and the environment. This is vital to Arizona's program because the primary purpose of the Safe Drinking Water Act is to ensure that drinking water supplied to consumers by public water systems is safe to drink. ADEQ must also have this same enforcement authority for wastewater facility operators for the protection of public health and the environment. Additionally, EPA calls upon states with an approved drinking water program to have the ability to suspend a public water system operator's certificate for noncompliance, or take other appropriate enforcement measures. Since EPA calls upon states with an approved drinking water program to have this ability, the adoption of suspension and probation as additional enforcement measures will assist ADEQ in maintaining its approval from EPA to implement the Safe Drinking Water Act in Arizona. The adoption of suspension and probation as additional enforcement measures to address noncompliance by operators of wastewater facilities will also assist ADEQ in protecting the public health, safety and the environment.

This rulemaking makes changes to five of the sixteen sections in Article 1. ADEQ believes that the results of these changes will represent cost-saving benefits in terms of improved protection to public health and safety. For example, the marginal costs to owners of water and wastewater facilities from replacing the services of an operator placed on suspension are expected to be less than the potential value of marginal benefits to consumers and general public. In other words, what it might cost facility owners to replace an operator placed on suspension is expected to be less than the additional public health and safety benefits expected to be obtained from such an action.

Although potential costs and benefits are described in part "D" below, ADEQ anticipates the incremental cost to implement this rule probably will be minimal.

C. Entities Directly Impacted

Entities that could be directly affected, bear costs, or directly benefit from this rule include: owners of water facilities and wastewater facilities, operators, ADEQ, and the public. Water and wastewater facilities include private and public owners. The federal government, state agencies, various political subdivisions of the state and private entities own and operate these facilities and could be impacted by this rulemaking. The public includes consumers and citizens at large. According to ADEQ's database, there are approximately 1,650 water facilities, 966 wastewater facilities and 5,798 certified operators.

ADEQ does not anticipate an impact to other state agencies or to the state General Fund.

D. Potential Costs and Benefits

Owners of Facilities. The potential for increased operating costs for owners of water facilities and wastewater facilities may arise for facilities that would find it necessary to replace the services of an operator who has been suspended. A facility faced with the necessity of finding replacement services for a suspended operator may encounter increased transaction costs to find a replacement operator. In addition, the cost for a certified operator may or may not be equivalent to prior service costs. Smaller facilities located in rural or remote areas generally employ a single operator. Unlike a larger facility with several operators, these facilities must always replace an operator placed on suspension. A smaller system in a rural or remote area may face greater difficulties in finding a replacement operator, depending upon the supply of qualified operators available to assume operation. However, if transaction costs are minimal and replacement service costs are relatively equivalent to prior costs, the impact should be "minimal." In cases where transaction costs become more expensive and/or replacement service costs exceed what the facilities were previously paying, the relative impact may be greater.

Even though the potential does exist for higher costs, ADEQ anticipates that significantly higher costs would be the exception rather than the anticipated scenario. Furthermore, relatively larger facilities may not experience any impact in the event of an operator suspension because of multiple operators already employed at those facilities. Finally, the threat of suspension or probation may actually work as an incentive for existing and new operators to perform their job tasks and to operate the facilities in compliance with the law.

Certified operators. Certified operators are individuals who hold a current certificate issued by ADEQ. Earning professional development hours (PDHs) for certificate renewals is an existing requirement. Although the rule currently requires an operator to provide PDH records to ADEQ upon request, the requirement to maintain the documentation for at least five years is a new requirement under these rules. ADEQ views the impact of this new requirement to be minimal.

ADEQ has the pre-existing authority to revoke an operator's certificate for one year for violations of A.A.C. R18-5-109. The amendment to R18-5-109 authorizes ADEQ to suspend an operator's certificate or place an operator on probation for violations of R18-5-109. Suspension means the operator cannot perform the functions and responsibilities of an operator during the suspension. Probation means the operator can continue to work as an operator, while complying with the terms of probation which may include, for example, a requirement to take additional professional development hours to improve skills.

While suspension means an operator cannot perform the functions and responsibilities of an operator during the suspension, an operator under suspension may or may not lose employment status or income. A larger facility which employs more than one operator may re-assign the operator under suspension to other duties during the suspension. Such an operator may experience little or no loss of income. An operator serving as the sole operator for one or more facilities could not continue to work as an operator during the probation, incurring a total loss of income as an operator. This potential adverse impact is no different from the pre-existing adverse impact from certificate revocation, except that revocation is for one year while suspension would be for a lesser period of time.

According to the U. S. Department of Labor, Bureau of Labor Statistics, the median annual earnings of water and wastewater facility operators were $33,390 in 2002. The earnings of operators in the 10th percentile were less than $20,220, while the earnings of operators in the 90th percentile were more than $52,110. Thus, an operator earning the median income under suspension for six months would lose $16,695 in operator income. Operators under suspension for six months whose earnings were $20,220 and $52,110 would lose $10,110 and $26,055, respectively, in operator income. Therefore, losses in earning power could range from $10,110 to $26,055 during a six-month period.

Unlike suspension, an operator placed on probation can continue to operate a facility while complying with the terms of the probation. Probation may include the completion of additional professional development hours, increased reporting of operator activity, limitations on activity the operator may perform or other terms which address deficiencies in operator performance. The cost of completing additional professional development hours may be borne by the operator or the facility. ADEQ provides regular operator training free of charge which may alleviate additional charges to an operator under probation who is required to obtain additional education.

While the authority to place an operator on suspension or probation represents a potential increased risk to these operators, the outcome, including improved operator performance, may be viewed as a positive and beneficial one. Nevertheless, as with any party subject to an enforcement action, the potential does exist for an operator whose certificate has been suspended or who has been placed on probation to be negatively impacted by lost or reduced income or other costs associated with an enforcement action.

ADEQ. In addition to the minimal rule development costs incidental to the rulemaking process, ADEQ does not anticipate the need for additional employees, equipment, or other explicit and implicit costs to accrue as a result of implementing this rulemaking. Even though the ability to suspend an operator's certificate or place an operator on probation would fall under a category of increased enforcement costs, ADEQ does not anticipate a significant increase in enforcement costs.

ADEQ expects that the implementation of these rule changes will strengthen the program that certifies and regulates the operators of water and wastewater facilities. Drinking water that is safe to drink is of critical importance to everyone. The proper operation of public water systems that deliver water to consumers is a vital step in maintaining safe drinking water. Similarly, it is important to public health and safety and the environment that wastewater is adequately treated through the proper operation of wastewater facilities. The adoption of suspension and probation as additional enforcement mechanisms for wastewater and water facility operators will improve ADEQ's oversight over these programs and will assist ADEQ in maintaining its approval from EPA to implement the Safe Drinking Water Act in the state.

Consumers and general public. Initially, this rulemaking is not expected to generate costs to consumers or to the general public. However, the potential does exist for owners/operators to pass on increased compliance costs to consumers, where possible. Minimum increases in costs may be viewed as a cost of doing business without passing these costs to consumers. Facility owners and operators are constrained by a variety of economic considerations, including the price elasticity of demand and supply. ADEQ believes probable benefits to outweigh probable costs because of the potential for increased public protection. In some cases, the potential exists for cost-avoidance benefits to facilities due to improving the operation of systems and mitigating the potential for facilities being out of compliance. Thus, this rulemaking can be viewed as a direct link to improving the well-being of consumers and the general public.

E. Rule Impact Reduction on Small Businesses

State law requires agencies to reduce the impact of a rule on small businesses by using certain methods when they are legal and feasible in meeting the statutory objectives of the rulemaking. ADEQ considered each of the methods prescribed in A.R.S. §§ 41-1035 and 41-1055(B)(5)(c) for reducing the impact on small businesses. Methods that may be used include the following: (1) Exempt them from any or all rule requirements, (2) Establish performance standards which would replace any design or operational standards, or (3) Institute reduced compliance or reporting requirements. An agency may accomplish the third method by establishing less stringent requirements, consolidating or simplifying them, or setting less stringent schedules or deadlines.

After assessing the various methods for reducing the impact on small businesses, ADEQ has been unable to implement any of the suggested methods. Owners and operators of these facilities must meet the requirements of these rules to maintain an adequate and appropriate Safe Drinking Water program and wastewater program in Arizona.

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

Below is a list of certain changes made between publication of the notice of proposed rulemaking and this notice of final rulemaking, as well as the reasons for the changes:

Change: R18-5-115(A) Clarifying amendment

Reason: Clarify the provision that water distribution facilities that do not treat water or that treat water in the distribution system with chlorine gas or hypochlorite only to maintain disinfection levels in the distribution system are not to be graded as water treatment facilities.

Change: Add footnote and asterisk to R18-5-115 (B)(1) chart

Reason: The footnote clarifies that the presence of a fire protection system and a testable backflow prevention assembly at a facility earns a total of five points for the system, not ten points.

Other technical and grammatical changes were made at the suggestion of G.R.R.C. staff.

11. A summary of comments and agency responses:

ADEQ received one written comment letter. Because no one came to the public hearing, no oral comments were received.

Comment: Commenter makes statements regarding his client, a certified operator. Some of these remarks are specific to an ongoing enforcement action with this certified operator. Although events in the enforcement action have proceeded since the commenter sent the comment letter to ADEQ, ADEQ will not respond to those statements that are generalized remarks about the ongoing enforcement action that do not also comment on this rulemaking.

Comment: Commenter states that there is a lack of standards to be used in choosing among the compliance and enforcement measures in R18-5-109.

Analysis: In drafting R18-5-109, ADEQ looked at the operator certification programs in several states. These states have similar programs to ADEQ's, due in part to the requirements of the federal Safe Drinking Water Act and the necessity to obtain EPA program approval to avoid significant cuts in federal funding to implement the program. ADEQ found several states that have compliance and enforcement rules similar to R18-5-109 that authorize the denial, revocation, suspension or other enforcement action to be taken against an operator based upon listed violations of the applicable laws and rules. These states authorize the regulating state agency to take enforcement actions such as suspension or revocation without any limiting criteria in rule. ADEQ believes it is appropriate to pattern its enforcement rule in part on the enforcement rules of other states which implement the same federal program to facilitate EPA approval of ADEQ's program.

The structure and authority of R18-5-109(B) follows the model of numerous rules within the Arizona Administrative Code involving numerous agencies. These state agency rules authorize the agencies to take a range of enforcement actions such as denial, revocation or suspension of a permit or certificate for violations listed in the individual rules. These rules do not limit the agency's discretion to determine the appropriate enforcement response by defining in rule which violations will receive which sanction. See A.A.C. R3-3-210, R3-3-1110, R4-3-411(A), R4-23-204(D), R4-23-901, R4-46-501, R6-5-5226(A), R12-4-605, R19-3-203, R20-2-603(G), R18-2-1016(G), R18-2-1019(H), R18-9-A213(A). Additionally, there are numerous Arizona statutes that authorize the state to select among different compliance measures for identified violations of the law, *e.g*. the A.R.S. Title 32 statutes, Professions and Occupations.

These rules do not limit the ability of these agencies to impose revocation, suspension, or other listed compliance measures to certain prescribed situations. ADEQ cannot identify in advance every conceivable enforcement situation in order to list in rule the appropriate compliance measure, particularly where multiple violations have occurred. Traditionally, enforcement discretion is a matter of agency policy. ADEQ, like other agencies granted enforcement authority by the Legislature, must maintain its ability to adjudge each situation on a case-by-case basis. As with any agency, the severity of the violation or violations will guide the enforcement response. Also, creating rigid standards in rule would prevent ADEQ in being able to negotiate settlements that contain terms and conditions agreed upon by ADEQ and the operator.

Corrective Actions

Because this rulemaking authorizes two new corrective actions, suspension and probation, it is appropriate to discuss each of the actions. Revocation, imposed through an administrative order, means an operator cannot operate a facility during the one-year revocation. An operator whose certificate is revoked must re-take the written examination to become re-certified. A term of suspension, imposed through an administrative order, means the operator cannot operate a facility during the term of the suspension. On the expiration of the suspension, the operator would not have to re-take the examination to resume operator responsibilities at a facility. A term of probation, imposed through an administrative order, will allow the operator to continue to work as an operator under conditions identified in the order, such as a requirement to take additional professional development hours (PDHs), restrictions on certain activi-

ties, or other conditions to address deficiencies in performance. For example, if an operator has made errors in collecting water samples for testing, ADEQ could require the operator to take additional training (PDHs) in proper water sample collection to improve the operator's ability to comply with state and federal law and to assist the facility in delivering water to the public that is safe to drink.

It is important to note that neither revocation, suspension, nor probation mandates that a facility owner terminate the affected operator's employment. Suspension and revocation mean the affected operator cannot continue to perform the functions and responsibilities of an operator. This does not mean that a facility owner cannot decide to re-assign the affected operator to non-operator duties. A larger facility, in particular, could choose to re-assign the operator under an enforcement action to other responsibilities that are not operator responsibilities while other operators assumed the affected operator's operational duties. A facility that has a single operator under suspension or revocation must replace that operator with a substitute operator in good standing. An operator under probation is subject to the limitations set forth in the administrative order establishing the probation.

In the types of corrective actions that may arise under this Article, revocation would generally be imposed for those violations that endangered public health, safety, or welfare or for repeat violations. Suspension would generally be imposed for serious violations while probation would generally be imposed for a non-serious, first-time violation. Revocation, suspension, or probation, would generally be imposed only after the operator has failed or refused to respond to or comply with informal attempts at achieving compliance. ADEQ normally attempts to negotiate a license revocation, suspension, or probation with the consent of the licensee, if possible. If this is unsuccessful, or unwarranted under the circumstances, ADEQ reserves the right to issue the license revocation, suspension, or probation unilaterally.

As stated, agency enforcement decision-making is traditionally a matter entrusted to the agency's discretion. The state agency rules cited earlier that authorize the agencies to take various types of enforcement actions based upon listed violations do not limit the ability of these agencies to impose revocation, suspension, or other listed compliance measures to certain situations prescribed in rule.

For these reasons, R18-5-109 is valid as written.

Response: No change.

Comment: The commenter states a preference for a recommendation from the operator certification committee to suspend or revoke. The comment then states that if this is not feasible, at least senior management should be involved in the decision-making process.

Analysis: Commenter requests that senior management be involved in the decision-making process involving enforcement matters. ADEQ senior management is involved in the decision-making process involving enforcement matters. ADEQ senior management approves every enforcement action that ADEQ takes, such as an administrative order requiring revocation, suspension, or probation.

The operator certification committee, created in rule by ADEQ to assist ADEQ in technical matters upon request, primarily assists ADEQ in validating the written operator examinations as required by EPA and provides advice on operator program rulemaking. This committee was not created to advise ADEQ on individual enforcement matters and ADEQ does not intend to alter its established agency-wide compliance and enforcement process.

Response: No Change.

Comment: Commenter states a belief that suspension or probation of an operator may have more of an economic impact than ADEQ's analysis concludes.

Analysis: ADEQ's economic impact analysis addresses the potential increased costs to operators, determining that the potential does exist for an operator whose certificate has been suspended or placed on probation to be negatively affected by reduced earnings or other costs associated with an enforcement action. Both facility owners and operators have been subject to similar potential increased costs from ADEQ's existing authority to revoke an operator's certificate.

Regarding the economic impact to an operator who is subject to a preliminary investigation, ADEQ must conduct investigations of possible violations of law in order to implement the law. The investigation includes fact-finding and communications with the affected party to resolve misunderstandings, to exchange information, and to narrow disputes. Generally an affected party seeks the opportunity to present its case to ADEQ prior to ADEQ taking an enforcement action, which ADEQ welcomes in order to narrow issues and, where possible, reach an agreed upon settlement. These investigations can and do resolve disputes prior to enforcement, saving costs to the affected party by avoiding litigation and other costs.

Response: No Change.

Comment: Commenter states that R18-5-109(A) mixes denial with suspension, revocation, and probation, stating that these are different concepts, particularly in light of A.R.S. § 41-1092.11. Commenter states that it "would be better to say 'If the Department decides to deny a license, or decides to initiate proceedings to suspend or revoke a certificate, or to place an operator on probation, the Department shall act in accordance with'" A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2.

Analysis: A.A.C. R18-5-109(A) requires ADEQ to act in accordance with the requirements of A.R.S. Title 41, Chapter 6, Article 10 (Uniform Administrative Hearing Procedures) and ADEQ's own administrative procedure rules, 18 A.A.C. 1, Article 2 (Administrative Appeals) whenever ADEQ denies, suspends, or revokes an operator certificate or places an operator on probation. A.R.S. Title 41, Chapter 6, Article 10 affords persons affected by certain agency actions determining legal rights, duties or privileges notice and an opportunity for an administrative hearing. A.A.C. R18-5-109(A) merely places the public on notice that each of these ADEQ decisions is subject to the administrative hearing procedures of A.R.S. Title 41, Chapter 6, Article 10 and the ADEQ administrative hearing rules.

Accordingly, for the purpose of A.A.C. R18-5-109(A), denial is no different from suspension, revocation, or probation because all of these actions are subject to the requirements of A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2. In this regard, there is no distinction to be made between denial and the other actions listed in this subsection. Thus, there is no reason to separate them out in this subsection. A.R.S. § 41-1092.11 does not alter this analysis or require a change in the existing text.

Commenter's proposed phrase that ADEQ "decides to initiate proceedings" for suspension, revocation, or probation has the potential for confusion. The phrase "to initiate proceedings" means different things to different people. The initiation of proceedings could mean when the Director issues an order or when an ADEQ compliance officer writes an internal memo recommending that an order be issued for the compliance officer's immediate supervisor to consider or some other date in the process. ADEQ would interpret this phrase to mean the Director's issuance of an administrative order to revoke, suspend, or place an operator on probation, which is the meaning of the current language. However, this is not the only possible interpretation of the proposed phrase and ADEQ's interpretation would not necessarily be clear to the public if ADEQ adopted the phrase "to initiate proceedings." The actual suspension, revocation or probation of an operator certificate is clear and understandable.

Finally, there is one way in which denial is different from probation, suspension, and revocation and the rule recognizes this difference. A.A.C. R18-5-109(B) addresses the factors ADEQ must consider in determining whether to revoke or suspend a certificate or to place an operator on probation while R18-5-109(C) addresses the factors ADEQ must consider in determining whether to deny certification. Certification denial refers to individuals who do not meet the qualifications to become a certified operator.

Response: No Change.

Comment: Commenter states that suspension or revocation should be based on an objective determination of misconduct on the part of the operator. Commenter states that R18-5-109(B) should provide: "The Department may suspend or revoke a certificate, or place an operator on probation, if the Department finds that the operator…"

Analysis: ADEQ currently does what the commentator is requesting. Each order that denies, revokes or suspends a certificate or places an operator on probation, contains findings of fact and conclusions of law, as required by A.R.S. § 41-1092.03(A).

Response: ADEQ has amended the rule in response to the comment and to conform the rule to other ADEQ enforcement rules.

Comment: The commenter states that R18-5-109(B)(9) regarding failing to cooperate with an investigation should be an aggravating factor to be considered in determining whether to revoke or suspend or place an operator on probation but should not be an independent basis for taking action.

Analysis: Failure to cooperate with ADEQ in an investigation, set forth in R18-5-109(B)(9), is a serious matter. Often the operator is the only individual with information necessary for ADEQ to be able to determine whether drinking water being delivered to the public is safe for human consumption or whether a wastewater facility is operating properly to protect the environment. An operator's refusal to communicate with ADEQ relating to a water or wastewater facility is a purposeful act that impedes ADEQ's ability to implement two significant laws relating to water quality. This concept is not a new one. A.A.C. R6-5-5226 authorizes the Department of Economic Security to deny, suspend or revoke the certification for family care home providers if an applicant or provider "fails or refuses to cooperate with the Department in providing information required by these rules or any information necessary to determine compliance with these rules." Finally, it would appear that violations of this provision typically would occur with other violations of R18-5-109(B).

Response: ADEQ has provided additional detail and guidance to the public regarding the types of actions that constitute failure to cooperate with ADEQ under R18-5-109(B).

Comment: Commenter states that any remedial requirements placed on an operator during probation should be tailored to remediation of the problem at hand.

Analysis: The limitation that the commenter seeks is provided in the first sentence, which states that probation shall address deficiencies in operator performance. The examples in the second sentence also address deficiencies in operator performance. However, to clarify further, ADEQ has added additional clarifying language to this subsection.

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. Was this rule previously adopted as an emergency rule?
No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY
ENVIRONMENTAL REVIEWS AND CERTIFICATION

ARTICLE 1. CLASSIFICATION OF ~~TREATMENT PLANTS~~ WATER AND WASTEWATER FACILITIES AND CERTIFICATION OF OPERATORS

Section
R18-5-101. Definitions
R18-5-104. General Requirements
R18-5-107. Certificate Renewal
R18-5-109. Denial, Suspension, Probation, and Revocation
R18-5-115. Grades of Water Treatment Plants and Distribution Systems

ARTICLE 1. CLASSIFICATION OF ~~TREATMENT PLANTS~~ WATER AND WASTEWATER FACILITIES AND CERTIFICATION OF OPERATORS

R18-5-101. Definitions
The terms in this Article have the following meanings:

"Certified operator" or "operator" means an individual who holds a current certificate issued by the Department in the field of water or wastewater treatment, water distribution, or wastewater collection~~, and is responsible for the daily onsite operation or the remote operation from a central location of all or a part of a facility~~.

"Collection system" means a pipeline or conduit, a pumping station, a force main, or any other device or appurtenance used to collect and conduct wastewater to a central point for treatment and disposal.

"Department" means the Department of Environmental Quality or its designated representative.

"Director" means the Director of the Department of Environmental Quality or the Director's designated representative.

"Direct responsible charge" means day-to-day decision making responsibility for a facility or a major portion of a facility.

"Distribution system" means a pipeline, appurtenance, or device of a public water system that conducts water from a water source or treatment plant to consumers for domestic or potable use.

"Facility" means a water treatment plant, wastewater treatment plant, distribution system, or collection system.

"Industrial waste" means the liquid, gaseous, or solid waste produced at an industrial operation.

"Onsite operator" means an operator who visits a facility at least daily to ensure that ~~it~~ the facility is operating properly.

"Onsite representative" means a ~~person~~ an individual located at a facility who monitors the daily operation at the facility and maintains contact with the remote operator regarding the facility.

"Operator" has the same meaning as certified operator, as defined in this Section.

"PDH" means professional development hour, as defined in this Section.

"Population equivalent" means the population that would contribute an equal amount of biochemical oxygen demand (BOD) computed on the basis of 0.17 pounds of five-day, 20-degree centigrade BOD per capita per day.

"Professional development hour" or "PDH" means one hour of participation in an organized educational activity related to engineering, biological or chemical sciences, a closely related technical or scientific discipline, or operations management.

"Public water system" has the same meaning prescribed in A.R.S. § 49-352.

"Qualifying discipline" means engineering, biology, chemistry, or a closely related technical or scientific discipline.

"Qualifying experience" means experience, skill, or knowledge obtained through ~~prior~~ employment that is applicable to the technical or operational control of all or part of a facility.

"Remote operator" means an operator who is not an onsite operator.

"Validated examination" means an examination that is approved by the Department after being reviewed to ensure that the examination is based on the class and grade of a system or facility.

"Wastewater" means sewage, industrial waste, and all other waterborne waste that may pollute any lands or waters of the state.

"Wastewater treatment plant" means a process, device, or structure used to treat or stabilize wastewater or industrial waste and dispose of the effluent.

"Water treatment plant" means a process, device, or structure used to improve the physical, chemical, or biological quality of the water in a public water system.

R18-5-104. General Requirements

~~**A.** A facility owner shall ensure that at all times:~~

1. A facility has an operator in direct responsible charge who is certified for the class of the facility and at or above the grade of the facility;

~~1.~~2. ~~Only a certified operator can make a decision~~ An operator makes all decisions about process control or system integrity regarding water quality or water quantity that affects public health; however, an administrator who is not a certified operator ~~can~~ may make a planning decision regarding water quality or water quantity ~~as long as~~ if the decision is not a direct operational process control or system integrity decision that affects public health~~.~~;

~~2. The operator in direct responsible charge of the facility is certified for the class of facility, at which the operator works, and at or above the grade of the facility for which the operator works;~~

3. An operator who is in direct responsible charge of more than one facility is certified for the class of each facility and at or above the grade of the facility with the highest grade;
4. An operator who replaces the operator in direct responsible charge does not begin operation of the facility before being certified for the applicable class and at or above the grade of the facility;
5. In the absence of the operator in direct responsible charge, the operator in charge of the facility is certified for the applicable class of facility and at a grade no lower than one grade below the grade of the facility; and
6. The names of all current operators are on file with the Department.

B. If the owner of a facility replaces an operator in direct responsible charge with another operator, the facility owner shall notify the Department in writing within ~~ten~~ 10 days of the replacement.

C. ~~The~~ An operator shall notify the Department in writing within ~~ten~~ 10 days of the date the operator either ceases operation of a facility or commences operation of another facility.

D. A facility owner shall ensure that an operator holding certification in a particular class and grade only operates a facility of the same class and the same or lower grade for which the operator is certified. An operator shall operate each facility in compliance with applicable state and federal law.

E. A facility owner shall ensure that a Grade 3 or Grade 4 facility has an onsite operator.

F. An operator holding certification in a particular class and grade may operate one or more Grade 1 or Grade 2 facilities as a remote operator if the facility owner ensures that the following requirements are met:

1. The remote operator is certified for the class of each facility and at or above the ~~class and~~ grade of each facility operated by the remote operator.
2. There is an onsite representative on the premises of each Grade 1 or Grade 2 facility, except for a Grade 1 water distribution system that serves fewer than 100 people, which is not required to have an onsite representative if the conditions of ~~(E)(8)~~ subsection (F)(8) are met. The onsite representative is not required to be an operator if the facility has a remote operator who is certified at or above the grade of the facility.
3. The remote operator instructs, supervises, and provides written instructions to the onsite representative in the proper operation and maintenance of each facility~~, providing written instructions,~~ and ~~ensuring~~ ensures that adequate records are kept. 4.The remote operator provides the onsite representative with a telephone number at which the remote operator can be reached at all times. If the remote operator is not available for any reason, the remote operator shall provide the onsite representative with the name and telephone number of a qualified substitute operator who will be available while the remote operator is not available.
5. The remote operator resides no more than 200 miles by ground travel from any facility that the remote operator serves.
6. The remote operator operates each facility in compliance with applicable state and federal laws.
7. The remote operator inspects a facility as often as necessary to ~~assure~~ ensure proper operation and maintenance, but in no case less than:
   a. Monthly for a Grade 1 or Grade 2 water treatment plant or distribution system that produces and distributes groundwater;
   b. Monthly for a Grade 1 wastewater treatment plant;
   c. Twice a month for a collection system that serves fewer than 2,500 people; and
   d. Weekly for a Grade 2 wastewater treatment plant or collection system that serves fewer than 1,000 people.
8. For a Grade 1 water distribution system that does not have an onsite representative and serves fewer than 100 people, the following conditions are met:
   a. The name and telephone number at which the remote operator can be reached is posted at the facility, enclosed with water bills, or otherwise made readily available to water users. If the remote operator is not available for any reason, the remote operator shall post at the facility the name and telephone number of a substitute operator of the applicable facility class and grade who will be available while the remote operator is not available;
   b. The remote operator or substitute operator resides no more than 200 miles by ground travel from the facility; and
   c. The remote operator inspects the facility weekly.

R18-5-107. Certificate Renewal

A. If the Department renews a certificate, the certificate is renewed for three years, unless the operator requests a shorter renewal period in writing.

B. To renew a certificate, an operator shall complete and submit to the Department an operator certificate renewal form approved by the Department. ~~an~~ An operator shall maintain documentation and provide ~~it~~ the documentation to the Department upon request to verify completion of at least 30 PDHs accumulated during a certification period. The operator shall provide documentation of PDHs ~~that is~~ in a format acceptable to the Department. At least 10 of the PDHs shall directly relate to the specific job functions of the operator. If an operator holds multiple certificates, the operator may apply required PDHs ~~may be applied~~ to all certificates if the PDHs are acquired within ~~that~~ the applicable certification period. The operator's supervisor or the entity that provides the education or training shall verify completion of each PDH in writing. An operator shall maintain documentation of completion of PDHs for a minimum of five years.

C. As an alternative to the requirements of subsection (B), an operator may renew a certificate by taking and passing an examination for the applicable class and grade.

R18-5-109. Denial, Suspension, Probation, and Revocation

A. ~~The~~ If the Department decides to deny, suspend, or revoke a certificate, or to place an operator on probation, the Department shall act in accordance with ~~shall act under~~ A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2 ~~to deny or revoke a certificate~~.

B. ~~If it is~~ The Department may ~~determining whether to~~ revoke or suspend a certificate, or place an operator on probation, if the Department ~~shall consider whether~~ finds that the operator:

1. Operates a facility in a manner that violates federal or state law;
2. Negligently operates a facility or negligently supervises the operation of ~~the~~ a facility;
3. Fails to comply with a Department ~~orders~~ order or ~~consent decrees~~ order of a court;
4. Obtains a certificate by fraud, deceit, or misrepresentation;
5. Engages in fraud, deceit, or misrepresentation in the operation or supervision of a facility;
~~5.~~6. Knowingly or negligently prepares a false or fraudulent report or record regarding the operation or ~~management~~ supervision of ~~the~~ a facility; ~~or~~
~~6.~~7. Endangers the public health, safety, or welfare;
8. Fails to comply with the terms or conditions of probation or suspension; or
9. Fails to cooperate with an investigation by the Department including failing or refusing to provide information required by this Article.

C. The Department shall deny certification to an applicant who does not meet the requirements of R18-5-105 or R18-5-110, or who is ineligible for certification pursuant to a Department order or order of a court.

~~C.~~D. In order to be recertified, ~~a~~ an ~~person~~ individual whose certificate is revoked shall reapply and be reexamined as a new applicant. ~~A~~ An ~~person~~ individual whose certificate is revoked is not eligible for admission to a certification examination for 12 months from the effective date of the revocation.

E. The Department may place an operator on probation to address deficiencies in operator performance. The terms of probation may include completion of additional PDHs, increased reporting of operator activity, limitations on activities the operator may perform, or other terms to address deficiencies in operator performance.

F. During the period of suspension or revocation, an individual whose certificate is suspended or revoked shall not operate a facility of any class or grade.

G. An operator whose certificate is suspended or revoked shall immediately notify the owner of a facility where the operator is employed of the suspension or revocation.

R18-5-115. Grades of Water Treatment Plants and Distribution Systems

A. Grading of water treatment plants. This subsection does not apply to a facility that distributes water but does not treat water or to a facility that distributes water and disinfects by chlorine gas or hypochlorite only to maintain disinfection levels in the distribution system. The Department shall grade a water treatment plant according to the sum of the points ~~it~~ the Department assigns for each plant characteristic~~.~~

1. No Change
2. No Change

B. Grading of water distribution systems. The Department shall grade a distribution system according to the sum of the points ~~it~~ the Department assigns for each system characteristic.

1. The Department shall assign points for the purpose of grading a distribution system as follows:

System Characteristics	Points
Population	1 per 5,000
Maximum Design Capacity	1 per Millions of Gallons per Day up to 10
Pressure Zones	5
Booster Stations	5
Storage Tanks	3
Blending	5
Fire Protection Systems/Testable Backflow Prevention Assemblies *	5
Cathodic Protection	3
Control System Technologies	2
Chlorine Gas	6
Hypochlorite Liquid	2
Hypochlorite Solid	2
Chloramine	9
Chlorine Dioxide	9

*The presence of one or both of these devices earns five points for the facility.

2. No Change
   a. No Change
   b. No Change
   c. No Change
   d. No Change
3. No Change

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R05-63]

PREAMBLE

1. Sections Affected	Rulemaking Action
Article 11	New Article
R20-5-1101	New Section
R20-5-1102	New Section
R20-5-1103	New Section
R20-5-1104	New Section
R20-5-1105	New Section
R20-5-1106	New Section
R20-5-1107	New Section
R20-5-1108	New Section
R20-5-1109	New Section
R20-5-1110	New Section
R20-5-1111	New Section
R20-5-1112	New Section
R20-5-1113	New Section
R20-5-1114	New Section
R20-5-1115	New Section
R20-5-1116	New Section

R20-5-1117	New Section
R20-5-1118	New Section
R20-5-1119	New Section
R20-5-1120	New Section
R20-5-1121	New Section
R20-5-1122	New Section
R20-5-1123	New Section
R20-5-1124	New Section
R20-5-1125	New Section
R20-5-1126	New Section
R20-5-1127	New Section
R20-5-1128	New Section
R20-5-1129	New Section
R20-5-1130	New Section
R20-5-1131	New Section
R20-5-1132	New Section
R20-5-1133	New Section
R20-5-1134	New Section
R20-5-1135	New Section
R20-5-1136	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. § 23-107(A)(1).

Implementing Statutes: A.R.S. §§ 23-961, 11-952.01, 41-621.01.

3. The effective date of the rules:

April 4, 2005

4. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 10 A.A.R. 588, February 20, 2004
Notice of Proposed Rulemaking: 10 A.A.R. 632, February 27, 2004

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

Name:	Andrew F. Wade, Esq.
Address:	Industrial Commission of Arizona 800 W. Washington, Suite 303 Phoenix AZ 85007
Telephone:	(602) 542-5781
Fax:	(602) 542-6783
E-mail:	awade@ica.state.az.us

6. An explanation of the rules, including the agency's reason for initiating the rules:

Article 2 of Title 20, Chapter 5, originally addressed the processes and procedures for regulating individual self-insured employers as well as workers' compensation pools. Because of confusion and misunderstandings by the regulated community, the Commission determined in 2003 to separate the requirements of Article 2 into two separate articles. Article 2, which will be submitted under a separate rulemaking, has been amended and limited in scope to workers' compensation pools. This new Article 11 contains those rules addressing individual self-insured employers. Although there will be a short period of time that the existing Article 2 and this new Article 11 both contain rules applicable to individual self-insurers, it is the Commission's intent that this new Article 11 govern individual self-insured employers until Article 2 is amended.

Several events occurred in recent years that impacted the Commission's self-insurance program and prompted the review of the rules, including:

1. Excess insurance coverage became very expensive and for some self-insured employers, was not even available.

2. The surety bond market became more expensive. In addition, it became more difficult for the Commission to access a surety bond for funds to cover the claims of an insolvent self-insurer or carrier.

3. Two self-insured entities became insolvent and one self-insured is currently in reorganization. In addition, ten insurance carriers became insolvent. These insolvencies have had a significant impact on the financial condition of the Special Fund.

4. As a result of one insolvency, it became obvious that the Commission needed a better mechanism to evaluate loss information in relation to securities posted by self-insurers. One insolvent self-insured understated its losses by

reporting losses in the amount of $113,000, when in reality, the actual claims resulted in losses of $950,000. This discrepancy in reported and actual losses increased potential liability to the Special Fund significantly.

As a result of these events and the perceived need for greater accountability and clarity in the rules, new rules were developed for individual self-insurers. A summary of the new Article 11 follows:

1. The previous Option Election form has been replaced with a Workers' Compensation Liability form, which requires greater disclosure. All self-insurers who must provide securities or surety bonds will now be required to follow one formula, based on 125% of estimated future liability, subject to a $100,000 minimum-security requirement. The actual formula for calculating the 125% of future liabilities is in the current rules and does not reflect a change. The self-insurer must also provide summary schedules by claim, which will reconcile to, and support, the information provided in the Workers' Compensation Liability form. These changes will allow the Administration Division to verify the correctness of the information provided and validate the amount of securities required.

2. The actual amount of a bond or security to be provided by the self-insured entity will be subject to the analysis and approval of the Commission's staff. In cases involving a requested decrease of 10% or more in the amount of the security, the analysis will be based on a review of claims filed for the preceding three years, a change in payroll, an analysis of the amount owed for unpaid claims, and the financial condition of the self-insurer.

3. A new surety bond form has been developed which requires the bond to be continuous in form rather than for a limited time (usually twelve months) subject to renewal. The bond cannot be issued by a surety company with an affiliate relationship to the self-insurer. In addition, the surety company must have an A.M. Best rating of at least "A."

4. Procedures and forms have been developed that require the self-insurer to notify the Commission on an annual basis whether it is directing medical care for its employees in compliance with A.R.S. § 23-1070.

5. There will be no requirement that a self-insurer carry excess insurance. However, if a self-insurer provides insurance coverage to offset the amount of a bond or security provided, there cannot be an affiliate relationship between the self-insured entity and the excess insurer. "Affiliate relationship" and "control" have now been defined in the definitional section of Article 11.

6. All non-public self-insurers must provide a bond or securities under Article 11. Qualified public entities, however, are exempt from providing these securities under certain conditions, including the maintenance of a fully funded risk management fund.

7. For public entities not exempt from posting securities, the Commission will now permit the deposit or posting of "Local Government Investment Pool" (LGIP) funds, which are held as cash by the Arizona State Treasurer. LGIP funds can be substituted for Letters of Credit, Surety Bonds, or Treasury Notes.

8. To eliminate problems concerning responsibility for disclosed information, all self-insurance forms must now be signed by an officer of the self-insured entity.

9. The new rules tighten the time-frames within which a self-insured entity must post security and provide required financial documentation. The restructuring of mandatory time limits will ensure that there are no gaps in coverage, which could result in liability to the Special Fund.

10. For self-insurers who become insolvent but desire to continue self-insurance, a procedure has been established allowing the self-insurer to provide the Commission with a "Letter of Intent" and expanding the Commission's role in the self-insurer's reorganization.

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

None

8. A showing of good cause why the rules are necessary to promote 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 statement:

Many of the rules in Article 11 are "companion" rules to those in Article 2 and have no substantive differences. However, there are several new rules in this Article that do have substantive impacts on businesses that are self-insured entities. Because of issues and problems with the individual self-insured program in the past, the Commission revised many of the rules addressing individual self-insured employers.

The requirements for disclosure of financial information have been expanded based on the bankruptcy or insolvency of some individual self-insured employers. Some individual employers may experience an economic impact in collating and submitting the financial information, however, many if not most self-insured employers should already have the type of financial documentation required under Article 11.

New provisions allow self-insurers more latitude in choosing the types of securities used to secure the self-insurer's workers' compensation obligations. Local Government Investment Pool funds are a new type of security that self-insured public agencies may now use and self-insured employers continue to have, as yet other options, the

use of letters of credit or guaranty bonds. Under this rulemaking, self-insurers can now obtain a credit for excess insurance against the amount of security otherwise required, provided the insurance carrier issuing the policy is not an affiliate of the self-insurer. Self-insurers will, therefore, have the option of acquiring excess insurance as an alternative to posting other forms of security, and some self-insurers may find an economic advantage to using excess insurance rather some other form of security. Under this rulemaking, political subdivisions may be exempt from the requirement to post security under certain circumstances. This exemption may result in a cost savings to some political subdivisions.

Recognizing the reality of insolvencies and bankruptcies, the Commission added new provisions requiring notice of an insolvency or bankruptcy proceeding. In the case of a bankruptcy, there are new provisions requiring the self-insured employer to notify the Commission in a Letter of Intent as to the employer's intentions concerning workers' compensation benefits. If a bankrupt self-insured individual employer elects to reorganize, the Commission must be included in the employer's Plan of Reorganization and kept informed concerning the bankruptcy case. This may place an economic impact on the employer, but the impact should be marginal because information required by the Commission will already be part of the employer's bankruptcy case.

Finally, the rules restructure the time-frames and hearing procedures related to processing initial and renewal applications. This restructuring is not expected to have any economic impact.

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

One rule has been deleted from this rulemaking. The rule originally proposed as R20-5-1125 and titled "Service Companies: Qualifications; Contracts; Transfer of Claims," will be the subject of future rulemaking.

The final rule also contains minor grammatical changes to improve clarity.

11. A summary of the comments made regarding the rules and the agency response to them:

Comment: The Agency received one letter and one comment at the oral proceeding about R20-5-1108(A)(9). Both comments expressed concerns that requiring self-insurers to explain why their experience modification rate (e-mod) is greater than 1.10, when applying for renewal, may be overly burdensome to some self-insurers and the comments suggest that self-insured's should be required to explain their e-mod only if it is greater than 1.30.

Response: A national rating organization, currently the National Council on Compensation Insurance (NCCI) serves Arizona's workers' compensation insurance marketplace. The NCCI evaluates statewide payroll and loss data and uses a fixed formula to measure the performance of a particular employer compared to the average of employers in similar businesses. The e-mod is expressed as a factor with the industry norm being 1.00. An employer with higher than average losses would be assigned an e-mod higher than 1.00 while lower than average losses would result in an e-mod of less than 1.00. The average e-mod for all self-insurers is 1.05. The Commission has decided that the threshold e-mod of 1.10 is appropriate at the present time because it is higher than both the industry norm and the average of self-insurers.

Comment: The Commission received a comment concerning the proposed rule concerning service companies.

Response: The rule has been deleted from this rulemaking and will be the subject of future rulemaking.

Comment: One commenter suggested that the Commission should perform its additional and independent review only for those self-insureds who request a reduction of 25% in the amount of the security rather than the 10% proposed in R20-5-1128(A)(3).

Response: Industrial Commission experience establishes that a 10% reduction in proposed security from the prior year is a significant and unusual reduction. This provision is intended to improve the evaluations of renewal applications and to help identify discrepancies in reported and actual losses and the relationship between losses and the amount of security the self-insured must post. Recent events and circumstances related to insolvencies, bankruptcies, and other potential liabilities for the Special Fund have highlighted the need for an additional and independent review by the Commission for those self-insurers that request a significant reduction in their posted security. Furthermore, the impact of this requirement would be primarily on the Commission and not on the self-insurers. Accordingly, the requirement of an additional and independent review should be triggered by a request for a 10% reduction in the amount of security rather than the commented amount of 25%.

Comment: The Commission received one comment stating that it was unclear what impact the continuous bond requirement would have on the posting and release requirements and expressed hope that the new rules would alleviate perceived problems with having bonds released.

Response: No change in the posting or release requirements is expected and the continuous bond provision in R20-5-1110(B)(2) is expected to have a positive impact on self-insurers and the Commission. Under R20-5-1110(B)(2), a self-insured may post a guaranty bond or rider as security for its obligations instead of other types of security, provided the bond is continuous in form. A continuous in form bond does not have a termination date and the bond is automatically extended from year to year. Under the current version of the rules, a self-insurer may post a bond instead of other security and the bond may be

an annual bond, meaning the bond expires in a stated time period, usually twelve months. The Commission has experienced significant losses due to the failure of annual bonds to cover the entire liability of insurance carriers or self-insured employers due to gaps or lapses in coverage. Because of this difficulty and because of the inconvenience to self-insurers in having to acquire a new bond or a rider each year, the Commission decided to specify that bonds posted instead of other security be continuous in form rather than annual.

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 these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 11. SELF-INSURANCE FOR INDIVIDUAL EMPLOYERS

Section

R20-5-1135. Plan of Action for Retaining Self-Insurance Authority in the Event of Insolvency or Bankruptcy
R20-5-1136. Notice of Termination of Authorization to Self-insure by Self-insurer

ARTICLE 11. SELF-INSURANCE FOR INDIVIDUAL EMPLOYERS

R20-5-1101. Definitions

In addition to the definitions provided in A.R.S. § 23-901, the following definitions apply to this Article:

"Act" means the Arizona Workers' Compensation Act, A.R.S. § 23-901 et seq.
"Affiliate" or "affiliate relationship" means a person or entity that has the power to control, directly or indirectly, through one or more intermediaries, another person or entity.
"Anniversary date" means the date beginning one year from the initial effective date of the Authorization to Self-insure.
"Applicant" means an individual employer filing an initial application for authority to self-insure under A.R.S. § 23-961.
"Authorized signature" means the signature of an officer of the self-insurer.
"Cash-flow ratio" means a numerical relationship that reflects an ability to meet current financial obligations out of cash flow and is calculated by dividing funds provided by operations of a business by current liabilities.
"Chief counsel" means the chief counsel for the Industrial Commission of Arizona.
"Claim" means a worker's compensation claim.
"Claims Division," means the Claims Division of the Industrial Commission of Arizona.
"Classification code" means a number assigned by an approved rating organization that classifies employees by type of job performed.
"Control" means the possession, direct or indirect, of power to direct or cause the direction of, the management and policies of a person or entity, whether through the ownership of voting securities, by contract, or otherwise.
"Current ratio" means a numerical relationship that reflects an ability to pay current obligations and is calculated by dividing current assets by current liabilities.
"Debt-status ratio" means a numerical relationship that reflects the proportion of funds supplied internally relative to the funds contributed by creditors and is calculated by dividing net worth by total liabilities.
"Division" means the Accounting Division of the Industrial Commission of Arizona.
"Ex-medical plan" means a method of determining the premium upon which taxes are calculated that provides for rate revisions based upon the self-insurer operating a medical facility with a program for providing medical, surgical, or hospital services to a majority of the self-insurer's employees and that complies with the requirements of A.R.S. § 23-1070. Neither losses nor incurred loss reserves are used in this plan.
"Excess insurance carrier" means an insurance carrier authorized to issue policies of excess insurance coverage to a self-insured employer.
"Experience modification rate" means a ratio comparing actual losses to expected losses based on a formula determined by an approved rating organization and which includes three years of loss information.
"Fixed premium plan" means a method of determining the premium upon which taxes are calculated in which neither losses nor incurred loss reserves are used for calculation. The only discount is for premium size.
"Fully-funded risk management fund" means a fund that maintains a positive equity balance that is sufficient to cover all of the fund's actuarial losses.
"Guaranteed cost plan" means a method of determining the premium upon which taxes are calculated that provides for a direct relationship, on a annual basis, of the premium for tax purposes and the experience modification rate developed to reflect the loss payment and incurred loss experience of the self-insured employer.
"Individual employer" means an employer under the Act that is applying for authority to self-insure, or is approved to self-insure, that is not an entity described in A.R.S. § 23-961.01; § 11-952.01; or § 41-621.01.
"Parent company" means one that owns sufficient stock in a subsidiary company to have voting control of the subsidiary company, as "control" is defined in this Article.
"Profitability ratio" means a numerical relationship that represents the return on assets and the efficiency of assets and is calculated by dividing profit before taxes by total assets, multiplied by 100 expressed as a percentage.
"Public entity" means an individual employer that is a state, county, municipality, school district, or any other entity with taxing authority.
"Quick ratio" means a numerical relationship that represents the degree to which liabilities are covered by the most liquid current assets and is calculated by dividing cash and equivalents, plus receivables, by current liabilities.
"Rating organization," means an entity that meets the requirements of A.R.S § 20-363, and is approved by the Arizona Department of Insurance to establish rates, codes, and formulas used to calculate worker compensation premiums.
"Resolution of Authorization" means a document issued by the Commission that grants authority to self-insure for purposes of workers' compensation.
"Retrospective rating plan" means a method of determining the premium upon which taxes are calculated that provides for the relationship between the premium for tax purposes, the experience modification rate developed to reflect the loss payment and incurred loss experience of the self-insured employer, and the actual incurred losses for the tax year.
"Securities" or "security" means a guaranty bond, a bond of the United States or its agencies, United States' Treasury

Notes, a letter of credit, or Local Government Investment Pool (LGIP) funds, or appropriate documents renewing or continuing any of these.
"Self-insurer" or "self-insured" means an individual employer that the Commission authorizes to self-insure for workers' compensation insurance under A.R.S. § 23-961.
"Working capital ratio" means a numerical relationship that measures the sufficiency of working capital to support sales and is calculated by dividing working capital by sales. Working capital is calculated by subtracting current liabilities from current assets.

R20-5-1102. Computation of Time

A. In computing any period of time prescribed or allowed by this Article, the day of the act or event from which the designated period of time begins to run is not included. The last day of the period computed is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays are excluded in the computation.

B. Except as otherwise provided by law, the Division may extend time limits prescribed by this Article for good cause. Any request for an extension of a time limit shall be submitted to the Division in writing at least 10 days before the expiration of the time limit for which an extension is sought.

R20-5-1103. Forms

The following forms are available upon request from the Division or from the Commission's Internet site at www.ica.state.az.us, and include the following information for each:

A. Initial application for authority to self-insure:
Legal name of the applicant and requested effective date for authority to self-insure;
Mailing address and telephone number of applicant's principal Arizona office and home office;
3. Name of state under which applicant is incorporated, if applicant is a corporation;
4. Name of parent company, if applicant is a subsidiary;
5. Name, address, and status of partners (general, special, and limited), if applicant is a partnership;
6. Length of time in business in Arizona and elsewhere, if applicable;
7. Nature or type of business in Arizona;
8. Arizona payroll data;
9. Current workers' compensation insurance data, including current expiration date;
10. Statement of reasons for rejection or cancellation if an application for worker's compensation insurance submitted by applicant has ever been rejected or a policy of workers' compensation insurance held by the applicant has ever been cancelled;
11. Listing of states where self-insurance was denied, if any, and where the applicant is currently self-insured;
12. Arizona claims history and data for three years preceding application date;
13. Arizona loss history and experience modification rates for three years preceding application date;
14. Name of excess insurance carrier;
15. Name, address, and telephone number of third-party administrator or individual responsible for processing Arizona workers' compensation claims;
16. Name and address of Arizona agent upon whom legal notice may be served;
17. Selection of tax plan;
18. Name, address, telephone and facsimile number, and e-mail address of person responsible for completing the premium tax information;
19. Name, address, and telephone number of claims office where Arizona workers' compensation claims will be processed;
20. Name, address, telephone and facsimile number, and e-mail address of the primary and secondary points of contact for the application and self-insurance process;
21. Statement that all information and assertions contained in the application and the documents accompanying the application are factually correct and true; and
22. Listing of required attachments.

B. Workers' compensation liability form:
1. Name of self-insurer;
2. Selection and calculation of required securities and excess insurance, which includes calculation and reporting the following:
   a. For all claims reported in the current calendar year, the number of open claims, total incurred liability, both medical and compensation, less the amount paid on these claims to equal the remaining liability or amount owing on these claims;
   b. For all open claims incurred in prior years and remaining open in the current year, the number of open claims, the total incurred liability, both medical and compensation, less the amount paid on these claims to equal the remain-

ing liability or amount owing on these claims;
c. The total remaining liability on all open claims less any reimbursement for excess insurance ceded to equal the net remaining liability owing on all claims; and
d. The amount calculated in subsection (B)(2)(c) multiplied by 125%;
3. Name of excess insurance carrier that provides reimbursement to self-insurer; and
4. A statement by the Chief Financial Officer or Chief Executive Officer attesting to the truthfulness of the information contained in the Workers' Compensation Liability Form;

C. Self-insurance workers' compensation guaranty bond:
1. Name of self-insurer;
2. Name of the surety insurance company;
3. Description of the bond, bond number, amount, and conditions of obligation;
4. Statement regarding the responsibility for fees and costs associated with the collection of the bond and the responsibility for payment of any award or judgment against the surety; and
5. Request for authorized signatures and titles of self-insurer, surety, and agent or attorney-in-fact, and a notarized power of attorney, and date of signing.

D. Parent company guaranty:
1. Name and state of incorporation of parent company;
2. Name of self-insured subsidiary to be included in the guaranty;
3. Statement that the parent company will assume the workers' compensation liabilities of the subsidiary if the subsidiary is unable to honor these liabilities, which guarantee is for the benefit of and may be enforced by any and all employees of subsidiary; and
4. Corporate seal.

E. Self-insured payroll report:
1. Name of self-insured;
2. Tax plan selection;
3. Period covered by report;
4. Payroll description (classification codes, methods, and types of pay);
5. Amount paid for period covered by the report;
6. Statement that all information contained in the report is correct; and
7. Request for authorized signature, date, title, and telephone number of person signing the form.

F. Self-insured medical report:
1. Name of self-insured;
2. Period covered by report;
3. Amount paid relating to treatment of industrial injuries, including payment of medical personnel employed by the self-insurer and medical providers providing outside services;
4. Compensation paid to worker's compensation claimants;
5. Insurance premiums paid;
6. Total expenditures for workers' compensation and occupational disease claims;
7. Statement that all information contained in the report is correct; and
8. Request for authorized signature, date, title, and telephone number of person signing the form.

G. Self-insured hospital report:
1. Name of self-insurer;
2. Period covered by report;
3. Amount paid for operational expenses, including payroll, employee benefits, surgeon and physician fees, pharmacy costs, miscellaneous supplies and services, utilities, depreciation, licenses, and taxes;
4. Amount of revenue, including charges for inpatient and outpatient care, miscellaneous revenue, employee-paid premiums, and employer-paid premiums;
5. Reconciliation of cash account, including cash balance, total cash available, investments, operating expenses, disbursements, and net cash balance;
6. Statement that all information contained in the report is correct; and
7. Request for authorized signature, date, title, and telephone number of person signing the form.

H. Self-insured injury report:

1. Name of self-insurer;
2. Period covered by report;
3. Description of individual claims for the current year and three preceding years requiring payment greater than $5,000.00 for each claim, including name of claimant, date of injury, nature of injury, accumulated amount paid, and the amount of any expenses incurred but not paid;
4. The total amount paid, and the amount of any expenses incurred but not paid, for the current year and three preceding

years for all claims requiring a total payment less than $5,000.00 for each claim;
5. Statement that all information contained in the report is correct; and
6. Request for authorized signature, date, title, and telephone number of person signing the form.

I. Quarterly tax payment:
1. Name and address of the self-insurer;
2. Designation of the applicable quarter;
3. Amount of annual tax paid in the previous calendar year; amount of the quarterly tax paid adjusted for any change in the tax rate for the applicable quarter;
4. Statement that all information contained in the form is correct; and
5. Request for authorized signature, date, title, and telephone number of person signing the form.

J. Notice of self-insurer's termination of self-insurance:
1. Name, address, and telephone number of self-insurer and all Arizona subsidiaries covered under the authority to self-insure, including if applicable:
   a. Names and addresses of all Arizona operations or locations covered by self-insurance authority;
   b. Names and addresses of all partners, if self-insurer is a partnership; and
   c. Current and former names of self-insurer if the self-insurer has undergone a name change since the most recent effective date of the authority to self-insure;
2. Effective date of termination of authority to self-insure;
3. Name and address of workers' compensation insurance carrier providing coverage after the effective date of termination;
4. For the new coverage; effective date of workers' compensation coverage;
5. Statement that all information contained in the form is correct; and
6. Request for authorized signature, date, title, and telephone number of person signing the form.

K. Self-provider of medical benefits:
1. Indication of whether the self-insurer is, or is not, directing medical care for all of its employees;
2. If the self-insurer is directing medical care for its employees, the self-insurer shall:
   (a) Attach a copy of all contracts between the self-insurer and the medical providers; or
   (b) Submit a list of names and addresses of all medical providers with whom the self-insurer contracts; and
   (c) The effective date of the agreements between the employer and medical provider; and
3. Authorized signature, date, and title of person signing the form.

R20-5-1104. Commission Approval to Act as Self-insurer

An employer does not have authority to act as a self-insurer under A.R.S. § 23-961 unless:
1. The Commission authorizes the employer to be self-insured; and
2. Except as provided in R20-5-1114, the employer posts security in an amount as required under this Article.

R20-5-1105. Resolution of Authorization

The Commission shall issue a Resolution of Authorization to an applicant that meets the requirements of this Article. The Commission shall annually review and renew a Resolution of Authorization to self-insure. The authority to self-insure is valid and continues in effect until the Commission takes action under this Article or the self-insured terminates its authorization to self-insure under R20-5-1136.

R20-5-1106. Time-frames

A. Administrative completeness review.
1. Initial application.
   a. The Division shall review an initial application for authority to self-insure within 20 days of receipt of the application to determine whether the application contains the information required by A.R.S. § 23-961 and this Article.
   b. The Division shall inform the applicant by written notice if the application is incomplete. The Division shall include in its written notice to the applicant, a list of the missing information necessary to comply with this Article.
   c. The Division shall deem the application withdrawn if the applicant fails to post security as required under this Article or fails to file a completed application within 10 days of being notified by the Division that the application is incomplete, unless the applicant obtains an extension to provide the missing information under subsection (D).
2. Request for renewal.
   a. The Division shall review a request for renewal within 10 days of receipt of the request to determine whether the request contains the information in A.R.S. § 23-961 and this Article.
   b. The Division shall inform a self-insurer by written notice if the request for renewal is incomplete. The Division shall include in its written notice to the self-insurer, a list of the missing information necessary to comply with this Article, and the right to request an extension under subsection (D).

B. Substantive review.
1. Initial application. Within 70 days after the Division determines an initial application complete, the Commission shall determine whether the initial application for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall issue either a Resolution of Authorization granting authority to self-insure, or an order denying authority to self-insure.
2. Request for renewal. Within 60 days after the Division receives all the required information under this Article, the Commission shall determine whether a request for renewal for authority to self-insure meets the substantive criteria of A.R.S. § 23-961 and this Article and shall renew the self-insurer's authority to self-insure, or issue an order denying or revoking authority to self-insure.

C. Overall time-frame.
1. Initial application. The overall time-frame is 90 days, unless extended under A.R.S. § 41-1072 et seq.
2. Request for renewal. The overall time-frame is 70 days, unless extended under A.R.S. § 41-1072 et seq.

D. If an applicant or self-insurer cannot timely submit to the Division information to complete an initial application or a request for renewal, the applicant or self-insurer may obtain an extension to submit the missing information by filing a written request with the Division. The written request for extension shall be filed no later than 10 days after receipt of the deficiency notice from the Division. The written request for an extension shall state the reasons the applicant or self-insurer is unable to meet the deadline. If an extension will enable the applicant or self-insurer to assemble and submit the missing information, the Division shall grant an extension of not more than 30 days and provide written notice of the extension to the applicant or self-insurer.

R20-5-1107. Initial Application under A.R.S. § 23-961

A. A public entity may file an initial application for authority to self-insure under A.R.S. § 23-961 if the public entity:
1. Provides an annual payroll in Arizona of at least $2,000,000; and
2. Has total assets of at least $50,000,000.

B. An individual employer that is not a public entity may file an initial application for authority to self-insure under A.R.S. § 23-961 if the employer:
1. Is engaged in business in Arizona and has been for at least five years before the date of the initial application;
2. Provides an annual payroll in Arizona of at least $2,000,000, including the combined payrolls of all subsidiary companies that will be under the self-insurance authorization;
3. Meets either of the following thresholds:
   a. Has assets of at least $50,000,000; or
   b. Has $10,000,000 in net worth and a cash flow ratio of at least .25.

C. The applicant for authority to self-insure shall complete and file with the Division a typewritten application form approved by the Division. An application is considered filed when it is received at the Division.

D. The authorized representative of the applicant shall sign and date the initial application.

E. The authorized representative signing the initial application shall verify, in writing, that the information submitted with the application is correct.

F. The Division shall deem an initial application for authority to self-insure complete if an applicant that is not a subsidiary company provides the following information with the initial application:
1. A statement from the board of directors or governing body:
   a. Authorizing the filing of the application, and
   b. Designating the person given authority to sign the application on behalf of the applicant;
2. A statement classifying the applicant's Arizona employees using the workers' compensation classification codes of the approved rating organization used by the Arizona State Compensation Fund;
3. A copy of the applicable hospital or medical agreement or a detailed statement of the arrangements between the employer and the medical provider, if medical care is directed under A.R.S. § 23-1070;
4. If the applicant is not a public entity, a copy of the applicant's audited financial statements or internally-reviewed and signed financial statements for the most current and prior two fiscal years, including any notes to the financial statements;
5. If the applicant is a public entity, a copy of the applicant's audited financial statement for the most current and prior fiscal year; and
6. If the applicant is a public entity that qualifies for exemption under R20-5-1114 (A), the certified statement required under R20-5-1114 (B).

G. The Division shall deem an initial application for authority to self-insure complete if an applicant that is a subsidiary company provides the following information with the initial application:
1. The information required in Section (H);
2. A completed Parent Company Guaranty form signed by the authorized representative of the subsidiary's parent company;
3. A certified copy of the resolution of the parent company's board of directors authorizing a designated officer to complete, sign, and file the Parent Company Guaranty form; and

4. A copy of the parent company's audited financial statements for the most current and prior two fiscal years, including any notes to the financial statements.

R20-5-1108. Self-insurance Renewal

A. A self-insurer that is required to post security under this Article shall request renewal of authorization to self-insure with the Division 30 days before the self-insurer's anniversary date, by filing a Workers' Compensation Liability form. The Commission shall deem the request for renewal complete if the self-insurer provides the following:

1. A copy of the self-insurer's most recent audited annual financial statement or internally reviewed and signed financial statement or annual report. A parent company shall submit a copy of its most recent audited annual financial statement or annual report.
2. If the self-insured company is a subsidiary, a completed Parent Company Guaranty form signed and dated by the authorized representative of the parent company, or if the parent company of the subsidiary is different from the last filing approved by the Commission, a certified copy of the parent company board of director's resolution authorizing a designated officer to complete, sign, and file the Parent Company Guaranty form;
3. Per claim data to support the summary information on the Workers' Compensation Liability form. The self-insurer shall provide this information in the same format as in R20-5-1103(B)(2)(a) and (b);
4. Deposit of security as shown on the completed Worker's Compensation Liability form no later than the self-insurer's anniversary date subject to R20-5-1127 and R20-5-1128;
5. A certificate of excess insurance or a continuing certificate of existing excess insurance if the self-insurer takes a credit for excess insurance under R20-5-1109;
6. If medical care is directed under A.R.S. § 23-1070, a copy of the current medical or hospital medical agreement, or detailed statement of the arrangements, if not previously provided;
7. A statement of the total number of full-time and part-time Arizona employees;
8. If the Division determines that the self-insurer's denial rate exceeds 12% of claims filed, a statement from the self-insurer identifying the reason for each denial of a workers' compensation claim;
9. If the Division determines that the self-insurer's experience modification rate is greater than 1.10, a statement from the self-insurer identifying the reasons for that level of losses;
10. Name of the third-party administrator;
11. Principal location of the self-insurer in Arizona;
12. A description of the self-insurer's current business in Arizona and a description of any changes in the nature of business in Arizona in the past year;
13. List of any subsidiary company located in Arizona; and
14. Primary and secondary points of contact, including addresses, telephone numbers, facsimile numbers, and e-mail information.

B. A self-insurer that is exempt from the requirement to post security, shall request renewal of authorization to self-insure by filing an annual statement described under R20-5-1114(B) no later than the employer's anniversary date. The Commission shall deem the request for renewal complete if the self-insurer provides the following:

1. Information required under subsections (A)(1), (A)(7) through (A)(10) and (A)(14); and
2. A certified statement that contains the information described in R20-5-1114 (A) and (B).

R20-5-1109. Security Deposit; Excess Insurance Policy

A. Except as provided in R20-5-1114, an applicant authorized to self-insure under this Article shall post security in the amount of at least $100,000.00 under A.R.S. § 23-961. The self-insurer shall not reduce or offset this minimum amount by any credit for excess insurance.

B. Except as provided in R20-5-1114, and subject to the minimum security requirement of A.R.S. § 23-961, a self-insurer filing a request to renew its authority to self-insure under R20-5-1108 shall post security in an amount equal to 125% of its total estimated future liability, or in an amount determined by the Division under R20-5-1127.

C. Subject to review by the Commission, the self-insurer shall determine its total estimated liability by using the Workers' Compensation Liability form.

D. The Commission shall approve a credit for excess insurance against the amount of security required under this Article only if the following criteria are met:

1. The self-insurer satisfies the minimum-security requirement of A.R.S. § 23-961;
2. The self-insurer does not reduce or offset the minimum-security amount by an excess insurance,
3. The self-insurer calculates the credit on the Workers' Compensation Liability form,
4. The excess insurance policy contains a 60-day notice of termination,
5. The excess insurer does not have an affiliate relationship with the self-insurer,
6. The excess insurance policy provides that the insolvency of the self-insurer does not relieve the excess insurer of liability under the policy, and
7. The excess insurer posts a deposit under A.R.S. § 23-961(D).

E. If an excess insurance provider gives the self-insurer notice of its intent to terminate the policy, the self-insurer shall

immediately:
1. Provide written notice of the notice of termination to the Division, and
2. Deposit security as shown on the Worker's Compensation Liability form without credit for the excess insurance.

R20-5-1110. Posting of Guaranty Bond; Bond Amount; Effective Date

A. A self-insurer shall ensure that a guaranty bond or rider for the guaranty bond filed with the Division bears the same effective date as the effective date of the Resolution of Authorization to self-insure.

B. The Commission shall permit the self-insurer to post a guaranty bond or rider of the guaranty bond instead of other security if:
1. The insurance carrier providing the guaranty bond or rider submits the bond or rider to the Division on a form approved for use by the Division;
2. The guaranty bond is continuous in form;
3. The penal sum of the guaranty bond or rider equals the amount the self-insured must post as security under this Article;
4. The company issuing the guaranty bond or rider is authorized and licensed to transact the business of surety insurance in Arizona;
5. An authorized agent of the surety executes the guaranty bond or rider;
6. The bond is signed and dated by an authorized representative of the self-insurer.
7. The surety issuing the bond or rider does not have an affiliate relationship with the applicant or self-insurer; and
8. The surety issuing the guaranty bond or rider has a rating with A.M. Best of at least A-.

C. A guaranty bond or rider is subject to annual change based on unpaid liabilities as reported by the self-insurer on the Workers' Compensation Liability form.

R20-5-1111. Posting of Other Bonds or Treasury Notes of the United States Instead of Guaranty Bond; Registration; Deposit

A. Instead of providing a guaranty bond under R20-5-1110, a self-insurer may deposit with the Commission for transmittal through the Arizona State Treasurer to the Treasurer's designated bank, bonds or treasury notes of the United States of America if the bonds or treasury notes are guaranteed as to principal and interest by the United States of America or by any agency or instrumentality of the United States of America.

B. The self-insurer shall ensure that bonds or treasury notes of the United States of America deposited with Commission under this subsection are registered to: "The Industrial Commission of Arizona, in trust for the fulfillment by -------- of its obligations under the Arizona Workers' Compensation Laws." The self-insured shall ensure that any contract between the self-insured and the custodial bank provides that the bonds or treasury notes are held for: "The Industrial Commission of Arizona, in trust for the fulfillment by -------- of its obligations under the Arizona Workers' Compensation Laws."

C. If one or more of the self-insurer's claims are assigned to the state compensation fund under A.R.S. § 23-966, the Commission shall:
1. Collect or order collection of the principal, or market value of the security, whichever is greater, as it becomes due;
2. Sell or order the sale of the security or any part of the security; or
3. Apply or order the application of the proceeds to the payment of any unpaid obligations of the self-insurer, as determined by the Commission, in the event of the default in the payment of its obligations.

D. The self-insurer may arrange for interest on bonds or treasury notes of the United States of America deposited under this subsection to be paid to the self-insurer.

E. Bonds or treasury notes deposited according to this Article by a self-insurer shall be in an amount not less than the security deposit amount required under R20-5-1109.

R20-5-1112. Letter of Credit or Local Government Investment Pool Funds (LGIP)

A. Letter of Credit:
1. A self-insurer may satisfy the provision of R20-5-1110 by filing a letter of credit.
2. The self-insurer shall ensure that the letter of credit is registered to: "The Industrial Commission of Arizona, in trust for the fulfillment by -------- of its obligations under the Arizona Workers' Compensation Laws."
3. The self-insurer shall ensure that the letter of credit is issued by a federal or Arizona chartered bank with an Arizona branch office or correspondent bank in Arizona upon which demand may be made and from which funds will be immediately payable on demand.
4. The letter of credit is acceptable only if:
   a. The letter includes the name and address of the self-insurer, including all Arizona subsidiaries;
   b. Is for a period of one year from the effective date;
   c. Includes a provision that the letter of credit automatically extends for consecutive periods of one year, unless the issuing bank provides written notice to the Division 30 days before the expiration of any one-year term that the issuing bank will not renew the letter of credit for the additional period;
   d. Includes a provision that the written notice required in subsection (A)(4)(d) may be delivered to the Division or sent to the Division by United States Mail, certified mail return receipt requested;

e. The letter of credit states the amount available under the letter of credit; and
f. The self-insurer ensures that the letter of credit includes a statement that the sum available under the letter of credit shall be paid to the Industrial Commission of Arizona upon receipt by the issuing bank of a signed statement by an official of the Commission stating the following:
1. The self-insurer has failed to comply with its workers' compensation obligations; or
2. The self-insurer has failed to renew or substitute acceptable security for its workers' compensation liability 15 days before the expiration of the letter of credit.

B. Local Government Investment Pool Funds (LGIP):
1. Instead of posting a guaranty bond, letter of credit, or United States of America bonds or Treasury Notes, a self-insured public agency may post a local government investment pool (LGIP) fund only if:
a. The self-insurer ensures that the funds are deposited through the Arizona State Treasurer as custodian subject to the order of, and in trust for, the Industrial Commission of Arizona, registered and assigned to: "The Industrial Commission of Arizona, in trust for the fulfillment by -------- of its obligations under the Arizona Workers' Compensation Laws;"
b. The LGIP funds posted as security in compliance with this Section are in an amount not less than the security deposit amount required under R20-5-1109;
c. The Commission has the ability to:
1. Collect or order collection of the funds; and
2. Apply or order the application of the funds to the payment of any award rendered against the self-insurer, as determined by the Commission, if the self-insurer defaults in any of its obligations;
d. The self-insurer submits an assignment for the benefit of the Industrial Commission of Arizona, and an Endorsement-Receipt for Notice of Assignment, signed by the State of Arizona Treasurer and notarized. The Endorsement-Receipt shall contain the following language:

Receipt is hereby acknowledged by the Treasurer of the State of Arizona of written notice of the assignment to the Industrial Commission ("Commission") of the above-identified account. We have noted our records to show the interest of the Commission in said account as shown in and by the above assignment. We have retained a copy of this document. We hereby certify that we have not received any notice of lien, encumbrance, hold, claim, or other obligation against the above-identified account prior to its assignment to the Commission. We further hereby waive any current or future right of set-off against such account. We agree to make payment as required by the Rules and Regulations of the Commission adopted in accordance with applicable laws and the law applicable to this institution.

3. Interest on the funds deposited under this Section may be remitted by the State of Arizona Treasurer directly to the self-insurer.

R20-5-1113. Substitution of Securities

The Commission may authorize the return a self-insurer's security deposit with written approval from the Division. The Commission shall not authorize the return or release of security unless the self-insurer substitutes the security with new security in an amount sufficient to satisfy the self-insurer's obligations under R20-5-1109.

R20-5-1114. Exemption from Requirement to Post Security

A. Conditions to qualify for exemption. A public entity applicant or public entity self-insurer is exempt from the requirements under this Article to post or provide security if the public entity:
1. Has a fully-funded risk management fund sufficient to cover actuarial liabilities for workers' compensation as determined by the self-insurer in accordance with Government Accounting Standards Board Statement #10; and
2. Provides funding to the risk management fund each year sufficient to cover actuarial liabilities for workers' compensation as determined by the self-insurer in accordance with Government Accounting Standards Board Statement #10.

B. Written request for exemption. A public entity applicant or public entity self-insurer that requests exemption from posting security shall file a certified statement along with its Workers' Compensation Liability form with the Commission before the effective date of initial self-insurance or before the anniversary date, if a renewal, that contains the following:
1. A statement that the public entity meets the conditions required under subsection (A);
2. A statement that the governing body of the public entity shall immediately notify the Commission and provide security required under this Article if the governing body learns that the risk management fund has insufficient funds to cover all workers' compensation liabilities of the public entity self-insurer;
3. The signatures of a majority of the members of the public entities' governing body; and
4. If the Commission has previously authorized the public entity to self-insure its workers' compensation obligations, a statement requesting the return of security previously posted or provided to the Commission, including a specific description of the type and amount of security previously posted or provided.

C. Approval or denial of request for exemption.
1. If the Commission determines that a self-insurer qualifies for exemption under this Section, the Division shall return to the self-insurer security previously posted or provided to the Commission, within 30 days after receiving written

notice under subsection (B).

2. If the Commission denies a request for exemption under this subsection, the Commission shall provide written notice to the public entity within 10 days of the initial written request. The applicant or self-insurer has 10 days from the date the Commission's notice is received to request a hearing under A.R.S. § 23-945.

D. Failure to comply with conditions of exemption. The Commission shall order a self-insurer exempt under subsection (A) to immediately file with the Commission a completed, dated, and signed Workers' Compensation Liability form and post or provide security as required under this Article if any of the following occurs:

1. The self-insurer fails to file the certified statement to request renewal of self-insurance authority;
2. The self-insurer fails to comply with the conditions in subsection (A); or
3. The Commission determines, based upon receipt of information under subsection (B), or its own review, that the self-insurer's risk management fund has insufficient funds to cover all actuarial liabilities for workers' compensation liabilities of the self-insurer.

R20-5-1115. Rating Plans Available for a Self-insurer

A. A self-insurer shall use one of the following rating plans to calculate the premium taxes required under A.R.S. §§ 23-961 and 23-1065:

1. Fixed-premium plan;
2. Ex-medical plan;
3. Guaranteed-cost plan; or
4. Retrospective-rating plan.

B. The provisions of the rating plans apply only to operations and payroll in Arizona. The self-insurer shall combine all operations in Arizona as a single base to calculate any premium modification.

R20-5-1116. Fixed-Premium Plan; Formula; Eligibility; Necessary Information for Plan

A. The Division shall calculate the net taxable premium under a fixed-premium plan as follows: payroll multiplied by the applicable workers' compensation rate minus the premium discount.

B. A self-insurer shall use a fixed-premium plan to calculate its net taxable premium if:

1. The self-insurer elects this plan;
2. The self-insurer's annual net taxable premium does not exceed $100,000; or
3. The self-insurer is not eligible for any other plan authorized by the Commission under this Article.

C. A self-insurer shall provide the following information in support of the fixed-premium plan:

1. Self-insurer's Payroll Report,
2. Self-insurer's Medical Report, and
3. Self-insurer's Quarterly Tax Payment form.

R20-5-1117. Ex-medical Plan; Formula; Eligibility; Necessary Information for Plan

A. The Division shall calculate the net taxable premium under an ex-medical plan as follows: [(payroll multiplied by the applicable workers' compensation rate) multiplied by (1 minus the ex-medical factor)] minus the premium discount.

B. A self-insurer may use the ex-medical plan if:

1. The self-insurer's program for medical, surgical, or hospital services meets the requirements of A.R.S § 23-1070; and
2. The self-insurer's annual net taxable premium exceeds $100,000.

C. A self-insured shall provide the following information in support of the plan submitted under this Section:

1. Self-insurer's Payroll Report,
2. Self-insurer's Hospital Report,
3. Self-insurer's Medical Report, and
4. Self-insurer's Quarterly Tax Payment form.

R20-5-1118. Guaranteed-Cost Plan; Formula; Eligibility; Necessary Information for Plan

A. The Division shall calculate the net taxable premium under a guaranteed-cost plan as follows: [(payroll multiplied by the applicable worker's compensation rate) multiplied by (the experience modification rate) minus the premium discount].

B. A self-insurer may use the guaranteed-cost plan if:

1. The self-insurer has an annual net taxable premium exceeding $100,000; and
2. Uses an experience modification rate calculated as follows:
   a. In the first year of self-insurance, the experience modification rate is 1.0;
   b. In the second and third years of self-insurance, the Division calculates the experience modification rate based upon the loss data accumulated by the self-insurer during its term of self-insurance; and
   c. In the fourth year of self-insurance and all following years, the Division calculates the experience modification rate based upon the most recent three years of loss data provided on the Self-insured Injury Report, excluding the most recent year.

C. A self-insurer shall provide the following information in support of the guaranteed-cost plan:

1. Self-insurer's Payroll Report,

2. Self-insurer's Medical Report,
3. Self-insurer's Injury Report, and
4. Self-insurer's Quarterly Tax Payment form.

R20-5-1119. Retrospective-Rating Plan; Formula; Eligibility; Necessary Information for Plan

A. The Division shall calculate the net taxable premium under a retrospective-rating plan as follows: [(payroll multiplied by the applicable worker's compensation rate multiplied by the experience modification rate multiplied by the basic premium factor) added to (losses for the current year plus adjusted losses from the previous year) multiplied by (the loss conversion factor)] multiplied by the tax multiplier. The net taxable premium is subject to a maximum and minimum premium level.

B. A self-insurer may use the retrospective-rating plan if:
1. The self-insurer has an annual net taxable premium exceeding $100,000; and
2. The Division calculates the experience modification rate as follows:
   a. In the first year of self-insurance, the experience modification rate is 1.0;
   b. In the second and third years of self-insurance, the Division calculates the experience modification rate based upon the loss data accumulated by the self-insurer during its term of self-insurance; and
   c. In the fourth year of self-insurance and all following years, the Division calculates the experience modification rate based upon the most recent three years of loss data provided on the Self-insured Injury Report, excluding the most recent year. The Division shall use the most recent year's data to calculate the actual premium tax.

C. A self-insurer shall provide the following information in support of the retrospective-rating plan:
1. Self-insurer's Payroll Report;
2. Self-insurer's Medical Report;
3. Self-insurer's Injury Report; and
4. Self-insurer's Quarterly Tax Payment form.

R20-5-1120. Completion of Reports in Support of Tax Rating Plan; Calculation and Payment of Taxes Owed by Self-insurer under A.R.S. §§ 23-961 and 23-1065

A. A self-insurer shall submit to the Division the information required in R20-5-1116, R20-5-1117, R20-5-1118, or R20-5-1119 by February 15 of each year.

B. After receiving the information required under A.R.S. § 23-961, § 23-1065, and this Article, the Division shall determine the annual taxes owed by the self-insurer. The Division shall determine whether the self-insurer has overpaid or underpaid its taxes for the previous calendar year. If the total of the quarterly payments is less than the actual taxes for the year, the self-insurer shall pay the difference on or before March 31 of the calendar year in which the taxes are due. If the total of the quarterly payments exceeds the amount of the actual taxes for the year, then the Division shall refund the amount described in A.R.S. § 23-961 or § 23-1065 as applicable.

C. A self-insurer shall pay to the Commission the self-insurer's annual workers' compensation premium taxes on or before March 31 based on the net taxable premium calculated for the preceding calendar year. A self-insurer shall pay a premium tax of at least $250.00 per calendar year.

D. The Division shall calculate a self-insurer's quarterly taxes owed under A.R.S. §§ 23-961 and 23-1065 in one of the following ways:
1. 25% of the tax calculated for the previous year; or
2. A calculation based on actual payroll and losses calculated for each quarter, using the same rating plan to calculate the quarterly payment as used to calculate the taxes required under A.R.S. §§ 23-961 and 23-1065. If the Division selects this method, the self-insurer shall submit quarterly payroll and loss information by classification code.

E. Quarterly tax payments are due April 30, July 31, October 31, and January 31 for the periods ending March 31, June 30, September 30, and December 31, respectively.

F. If the self-insurer fails to pay the annual or quarterly taxes to the Commission when due, the self-insurer shall pay a penalty of $25.00 or 5% of the tax or payment due, whichever is more, plus interest at the rate of 1% per month from the date the tax or payment was due until paid.

R20-5-1121. Basis for Definitions, Classifications, Rating Procedures, and Plans

The Division shall use the definitions, classifications, rating procedures, and plans specified in the rating systems filed by the rating organization used by the State Compensation Fund under A.R.S. Title 20, Chapter 2, Article 4 in calculating the net taxable premium under A.R.S. §§ 23-961 and 23-1065.

R20-5-1122. Report, Book, Record, and Data Review by the Commission

A. All reports, books, records, and data of a self-insurer relating to classifications, payroll, incurred-loss reserves, calculation of premiums, completion of Workers' Compensation Liability form, and procedures for development of statistical information for the development of rating information are subject to review by the Commission or its authorized representative upon request.

B. A self-insurer shall ensure that the reports, books, records, and data described in subsection (A) are readily available for review by the Commission.

C. A self-insurer shall ensure that the reports, books, records, and data described in subsection (A) are clear, valid, and understandable.

R20-5-1123. Audit and Cost of Audit
The Commission may, at any time, perform or have performed for its benefit an audit of the payroll, loss payment, and loss reserve records for incurred losses of a self-insurer for the purpose of determining the scope and adequacy of the records. The entire cost of the audit shall be borne by the self-insurer.

R20-5-1124. Requirement to Provide Information to the Commission
A self-insurer shall make available to the Commission, upon request and at an office of the Commission, information described in this Article.

R20-5-1125. Notice to Commission of Location of Self-insurer's Claims Files
In addition to the requirements found in 20 A.A.C. 5, Article 1, a self-insurer shall advise the Claims Manager of the location of the self-insurer's open and closed workers' compensation claims files. Except for a claims file that is made available for copying and inspection under A.A.C. R20-5-131(C), if a self-insurer or third-party administrator intends to change the location of its claims files, the self-insurer shall provide written notice to the Claims Manager of the change in location at least 30 days before the files are moved.

R20-5-1126. Processing of Workers' Compensation Claims by a Self-insured Employer
The Claims Division shall permit a self-insurer to process its own workers' compensation claims if the self-insurer provides information and supporting documentation establishing the following:

1. The self-insurer has facilities and equipment to manage, process, and store its own information pertaining to the self-insurer's workers' compensation claims;
2. The self-insurer's workers' compensation claims are processed by persons with experience, training by the Claims Division, or knowledge regarding the Arizona Workers' Compensation Act; and
3. The persons processing the self-insurer's workers' compensation claims attend and complete training provided by the Claims Division.

R20-5-1127. Review of Initial Application and Request for Renewal to Self-insure

A. Upon the filing of a completed initial application or request for renewal, the Division shall:
1. Determine whether the applicant or self-insurer meets the requirements of A.R.S. § 23-96;
2. Determine whether the applicant or self-insurer meets the requirements of this Article. Except for a self-insurer that is exempt under R20-5-1114, the self-insurer shall post security according to R20-5-1109 that is adequate to provide for the self-insurer's future estimated liability. If applicable, the Division shall advise the applicant or self-insurer of the need for additional security, and the self-insurer shall post the additional security before the Commission makes its decision under R20-5-1128;
3. If a self-insurer requests a decrease of 10% or greater in the value or amount of security provided in the prior year, perform an additional review to determine the adequacy of the security deposit, including:
   a. Mathematical verification of the accuracy of amounts reported on the Workers' Compensation Liability form;
   b. Review of claims filed for the three preceding years;
   c. Review of changes in the payroll of the self-insurer to determine changes in employment levels;
   d. Review of changes in workers' compensation classification codes to determine changes in operations of the company in Arizona; and
   e. Review of the financial condition of the self-insurer to determine changes in financial stability, including a review of the total incurred liability expenses for the past three years;
4. Determine whether the applicant or self-insurer has the ability to process and pay benefits required under the Arizona Workers' Compensation Act.
   a. For an applicant that is not a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
      i. Reviewing the financial statements to determine the current ratio, quick ratio, cash-flow ratio, working-capital ratio, debt-status ratio, profitability ratio, and the applicant's net profit or loss;
      ii. Comparing the applicant's ratios with the ratios of existing self-insurers in the same or a closely related industry;
      iii. Reviewing notes to the financial statements;
      iv. Reviewing management reports of operations and other information provided by the self-insurer; and
      v. Comparing the applicant's ratio of claims filed to total employees with that of other employers within the same or closely related industry;
   b. For an applicant that is a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
      i. Reviewing the public entity's general fund financial statement to determine the cash ratio and fund equity ratio;

ii. Reviewing excess revenues over expenditures and the ending balances in the general fund and all fund accounts for the past two years;
iii. Reviewing notes to the self-insurer's financial statements;
iv. Reviewing management reports of operations and other information provided by the self-insurer;
v. Comparing the public entity's ratio of claims filed to total employees with that of other public entities;
vi. Comparing cash and fund equity ratios with that of other self-insured public entities; and
vii. Reviewing the risk management fund to determine if it is sufficient to pay all workers' compensation liabilities;

c. For a self-insurer requesting renewal that is not a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
i. Reviewing the information in subsection (A)(4)(a);
ii. Reviewing the claims profile for the past three years, which includes a review of the claims filed, claims denied, and denial rate;
iii. Reviewing of the self-insurer's experience modification rate;
iv. Comparing of the self-insurer's ratio of claims filed to total employees with that of other self-insurer's; and
v. Reviewing the Parent Company Guaranty form; and

d. For a self-insurer requesting renewal that is a public entity, the Division shall determine whether the self-insurer has the ability to process and pay by:
i. Reviewing the information in subsection (A)(4)(b);
ii. Reviewing the claims profile for the past three years, including a review of the claims filed, claims denied, and denial rate;
iii. Reviewing the self-insured's experience modification rate; and
iv. Comparing the self-insurer's ratio of claims filed to total employees with that of other self-insured public entities of similar size.

B. The Division shall present the findings and recommendations of its review to the Commission, and may include a recommendation regarding the adequacy of the security based on its review and determination whether the self-insurer has the ability to process and pay as set forth in subsection (A)(3).

R20-5-1128. Decision by the Commission on Initial Application or Request for Renewal of Authorization to Self-insure

A. The Commission shall consider the following before granting or denying an initial application or request for renewal to self-insure:
1. The information submitted by an applicant or self-insurer,
2. The information and recommendations of the Division, and
3. The requirements of A.R.S. § 23-961 and this Article, including compliance with the requirement for posting additional security as recommended by the Division under R20-5-1127.

B. The Commission shall deny authority to self-insure if the Commission finds one or more of the following conditions:
1. The applicant or self-insurer does not meet the requirements of A.R.S. § 23-961,
2. The applicant or self-insurer does not meet the requirements of this Article, or
3. The applicant or self-insurer is unable to process and pay benefits under the Arizona Workers' Compensation Act.

C. The Commission may table consideration of, or action on, a request for renewal pending the self-insurer posting additional security based on a Division decision under R20-5-1127 that the posted security is insufficient.

D. Whether to grant, deny, or table an application for self-insurance authority shall be made by a majority vote of a quorum of Commission members present when the application for initial authority or renewal is presented at a public meeting.

E. If the Commission approves an initial application of an applicant that is not exempt under R20-5-1114:
1. The approval is contingent upon the self-insurer posting the required security;
2. After the Commission takes action under subsection (D), the Division shall provide written notice to the applicant that the Commission approves the application for self-insurance authority effective on a date certain;
3. The applicant shall provide to the Commission the required security before the effective date of the authority to self-insure; and
4. After the applicant complies with the requirements of subsection (E)(3), the Division shall mail a Resolution of Authorization to Self-insure to the last known business address of the applicant.

F. If an applicant fails to comply with the requirements of subsection (E)(3), the Commission shall not grant authority to self-insure and the Commission shall deem the initial application withdrawn.

G. If the Commission approves an initial application of an applicant exempt under R20-5-1114, the Division shall mail a Resolution of Authorization to Self-insure, to the last known business address of the applicant.

H. If the Commission approves a request for renewal of authority to self-insure, or tables consideration of the request for renewal, the Division shall mail written notice of the Commission's action on the request for renewal to the last known business address of the self-insurer.

I. If the Commission denies authority to self-insure, the Commission shall issue and mail written findings and an order to

the last known business address of the applicant or self-insurer no later than 10 days after the Commission denies authority to self-insure.

R20-5-1129. Right to Request a Hearing

A. An applicant or self-insurer has 15 days from the date the Commission's findings and order is mailed to request a hearing.

B. A request for hearing shall comply with A.R.S. § 23-945 and be signed by an authorized representative of the applicant or self-insurer or the applicant's or self-insurer's legal representative. The applicant or self-insurer shall file the request for hearing with the Division.

C. The Commission shall deem its findings and order final if a request for hearing is not received by the Division within the time specified in subsection (A).

R20-5-1130. Hearing Rights and Procedures

A. Burden of proof.
1. Except as provided in subsection (A)(2), in all proceedings arising out of this Article, the applicant or self-insurer has the burden of proof to establish that it has met the requirements of A.R.S. § 23-901 et seq. and this Article.
2. In a revocation hearing, the Commission has the burden of proof to establish that the self-insurer has committed the acts described in R20-5-1133.

B. Roles of Chair and Chief Counsel.
1. The Chair of the Commission or designee shall preside over hearings held under this Article. Except as otherwise provided in this Section, the Chair shall apply the provisions of A.R.S. § 41-1062 to hearings held under this Article and shall have the authority and power of a presiding officer as described in A.R.S § 41-1062.
2. The Chief Counsel of the Commission shall represent the Commission in hearings held before the Commission and upon direction of the Chair of the Commission shall issue on behalf of the Commission all notices and subpoenas required under this Section.

C. Appearance by a party.
1. Except as otherwise provided by law, a party to a hearing may appear on its own behalf or through counsel.
2. When an attorney appears or intends to appear before the Commission, the attorney shall file a notice of appearance.

D. Filing and service.
1. For purposes of this Section, a document is considered filed when the Commission receives the document. All documents required to be filed under this Section with the Commission shall be served upon the Chief Counsel of the Commission and upon all parties to the proceeding.
2. Except as otherwise provided in A.R.S. § 23-901, et seq. and this Article, service of all documents upon the Commission, applicant, or self-insurer shall be by personal service or mail. Personal service includes delivery upon the Commission or party. Service by mail includes every type of service except personal service and is complete on mailing.

E. Notice of hearing.
1. The Commission shall give the parties at least 20 days notice of hearing.
2. A notice of hearing shall be in writing and mailed to the last known address of the applicant or self-insurer as shown on the records of the Commission, or upon the applicant's or self-insurer's representative if a notice of appearance has been filed by a representative.
3. A notice of hearing shall comply with the requirements in A.R.S. § 41-1061.

F. Evidence.
1. The civil rules of evidence do not apply to hearings held under this Section.
2. A party may make an opening and closing statement with the permission of the Chair if the Chair determines that the statement will be helpful to a determination of the issues.
3. All witnesses at a hearing shall testify under oath or affirmation.
4. A party may present evidence and conduct cross-examination of witnesses.
5. The Commission Chair may admit documents into evidence if filed no later than 15 days before the date of the hearing. Upon request or upon direction from the Commission Chair, the Commission may issue a subpoena to the author of any document submitted into evidence to appear and testify at the hearing.
6. Upon written request by a party or upon direction from the Commission Chair, the Commission may issue a subpoena requiring the attendance and testimony of a witness whose testimony is material. A party shall submit its subpoena request no later than 10 days before the date of the hearing.
7. Upon written request by a party or upon direction from the Commission Chair, the Commission may issue a subpoena duces tecum requiring the production of documents or other tangible evidence. The written request by a party shall contain a statement explaining the general relevance, materiality, and reasonable particularity of the documentary or other tangible evidence and the facts to be proved by them.

G. Transcript of Proceedings. The Commission shall stenographically report or electronically record hearings. Any party desiring a copy of transcript shall obtain a copy from the court reporter. Any party desiring a copy of an electronic recording may obtain a copy from the Commission.

R20-5-1131. Decision Upon Hearing by the Commission

A. A decision of the Commission to deny authority to self-insure shall be based upon the grounds in R20-5-1128 and shall be made by a majority vote of the quorum of Commission members present at a public meeting.
B. A decision of the Commission to revoke authority to self-insure shall be based upon the grounds in R20-5-1133 and shall be made by a majority vote of the quorum of Commission members present at a public meeting.
C. The Commission shall issue a written decision after the hearing that shall include findings of fact and conclusions of law, separately stated.
D. The Commission decision is final unless an applicant or self-insurer requests review under R20-5-1132 no later than 15 days after the written decision is mailed to the parties.

R20-5-1132. Request for Review
A. A party may request review of a Commission decision issued under R20-5-1131 by filing with the Commission a written request for review no later than 15 days after the written decision is mailed to the parties.
B. A request for review of a Commission Decision shall be based upon one or more of the following grounds, which have materially affected the rights of a party:
1. Irregularities in the hearing proceedings or any order or abuse of discretion that deprives a party seeking review of a fair hearing;
2. Accident or surprise, which could not have been prevented by ordinary prudence;
3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
4. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of the hearing;
5. Bias or prejudice of the Division or Commission; and
6. The order, decision, or findings of fact are not justified by the evidence or are contrary to law.

C. The request for review shall state the specific facts and law in support of the request and shall specify the relief sought.
D. The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.
E. The Commission's decision upon review is final unless an applicant or self-insurer seeks judicial review as provided in A.R.S. § 23-946.

R20-5-1133. Revocation of Authorization to Self-insure
A. The Commission may revoke a Resolution of Authorization to Self-insure for good cause. Good cause includes any of the following:
1. An inability or failure to process and pay any claim under the Arizona Workers' Compensation Act;
2. Failure of the self-insurer to pay any taxes levied by the Commission as required under A.R.S. §§ 23-961 and 23-1065 and this Article;
3. Failure of the self-insurer to comply with the requirements of this Article, including the failure of the self-insurer to:
   a. Promptly provide the Commission reports or other information required under this Article; and
   b. File the written Letter of Intent required under R20-5-1135;
4. Failure or deliberate refusal to comply with the applicable requirements of A.R.S. § 23-901 et seq.;
5. Failure to pay or comply with any award or order of the Commission after the award or order becomes final;
6. Willful misstating of any material fact in a tax report, application, renewal documentation, or other report or statement made to or filed with the Commission;
7. Failure or deliberate refusal to comply with the requirements of 20 A.A.C. 5, Article 1;
8. Failure to deposit or file security timely as specified in this Article; or
9. Failure to provide information or documentation necessary to timely renew the Authorization to Self-insure.

B. Upon receiving information that a self-insurer has committed an act described in subsection (A), the Division shall conduct an investigation of the facts of the alleged misconduct. If, upon completion of the investigation, the Division determines that sufficient evidence exists to warrant revocation of a self-insurer's authority to self-insure, the Division shall present its findings to the Commission.
C. The Commission shall consider the findings and recommendation of the Division before revoking a self-insurer's authorization to self-insure.
D. The Commission shall revoke a self-insurer's authority to self-insure if the Commission finds one or more of the grounds in subsection (A). The Commission shall issue written findings and an order revoking the Resolution of Authorization to Self-insure and shall serve a copy of the findings and order upon the self-insurer addressed to the last known address of the self-insurer as shown by the records of the Commission.
E. A self-insurer has 15 days from the date the Commission serves the findings and order described in subsection (D) to request a hearing. The request for hearing shall comply with the requirements of A.R.S. § 23-945.
F. R20-5-1130, R20-5-1131, and R20-5-1132 govern hearing rights and procedures for revocation hearings and review.

R20-5-1134. Notice of Bankruptcy, Change in Ownership Status, or Change in Business Address
A. A self-insurer shall notify the Commission in writing within 24 hours of any bankruptcy filing under federal law or insolvency proceeding under any state's laws.
B. A self-insurer shall notify the Commission in writing within 24 hours of any change in the ownership status or business

address of the employer.

R20-5-1135. Plan of Action for Retaining Self-insurance Authority in the Event of Insolvency or Bankruptcy

A. If a self-insurer becomes insolvent or files for protection under the United States Bankruptcy Code seeking to reorganize, and desires to remain self-insured, it shall file with the Division a written Letter of Intent regarding its intent to reorganize under the applicable provisions of the United States Bankruptcy Code.
1. If the self-insurer is incorporated, the chief executive officer shall sign the Letter of Intent and the board of directors shall approve the Letter if the corporation is still operating;
2. If the self-insurer is not incorporated, an authorized representative of the self-insurer shall sign the Letter of Intent; or
3. An attorney representing the entity in its bankruptcy reorganization case may sign the Letter of Intent instead of the chief executive officer or authorized representative.

B. The self-insurer shall file the Letter of Intent with the Division within 10 days of the initial bankruptcy filing or insolvency proceeding.

C. The self-insurer shall ensure that a provision addressing the self-insurer's obligations to workers' compensation claimants and the Commission is included in the Plan of Reorganization filed with the United States Bankruptcy Court. This Plan shall state the self-insurer's intentions and financial ability to continue self-insurance.

D. During the period between the initial bankruptcy filing and the approval of a Plan of Reorganization or Plan of Liquidation, the self-insurer may continue its self-insurance status only upon the demonstration of adequate protection to cover its current workers' compensation claims, or those claims that may come due before the Bankruptcy Court approves the Reorganization or Insolvency Plan. As part of the adequate protection for the Commission, the self-insurer shall post or deposit additional security in an amount the Commission deems necessary to pay claims currently pending or anticipated before the approval of the Plan of Reorganization or liquidation.

E. The self-insurer, or its legal representative, shall send a copy of the proposed Plan of Reorganization or Liquidation, including amendments to the Division.

F. The Commission may file an Objection to the Plan of Reorganization in the appropriate bankruptcy court and take other actions as permitted under the United States Bankruptcy Code if it determines that the Plan of Reorganization or Liquidation does not adequately provide for the processing and payment of the self-insurer's workers' compensation claims.

R20-5-1136. Notice of Self-insurer's Termination of Self-insurance

A. A self-insurer shall file with the Division a completed and signed Notice of Self-insurer's Termination of Self-insurance form, if the self-insurer decides to terminate its self-insurance. The Notice of Self-insurer's Termination shall be filed with the Division 30 days before the effective date of termination of self-insurance.

B. Before the effective date of the termination of self-insurance, the self-insurer shall file a certificate with the Claims Division designating an insurance carrier, or other proof, satisfactory to the Commission, of compliance with the requirements of A.R.S. § 23-961, to cover claims of the self-insurer that:
1. Are pending at that time the self-insurer terminates self-insurance; and
2. Occur after the effective date of the termination of self- insurance.