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 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES
OCCUPATIONAL LICENSING

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R9-16-315 — New Section

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

Authorizing statutes: A.R.S. §§ 36-104(3), 36-136(F), and 36-1902(B)

Implementing statutes: A.R.S. §§ 36-1904, 36-1910, 36-1922, 36-1923, 36-1926, and 41-1072 through 41-1079

3. The effective date of the rule:

June 7, 2002

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

Notice of Rulemaking Docket Opening: 7 A.A.R. 3847, August 31, 2001

Notice of Proposed Rulemaking: 8 A.A.R. 719, February 22, 2002

Notice of Public Information: 8 A.A.R. 1114, March 15, 2002

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

Name: Becky Burkhart, Team Leader

Address: Arizona Department of Health Services
Assurance and Licensure, Office of Speech and Hearing Licensure
1647 E. Morten, Suite 160
Phoenix, AZ 85020

Telephone: (602) 674-4325

Fax: (602) 861-0463

E-mail: bburkha@hs.state.az.us

or

Name: Kathleen Phillips, Rules Administrator

Address: Arizona Department of Health Services
1740 W. Adams, Suite 102
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: kphilli@hs.state.az.us

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

The proposed rulemaking adds R9-16-315 to A.A.C. Title 9, Health Services; Chapter 16, Occupational Licensing; Article 3, Licensing Hearing Aid Dispensers, to establish time-frames for the issuance of licenses required by the Article. Time-frames are established for Department approval to take an examination, issuance of a regular license by examination, issuance of a regular license by reciprocity, issuance of a regular license for a business, issuance of an initial temporary license, renewal of a temporary license, renewal of a regular license, and approval of a continuing education course that is requested separately from an application for renewal of a license. The rulemaking is necessary to ensure that Department licenses required under 9 A.A.C. 16, Article 3 are issued according to A.R.S. §§ 41-1072 through 41-1079.

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

Not applicable

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

Not applicable

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

The proposed rule directly impacts and benefits the approximately 215 hearing aid dispensers who are currently licensed to engage in the practice of fitting and dispensing hearing aids in Arizona, the approximately 60 business organizations that are currently licensed to operate a hearing aid dispenser business in Arizona, the approximately 45 individuals and entities that apply for an initial license each year, the approximately 50 individuals who apply for approval to take the examination to become a licensed hearing aid dispenser each year, and the approximately 65 individuals and entities that request approval of a continuing education course each year. The proposed rule will not add any new or additional costs to licensed hearing aid dispensers or hearing aid dispenser businesses, or to individuals or entities that may apply to the Department for initial licenses or approvals related to the hearing aid dispenser licensing program. Establishing a time-frame rule for the licensure of hearing aid dispensers and hearing aid dispenser businesses and for approvals related to the hearing aid dispenser licensing program helps ensure that the Department issues hearing aid dispenser and hearing aid dispenser business licenses and approvals in a timely and consistent manner, which benefits Arizona's hearing aid dispensers and hearing aid dispenser businesses, individuals and entities that apply to become hearing aid dispensers or hearing aid dispenser businesses, individuals and entities that apply for approvals related to the hearing aid dispenser licensing program, and the tens of thousands of individuals who receive services from licensed hearing aid dispensers and hearing aid dispenser businesses in Arizona.

The proposed rule directly impacts the Department. The Department estimates that it will incur minimal initial costs of approximately $580.00 to revise forms and update the Department's database. The Department estimates that it will incur moderate ongoing annual costs of approximately $2214.00 to implement the time-frame rule. The Department's increased annual costs result from entering data into the database for approximately 50 applications for approval to take the examination and approximately 65 applications for approval of a continuing education course; monitoring and tracking those applications; mailing letters of administrative completeness to applicants; and conducting management review and analysis of time-frame compliance.

The proposed rule may impact state revenues if the Department fails to comply with the time-frame requirements and is required by state law to refund licensing fees and pay penalties to applicants. However, the Department has already been performing time-frame activities and tracking time-frames for the licensure of hearing aid dispensers and hearing aid dispenser businesses and, given the Department's current work load and resources, the Department believes that the time-frame rule requirements will be met for the licensing of hearing aid dispensers and hearing aid dispenser businesses, the approval to take the examination, and the approval of a continuing education course.

The proposed rule does not impact public or private employment or a political subdivision of this state.

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

The agency did not receive any comments regarding the Notice of Proposed Rulemaking. The Department has made technical and grammatical changes to the rules based on comments received from the Governor's Regulatory Review Council's staff. Subsection (A)(4) was added to the final rule to include in the definition of "application packet" the "information, documents, and fees required by the Department for approval of a continuing education course that is requested separately from an application for renewal of a license." The proposed rule did not contain this subsection, which is necessary to clarify that the term "application packet" applies to an approval of a continuing education course in addition to an approval to take the examination, an initial regular license or renewal of a regular license, and an initial temporary license or renewal of a temporary license.

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

None

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 made as an emergency rule?
No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 16. DEPARTMENT OF HEALTH SERVICES OCCUPATIONAL LICENSING

ARTICLE 3. LICENSING HEARING AID DISPENSERS

Section
R9-16-315. Time-frames

ARTICLE 3. LICENSING HEARING AID DISPENSERS

R9-16-315. Time-frames

A. For purposes of this Section, "application packet" means the information, documents, and fees required by the Department for:
1. Approval to take an examination,
2. An initial regular license or renewal of a regular license,
3. An initial temporary license or renewal of a temporary license, or
4. Approval of a continuing education course that is requested separately from an application for renewal of a license.

B. The overall time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Article is specified in Table 1. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive review time-frame and the overall time-frame may not exceed 25% of the overall time-frame.

C. The administrative completeness review time-frame described in A.R.S. § 41-1072 for each type of approval granted by the Department under this Article is specified in Table 1.
1. The administrative completeness review time-frame begins:
   a. For approval to take an examination, on the date the Department receives an application packet;
   b. For approval of a regular license by examination, when the applicant takes the examination; and
   c. For approval of a regular license by reciprocity, a regular license for a business, an initial temporary license, a renewal of a regular license, a renewal of a temporary license, or approval of a continuing education course that is requested separately from an application for renewal of a license, on the date the Department receives an application packet.
2. When an application packet is complete, or when an applicant for approval of a regular license by examination submits an examination for scoring, the Department shall provide a written notice of administrative completeness to the applicant.
3. If the Department grants an approval during the administrative completeness review time-frame, the Department shall not issue a separate written notice of administrative completeness.
4. If an application packet is incomplete, the Department shall provide to the applicant a written notice of deficiencies specifying the missing documents or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice until the date the Department receives a complete application packet from the applicant.
5. If the applicant fails to submit to the Department all of the items and information listed in the notice of deficiencies within 90 days from the date of the notice of deficiencies, the Department shall consider the application withdrawn.

D. The substantive review time-frame described in A.R.S. § 41-1072 is specified in Table 1 and begins on the date of the notice of administrative completeness.
1. During the substantive review time-frame, the Department may make one comprehensive written request for additional documents or information, or a supplemental request for additional documents or information by mutual written agreement with the applicant.
2. If the Department provides to the applicant a comprehensive written request or a supplemental request for additional documents or information, the substantive review time-frame and the overall time-frame are suspended from the date of the request until the date the Department receives all of the documents or information requested.

3. If the applicant fails to submit to the Department the documents or information requested by the Department in a comprehensive written request or supplemental request for additional documents or information within 90 days from the date of the request, the Department shall consider the application withdrawn.

Table 1. Time-frames (in calendar days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Review Time-frame	Substantive Review Time-frame
Approval to take an examination (R9-16-303(A)(1) and (A)(2))	A.R.S. §§ 36-1904, 36-1923	60	30	30
Regular License by Examination (R9-16-303(A)(3), (A)(4), and (A)(5)	A.R.S. §§ 36-1904, 36-1923	60	30	30
Regular License by Reciprocity (R9-16-303(B))	A.R.S. §§ 36-1904, 36-1922	60	30	30
Regular License for a Business (R9-16-303(C))	A.R.S. §§ 36-1904, 36-1910	60	30	30
Initial Temporary License (R9-16-303(D))	A.R.S. § 36-1926	60	30	30
Renewal of a Temporary License (R9-16-303(D))	A.R.S. § 36-1926	60	30	30
Renewal of a Regular License (R9-16-303(C) and R9-16-307)	A.R.S. §§ 36-1904, 36-1904, 36-1910	60	30	30
Approval of a continuing education course that is requested separately from an application for renewal of a license (R9-16-308 and R9-16-309)	A.R.S. § 36-1904(C)	60	30	30

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

PREAMBLE

1. Sections Affected | **Rulemaking Action**

R12-4-701	Amend
R12-4-702	Amend
R12-4-703	Amend
R12-4-705	Amend
R12-4-706	Amend
R12-4-708	Amend
R12-4-709	Amend
R12-4-711	Amend
R12-4-712	Amend

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

Authorizing statute: A.R.S. § 17-231(A)(1)

Implementing statutes: A.R.S. §§ 17-296, 17-297, and 17-298

3. The effective date of the rules:

June 6, 2002

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

Notice of Rulemaking Docket Opening: 7 A.A.R. 1683, April 20, 2001

Notice of Public Meeting on Open Rulemaking Docket: 7 A.A.R. 2333, June 8, 2001

Notice of Public Meeting on Open Rulemaking Docket: 7 A.A.R. 2782, June 29, 2001

Notice of Proposed Rulemaking: 8 A.A.R. 34, January 4, 2002

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

Name: Mark E. Naugle, Manager, Rules and Risk Management

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

Telephone: (602) 789-3289

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

The rulemaking is primarily a result of the 2000 five-year rules review of Article 7, which identified potential amendments to the Article 7 rules to clarify the application process and general provisions of the Arizona Game and Fish Commission Heritage Fund Grant programs.

R12-4-701. Heritage Grant Definitions

In order to alleviate any possible confusion regarding the effective dates of the grants, the rulemaking adds a definition of "grant effective date" to R12-4-701. This term will also be used in R12-4-711. Participant Agreements. The grant effective date will be the date that the Arizona Game and Fish Department Director signs the participant agreement, and this will be the start date for the project.

In a further effort to reduce confusion for those applying for a Heritage Grant, the rulemaking amends the term "Budget Prioritization Process" to clarify that the document and the prioritization process is for grant applications. The new term is "Grant Prioritization Process."

In addition, the rulemaking adds definitions for "Heritage Grant" and "Participant Contact" and amends the rule where necessary to make the rule language consistent with the current requirements for rulemaking language and style.

R12-4-702. General Provisions

The 2000 five-year rules review of Article 7 identified amendments to the rule to clarify the application process and general provisions of the Arizona Game and Fish Commission Heritage Fund Grant programs. The rulemaking makes the following amendments to R12-4-702:

- In order to clarify application submission requirements, prevent applicant confusion, and eliminate unintentional applicant error, the rulemaking amends subsection (A) to clarify that the exact time and date for the application deadline and the exact application submission location will be designated in the Arizona Game and Fish Department's Grant Application Manual, available from the Department's Funds Planning Section at the Phoenix office.
- The 2000 five-year rules review of Article 7 found that the language in subsection (B) regarding grant ineligibility was overly broad and restrictive. The rulemaking revises the language to specify that grant applicants who fail to comply with the rules or conditions of a Heritage Grant Participant Agreement, issued under Title 12, Chapter 4, are not eligible for further grants only until their project is brought into compliance. With this proposed rule amendment, the Department is relaxing the ineligibility restriction it places on participants, since it was never the intent of the Department to render an applicant permanently ineligible under this subsection if they have a project over two years old that has not been completed and closed. The amended rule language will allow applicants to be eligible for further Heritage Grants once their projects are brought into compliance.
- The Department has found that the $500 Environmental Education and Schoolyard grant minimums, allowed in subsection (H), are not cost effective for the agency to administer. Actual administrative costs routinely exceed $500. The rulemaking raises the minimum to $1000, which is the minimum for all grants other than Environmental Education and Schoolyard.
- The rulemaking also amends the rule to add subsection (K), which specifies that if required by the participant agreement, including the Special Conditions attachment, the grant recipient shall be in compliance with all applicable local, state, and federal law and must provide evidence, as defined by the Department in the Special Conditions attachment, to the Department prior to the release of the initial grant funds and prior to project implementation. This is an existing requirement currently stipulated in R12-4-709. The requirement is being deleted from R12-4-709, and the language is being clarified and moved to this Section since it is more appropriately identified as a general provision of the Heritage Grant requirements.
- Subsection (L) is also being added by the rulemaking. This subsection specifies that if a participant contact has a Heritage Grant funded project in extension, the participant contact and the administrative subunit employing the participant contact shall not be eligible for further Heritage Grants until the project under extension is completed. This restriction applies only to an individual participant contact and administrative subunit, as defined in R12-4-701. It does not apply to the participant contact's public agency as a whole, or to any other participant contact employed by the same public agency in another administrative subunit, so long as that participant contact's Heritage Grant funded project is not in extension. The proposed amendment will not change the amount of available funds, or the amount of funds awarded. It will encourage participants to complete their projects on time, and it will benefit additional applicants who might not otherwise receive funding for their projects.
- The 2000 five-year rules review of Article 7 also identified the need for technical corrections and style changes. These changes are necessary to correct outdated material and to make the rule language consistent with the current requirements for rulemaking language and style.

R12-4-703. Review of Proposals

The 2000 five-year rules review of R12-4-703 did not identify the need for any changes to the rule; however, to make the rule language consistent with the rest of the proposed Article 7 rule amendments, and in an effort to reduce confusion for those applying for a Heritage Grant, the rulemaking amends the term "Budget Prioritization Process" to clarify that the document and prioritization process is for grant applications. The proposed new term is "Grant Prioritization Process."

In addition, the rulemaking amends the rule where necessary to make the rule language consistent with the current requirements for rulemaking language and style.

R12-4-705. Public Access Grants

The 2000 five-year rules review of R12-4-705 determined that the applicant eligibility requirements in subsection (B) were somewhat vague. The rulemaking amends the rule to clarify project eligibility requirements and to remove language that is duplicative of state Statute. In addition, the rulemaking amends the rule where necessary to make the rule language consistent with the current Requirements for rulemaking language and style.

R12-4-706. Environmental Education Grants

The rulemaking revises subsection (B) to raise the Environmental Education Grant's minimum project proposal amount from $500 to $1000, which is the minimum for all grants other than Environmental Education and Schoolyard. The agency has found that allowing for proposals of only $500 is not cost-effective for the agency to administer since the actual administrative costs routinely exceed $500.

The rulemaking also makes technical corrections and style changes identified in the 2000 five-year rules review of Article 7. These changes are necessary to correct outdated material and to make the rule language consistent with the current Requirements for rulemaking language and style.

R12-4-708. IIAPAM: Grants for Identification, Inventory, Acquisition, Protection, and Management of Sensitive Habitat

The 2000 five-year rules review of R12-4-708 determined that the rule title required revision. The grant title and the acronym for the grant are not consistent. The rulemaking will change the title to "IIAPM: Grants for Identification, Inventory, Acquisition, Protection, and Management of Sensitive Habitat." The rulemaking also amends the rule to make the rule language consistent with the current Requirements for rulemaking language and style and to remove language that is duplicative of state Statute.

R12-4-709. Grant Applications

In an effort to simplify the paperwork required to provide evidence of control and tenure at a project site that is being directly or indirectly managed by the applicant, the Department proposes to amend subsection (I)(2) of the rule to allow for other types of appropriate documentation to be used as proof of control and tenure. An example would be a letter from a public school principal or superintendent verifying that the project site is on public school grounds.

The rulemaking will also amend the rule to delete subsection (K) and move it to R12-4-702 to be incorporated into a new subsection that specifies that if required by the participant agreement, including the special conditions attachment, the grant recipient shall be in compliance with local, state, and federal law and must provide evidence, as defined by the Department in the Special Conditions attachment, to the Department prior to the release of the initial grant funds and prior to project implementation.

In addition, the rulemaking amends the rule where necessary to make the rule language consistent with the current Requirements for rulemaking language and style.

R12-4-711. Participant Agreements

The rulemaking clarifies that the Department shall transfer grant funds within one year of the date the Director signs the agreement rather than within one year of the date grant awards are announced. This change is being proposed because of confusion generated by the term "grant award" in subsection (2). This term is often misinterpreted as the date of the Commission meeting at which the Department announces the grant awards, rather than the date the Department ratifies the contractual agreement. Therefore, the Department wishes to clarify that the Department shall transfer grant funds within one year of the date the Director signs the agreement rather than within one year of the date that the grant awards are announced.

The rulemaking also extends the project period from two years to three years and adds a provision to subsection (13) that stipulates that any equipment purchased with grant funds that has an acquisition cost of greater than $500 shall be surrendered to the Department upon completion of the project, unless the Department has authorized the participant to sell the equipment or use the equipment for an approved public purpose for the useful life of the equipment under the Grant-in-Aid Participant Agreement. In the existing rule text, no monetary figure is placed on the equipment to be surrendered to the Department; instead, the rule requires that the participant return any equipment not used for a public purpose for the useful life of the equipment to the Department.

On average, it takes 2.6 years to complete a Heritage Grant project, due primarily to the external permitting and approval process. This limits the actual fieldwork time to less than two biological seasons, which can impact the quality of the biological data. Ideally, two biological seasons are needed for sound and valid research. Under the current time-limit constraint of two years, participants typically need to request an extension to complete their work. This is costly to both the participant and the Department. The proposed rule change, which increases the time limit from two to three years, will eliminate the need for most extensions and should improve the potential for project success. The new schedule will also benefit those working with grants in the school systems, as it will lessen the constraints that the school year time period places on project completion schedules.

Stipulating that equipment purchased with grant funds that has an acquisition cost of greater than $500 be surrendered to the Department upon completion of the project (unless the Department has authorized the participant to sell the equipment or use the equipment for an approved public purpose for the useful life of the equipment) will act as a control mechanism on the Heritage Grant Fund to assure that equipment of at least $500 is used for a Heritage funded public good. Returned equipment undergoes Department inventory processing, which requires the time and effort of the Heritage Grant Coordinator and Special Services personnel. Equipment identification tags are assigned to the items, and the items are then routed to Heritage-funded projects or, if determined to be non-useable, processed for disposal. The retrieval or return processing, inventory, and distribution takes an estimated minimum of 20 hours. $500 was selected as the threshold amount because that is the administrative break-even point for the retrieval of equipment.

The rulemaking also involves technical corrections and style changes identified in the 2000 five-year rules review of Article 7. These changes are necessary to correct outdated material and to make the rule language consistent with the current Requirements for rulemaking language and style.

R12-4-712. Reporting and Record Requirements

In addition to amending the rule where necessary to make the rule language consistent with the current Requirements for rulemaking language and style, the rulemaking reduces the regulatory burden on the participant by reducing the number of annually required project-status reports from four to two. This amendment is being proposed to eliminate

unnecessary reporting requirements for Heritage Grant participants. The Department believes that requiring participants to submit quarterly status reports is not necessary for the control and management of Heritage Grant funded projects. The Department believes that reducing the reporting requirements will save participants and the Department both time and money, without impacting project quality or results.

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, any analysis of the 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:

R12-4-701. Heritage Grant Definitions

R12-4-703. Review of Proposals

R12-4-705. Public Access Grants

R12-4-708. IIAPAM: Grants for Identification, Inventory, Acquisition, Protection, and Management of Sensitive Habitat

R12-4-709. Grant Applications

Except for those costs associated with the rulemaking itself, the rulemaking will result in no added cost to the Arizona Game and Fish Department, or to other agencies directly affected by the implementation and enforcement of the rulemaking. The rulemaking will benefit the Department and those governmental entities applying for Heritage Grants by correcting outdated material and improving the accuracy, clarity, and understandability of the rules. Additionally, proposed amendments to R12-4-709 will help to reduce costs to applicants by simplifying the paperwork required to provide evidence of control and tenure at a project site that is being directly or indirectly managed by the applicant.

The grants that are approved from the Heritage Fund result in an average expenditure of $980,000 annually. Many of these funds are expended to purchase goods and services from businesses in Arizona. Some of the types of businesses who receive the benefit of these funds are construction companies, engineering firms, companies that supply high-tech equipment and computers, testing laboratories, scientific supply houses, lumber companies, archaeologists, sign companies, paper products companies, helicopter/flight service companies, fence companies, and landscaping companies.

There will not be any additional costs or reduction in revenues to businesses resulting from these rule amendments, and there is no anticipated effect on the revenues or payroll expenditures of employers who are subject to or affected by the rulemaking.

The expenditure of funds from the grants that are approved from the Heritage Fund will continue to have a very positive financial affect in terms of providing additional revenue opportunities for many businesses in the state.

The Department has determined that the benefits of the rulemaking for R12-4-701, R12-4-703, R12-4-705, R12-4-708, and R12-4-709 outweigh any costs.

R12-4-702. General Provisions

The rulemaking will affect those agencies and governmental entities eligible to apply for and receive Heritage Grants. The agencies that have submitted applications to the Department in the past include representative organizations from all of the types of government that are eligible to receive funding. Those which have received funding include agencies such as the U.S. Department of Agriculture, the U.S. Fish and Wildlife Service, Arizona State Parks Board, NAU, ASU, Verde Natural Resource Conservation District, Yavapai County Parks and Recreation Department, White Mountain Apache Tribe, Miami School District, Cochise County, and the Prescott Historical Society, to name just a few. The grants from the Heritage Program have been distributed to nearly all of the urban and rural areas in the state, and to all levels of government. The rulemaking is expected to benefit all public agencies and governmental entities applying for an Arizona Game and Fish Commission Heritage Fund Grant.

Except for those costs associated with the rulemaking itself, the proposed rule amendment to subsection (A), which clarifies that the exact time and date for application deadline and the exact application submission location will be designated in the Arizona Game and Fish Department's Grant Application Manual, will result in no added cost to the Arizona Game and Fish Department, or to other agencies directly affected by the implementation and enforcement of the rulemaking. The Department's Grant Application Manual, which the Department currently publishes and provides to applicants, already contains this information. The information is being added to the rule so that Heritage Grant applicants will be better informed about the correct process for submitting applications. It is the Department's belief that this amendment will reduce and perhaps even eliminate unintentional applicant submission errors. The rulemaking will benefit the Department and those governmental entities applying for Heritage Grants by clarifying the application submission process and reducing or eliminating errors.

The proposal to revise subsection (B) to specify that grant applicants who fail to comply with the rules or conditions of a Heritage Grant Participant Agreement, issued under Title 12, Chapter 4, are not eligible for further grants only until their project is brought into compliance, is intended to clarify the existing rule language, which the Department has found to be overly broad and restrictive. With this proposed rule amendment, the Department is relaxing the ineligibility restriction it places on participants, since it was never the intent of the Department to render an applicant permanently ineligible under this subsection if they have a project over two years old that has not been completed and closed. The amended rule language will allow applicants to be eligible for further Heritage Grants once their projects are brought into compliance. There should be no additional costs to the Department or to other agencies as a result of this rulemaking. Applicants who are in default will have a greater incentive to bring their projects into compliance, which will ultimately benefit the Department and the citizens of Arizona.

The proposal to raise the grant minimums allowed in subsection (H) from $500 to $1000 is designed to make the rule language of R12-4-702 consistent with R12-4-706. Environmental Education Grants, where this change is also being made. All Heritage Grant applications are evaluated through the Department's Grant Prioritization Process, and the processing is the same for all applications approved for funding, regardless of the amount or type of project. Once funded, projects are managed essentially the same even though the funding may vary greatly among projects. The minimum staff time needed to evaluate the application and manage the funded project is approximately 56 hours. Assuming staff time at $20 per hour, the cost/benefit ratio of projects funded at less than $1,000 is less than the funding amount. Changing the minimum amount to $1,000 will benefit the Department because the administration and management costs will be more in line with the minimum amount funded.

The only other agencies directly affected by the rulemaking in subsection (H) are the school districts of Arizona applying for Environmental Education and Schoolyard grants. Since 1992, there have been eight school districts that have been awarded grants for less than $1,000. None of these was more recent than 1996. Therefore, the direct impact on applicants is expected to be minimal to nonexistent since all funded projects in the last five years have been for amounts greater than $1,000, which indicates that costs for these types of projects typically exceed $1,000. Larger projects generally do require more effort in application preparation and project management during the project implementation phase; however, increasing the minimum from $500 to $1,000 is not believed to be a significant amount from this standpoint and is not expected to increase costs to applicants.

The Department anticipates that the proposed addition of subsection (K) to this Section will result in no added costs to the Arizona Game and Fish Department, or to other agencies directly affected by the implementation and enforcement of the rulemaking, with the exception of those costs directly associated with the rulemaking itself. The rulemaking specifies in subsection (K) that if required by the participant agreement, including the Special Conditions attachment, the grant recipient shall be in compliance with local, state, and federal law and must provide evidence, as defined by the Department in the Special Conditions attachment, to the Department prior to the release of the initial grant funds and prior to project implementation. This is an existing requirement currently stipulated in R12-4-709. The requirement is being deleted from R12-4-709, and the language is being clarified and moved to this Section since it is more appropriately identified as a general provision of the Heritage Grant requirements. The addition of subsection (K) will place no new requirements on applicants and will benefit applicants and the Department be clarifying the requirements in a more logical place in the Heritage Grants rules.

The Department likewise anticipates that the proposed addition of subsection (L) to this Section will result in no added costs to the Arizona Game and Fish Department, or to other agencies directly affected by the implementation and enforcement of the rulemaking, with the exception of those costs directly associated with the rulemaking itself. Subsection (L) specifies that if a participant contact has a Heritage Grant funded project in extension, the participant contact and the administrative subunit employing the participant contact shall not be eligible for further Heritage Grants until the project under extension is completed. This restriction applies only to an individual participant contact and administrative subunit, as defined in R12-4-701. It does not apply to the participant contact's public agency as a whole, or to any other participant contact employed by the same public agency in another administrative subunit, so long as the other participant contact's Heritage Grant funded project is not in extension. The primary effect of this restriction will be that any available funding that might otherwise have gone to applicants whose projects are in extension will now be available to other applicants, including new applicants. The proposed amendment will not change the amount of available funds, or the amount of funds awarded. It will encourage participants to complete their projects on time, and it will benefit additional applicants who might not otherwise receive funding for their projects. In the last funding cycle, only two participants would have been affected by this rule change.

There will be no additional costs and no reductions in revenues to businesses resulting from these rule amendments, and there is no anticipated effect on the revenues or payroll expenditures of employers who are subject to or affected by the rulemaking.

The expenditure of funds from the grants that are approved from the Heritage Fund will continue to have a very positive financial affect in terms of providing additional revenue opportunities for many businesses in the state. This will not change as a consequence of the rulemaking.

The Department anticipates that the benefits from the rulemaking for R12-4-702 will outweigh the costs to the Department and any other agencies or political subdivisions directly affected by the implementation and enforcement of the rulemaking.

R12-4-706. Environmental Education Grants

The rulemaking revises subsection (B) to raise the Environmental Education Grant's minimum project proposal amount from $500 to $1000, which is the minimum for all grants other than Environmental Education and Schoolyard. The agency has found that allowing for proposals of only $500 is not cost-effective for the agency to administer since actual administrative costs routinely exceed $500.

An analysis of funded projects indicates that the number of projects funded in the range of $500 to $1,000 has been few. Beginning in 1992 and extending through 2000, five of 61 Environmental Education projects were funded for less than $1,000, for a total of $3,068. Likewise, three of 88 Schoolyard projects were funded for less than $1,000, for a total of $1,883. All of the projects under $1,000 were funded prior to fiscal year 1996. The total awarded funding during the period was $301,350 for Environmental Education and $495,492 for Schoolyard projects. The direct impact on applicants is expected to be minimal to nonexistent since all funded projects in the last five years have been for amounts greater than $1,000, which indicates that costs for these types of projects typically exceed $1,000. Larger projects generally do require more effort in application preparation and project management during the project implementation phase; however, increasing the minimal standard from $500 to $1,000 is not believed to be a significant amount from this standpoint and is not expected to increase costs to applicants.

The total grants that are approved from the Heritage Fund result in an average expenditure of $980,000 annually. Many of these funds are expended to purchase goods and services from businesses in Arizona. Some of the types of businesses who receive the benefit of these funds are construction companies, engineering firms, companies that supply high-tech equipment and computers, testing laboratories, scientific supply houses, lumber companies, archaeologists, sign companies, paper products companies, helicopter/flight service companies, fence companies, and landscaping companies.

There will not be any additional costs or reduction in revenues to businesses resulting from these rule amendments, and there is no anticipated effect on the revenues or payroll expenditures of employers who are subject to or affected by the rulemaking.

The expenditure of funds from the grants that are approved from the Heritage Fund will continue to have a very positive financial affect in terms of providing additional revenue opportunities for many businesses in the state. This will not change as a consequence of the rulemaking.

The Department anticipates that the benefits of the rulemaking for R12-4-706 will outweigh the costs.

R12-4-711. Participant Agreements

The rulemaking clarifies that the Department shall transfer grant funds within one year of the date the Director signs the agreement rather than within one year of the date grant awards are announced; extends the project period from two years to three years; and adds a provision to subsection (13) that stipulates that any equipment purchased with grant funds that has an acquisition cost of greater than $500 shall be surrendered to the Department upon completion of the project, unless the Department has authorized the participant to sell the equipment or use the equipment for an approved public purpose for the useful life of the equipment under the Grant-in-Aid Participant Agreement. In the existing rule text, no monetary figure is placed on the equipment to be surrendered to the Department; instead, the rule required that the participant return any equipment not used for a public purpose for the useful life of the equipment to the Department. Returned equipment undergoes Department inventory processing, which requires the time and effort of the Heritage Grant Coordinator and Special Services personnel. Equipment identification tags are assigned to the items, and the items are then routed to Heritage-funded projects or, if determined to be non-useable, processed for disposal. The retrieval or return processing, inventory, and distribution takes an estimated minimum of 20 hours. $500 was selected as the threshold amount because that is the administrative break-even point for the retrieval of equipment.

Establishing the deadline for payment of funds within one year of the grant effective date clarifies the deadline for the participant and removes confusion from the process. This change will also allow the participant more time (in some cases as much as three months) to request funds, which will help with scheduling and logistical matters associated with project implementation.

The time needed to complete Heritage projects averages approximately 2.6 years. Currently, half of the open projects have extensions. The rulemaking adds an additional year for the project period, which is expected to offset the need for at least one extension. This should reduce the financial impact for the participants and the Department. For example, the administrative tasks necessary for amending the Agreement to authorize an extension include the Department notifying the participant of the impending expiration date, the participant requesting an extension, and the Department processing and approving the extension. If these steps can be eliminated the financial impact will be reduced for all parties involved in the grant process.

The proposed three-year project period may impact project cost, that is, there will be more time for more work and thus the potential for more costs. How much this will actually affect costs and in turn the amount of funding requested is not known at this time. However, the applicant will be encouraged to limit the scope of project work to not more than two years and to reserve the remaining time for product review and project management. With fewer projects needing extensions, the participants and the Department should benefit without any change in the amounts of monies being awarded.

The grants that are approved from the Heritage Fund result in an average expenditure of $980,000 annually. Many of these funds are expended to purchase goods and services from businesses in Arizona. The general public is the ultimate beneficiary of these rules. The activities and programs that are developed as a result of the Heritage Fund are intended to benefit wildlife and wildlife resources and also the general public for recreational and educational purposes. No additional costs are anticipated for the general public**,** private persons, and consumers who are directly or indirectly affected by the rulemaking, and there are no small businesses directly subject to the rulemaking since only governmental entities are eligible to apply for Heritage Grants.

The Department believes that the rulemaking will reduce confusion for applicants and save both applicants and the Department time and money. The Department has determined that the benefits of the rulemaking for R12-4-711 outweigh any costs.

R12-4-712. Reporting and Record Requirements

Except for those costs associated with the rulemaking itself, the rulemaking will result in no added cost to the Arizona Game and Fish Department, or to other agencies directly affected by the implementation and enforcement of the rulemaking. The proposed rule amendment eliminates unnecessary reporting requirements for Heritage Grant participants. The Department believes that requiring participants to submit quarterly status reports is not necessary for the control and management of Heritage Grant funded projects. The Department believes that reducing the reporting requirements will save participants and the Department both time and money, without impacting project quality or results.

The Department has determined that the benefits of the rulemaking for R12-4-712 outweigh any costs.

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

There were no substantive changes between the text of the rules contained in the Notice of Proposed Rulemaking published by the Secretary of State in 8 A.A.R. 34, January 4, 2002, and the text of the rules as finally adopted by the Arizona Game and Fish Commission on March 16, 2002. Minor grammatical and formatting changes were made at the suggestion of G.R.R.C. staff.

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

No public comments were received on the Notice of Proposed Rulemaking.

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. 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 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 7. HERITAGE GRANTS

Section

R12-4-701. Heritage Grant Definitions
R12-4-702. General Provisions
R12-4-703. Review of Proposals
R12-4-705. Public Access Grants
R12-4-706. Environmental Education Grants
R12-4-708. ~~IIAPAM~~ IIAPM: Grants for Identification, Inventory, Acquisition, Protection, and Management of Sensitive Habitat
R12-4-709. Grant Applications
R12-4-711. Grant-in-Aid Participant Agreements
R12-4-712. Reporting and Record Requirements

ARTICLE 7. HERITAGE GRANTS

R12-4-701. Heritage Grant Definitions

In addition to the definitions provided in A.R.S. §§ 17-101 and 17-296, the following definitions apply to ~~the rules within~~ this Article:

1. "Administrative subunit" means the branch, department, division, section, school, or other similar divisional entity of a public agency where a participant contact is directly employed, for example, an individual school, but not the entire school district; an individual field office or project office, but not the entire agency; or an individual administrative department, but not the entire city government.

~~1.~~2. "Approved application" means ~~the~~ a participant's application including any changes, exceptions, deletions, or additions made by the Department ~~prior to and for the purposes of~~ before approval.

~~2. "Budget Prioritization Process" means a document approved by the Game and Fish Commission based upon the Department mission statement, strategic plans, and current guiding statements which define the Department's priorities. This process is also used for prioritizing grant applications.~~

3. "Commission" means the Game and Fish Commission.

~~3.~~4. "Department" means the Game and Fish Department.

~~4.~~5. "Facilities" means capital improvements.

~~5.~~6. "Fund" means a granting source from the Game and Fish Heritage Fund, ~~pursuant to~~ under A.R.S. § 17-297.

~~6. "Commission" means the Game and Fish Commission.~~

7. "Grant effective date" means the date the Director of the Arizona Game and Fish Department signs the Grant-in-Aid Participant Agreement.

8. "Grant Prioritization Process" means a document approved by the Game and Fish Commission based upon the Department mission statement, strategic plans, and current guiding statements that defines the Department's priorities. This document is also used for prioritizing grant applications.

9. "Heritage Grant" means an Arizona Game and Fish Commission Heritage Fund Grant.

~~7.~~10. "Participant" means an eligible applicant that has been awarded a grant from the fund.

11. "Participant contact" means an eligible applicant's employee who is responsible for administering a Heritage Grant funded project.

~~8.~~12. "Project" means an activity, or series of related activities, which ~~are~~ is described in the specific project scope of work and which ~~result~~ results in specific products or services.

~~9.~~13. "Project period" means the ~~period of~~ time during which all approved work and related expenditures associated with an approved project are to be accomplished by the participant.

~~10.~~14. "Public agency" means the federal government or any federal department or agency, Indian tribe, this state, all departments, agencies, boards, and commissions of this state, counties, school districts, cities, towns, all municipal corporations, and any other political subdivision of this state.

~~11.~~15. "Specific scope of work" means the units of work to be accomplished by an approved project.

R12-4-702. General Provisions

A. The application deadline is the last working day of November each year and funds become available July 1 of the following year. The Department shall ensure that the exact time and date for the application deadline and the exact application submission location are designated in the Arizona Game and Fish Department's "Grant Application Manual." The Department shall ensure that the "Heritage Grant Application Manual,"~~" containing~~ application forms and instructions, ~~and~~ the ~~Budget~~ Grant Prioritization Process, and any annualized information on project emphasis for each fund are available from the Department's Funds Planning Section within the Phoenix office. ~~The Department shall also ensure that any annualized information on project emphasis for each fund is also available.~~

B. Applicants shall be public agencies as defined in R12-4-701 and shall apply for Heritage grants in accordance with A.R.S. §§ 17-296, 17-297, ~~and~~ 17-298, and Commission rules within 12 A.A.C. 4, Article 7, ~~in order~~ to be eligible for consideration. ~~Applicants~~ An applicant who ~~have~~ has failed to comply with the rules or conditions of ~~the participant-in-aid agreements~~ a Grant-in-Aid Participant Agreement ~~are~~ is not eligible for further grants ~~if they have any project over 2 years old which has not been completed and closed, unless a formal extension has been requested and approved.~~ until the applicant's project is brought into compliance.

C. The Department shall notify applicants in writing of the results of their applications and announce grant awards at a regularly scheduled open meeting of the Game and Fish Commission. An unsuccessful applicant may submit an appeal regarding a grant award within 30 calendar days of the Commission meeting in accordance with ~~R12-4-608.~~ A.R.S. Title 41, Chapter 6, Article 10, Uniform Administrative Appeals Procedures.

D. Participants shall not begin projects described in an application until ~~they have signed a participant-in-aid agreement~~. the grant effective date as defined in R12-4-701. ~~Participants~~ A participant shall complete projects as specified in the ~~agreement~~ Grant-in-Aid Participant Agreement. ~~Participants~~ A participant shall submit records that substantiate the expenditure of funds.

E. ~~The~~ A participant shall operate and maintain properties, facilities, equipment, and services funded by a Heritage grant for the benefit of the public for the useful life of the project.

F. The participant shall control land or waters on which capital improvements are to be made, through fee title, lease, easement, or agreement. To be eligible for a Heritage ~~grant~~ Grant, the applicant's management or control rights to the proposed site ~~must~~ shall be equivalent to the proposed investment in at least one of the following three respects:

1. The time remaining on the use agreement is a term sufficient, in the judgment of the Department, to ensure a period of public use equal in value to the expenditure of awarded funds.
2. The use agreement is not revocable at will by the property owner and provides for the option to renew by the managing agency.
3. The applicant ~~shall show~~ shows evidence that public access exists to the actual site where the project is proposed, unless the purpose of the project proposal is to specifically create access or limit access.

G. A participant shall give public acknowledgment of grant assistance for the life of a project. ~~When~~ If a project involves acquisition of property, development of public access, or renovation of a habitat site, the participant shall install a permanent sign describing the funding sources and dollar amounts of all funds. The participant may include the cost of this signage as part of the original project, but ~~shall be~~ is responsible for maintenance or replacement of the sign as required. For other project types, the participant shall include funding acknowledgment on any publicly available or accessible products resulting from the project.

H. The Department shall not accept project proposals for less than $1000. ~~except that environmental education and school yard grant proposals may be as low as $500.~~

I. ~~The~~ A participant shall pay operation and maintenance costs, including costs for reprinting of publications or other media.

J. ~~The~~ A participant shall not use grant funds to pay compensation in excess of the legally established salary for any permanent public employee.

K. If specified in the Grant-in-Aid Participant Agreement, including the Special Conditions attachment, the participant shall provide evidence of compliance with local, state, and federal law to the Department before the release of the initial grant funds and before project implementation.

L. If a participant contact has a Heritage Grant funded project in extension, the participant contact and the administrative subunit employing the participant contact are not eligible for further Heritage Grants until the project under extension is completed. This restriction does not apply to the participant contact's public agency as a whole, or to any other participant contact employed by the same public agency in any other administrative subunit, so long as the other participant contact does not have a Heritage Grant funded project in extension. For the purposes of this restriction, the Department shall determine what constitutes an administrative subunit.

R12-4-703. Review of Proposals

A. Grant proposals are competitive and the Department shall make awards based on ~~the basis of~~ a proposed ~~projects'~~ project's compatibility with the priorities of the Game and Fish Department~~, project~~ and the project's feasibility, merit, and usefulness. The Department shall evaluate and rank all eligible proposals ~~pursuant to~~ under the criteria established in ~~these rules~~ this Section and the Department's ~~Budget~~ Grant Prioritization Process as approved by the Commission and available from the Department's Funds Planning Section in the Phoenix office.

B. The Department ~~may~~ shall make funding of ~~a~~ an awarded project contingent upon revision of the ~~proposal~~ application if the Department determines that substantive changes are necessary for the successful completion of the project.

R12-4-705. Public Access Grants

A. "Public access" has the meaning prescribed in A.R.S. § 17-296(1). ~~means providing entry to publicly held lands for recreational use where such entry is consistent with the provisions establishing those lands. (A.R.S. § 17-296(1)). Publicly held lands are those federal, public, and reserved lands, State Trust Lands, and other lands within the state of Arizona which are owned, controlled, or managed by the United States, the state of Arizona, agencies, or political subdivisions of the state.~~

B. "Publicly held lands" means federal, public, and reserved lands, State Trust Lands, and other lands within Arizona that are owned, controlled, or managed by the United States, the state of Arizona, agencies, or political subdivisions of the state.

~~**B.**~~**C.** ~~In order to~~ To be eligible for a public access grant award, ~~applicants~~ an applicant shall ensure that a proposed ~~projects are~~ is designed to increase or~~,~~ maintain~~, or reduce~~ public access for recreational use in cooperation with federal land managers, local and state governments, private landowners, and public users.~~,~~ An applicant shall also ensure that a proposed project is designed to ~~and~~ inform and educate the public about recreational use of publicly held lands and public access to those lands. To be eligible for Heritage access grant funding, an applicant's potential project shall provide for substantive recreational access opportunities. Examples include providing new access into an area where no access currently exists, re-establishing access into an area where access existed historically, maintaining or enhancing existing access routes to better serve a specific segment of the population, or relocating an existing access corridor to avoid biologically sensitive areas.

D. Ineligible projects are those projects not in compliance with this Section and those project types listed as ineligible in the Heritage Grant Application Manual or other materials available from the Department's Funds Planning Section in the Phoenix office.

R12-4-706. Environmental Education Grants

A. "Environmental education" has the meaning prescribed in A.R.S. § 17-296(7). ~~means educational programs dealing with basic ecological principles and the effects of natural and man related processes on natural and urban systems and programs to enhance public awareness of the importance of safeguarding natural resources. (A.R.S. § 17-296(7)).~~

B. ~~In order to~~ To be eligible for an environmental education grant, ~~applicants~~ an applicant shall ensure that a project ~~proposals are~~ proposal is for no less than ~~$500~~ $1,000 and no more than $10,000, and that a proposed ~~projects are~~ project is designed to:

1. Develop awareness, appreciation, and understanding of Arizona's wildlife and its environment and increase responsible actions toward wildlife;
2. Use Arizona wildlife as its focus and present wildlife issues in a balanced and fair manner; and
3. Have impact on Arizona schools and school children.

R12-4-708. ~~HAPAM~~ IIAPM: Grants for Identification, Inventory, Acquisition, Protection, and Management of Sensitive Habitat

~~**A.** The following definitions are established in A.R.S. § 17-296:~~

~~1. "Habitat protection" means the process of protecting the quality, diversity, abundance, and serviceability of habitats for the purposes of maintaining or recovering populations of Arizona wildlife.~~

~~2. "Sensitive habitat" means the specific areas within the geographical area historically or currently occupied by a species or community of species in which are found those physical or biological features essential to the establishment or continued existence of the species and which may require special management, conservation, or protection considerations.~~

A. "Habitat protection" has the meaning prescribed in A.R.S. § 17-296(9).

B. "Sensitive habitat" has the meaning prescribed in A.R.S. § 17-296(2).

~~**B.**~~**C.** ~~In order to~~ To be eligible for an ~~HAPAM~~ IIAPM grant, ~~applicants~~ an applicant shall ensure that the proposed ~~projects are~~ project is designed to:

1. Preserve and enhance Arizona's natural biological diversity, and
2. Incorporate at least one of the following elements:
   a. Identification, inventory, acquisition, protection, or management of sensitive habitat~~.~~; or
   b. Inventory, identification, protection, or management of species as addressed within A.R.S. § 17-296.

~~**C.**~~**D.** Each year the Department shall provide a listing of habitat and species as defined within A.R.S. § 17-296 ~~which~~ that it will consider in accordance with biological, conservation, and management status changes.

R12-4-709. Grant Applications

A. ~~In order to~~ To be eligible for a Heritage grant, an applicant shall submit a grant application in accordance with the schedule established by R12-4-702.

B. The applicant shall submit a separate application for each funding source.

C. The applicant shall submit the original plus two copies of each application on paper sized 8 1/2" x 11", and shall ensure that the original and the copies are legible.

D. The Department shall not accept facsimile or ~~"fax"~~ "faxed" copies of a grant application.

E. The applicant shall ensure that ~~the 1st page of the application is~~ the "Application Checklist" ~~which~~ lists all items ~~required~~ included within the application. The applicant shall check off an item if it is included within the application, and initial each item ~~which~~ that is not applicable.

F. The applicant shall provide the following information on the grant application form:

1. Name of the eligible applicant;
2. Any county and legislative district where the project will be developed or upon which the project will have impact;
3. The official mailing address of the applicant;
4. The name, title, and telephone number of the individual who will have the day-to-day responsibility for the proposed project;
5. Identification of the particular grant fund from which assistance is being requested, ~~pursuant to~~ under R12-4-704, R12-4-705, R12-4-706, R12-4-707, or R12-4-708;
6. The proposed project title incorporating the name of the site, if any, and the type of work to be accomplished;
7. A clear and concise ~~scope~~ description of the scope and objective of the proposed project~~;~~, the nature of what is to be accomplished~~;~~, the methods to be used~~;~~, and the desired result from the project;
8. The beginning and ending dates for the project; and
9. The funding amounts that will be needed to accomplish the project, including the Heritage Grant funds requested, and evidence of secured matching funds or contributions.

G. ~~The grant application form must be signed by an authorized agent of the public agency applying for the grant,~~ The person who on behalf of the applicant has authority to bind the applicant to the terms of the Grant-in-Aid Participant Agreement shall sign the grant application form. The person ~~and by~~ signing~~, the authorized agent~~ the grant application form represents that the applicant has authority to enter into agreements, accept funding, and fulfill the terms of the ~~proposed project~~ Grant-in-Aid Participant Agreement.

H. The applicant shall submit a ~~location~~ map clearly identifying project locations or project proposal areas~~;~~, and, if applicable, the applicant shall also submit a site plan and floor plan.

I. The applicant shall submit with the grant application the following information to provide evidence of control and tenure at the project site. The Department shall determine the appropriateness of the evidence of control and tenure as a part of the grant application review process:

1. If the project site is owned by the applicant, a copy of the ~~appropriate~~ legal document showing title in the name of the applicant and the legal description of the property;
2. If the project site will be managed by the applicant, a copy of the lease, special use permit, intergovernmental agreement, or other ~~appropriate~~ official instrument or documentation; or
3. For research project proposals relating to sites not controlled by the applicant, a copy of the permit or agreement allowing the research or, at a minimum, ~~a letter of intent~~ evidence of permission from the land manager allowing the research.

J. The applicant shall submit an estimated project cost sheet form with the following information:

1. Project title as designated on the application form;
2. If applicable, pre-agreement costs requested;
3. If applicable, all estimated development costs in order of priority of need, facilities to be constructed, unit measurements, number of items, and total costs;
4. All land parcels to be acquired listed in priority order~~;~~, with acreage involved~~;~~ and anticipated dates of acquisition;
5. The cost, title, and name of personnel who would accomplish the project objectives and who would receive benefit from the grant; and
6. The ~~applicant shall provide the~~ total cost for the entire project proposal ~~and list~~ with each of the following amounts listed separately:
   a. Heritage grant funds requested;
   b. Applicant contribution to the project, if applicable; and
   c. Any other sources of funding.

~~**K.** The applicant is responsible for securing all documentation necessary to comply with local, state, or federal law, and for providing copies of all required compliance documents to the Department prior to project implementation.~~

~~**L.**~~**K.** The applicant shall answer all questions relevant to the grant applied for and to the ~~Budget~~ Grant Prioritization Process by which the Department evaluates and ranks proposals.

R12-4-711. Grant-in-Aid Participant Agreements

~~Prior to~~ Before any transfer of funds, a participant shall agree to and sign a ~~participant agreement~~ Grant-in-Aid Participant Agreement~~, which~~ that includes the following minimum stipulations:

1. The participant shall use awarded grant funds solely for eligible purposes of the funding program as defined by law and as approved by the Department. The participant shall not exceed the grant allocation unless the parties amend the ~~participant agreement~~ Grant-in-Aid Participant Agreement.
2. If both parties agree that all project costs ~~must~~ shall be expended within the ~~1st~~ first quarter of the project period, the Department shall transfer the total amount of awarded grant funds to the participant within the ~~1st~~ first quarter of the project period. In all other cases, the Department shall transfer awarded grant funds, less ~~10%~~ ten percent, to the participant within ~~1~~ one year of the ~~grant award~~ grant effective date. The Department shall transfer the final ~~10%~~ ten percent less any adjustment for actual expenditures upon receipt of a written request and a certification of project completion from the participant, unless the participant violates state law or the ~~participant agreement~~ Grant-in-Aid Participant Agreement. The Department ~~may~~ has the authority under the Grant-in-Aid Participant Agreement to perform completion inspections ~~prior to~~ and reviews before release of final payment.
3. The participant shall deposit transferred grant funds in a separate project account carrying the name and number of the project. The participant shall expend funds from the account only as authorized under the terms of the ~~agreement~~ Grant-in-Aid Participant Agreement.
4. The participant may request changes to the terms, scope, conditions, or provisions of the ~~agreement~~ Grant-in-Aid Participant Agreement ~~in~~ by writing to the Department. Requests for extension beyond the approved project period shall be submitted by the participant no later than 30 days ~~prior to~~ before the contract expiration date. The Department shall prepare in writing any approved amendments, which must be signed by both the participant and the Department ~~in order~~ to be valid.

5. Notwithstanding subsection (4), the Department ~~may~~ shall issue an administrative extension to unilaterally extend the project period by no more than 90 days ~~when necessary~~ to perform completion inspections or to ~~develop an amendment for extension of the project period~~ complete administrative work if completion inspections or administrative work cannot be completed within the time-frame of the existing Grant-in-Aid Participant Agreement.
6. If the participant violates state law or the ~~participant agreement~~ Grant-in-Aid Participant Agreement, the Department ~~may~~ shall seek recovery of all funds granted and classify the participant as ineligible for Heritage Funds grants for a period not to exceed ~~5~~ five years.
7. ~~A~~ The participant shall operate and maintain grant-assisted capital improvements and provide reasonable protection of any project improvements.
8. ~~A~~ The participant sponsoring a ~~3rd~~ third party or ~~subcontractors~~ subcontractor is responsible for compliance with ~~agreement~~ the Grant-in-Aid Participant Agreement provisions ~~in the event of 3rd~~ if the third party or subcontractor ~~default~~ defaults.
9. ~~Participants~~ The participant shall use awarded grant funds solely for ~~those~~ costs associated with approved project work incurred during the project period.
10. The project period is designated to be ~~2~~ three years from the grant effective date ~~of the agreement~~ unless otherwise agreed upon by the Department and the participant.
11. ~~Should~~ If a balance of awarded grant funds ~~be~~ is available upon completion of approved project elements, the participant may, with Department approval, develop additional scope elements.
12. The participant shall request amendments to accommodate additions or changes to the ~~agreement~~ Grant-in-Aid Participant Agreement in writing, stating the need and rationale for the amendments.
13. The participant shall use equipment purchased with grant funds for ~~a~~ an approved public purpose for the useful life of the equipment, or surrender the equipment to the Department upon completion of the project, whichever comes first, if the equipment has an acquisition cost of more than $500. If the equipment is sold, the participant shall pay the Department the amount of any resulting proceeds in the ratio equivalent to the funds provided for the purchase.
14. The participant shall ensure that ~~values~~ the value of real property purchased with grant assistance ~~are~~ is appraised by an ~~a~~ Arizona certified appraiser within ~~1~~ one year before the purchase or lease according to the Uniform Standards of Professional Appraisal Practice. The Department ~~may~~ has the authority to select an appraiser for independent evaluation if the Department has evidence that the appraised value of real property is not accurate as submitted by the participant. The Department's acceptance of land conveyance documents is contingent upon approval by the Game and Fish Commission and the governor.
15. ~~Failure~~ The Department shall delay grant payment to a participant who fails to submit project-status reports as required in R12-4-712 ~~shall delay grant reimbursement or processing~~ until the participant has submitted all past due project-status reports.
16. The Department ~~may~~ has the authority under the Grant-in-Aid Participant Agreement to conduct inspections to ~~assure~~ ensure compliance with all terms of the contract.
17. ~~A~~ The participant shall not use grant funds for the purpose of producing income. However, the participant may engage in income-producing activities incidental to the accomplishment of approved purposes if the participant uses the activities to further the purposes of the approved project or returns the income to the original funding source designated in the ~~agreement~~ Grant-in-Aid Participant Agreement. The participant shall return funds remaining at the end of the project period to the Department.

R12-4-712. Reporting and Record Requirements

A. ~~Within 30 days after the end of each quarter, participants~~ A participant shall submit ~~a quarterly~~ biannual project-status ~~report~~ reports to the Department covering activities for the ~~quarter that just ended.~~ project period, unless otherwise specified in the Grant-in-Aid Participant Agreement, including the Special Conditions attachment. The exact timing of the submission of reports to the Department will be as specified in the Grant-in-Aid Participant Agreement and the Special Conditions attachment. ~~Participants~~ A participant shall ~~ensure that this~~ include a separate section in each report ~~includes Section a~~ covering ~~each~~ all of the following subjects:

1. Progress in completing approved work,
2. ~~Budget,~~ Itemized, cumulative project expenditures, and
3. Anticipated delays and problems preventing ~~expeditious~~ on-time completion of the project.

B. ~~Participants~~ A participant shall account for income or interest derived from project funds in ~~their~~ the participant's report.

C. Each participant shall retain and shall contractually require each subcontractor to retain all books, accounts, reports, files, and other records relating to the acquisition and performance of the contract for a period of ~~5~~ five years after the completion of the contract. The Department may inspect and audit participant and subcontractor records based on verified complaints or evidence that indicates the need for an inspection or audit. Upon the Department's request, a participant or subcontractor shall produce a legible copy of these records. The participant shall bear full responsibility for acceptable performance by a subcontractor under each subcontract. The participant may substitute microfilm copies in place of the original records after project costs have been verified.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER POLLUTION CONTROL

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R18-9-A902	Amend
R18-9-A903	Amend
R18-9-A905	Amend

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

Authorizing statutes: A.R.S. §§ 49-203, 49-255.01(B), 49-255.02(A), and 49-255.03(A)

Implementing statutes: A.R.S. §§ 49-255.01, 49-255.02, and 49-255.03

3. The effective date of the rules:

June 5, 2002

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

Notice of Rulemaking Docket Opening: 8 A.A.R. 1558, March 29, 2002

Notice of Proposed Rulemaking: 8 A.A.R. 1218, March 29, 2002

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

Name: Shirley J. Conard

Address: Arizona Department of Environmental Quality
3033 N. Central Avenue, M0401A-422
Phoenix, AZ 85012-2809

Telephone: (602) 207-4632 (Metro-Phoenix area) or
1-800-234-5677, ext. 4632 (other areas)

Fax: (602) 207-4674

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

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

This rulemaking makes corrections required for consistency with the NPDES program for program approval.

R18-9-A902(A)(1) has been changed to reflect the correct term for tribal lands, which is Indian Country. The change makes the rules consistent with the terms used in the AZPDES Memorandum of Agreement between the Department and EPA Region 9 and the definition in 40 CFR 122.2. The Department intends only to regulate discharges to land that is within the jurisdiction of the state of Arizona.

R18-9-A902(G)(8) has been deleted. The discharge categories will be covered under the Deminimis General Permit currently being drafted by the Department and stakeholders. EPA required that the exclusions be deleted because the Clean Water Act and the Code of Federal Regulations governing the National Pollutant Discharge Elimination System (NPDES) program do not include such exclusions. If the Department retained the exclusions in R18-9-A902(G)(8), the AZPDES program would be less stringent than the federal program and therefore the EPA would not be able to approve it as a state-managed NPDES program. EPA has stated in comments on the proposed AZPDES rule and in recent discussions that those discharges need to be covered by a permit. As explained in #6, stakeholders had requested these exclusions and that it was infeasible for the Department to "permit" these types of discharges because of the significant number. Based on discussions with EPA and other NPDES-states, the Department believes that these discharges can be handled with a general AZPDES permit.

R18-9-A903(3) has been updated to include any water quality standard promulgated specifically for Arizona by EPA under 40 CFR 131.31.

R18-9-A905(A)(10)(h) has been deleted because the public notice and public hearing procedures in 40 CFR 403.11(b) are for pretreatment programs and removal credits whereas the provisions at R18-9-A907 and R18-9-A908 only apply to permit actions. Because 40 CFR 403 in its entirely is incorporated by reference in R18-9-A905(A)(7)(b), the Department agreed to make the change for clarity. Parties looking at the pretreatment sections need only look at 40 CFR 403.

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

None

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

Not applicable

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

This rulemaking is being promulgated solely to comply with EPA's request for the Department to conform with the Clean Water Act. None of these changes will have an impact on the consumers or small business in Arizona because these rules have not been applied and the changes are consistent with the current NPDES regulations. The AZPDES rules will not be applied until EPA approves the AZPDES program submission. EPA will not move forward on the approval of the AZPDES program until these changes are made to the AZPDES rules.

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

None

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

The following two public hearing comments, although dealing with the AZPDES program, covers issues outside the scope of this rulemaking:

Comment: R18-9-A902(A)(1). This provision states "The Director shall give a notice to all Arizona NPDES permittees, except NPDES permittees located on or discharging in Indian Country..." It is unclear whether the Department intends to give a notice to a permittee that meets only one of those criteria (either is located on Indian Country but discharging to non-Indian Country OR is not located within Indian Country but discharging to Indian Country). Clarify the Department's intent either through revising the rule language or adding an explanation to the preamble.

Response: The Preamble to the proposed rule included the following statement: "The Department intends only to regulate discharges to land that is within the jurisdiction of the state of Arizona." After AZPDES program approval, the Department will be the permit issuing authority for any discharge to lands within the state's jurisdiction. Generally, discharges to waters within Indian Country will not be within state jurisdiction. The Department has jurisdiction over private, state, and federal lands, within the boundaries of Indian Country. For situations where a discharge to Indian Country waters impacts water quality standards of downstream waters of the state (non-Indian Country waters), then the permitting authority for that discharge to Indian Country water must provide the Department an opportunity to comment on the public noticed permit.

Comment: How will the Department handle new regulations that are promulgated by EPA after the rules are effective but before AZPDES program approval? The new rules for cooling water intake structures are one example. Will EPA serve as the approval authority until the Department has the authority?

Response: In general, the regulations at 40 CFR 123.62 govern revisions to state programs. 40 CFR 123.62(e) requires that a state program be revised within one year of promulgation of a new or revised federal regulation. If statutory changes are necessary, 40 CFR 123.62(e) provides a state up to two years from the date of promulgation of the federal regulation. The regulations for cooling water intake structures for new facilities became effective on January 17, 2002. EPA proposed regulations for existing cooling water intake structures on April 9, 2002. Until the Department has the authority to implement these regulations, applicants for cooling water intake structure for new facilities will work with EPA. The Department does not anticipate any new structures subject to the regulation for new facilities in Arizona because of the location of power plants in relation to perennial waters of the United States. Some existing facilities in Arizona may be covered by the proposed regulations for existing facilities. Upon AZPDES program approval by EPA, the Department will work to revise its rules to cover the new regulations. The Department anticipates that the regulations for existing facilities will become effective after AZPDES program approval. Upon program approval, the Department will proceed with a rulemaking to update the AZPDES rules in accordance with 40 CFR 123.62(e).

Comment: R18-9-A902(G)(8). The commenter does not feel it would be appropriate to delete this Section. It is the commenter's belief that residential evaporative cooler bleed offs, residential swimming pools, and charitable, noncommercial car washes are an insignificant source of pollutants in Arizona. The Deminimus General Permit would not be an appropriate way to permit these discharges. In addition, the general public are not knowledgeable about all environmental regulations and this would probably put many individuals into noncompliance even though the source of pollutants would be insignificant.

Response: The Clean Water Act requirement for permitting does not distinguish between significant or insignificant, but is determined based on whether there is a discharge to a waters of the U.S. The Department must remove the

exclusions from permitting from the AZPDES rules because the federal NPDES program does not contain such blanket waivers. The Department believes that coverage under a general permit is the only feasible means for permitting these activities if there is a discharge. The Department understands that it will need to develop an outreach component to inform communities and individuals of such permit requirements.

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 9. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER POLLUTION CONTROL

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM

PART A. GENERAL REQUIREMENTS

Section
R18-9-A902. AZPDES Permit Transition, Applicability, and Exclusions
R18-9-A903. Prohibitions
R18-9-A905. AZPDES Program Standards

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM

PART A. GENERAL REQUIREMENTS

R18-9-A902. AZPDES Permit Transition, Applicability, and Exclusions

A. Upon the effective date of EPA approval of the AZPDES program, the Department shall, under A.R.S. Title 49, Chapter 2, Article 3.1, and Articles 9 and 10 of this Chapter, administer any permit authorized or issued under the NPDES program, including an expired permit that EPA has continued in effect under 40 CFR 122.6.

1. The Director shall give a notice to all Arizona NPDES permittees, except NPDES permittees located on and discharging ~~to tribal lands~~ in Indian Country, and shall publish a notice in one or more newspapers of general circulation in the state. The notice shall contain:
   a. The effective date of EPA approval of the AZPDES program;
   b. The name and address of the Department;
   c. The name of each individual permitted facility and its permit number;
   d. The title of each general permit administered by the Department;
   e. The name and address of the contact person, to which the permittee will submit notification and monitoring reports;
   f. Information specifying the state laws equivalent to the federal laws or regulations referenced in a NPDES permit; and
   g. The name, address, and telephone number of a person from whom an interested person may obtain further information about the transition.
2. No change
3. No change
4. No change

B. No change
C. No change
D. No change
E. No change
F. No change
G. Exclusions. The following discharges do not require an AZPDES permit:

1. Discharge of dredged or fill material into a navigable water that is regulated under Section 404 of the Clean Water Act (33 U.S.C. 1344);
2. The introduction of sewage, industrial wastes, or other pollutants into POTWs by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and com-

ply with a permit until all discharges of pollutants to a navigable water are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through a pipe, sewer, or other conveyance owned by the state, a municipality, or other party not leading to treatment works;

3. Any discharge in compliance with the instructions of an on-scene coordinator under 40 CFR 300, The National Oil and Hazardous Substances Pollution Contingency Plan; or 33 CFR 153.10(e), Control of Pollution by Oil and Hazardous Substances, Discharge Removal;
4. Any introduction of pollutants from a nonpoint source agricultural or silvicultural activity, including stormwater runoff from an orchard, cultivated crop, pasture, rangeland, and forest land, but not discharges from a concentrated animal feeding operation, concentrated aquatic animal production facility, silvicultural point source, or to an aquaculture project;
5. Return flows from irrigated agriculture;
6. Discharges into a privately owned treatment works, except as the Director requires under 40 CFR 122.44(m), which is incorporated by reference in R18-9-A905(A)(3)(d);
7. Discharges from conveyances for stormwater runoff from mining operations or oil and gas exploration, production, processing or treatment operations, or transmission facilities, composed entirely of flows from conveyances or systems of conveyances, including pipes, conduits, ditches, and channels, used for collecting and conveying precipitation runoff and that are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste product located on the site of the operations;
8. ~~Discharges of:~~
   a. ~~Residential evaporative cooler bleed-off water;~~
   b. ~~Residential swimming pools; and~~
   c. ~~Charitable, noncommercial car washes.~~

H. No change

R18-9-A903. Prohibitions

The Director shall not issue a permit:

1. If the conditions of the permit do not provide for compliance with the applicable requirements of A.R.S. Title 49, Chapter 2, Article 3.1; 18 A.A.C. 9, Articles 9 and 10; and the Clean Water Act;
2. Before resolution of an EPA objection to a draft or proposed permit under R18-9-A908(C);
3. If the imposition of conditions cannot ensure compliance with the applicable water quality requirements from Arizona or an affected state or tribe, or a federally promulgated water quality standard under 40 CFR 131.31;
4. If in the judgment of the Secretary of the U.S. Army, acting through the Chief of Engineers, the discharge will substantially impair anchorage and navigation in or on any navigable water;
5. For the discharge of any radiological, chemical, or biological warfare agent, or high-level radioactive waste;
6. For any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of the Clean Water Act (33 U.S.C. 1288); and
7. To a new source or a new discharger if the discharge from its construction or operation will cause or contribute to the violation of a water quality standard. The owner or operator of a new source or new discharger proposing to discharge into a water segment that does not meet water quality standards or is not expected to meet those standards even after the application of the effluent limitations required under R18-9-A905(A)(8), and for which the Department has performed a wasteload allocation for the proposed discharge, shall demonstrate before the close of the public comment period that:
   a. There are sufficient remaining wasteload allocations to allow for the discharge, and
   b. The existing dischargers into the segment are subject to schedules of compliance designed to bring the segment into compliance with water quality standards.

R18-9-A905. AZPDES Program Standards

A. Except for subsection (A)(10), the following 40 CFR Sections and appendices, July 1, 2001 edition, as they apply to the NPDES program, are incorporated by reference, do not include any later amendments or editions of the incorporated matter, and are on file with the Department and the Office of the Secretary of State:

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. The following substitutions apply to the material in subsections (A)(1) through (A)(9):
    a. Substitute the term AZPDES for any reference to NPDES;
    b. Except for 40 CFR 122.21(f) through (q), substitute R18-9-B901 (individual permit), and R18-9-C901 (general permit), for any reference to 40 CFR 122.21;
    c. Substitute Articles 9 and 10 of this Chapter for any reference to 40 CFR 122;
    d. Substitute R18-9-C901 for any reference to 40 CFR 122.28;
    e. Substitute R18-9-B901 (individual permit), and R18-9-C901 (general permit), for any reference to 40 CFR 122 subpart B;
    f. Substitute Articles 9 and 10 of this Chapter for any reference to 40 CFR 123;
    g. Substitute Articles 9 and 10 of this Chapter for any reference to 40 CFR 124;
    ~~h. Where 40 CFR 403.11(b) provides procedures for public notice or requesting and holding a public hearing, the Department shall instead publish notice of and hold a public hearing under R18-9-A907 and R18-9-A908;~~
    ~~i.~~h. Substitute R18-9-1006 for any reference to 40 CFR 503.32; and
    ~~j.~~i. Substitute R18-9-1010 for any reference to 40 CFR 503.33.

B. No change

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

PREAMBLE

1. Sections Affected	Rulemaking Action
R20-4-602	Amend
R20-4-603	Amend
R20-4-604	Amend
R20-4-607	Amend
R20-4-611	Amend
R20-4-612	Amend
R20-4-620	Repeal

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

Authorizing statute: A.R.S. § 6-123(2)

Implementing statutes: A.R.S. §§ 6-123(1), 6-123(3), 6-704, 6-709(A), 6-709(J) and (M), 6-710(1), 6-710(8), and 6-714

3. The effective date of the rules:

June 6, 2002

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

Notice of Rulemaking Docket Opening: 7 A.A.R. 3850, August 31, 2001

Notice of Proposed Rulemaking: 8 A.A.R. 763, February 22, 2002

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

Name: John P. Hudock

Address: Banking Department
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

Telephone: (602) 255-4421, ext. 167

Fax: (602) 381-1225

E-mail: jhudock@azbanking.com

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

These Sections control the conduct of business in Arizona by Debt Management Companies. This rulemaking will accomplish the revisions promised to the Governor's Regulatory Review Council (G.R.R.C.) in a five-year review report approved September 14, 1999. The Department will amend the Sections to remove obsolete provisions no

longer enforced, streamline the writing, modernize statutory references, remove provisions that duplicate statutory language, remove pointless legalisms and passive constructions, remove obsolete forms, and make these Sections comport with modern rule writing standards.

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

The Department did not rely on any study as an evaluator or justification for the rule.

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

Not applicable

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

A. The Banking Department

Changes in income and expenses to this Agency are negligible. The revision of these Sections will have some beneficial economic effect on the Department. The rewriting of the Sections will make the rules easier for debt management companies to understand and, therefore, easier for the Department to enforce.

B. Other Public Agencies

The state will incur normal publishing costs incident to rulemaking.

C. Private Persons and Businesses Directly Affected

Costs of services will not increase to any measurable degree. Nor should these revisions increase any debt management company's cost of doing business in compliance with these rules.

D. Consumers

No measurable effect on consumers is expected.

E. Private and Public Employment

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

F. State Revenues

This rulemaking will not change state revenues.

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

The Council's staff has recommended editorial and stylistic changes to the originally proposed text of the rule. The changes improved the precision and clarity of the text and have been implemented.

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

One debt management company commented on the proposed revisions before the Department published its Notice of Proposed Rulemaking. Its suggestion was that the rules be revised to allow debt management companies to store required records outside the state of Arizona so long as they are available to the office in Arizona. The Department's response was to revise Section R20-4-604(B), allowing out of state record storage so long as the records are available to the Department and to the company's debtor customers.

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. 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 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 6. DEBT MANAGEMENT COMPANIES

Section
R20-4-602. Applications
R20-4-603. Reports
R20-4-604. Records
R20-4-607. Budget Analysis
R20-4-611. Advertising
R20-4-612. Solvency and Minimum Liquid Assets
R20-4-620. ~~Forms~~ Repealed

ARTICLE 6. DEBT MANAGEMENT COMPANIES

R20-4-602. Applications

A. ~~Application~~ An applicant for a debt management company license shall ~~be made by completing and filing with the Superintendent~~ send the Department an application on the form ~~prescribed~~ required by the Superintendent ~~in R20-4-620.A~~. ~~In connection with its application, the applicant~~ The Department shall order a credit report~~,~~ from a local credit ~~bureau,~~ reporting agency ~~regarding the applicant, if an individual or if a trust, partnership or other entity, regarding the partners, trustees~~ disclosing the credit history of the applicant's principals or managing agents ~~thereof~~. ~~The credit report must be sent directly to the Superintendent by the credit bureau.~~ The Department shall direct the credit reporting agency to send the credit report directly to the Superintendent. The applicant shall pay the cost of obtaining the credit report. ~~The~~ A complete application ~~filed with the Superintendent~~ shall ~~be accompanied by~~ include the credit report required by this Section and all of the following:

1. The surety bond required by A.R.S. § 6-704(B)~~.~~ ;
2. ~~A copy of the~~ The fidelity bond required by ~~R20-4-606~~ A.R.S. § 6-704(D)~~.~~ ;
3. The nonrefundable ~~investigation~~ application fee and original license fee ~~prescribed by~~ described in A.R.S. § 6-706~~.~~ , and specified in A.R.S. § 6-126(A)(14);
4. A sample of the contract intended to be used by the ~~licensee~~ applicant~~.~~ ;
5. Current financial statements as described in R20-4-604(A)(5)~~.~~ ;
6. A certified copy of the current articles of incorporation, by-laws, partnership agreement or other ~~governing~~ organizing documents ~~under which the applicant proposes to conduct business~~ used to form the applicant business entity; and
7. Statements of ~~Personal History~~ personal history, on the form ~~prescribed~~ required by the Superintendent ~~in R20-4-1410~~, for each of the applicant's principals, principal ~~officer~~ officers, ~~trustee~~ trustees, ~~partner or~~ partners, and managing ~~agent of the applicant~~ agents.
8. ~~A receipt indicating that the credit report required under R20-4-602 has been ordered and paid for.~~

B. ~~Application by a licensee for approval~~ A debt management company applying to operate a branch office or use an agency shall ~~be made by completing and filing with the Superintendent~~ send the Department an application on the form ~~prescribed in R20-4-620(B)~~ required by the Superintendent.

C. ~~Application for renewal of a license shall be made by completing and filing with the Superintendent prior to June 15th of each year an application for renewal on the form prescribed in R20-4-620(C). A separate application for renewal shall be filed for each office of the licensee for which it has been authorized to conduct business. Each application for renewal shall be accompanied by the renewal fee prescribed in A.R.S. § 6-706.~~ A debt management company applying to renew a license shall deliver, on or before June 15th of each year, an application to the Department on the form required by the Superintendent. A debt management company shall apply separately to renew the license of each authorized business location. With each application for renewal, a debt management company shall include the renewal fee described in A.R.S. § 6-706 and specified in A.R.S. § 6-126(C)(2).

D. The ~~Superintendent~~ Department may require additional information ~~he~~ the Superintendent considers necessary in connection with ~~any~~ an application under this ~~rule~~ Section.

R20-4-603. Reports

A. Each ~~licensee~~ debt management company and each nonprofit corporation or association exempt from licensure ~~pursuant to A.R.S. § 6-702, paragraph (4) or (5)~~ under A.R.S. §§ 6-702(4) and (5), shall ~~file with the Superintendent on or before August 15 of each year,~~ send the Department an annual report of ~~the company's~~ its business and operations for each place of business during the ~~preceding~~ previous year beginning July ~~1~~ 1st and ending June ~~30~~30th, ~~on~~ using the form ~~prescribed in R20-4-620(D)~~ required by the Superintendent. A debt management company shall deliver its report to the Department on or before August 15th.

B. Each ~~corporate licensee~~ debt management company organized as a corporation shall ~~file with the Superintendent copies~~ send the Department a copy, date-stamped by the Arizona Corporation Commission, of ~~all~~ each annual ~~reports and certif-~~

~~icates of disclosure filed with the Arizona Corporation Commission pursuant to A.R.S. §§ 10-125 and 10-128 respectively, which copies shall indicate the date the original was filed with the Corporation Commission and shall be filed with the Superintendent within 10 days of such filing with the Corporation Commission.~~report and certificate of disclosure filed under the authority of A.R.S. §§ 10-202 or 10-1622 within ten days of filing the report and certificate with the Arizona Corporation Commission.

C. Each ~~licensee~~ debt management company shall notify the ~~Superintendent~~ Department of any change in ~~the~~ its ownership or in the names of its officers, directors, trustees, partners, or managing agents ~~of the licensee~~ within ten days of ~~such~~ the change.

R20-4-604. Records

A. ~~All licensees~~ A debt management company shall keep ~~and maintain~~ books, accounts, and records adequate to provide a clear and readily understandable record of all its business ~~conducted by the licensee including without limitation:~~ activity. A debt management company may use an electronic recordkeeping system. The Department shall not require a debt management company to keep a written copy of its books, accounts, and records if the debt management company can generate all information and documentation required by this Section within three days of the Department's request for production of the records for examination or other purposes. A debt management company's books, accounts, and records shall include:

1. ~~Files~~ A file for each account ~~which shall include copies~~ containing:
   a. A copy of all correspondence concerning the account~~,~~ ;
   b. ~~evidence~~ Evidence of the notice given to creditors of the debt management contract~~,~~ ;
   c. A subsidiary ~~ledgers~~ ledger disclosing all financial transactions concerning the account~~,~~ ;
   d. ~~copies~~ A copy of ~~all~~ each written ~~statements~~ statement of account ~~provided~~ given to the debtor~~,~~ ;
   e. ~~the~~ The original ~~of the~~ budget analysis required under R20-4-607~~,~~ ; and
   f. ~~the~~ The original ~~of the~~ contract between the ~~licensee~~ debt management company and the debtor, ~~and any~~ including all amendments ~~thereto~~.
2. A trust account general ledger ~~reflecting all deposits~~, kept current daily, that reflects each deposit to and ~~disbursements~~ disbursement from the trust account. ~~The trust general ledger shall be kept current on a daily basis.~~
3. ~~A~~ Each reconciliation of the ~~licensee's~~ debt management company's trust account, prepared at least once a month.
4. A general ledger ~~reflecting all of the licensee's~~, kept current monthly, that reflects each financial ~~transactions other than transactions involving the licensee's trust account. The general ledger shall be kept current at least on a monthly basis~~ transaction by the debt management company except those recorded in its trust account general ledger.
5. ~~Financial statements~~ A financial statement produced in accordance with generally accepted accounting principles at least once every three months, or more frequently ~~when~~ if directed by the Superintendent, ~~reflecting~~ that reflects the financial condition of the ~~licensee in accordance with generally accepted accounting principles~~ debt management company. The financial ~~statements~~ statement shall include ~~at least~~:
   a. ~~a~~ A balance sheet,
   b. A statement of income and retained earnings, ~~and~~
   c. ~~a~~ A statement of changes in financial condition, and
   d. ~~appropriate~~ Appropriate footnotes~~.~~ that either:
      i. Explain entries in the documents listed in subsections (a), (b), and (c);
      ii. Contain material information not required or not reportable in documents listed in subsections (a), (b), or (c); or
      iii. Contain other disclosures required by generally accepted accounting principles.
6. ~~Adequate records~~ A record of all pending litigation ~~to which the licensee is~~ naming the debt management company as a party. The debt management company shall keep, during the pendency of each case, a copy of the complaint, and a copy of any answer or motion filed by the debt management company in response to the complaint.

B. All records ~~or complete duplicates of records~~ required under this ~~rule~~ Section ~~shall~~ may be maintained at the ~~licensee's~~ debt management company's office in Arizona. A debt management company may keep its records outside this state if it:

1. Makes the records available to the Superintendent, for examination or other purposes, in this state not more than three business days after demand; and
2. Allows its debtor customers to call toll free to obtain information from the records that is not available from the debt management company's office in Arizona.

C. Each ~~licensee~~ debt management company shall preserve its books, accounts, and records for the period ~~of time prescribed in~~ required by A.R.S. §§ 6-709~~, subsection~~ (J) and ~~§~~ 6-710~~, paragraph~~ (1).

R20-4-607. Budget Analysis

A. ~~No licensee~~ A debt management company shall not accept an account unless it ~~appears on the basis of a reasonable budget analysis reduced to writing~~ first concludes that the debtor can reasonably meet the payments agreed upon by the ~~licensee~~ debt management company and the debtor. The debt management company's conclusion shall be supported by a written budget analysis kept in the company's records.

B. The written budget analysis shall either be part of an application form or a separate document ~~and shall be dated and signed by the debtor~~. The debtor shall date and sign the written budget analysis before the debt management company draws any conclusions from the budget analysis.

C. The budget analysis shall disclose the disposable income available ~~to be paid~~ for payment to the ~~licensee~~ debt management company after ~~making allowance for the payment of the debtors~~ the debtor pays its reasonable and necessary living expenses ~~and all other payments required to be paid such as~~ including taxes, insurance, child support, alimony, and ~~rent or other payments on the debtors residence~~ residential rent or mortgage payments.

R20-4-611. Advertising

A. ~~Any advertising, communication or sales literature of any kind, published exhibited, broadcast for radio or television, or used directly or indirectly in connection with the sale of a licensee's services, shall be filed with the Superintendent at least five (5) days prior to its use.~~A debt management company shall send the Department copies of all advertising, communication, or sales material at least five days before the company uses the advertising, communication, or sales material to promote the sale of the company's services. This requirement applies to every type of promotional material used, whether the company will publish, exhibit, broadcast, or personally distribute the material by any other method or medium.

B. ~~No such advertising or sale material shall contain~~ A debt management company shall not use advertising, communication, or sales material that contains:

1. ~~Any~~ A false, misleading, or deceptive statement ~~or representation with regard to~~ about the debt management company's services ~~to be performed by the licensee or the charges to be made therefor~~ or charges. A statement is ~~misleading and deceptive~~ a violation of this Section if the person making the statement ~~omits to~~ does not state ~~any~~ a material fact necessary ~~in order~~ to make the ~~statements made~~ statement true, in light of the circumstances under which ~~they were~~ it is made~~, not misleading.~~ ;
2. ~~Any words or terms which might imply~~ A claim, direct or implied, that the ~~licensee~~ debt management company consolidates debts or makes loans ~~of money.~~ ; or
3. A schedule of payments in any form.

C. ~~All such advertising and sales material~~ A debt management company's advertising, communication, and sales material shall contain:

1. The ~~correct~~ name of the ~~licensee.~~ debt management company exactly as it appears on the current license; and
2. The following legend, conspicuously displayed in at least 12 point type and in bold print:
   "NOT A LOAN COMPANY."

D. The Department's failure ~~of the Superintendent~~ to object to the advertising, communication, or sales material filed with ~~him~~ it ~~shall not be considered nor~~ is not and shall not be represented as an approval of the material or the statements ~~contained therein~~ it contains.

R20-4-612. Solvency and Minimum Liquid Assets

A. ~~No licensee shall cause or permit itself to become insolvent.~~ A debt management company shall not operate if it is insolvent. For purposes of this ~~rule and A.R.S. § 6-708, subsection (B), paragraph (4), a licensee "is insolvent" when its total liabilities exceed its total assets or it is unable to meet its obligations as they become due~~ Section "insolvent" has the same meaning as in A.R.S. § 47-1201(23).

B. ~~A.R.S. § 6-709, subsection (A), requires that a licensee shall at all times maintain minimum liquid assets of at least $500 in excess of its business liabilities and of its liabilities on account of monies received in the business of a debt management company.~~ To determine compliance with ~~that section all of the~~ A.R.S. § 6-709(A), a debt management company's liquid assets ~~held by the licensee as part of its business, plus all~~ include funds held in its trust account~~, must exceed by $500 all business liabilities of the licensee and all balances held on account for all of its debtors as reflected in its subsidiary ledgers. For purposes of this determination goodwill and other intangible assets shall not be used in computing total liquid assets~~. Liquid assets do not include goodwill and other intangible assets. A debt management company's total liquid assets shall exceed by $2,500.00 the total of all its current business liabilities together with all balances held for debtors as reflected in the company's subsidiary ledgers.

~~**C.** The Superintendent may make rulings with respect to whether specific items may be treated as liquid assets for purposes of determining compliance with § 6-709, subsection (A).~~

~~**D.**~~**C.** Except as otherwise provided by this ~~rule~~ Section, or in a specific ruling by the Superintendent, a debt management company shall use generally accepted accounting principles ~~shall be followed in computing~~ to compute assets and liabilities ~~under this rule~~.

R20-4-620. ~~Forms~~ Repealed

~~**A.** The form of the application for a debt management company license shall be as follows:~~

STATE BANKING DEPARTMENT
101 Commerce Building
1601 West Jefferson
Phoenix, Arizona 85007

APPLICATION FOR DEBT MANAGEMENT COMPANY LICENSE

INSTRUCTIONS: All information required by the application must be typewritten or printed.

(For Department Use Only)

DATE FILED _____
LICENSE ISSUED _____
LICENSE NUMBER _____
RECEIPT NO. _____AMOUNT _____

TO THE SUPERINTENDENT OF BANKS:

Application is hereby made for a license to engage in and carry on the business of a DEBT MANAGEMENT COMPANY, pursuant to Title 6, Chapter 6, Arizona Revised Statutes.

1. Name of Applicant: _____
(Furnish corporate, trade or individual's name under which business is to be conducted.)

2. Address of principal Arizona office where business is to be conducted:

_____
(Street and Number) (City) (State) (Zip)

3. Mailing address (if different) _____

4. Telephone number of principal Arizona office _____

5. Is the applicant a _____ Corporation _____ Partnership _____ Sole Proprietorship _____ Other.

6. If the applicant is not a corporation, describe the nature of the business entity on a separate sheet. If the applicant is a corporation, complete the following:
   a. Name of the corporation _____
   b. Place & date of incorporation _____
   c. If a foreign corporation, date authorized to do business in Arizona _____

7. The name(s) and address(es), both of residence and place of business, of the applicant, principal officers thereof if a corporation, trustees thereof if a business trust, partners thereof if a partnership, and managing agent thereof, are as follows: (Insert the official capacity of the person in the business entity and the number of years such person has been engaged in the debt management business next to his name.)

   a. _____ _____
   (Name) (Capacity) (Yrs. in Bus.)

   _____ _____
   (Business Address) (Residence Address)

   b. _____ _____
   (Name) (Capacity) (Yrs. in Bus.)

   _____ _____
   (Business Address) (Residence Address)

   c. _____ _____
   (Name) (Capacity) (Yrs. in Bus.)

   _____ _____
   (Business Address) (Residence Address)

d. _____ _____ _____
(Name) (Capacity) (Yrs. in Bus.)

_____ _____
(Business Address) (Residence Address)

e. _____ _____ _____
(Name) (Capacity) (Yrs. in Bus.)

_____ _____
(Business Address) (Residence Address)

f. _____ _____ _____
(Name) (Capacity) (Yrs. in Bus.)

_____ _____
(Business Address) (Residence Address)

(Continue on separate sheet, if necessary.)

8. Name and address of firm or agency which audits your financial records and provides accounting services:

_____

_____

9. Name and address of the officer or managing agent who is to have primary responsibility for the business to be conducted by the applicant:

_____

_____

10. State whether the applicant or any officer, director, trustee, partner or managing agent thereof has been convicted of any criminal offense other than a traffic violation. Yes _____ No _____ (If yes, complete and attach Statements of Personal History for such persons.)

11. State whether the applicant, or any officer, director, trustee, partner or managing agent thereof has had a final judgment issued against him in a civil action on account of fraud, misrepresentation or deceit. Yes _____ No _____ (If yes, furnish complete details on separate sheet.)

12. State whether the applicant, or any officer, director, trustee, partner or managing agent thereof, has filed bankruptcy within the last ten years? Yes _____ No _____ (If yes, furnish complete details on separate sheet.)

13. State whether the applicant or any officer, director, trustee, partner or managing agent is interested in or connected with any other debt management company licensed by the Arizona Superintendent of Banks. Yes _____ No _____ (If yes, furnish details on separate sheet.)

14. State whether the applicant or any officer, director, trustee, partner or managing agent thereof is currently licensed to conduct the business of debt management in any other state. Yes _____ No _____ (If yes, furnish details on separate sheet.)

15. State whether the applicant or any officer, director, trustee, partner or managing agent thereof has at any time been licensed to conduct the business of debt management in this or any other state. Yes _____ No _____ (If yes, furnish details on separate sheet.)

16. State whether any application by the applicant or any officer, director, trustee, partner or managing agent thereof for a license to conduct the business of debt management has at any time been denied by this or any other state. Yes _____ No _____ (If yes, furnish details on separate sheet.)

17. State whether any license of the applicant or any officer, director, trustee, partner or managing agent thereof to conduct the business of debt management has at any time been suspended or revoked by this or any other state. Yes _____ No _____ (If yes, furnish details on separate sheet.)

18. Attached to this application are: the bond required by A.R.S. § 6-704; a copy of the fidelity bond required by R20-4-606; checks for the nonrefundable investigation fee and original license fee prescribed by A.R.S. § 6-706; a sample of the contract intended to be used by the licensee; current financial statements as described in R20-4-604(A); a certified copy of the current articles of incorporation, by-laws, partnership agreement or other governing documents under which the applicant proposed to conduct business; Statements of Personal History for each principal officer, trustee, partner or managing agent of the applicant; and a receipt indicating that the credit report required under R20-4-602 has been ordered and paid for.

VERIFICATION

State of _____)
) SS
County of _____)

II _____ , being duly sworn, depose and say that I have personal
(Name of person signing application)
knowledge of the matters contained in and attached to this application and everything contained therein is true and correct to the best of my knowledge and belief; and that I have signed this application as _____
(official capacity)
of the above named applicant, having full authority to sign such application in said capacity.

_____
Signature

Subscribed and sworn to before me this _____ day of _____, 19_____

(Notarial Seal)

My commission expires _____

~~**B.** The form of the application for approval of a branch office or agency shall be as follows:~~

101 Commerce Building
1601 West Jefferson
Phoenix, Arizona 85007

APPLICATION FOR BRANCH LICENSE OF A DEBT MANAGEMENT COMPANY

INSTRUCTIONS: All information required by the application must be typewritten or printed.

(For Department Use Only)

DATE FILED _____
LICENSE ISSUED _____
LICENSE NUMBER _____
RECEIPT NO. _____ AMOUNT _____

TO THE SUPERINTENDENT OF BANKS:

Application is hereby made for a license to operate a branch office of a debt management company.

1. Name of Licensee making application:

_____
(Name shown on license)

2. Address of proposed branch office:

_____

3. Telephone number of proposed branch office:

_____

4. Set forth the name and address of the officer or managing agent who is to have primary responsibility for the business to be conducted at the proposed branch office:

_____

5 Attached to this application are a Statement of Personal History for the person identified under item number 4, a nonrefundable investigation fee of $10.00 and a license fee of $100.00.

VERIFICATION

State of_____)
) SS
County of _____)

I_____ , being duly sworn, depose and say that I have personal
(Name of person signing application)
knowledge of the matters contained in and attached to this application and everything contained therein is true and correct to the best of my knowledge and belief; and that I have signed this application as_____
(official capacity)
of the above named applicant, having full authority to sign such application in said capacity.

_____
Signature

Subscribed and sworn to before me this _____ day of _____, 19 _____

(Notarial Seal)

My commission expires _____

~~**C.** The form of the application for renewal of a debt management company license shall be as follows:~~

101 Commerce Building
1601 West Jefferson
Phoenix, Arizona 85007

DEBT MANAGEMENT COMPANY APPLICATION FOR LICENSE RENEWAL
For Year Ending June 30, 19_____

INSTRUCTIONS: A separate application must be filed for the principal place of business and for each branch office. Each application for renewal must be filed not later than June 15 and must be accompanied by the renewal fee required by § 6-706. All information required by this application must be typewritten or printed.

(For Department Use Only)

DATE FILED _____

RECEIPT NO. _____ AMOUNT _____

TO THE SUPERINTENDENT OF BANKS:

Application is hereby made to renew the debt management company license, branch license, or agency license described below:

1. Name of Licensee_____License No._____

2. Street address_____Phone _____

3. State whether the information contained in the original application for license, as supplemented by any application for renewal heretofore filed, has changed. Yes _____ No _____ (If yes, furnish details on separate sheet.

4. Attached is a check for the renewal fee required by § 6-706.

VERIFICATION

State of_____)
) SS
County of_____)

I_____ , being duly sworn, depose and say that I have personal
(Name of person signing application)
knowledge of the matters contained in and attached to this application and everything contained therein is true and correct to the best of my knowledge and belief; and that I have signed this application as_____
(official capacity)
of the above named applicant, having full authority to sign such application in said capacity.

_____
Signature

Subscribed and sworn to before me this _____ day of _____, 19 _____

(Notarial Seal)

My commission expires _____

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

PREAMBLE

1. Sections Affected | **Rulemaking Action**

R20-4-801	Amend
R20-4-805	Amend
R20-4-806	Amend
R20-4-807	Amend
R20-4-808	Amend
R20-4-809	Amend
R20-4-810	Amend
R20-4-811	Amend
R20-4-812	Amend
R20-4-813	Amend
R20-4-814	Amend
R20-4-815	Amend
R20-4-816	Amend

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

Authorizing statute: A.R.S. § 6-123(2)

Implementing statutes: A.R.S. §§ 6-859(A), 6-861, 6-863(A)(8), and 6-865

3. The effective date of the rules:

June 6, 2002

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

Notice of Rulemaking Docket Opening: 7 A.A.R. 3054, July 13, 2001

Notice of Rulemaking Docket Opening: 7 A.A.R. 3851, August 31, 2001

Notice of Proposed Rulemaking: 8 A.A.R. 398, February 1, 2002

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

Name: John P. Hudock

Address: Banking Department
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

Telephone: (602) 255-4421, ext. 167

Fax: (602) 381-1225

E-mail: jhudock@azbanking.com

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

These Sections govern the conduct of the business of bank trust departments and private trust companies in Arizona. They are being amended for several reasons. The first reason is to correct inadvertent drafting errors in the recent revision of Article 8.

One error is that parts of three of these Sections (R20-4-805, R20-4-806, and R20-4-807) are written so that they apply both to bank trust departments and to private trust companies. This is an error for one of two reasons. First, A.R.S. § 6-381 establishes that bank trust departments are not subject to the statutes implemented in Article 8 except in the administration of trust accounts. So, because Sections R20-4-805(B) and (C), and R20-4-807 do not regulate the administration of trust accounts, this rulemaking amends each subsection to remove the implication of their applicability to bank trust departments from the language of each one.

Second, in the case of R20-4-806(A), the Section's implied applicability to bank trust departments is an error because it is redundant. The Section grants trust departments and trust companies authority to use electronic recordkeeping. But, bank trust departments already have electronic recordkeeping authority by virtue of the recently revised text of R20-4-214(A). To remove the redundancy, this rulemaking amends R20-4-806(A) to remove implied references to bank trust departments.

The second underlying reason for these amendments is to revise some definitions peculiar to Article 8. The definitional effects of this rulemaking will be three. First, it removes the numbers from the definitions in R20-4-801. Second, it removes the definition of "Bank" in R20-4-801, and replaces it with a definition of "Trust department." Third, it removes the definition of the term "Licensee" from Article 8. This last change is made because neither bank trust departments nor private trust companies are, strictly speaking, "licensees." Neither one receives a license to conduct its business. Instead, trust departments operate under banking permits that grant trust powers to banks. And, trust companies operate under certificates granted by the Superintendent. For these reasons, the use of the term "licensee" is confusing and unnecessary.

The rationale for the amendments discussed in the preceding paragraphs, clarifying the distinction between trust companies and bank trust departments, is that the duties presently imposed by these Sections on bank trust departments are already required by statute. As a result, while it is fair to impose the duties on private trust companies, it is not necessary to restate duties imposed on banks by statute. Also A.R.S. § 6-381 establishes that bank trust departments are not subject to the statutes implemented in these Sections except in the administration of trust accounts. These amended Sections do not regulate the administration of trust accounts and do not, under state law, apply to bank trust departments.

Finally, the remaining Sections in Article 8 are amended to remove the confusing and unnecessary use of the term "licensee" from each Section.

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

The Department did not rely on any study as an evaluator or justification for the rule.

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

Not applicable

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

A. The Banking Department

The amendment of these Sections will have a marginally beneficial effect on the Department for three reasons. First, it will make the definitions in R20-4-801 easier to use. Second, it will remove the ambiguous term "licensee" from this Article. And finally, it will resolve any confusion caused by the previous revisions of R20-4-805, R20-4-806, and R20-4-807.

B. Other Public Agencies

The state will incur normal publishing costs incident to rulemaking, including detailed review of the rulemaking documents by the Governor's Regulatory Review Council (G.R.R.C.) staff.

C. Private Persons and Businesses Directly Affected

Costs of services will not increase to any measurable degree. Nor should these revisions increase any trust department's or trust company's cost of doing business in compliance with these rules.

D. Consumers

No measurable effect on consumers is expected.

E. Private and Public Employment

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

F. State Revenues

This rulemaking will not change state revenues.

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

The Council's staff has recommended editorial and stylistic changes to the originally proposed text of the rule. The changes improved the precision and clarity of the text and have been implemented.

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

The public was invited to comment in the Notice of Proposed Rulemaking. That invitation contained an agency contact name, address, telephone number, and fax number. The Department has had several very helpful informal discussions with stakeholders about preliminary drafts of this rulemaking. However, no written comments were received and no arguments against adoption of the rules as they appear in this Final Rulemaking have been raised.

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. 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 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 8. TRUST COMPANIES

Section
R20-4-801. Definitions
R20-4-805. Reports
R20-4-806. Records
R20-4-807. Unsafe or Unsound Condition
R20-4-808. Administration of Fiduciary Powers
R20-4-809. Fiduciary Duties
R20-4-810. Funds Awaiting Investment or Distribution
R20-4-811. Investment of Trust Funds
R20-4-812. ~~Self-Dealing~~ Self-dealing
R20-4-813. Custody of Investments
R20-4-814. Compensation
R20-4-815. Collective Investments
R20-4-816. Termination of Trust or Fiduciary Powers and Duties

ARTICLE 8. TRUST COMPANIES

R20-4-801. Definitions

In this Article, unless the context otherwise requires:

~~1.~~ "Account" means the trust, estate, or other fiduciary relationship established with a trust department or trust company ~~or bank~~.

~~2.~~ "Affiliate" has the meaning stated at A.R.S. § 6-801.

~~3. "Bank" means a licensee under both A.R.S. § 6-201, et seq., and Article 2 of this Chapter that possesses a banking permit authorizing it to engage in trust business as defined at A.R.S. § 6-851.~~

~~4.~~ "Certificate" has the meaning stated at A.R.S. § 6-851.

~~5.~~ "Fiduciary" has the meaning stated at A.R.S. § 6-851.

~~6.~~ "Governing instrument" means a document, and all its operative amendments, that:

~~a.~~ Creates a trust and regulates the trustee's conduct~~;~~ ,

~~b.~~ Creates an agency relationship between a ~~licensee~~ trust department or trust company and a client~~;~~ , or

~~c.~~ Otherwise evidences a fiduciary relationship between a ~~licensee~~ trust department or trust company and a client.

~~7.~~ "Investment responsibility" means full and unrestricted discretion to invest trust funds without direction from anyone as to any matter, including the terms of the trade or the identity of the broker.

~~8. "Licensee" means a bank, as defined in this Section, and a trust company, as defined in this Section.~~

~~9.~~ "Person" has the meaning stated at A.R.S. § 1-215.

~~10.~~ "Superintendent" has the meaning stated at A.R.S. § 6-851.

~~11.~~ "Trust asset" means any property or property right held by a ~~licensee~~ trust department or trust company for the benefit of another.

~~12.~~ "Trust business" has the meaning stated at A.R.S. § 6-851.

~~13.~~ "Trust company" has the meaning stated at A.R.S. § 6-851.

"Trust department" means a permittee under both A.R.S. § 6-201 et seq. and Article 2 of this Chapter that possesses a banking permit authorizing it to engage in trust business.

~~14.~~ "Trust funds" means any money held by a ~~licensee~~ trust department or trust company for the benefit of another.

~~15.~~ "Trustor" means a person who creates or funds a trust, or both.

R20-4-805. Reports

A. Within 90 days following each December 31st, each ~~licensee~~ trust department and trust company shall file an annual report of trust assets with the Superintendent on the form prescribed by the Superintendent. The annual report shall include the current market value of all trust assets held by the ~~licensee~~ trust department or trust company as of December 31. The report shall also identify and briefly describe all transactions conducted in the report period that are regulated by R20-4-812(E) through R20-4-812(G).

B. Each ~~licensee~~ trust company shall deliver a copy of ~~each~~ its annual report and certificate of disclosure to the Superintendent within 10 days of filing ~~each~~ the report and certificate at the Arizona Corporation Commission. A report or certificate covered by this subsection is one filed under the authority of A.R.S. §§ 10-202 or 10-1622. A copy delivered to the Superintendent, as required in this subsection, shall be date-stamped by the Arizona Corporation Commission to confirm the actual filing date.

C. Each ~~licensee~~ trust company shall notify the Superintendent of any change in the directors or officers of the company within 10 days of the change. Any ~~licensee~~ trust company with more than 25 officers may, after obtaining the Superintendent's written approval, limit the officers covered by this subsection to those with substantial involvement in the ~~licensee's~~ trust company's corporate operations or in the ~~licensee's~~ trust company's trust business in this state.

R20-4-806. Records

A. A ~~licensee~~ trust company may use a computer recordkeeping system if the ~~licensee~~ trust company gives the Superintendent advanced written notice that it intends to do so. Except for records required by subsections (B)(1)(a) ~~or~~ and (B)(1)(b), the Department shall not require a ~~licensee~~ trust company to keep a written copy of its records if the ~~licensee~~ trust company can generate all information required by this Section in a timely manner for examination or other purposes. A ~~licensee~~ trust company may add, delete, modify, or customize a computer recordkeeping system's hardware or software components. When requested, or in response to a written notice of an examination, a ~~licensee~~ trust company shall report to the Superintendent any alteration in the ~~approved~~ computer recordkeeping system's fundamental character, medium, or function if the alteration changes the computer system to a paper-based system.

B. ~~All licensees~~ A trust department or trust company shall keep books, accounts, and records adequate to provide clear and readily understandable evidence of all business conducted by the ~~licensee~~ trust department or trust company, including the following:

1. A file for each account that includes:
   a. The original of the governing instrument,
   b. The originals of all contracts and other legal documents,
   c. Copies of all correspondence,
   d. Accounting records disclosing all the financial transactions, and
   e. A listing of all the account's assets and liabilities.
2. An investment file for each account that includes:
   a. All original documentary evidence of the account's assets~~,~~ ; or
   b. Copies of the original documentary evidence of the account's assets, together with written evidence of custody or receipt of the originals by an authorized holder; and
   c. A record of the initial and annual investment reviews for the account.
3. The corporate general ledger kept current on a daily basis. This record shall identify and segregate all financial transactions conducted by the ~~licensee~~ trust department or trust company for itself, distinguishing them from those relating to the ~~licensee's~~ trust department's or trust company's trust business;
4. Unaudited financial statements. ~~Each licensee~~ A trust department or trust company shall produce these statements quarterly or more frequently when directed by the Superintendent. The financial statements shall include at least:
   a. A balance sheet~~,~~ ; and
   b. A statement of income, expenses, and retained earnings.
5. Adequate records of all pending litigation that names the ~~licensee~~ trust department or trust company as a party.

C. ~~Every licensee~~ A trust department shall keep its fiduciary records separate and distinct from the ~~licensee's~~ trust department's corporate records.

D. A ~~licensee~~ trust department or trust company shall keep records described ~~above~~ in subsections (B)(1) and (B)(2) for at least three years after closing an account. If litigation occurs concerning a particular account, the ~~licensee~~ trust department or trust company shall keep that account's records, described ~~above~~ in subsections (B)(1) and (B)(2), for three years after the litigation is ~~finally~~ resolved.

R20-4-807. Unsafe or Unsound Condition

For purposes of A.R.S. §§ 6-863 and 6-865, a ~~licensee~~ trust company conducts business in an unsafe manner or its affairs are in an unsound condition if it:

1. Violates any fiduciary duty or obligation, including those listed in R20-4-809 through R20-4-815;
2. Violates any state or federal requirement for operating or maintaining trusts, common trust funds, or other accounts;
3. Violates any applicable federal or state law or regulation regarding corporations or securities;

4. Employs an officer or director who violates a corporate fiduciary duty;
5. Is insolvent; or
6. Engages in any conduct that the Superintendent determines constitutes an unsafe or unsound business practice jeopardizing the ~~licensee's~~ trust company's financial condition or the interests of a stockholder, creditor, trustor, beneficiary, or ~~licensee's~~ trust company's principal.

R20-4-808. Administration of Fiduciary Powers

A. The board of directors and the officers share responsibility for the exercise of fiduciary powers by a ~~licensee~~ trust department or trust company. The board of directors is responsible for determining policy; investing and disposing of trust assets; and directing and reviewing the actions of all directors, officers, and committees of the board that exercise fiduciary powers. The board of directors may delegate the necessary power and authority to perform the ~~licensee's~~ trust department's or trust company's duties as a fiduciary to selected directors, officers, employees, or committees of the board if the delegation is consistent with the corporate charter. The minutes of the board's meetings shall duly reflect all those delegations.

B. A ~~licensee~~ trust department or trust company shall not accept a new account without first obtaining the board's approval, or that of the directors, officers, or committees that the board may have authorized to approve new accounts. The ~~licensee~~ trust department or trust company shall keep a written record of each new account approval and of the closing of each account. ~~A licensee~~ The trust department or trust company shall conduct an asset review within 60 days after it accepts each new account if it has investment responsibility for that account. The ~~licensee's~~ trust department's or trust company's board shall ensure that an annual review of account assets is conducted for any account in which the ~~licensee~~ trust department or trust company has investment responsibility, to determine whether to retain or dispose of the assets.

C. A ~~licensee~~ trust department or trust company exercising fiduciary powers shall use independent legal counsel admitted to practice in Arizona~~, who shall~~ to advise and inform the ~~licensee~~ trust department or trust company on fiduciary matters and all other legal issues presented to the ~~licensee~~ trust department or trust company by the conduct of its trust business.

R20-4-809. Fiduciary Duties

~~All licensees~~ A trust department or trust company shall perform all fiduciary duties imposed upon ~~them~~ it by law, including the following:

1. Administer accounts strictly according to the governing instrument and solely in the account beneficiary's interests;
2. Use reasonable care and skill to make the account productive;
3. Provide complete and accurate information of the nature and amount of assets held to each account's beneficiary or principal and permit the beneficiary, principal, or any person duly authorized by the beneficiary or principal to inspect the account's records at any time during normal business hours. The information provided in compliance with this subsection shall be delivered at least quarterly, unless:
   a. The ~~licensee~~ trust department or trust company and its account's beneficiary, principal, or authorized person agree otherwise in writing;
   b. The governing instrument provides otherwise; or
   c. A different frequency ~~was~~ is established by a lawful course of dealing before the effective date of this rule; and
4. Comply with all lawful provisions of the governing instrument.

R20-4-810. Funds Awaiting Investment or Distribution

A. Trust funds held by a ~~licensee~~ trust department or trust company awaiting investment or distribution shall not remain uninvested or undistributed any longer than is reasonable for the account's proper management.

B. A ~~licensee~~ trust department or trust company may keep trust funds in deposit accounts maintained by the ~~licensee~~ trust department or trust company, unless prohibited by law or by the governing instrument. The ~~licensee~~ trust department or trust company shall set aside collateral security for all deposited trust funds under a ~~3rd-party's~~ third party's control. The collateral shall be the following ~~type~~ types of securities, in any combination:

1. Direct obligations of the United States or any agency, department, division, or administration of the federal government;
2. Any other obligations fully guaranteed by the United States government as to principal and interest;
3. Obligations of a Federal Reserve Bank;
4. Obligations of any state, political subdivision of a state, or public authority organized under the laws of a state; or
5. Readily marketable securities that either:
   a. Qualify as investment securities under the Investment Securities regulations of the Comptroller of the Currency, 12 CFR, Chapter 1, Part 1; or
   b. Satisfy state pledging requirements under A.R.S. § 6-245(C).

C. The securities set aside under subsection (B) shall, at all times, have a market value no less than the amount of trust funds deposited. No collateral security is required to the extent the Federal Deposit Insurance Corporation, or its successor, insures the deposited trust funds.

R20-4-811. Investment of Trust Funds

A. A ~~licensee~~ trust department or trust company shall invest trust funds according to:
1. The governing instrument~~,~~ ; and
2. All applicable laws, including A.R.S. §§ 6-862, 14-7402, and 14-7601 through 14-7611.

B. A ~~licensee~~ trust department or trust company shall make any collective investment of trust funds exclusively under the terms of R20-4-815.

R20-4-812. ~~Self-Dealing~~ Self-dealing

A. A ~~licensee~~ trust department or trust company shall not invest trust funds in the following types of property unless expressly authorized by the governing instrument, applicable state or federal law, or court order:
1. Its own securities;
2. Other types of property acquired from the ~~licensee~~ trust department or trust company;
3. Property acquired from the ~~licensee's~~ trust department's or trust company's directors, officers, or employees;
4. Property acquired from the ~~licensee's~~ trust department's or trust company's affiliates;
5. Property acquired from its affiliates' directors, officers, or employees; or
6. Property acquired from other individuals or organizations with an interest in the ~~licensee~~ trust department or trust company if that interest might affect the ~~licensee's~~ trust department's or trust company's exercise of discretion to the detriment of its trust clients.

B. ~~However, the licensee~~ A trust department or trust company may use trust funds to purchase its own securities, or its affiliates' securities:
1. If the ~~licensee~~ trust department or trust company has authority under subsection (A)~~;~~ , and
2. If those securities are offered pro rata to all stockholders of the ~~licensee~~ trust department or trust company.

C. A ~~licensee~~ trust department or trust company shall not sell or loan trust property to itself, or to the following types of persons, unless expressly authorized by the governing instrument, applicable state or federal law, or court order:
1. Its directors, officers, or employees;
2. Its affiliates;
3. Its affiliates' directors, officers, or employees; or
4. Other individuals or organizations with an interest in the ~~licensee~~ trust department or trust company if that interest might affect the ~~licensee's~~ trust department's or trust company's exercise of discretion to the detriment of its trust clients.

D. However, a ~~licensee~~ trust department or trust company may sell or loan trust property to persons prohibited by subsection (C) if either:
1. Its counsel has advised in writing that, by holding certain property, the ~~licensee~~ trust department or trust company has incurred a contingent or potential liability for breach of fiduciary duty; and
   a. The proposed sale or loan avoids the contingent or potential liability;
   b. Its board of directors authorizes the sale or loan by an action duly noted in the ~~licensee's~~ trust department's or trust company's minutes;
   c. Its board of directors' action expressly authorizes reimbursement to the affected account; and
   d. The affected account is reimbursed, in cash, at no loss to that account; or
2. The Superintendent requires or approves, in writing, the sale or loan to otherwise prohibited parties.

E. A ~~licensee~~ trust department or trust company may sell trust property held in ~~1~~ one account to another of its accounts if:
1. The transaction is fair to both accounts; and
2. The transaction is not prohibited by the governing instruments, applicable state or federal law, or court order.

F. A ~~licensee~~ trust department or trust company may loan trust property held in ~~1~~ one account to another of its accounts if:
1. The transaction is fair to both accounts; and
2. The transaction is not prohibited by the governing instruments, applicable state or federal law, or court order.

G. A ~~licensee~~ trust department or trust company may make a loan to a trust account, taking trust assets of the borrowing account as security for repayment, if:
1. The transaction is fair to the borrowing account; and
2. The transaction is not prohibited by the governing instrument, applicable state or federal law, or court order.

R20-4-813. Custody of Investments

A. A ~~licensee~~ trust department or trust company shall keep each account's investments separate from its own assets. It shall place each account's assets in the joint control of at least ~~2~~ two officers or employees of the ~~licensee~~ trust department or trust company designated in writing for that purpose by:
1. The ~~licensee's~~ trust department's or trust company's board of directors, or
2. One or more officers authorized by the ~~licensee's~~ trust department's or trust company's board of directors to make the designation.

B. ~~The licensee~~ A trust department or trust company shall either:

1. Keep each account's investments separate from all other accounts' investments, except as provided in R20-4-815; or
2. Adequately identify each account's property in the ~~licensee's~~ trust department's or trust company's records.

R20-4-814. Compensation

A. A ~~licensee~~ trust department or trust company acting as a fiduciary may charge a reasonable fee for its services. It shall receive the fee allowed by the court when it is acting under a court appointment. Any agreement as to fees in the governing instrument shall control the fee unless contrary to law, regulation, or court order.

B. ~~No licensee~~ A trust department or trust company shall not permit any of its officers or employees to take any compensation for acting as a co-fiduciary with the ~~licensee~~ trust department or trust company in the administration of an account.

R20-4-815. Collective Investments

A. All collective investments made by ~~licensees~~ a trust department or trust company shall be in a common trust fund established under A.R.S. § 6-871, and maintained by the ~~licensee~~ trust department or trust company exclusively for the collective investment and reinvestment of funds contributed by the ~~licensee~~ trust department or trust company acting as a fiduciary. A ~~licensee~~ trust department or trust company shall not establish a common trust fund unless it first:

1. Prepares a written plan regarding the common trust fund; and
2. Obtains its board of directors' approval of the plan, evidenced by a duly adopted resolution or the board's unanimous written consent.

B. The plan shall describe the common trust fund's operational details, including a description of:

1. The ~~licensee's~~ trust department's or trust company's investment powers and investment policy over all funds deposited in the common trust fund~~;~~ .
2. The manner for allocating the common trust fund's income and losses~~;~~ .
3. The criteria for admission to or withdrawal from participating in the common trust fund~~;~~ , and
4. The method for valuing assets in the common trust fund and the frequency of valuation.

C. A ~~licensee~~ trust department or trust company shall advise all persons having an interest in its common trust fund of the existence of the plan described in subsection ~~(A)~~ (B), and shall provide a copy of the plan upon request.

D. The annual report required under R20-4-805(A) shall include all common trust funds operated by the ~~licensee~~ trust department or trust company.

R20-4-816. Termination of Trust or Fiduciary Powers and Duties

A. Any ~~bank~~ trust department that wants to surrender its trust powers shall file with the Superintendent a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. If, after investigation, the Superintendent concludes that the ~~bank~~ trust department has no remaining fiduciary duties, the Superintendent shall notify the ~~bank~~ trust department that it no longer has authority to exercise trust powers.

B. Any trust company that wants to surrender its certificate of authority to conduct trust business and wind up its affairs shall file with the Superintendent a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. Upon receipt of the resolution or consent, the Superintendent shall cancel the trust company's certificate of authority, and the trust company shall not accept new trust accounts.

C. After winding up its affairs, any trust company that wants to surrender its rights and obligations as a fiduciary and remove itself from the Superintendent's supervision shall file with the Superintendent a certified copy of the appropriate resolution of its board of directors or of the board's unanimous written consent. If, after investigation, the Superintendent concludes that the trust company has no further fiduciary duties, the Superintendent shall notify the trust company that it no longer has authority to exercise fiduciary powers.

D. Any ~~licensee~~ trust department or trust company that surrenders its powers, rights, obligations, or certificate under this Section or that has them cancelled, suspended, or revoked shall continue to be regulated under A.R.S. § 6-864 and this Article until it winds up its affairs. No action under this Section impairs any liability or cause of action, existing or incurred, against any ~~licensee~~ trust department or trust company or its stockholders, directors, or officers.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

PREAMBLE

1. Sections Affected | **Rulemaking Action**

R20-6-604	Repeal
R20-6-604	New Section
Exhibit A	Repeal
R20-6-604.01	New Section
R20-6-604.02	New Section
R20-6-604.03	New Section
R20-6-604.04	New Section
R20-6-604.05	New Section
R20-6-604.06	New Section
R20-6-604.07	New Section
R20-6-604.08	New Section
R20-6-604.09	New Section
R20-6-604.10	New Section

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

Authorizing statute: A.R.S. § 20-1615

Implementing statutes: A.R.S. §§ 6-636; 20-142, 20-151, 20-161(A), 20-223, 20-1601 through 20-1616

3. The effective date of the rules:

June 7, 2002

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

Notice of Rulemaking Docket Opening: 7 A.A.R. 2778, June 29, 2001

Notice of Proposed Rulemaking: 7 A.A.R. 4856, October 19, 2001

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

Name: Vista Thompson Brown or Margaret McClelland

Address: Arizona Department of Insurance
2910 N. 44th Street, 2nd Floor
Phoenix, AZ 85018

Telephone: (602) 912-8456

Fax: (602) 912-8452

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

Under A.R.S. § 20-1610, the premiums charged for a credit life or credit disability insurance policy shall not be excessive in relation to the benefits provided. The current rule establishes required loss ratios of 50% for credit life insurance and 60% for credit disability insurance as the standard for what is reasonable, i.e., for every dollar of premium collected, an insurer must pay at least $.50 in losses on a credit life insurance policy and $.60 in losses on a credit disability policy. These loss ratio standards strike a balance between consumers' rights to receive a fair return on premiums paid, and insurers' rights to reasonable profits. These standards are within the range of standards adopted in other states. The National Association of Insurance Commissioners (NAIC) model regulation on which these rules are based, has a standard loss ratio of 60% on both lines of business.

The current rule also includes an Appendix of prima facie rates. The prima facie rates are tables of insurance rates based on age, mortality, type of policy, and other factors. Insurers charging no more than prima facie rates are presumed to satisfy the minimum loss ratios. The Department conducted a review of the experience on credit life and credit disability insurance business for the period 1997 through 1999, and determined that the current prima facie rates, which were adopted in 1983, need to be lowered to generate the required loss ratios. The proposed rules will repeal the current prima facie rates and permit the director to establish rates by order after notice and a hearing. This different procedure will permit the Department to more timely respond to changes in the marketplace.

The current rules are based on an NAIC model regulation. That model has undergone revision since the current rules were adopted. The changes proposed to the rules will bring Arizona's rules into greater conformity with the model

regulation. Conformity with this national model helps to reduce the administrative burden for insurers doing business in multiple states. The Department has made certain changes to the model language to achieve compliance with Arizona statutory provisions and to recognize the particular dynamics of the Arizona marketplace.

The rules are also being updated to conform to current rulemaking stylistic requirements to make the rule more clear, concise and understandable, including elimination of text that duplicates statute, insertion of statutory cross-references, elimination of unnecessary forms.

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

Report of Department Actuary to the Director, dated June 20, 2001. This report may be viewed on the Department's web site at www.state.az.us/id, under the heading "Credit Insurance Rules Changes."

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:

The rulemaking is designed to update the rules, to repeal the current prima facie rates, and to establish a more timely process for determination of prima facie rates. As a direct result of this rulemaking, the Department will be able to more timely adjust rates based on changing conditions in the marketplace. This may have the effect of increasing the competitiveness of the credit insurance market.

There will be significant economic impacts as an indirect result of this rule change. After the new rules are effective, the Department will conduct a separate proceeding (with notice, a public hearing, and an order) to establish new prima facie rates. Based on the report of the Department actuary, the Department estimates that for the first full year that new rates are in effect, Arizona's consumers will realize a savings of approximately $19 million in credit life and credit disability insurance premium costs, unadjusted for inflation and assuming that other marketplace variables remain constant. Insurers that issue these insurance products and insurance producers who earn commissions on the sale of these products will likely experience a corresponding reduction in income. Because a portion of every premium dollar (0.2%) is for premium taxes, Arizona's general fund may lose some premium tax revenues. However, it is expected that consumers will use the money saved on credit insurance premiums for spending on a wide variety of other products, as well as savings and investments, resulting in a boost to other sectors of Arizona's economy. To the extent that consumers use the savings to purchase other taxable products, there may be increases in other tax collections.

There will be a minimal economic impact on the Department, the Secretary of State and the Governor's Regulatory Review Council associated with the rulemaking process. The Department may experience a moderate increase in administrative costs as a result of the new process and increased frequency of experience review.

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

The Department made changes to the rules in response to written and oral comments received from the public, as described in item #11 below. The Department also made changes based on comments and suggestions from staff of the Governor's Regulatory Review Council. The Department made additional changes to improve clarity, conciseness, and understandability. In this section, underlined text indicates text added after the proposed rules were published. Stricken text indicates text deleted from the proposed rules. The Department's reasons for these changes are discussed in item #11.

R20-6-604. Definitions

"Credit insurance" means credit life insurance, credit disability insurance, or both, but does not include any insurance for which there is no identifiable charge.

~~4. "Debt" has the same meaning as indebtedness in A.R.S. § 20-1603(6).~~

"Gross debt" means the sum of the remaining payments that a debtor owes a creditor.

"Identifiable charge" means a charge for credit insurance that is imposed on a debtor with credit insurance but not on a debtor without credit insurance, and includes a charge for insurance that is disclosed in the credit or other financial instrument furnished to the debtor, which sets forth the financial elements of a credit transaction, and any difference in finance, interest, service charges, or other similar charges made to a debtor in like circumstances except for the debtor's status as insured or noninsured.

"Incurred claims" means the total claims ~~paid~~ an insurer pays during an experience period, adjusted for the change in the claim reserves.

~~13. Outstanding indebtedness" means the amount a debtor has borrowed, plus any unearned interest or finance charges.~~

"Net debt" means the amount necessary to liquidate a debt in a single lump-sum payment, excluding unearned interest and other unearned finance charges.

"Reasonableness standard" means the requirement in A.R.S. § 20-1610(B) that an insurer's premiums ~~rates~~ for credit insurance shall not be ~~reasonable~~ excessive in relation to the benefits provided under the policy ~~of insurance~~.

"Rule of Anticipation" means the product of the gross single premium per $100 of indebtedness for a debtor's remaining term of indebtedness, times the number of hundreds of dollars of remaining indebtedness.

R20-6-604.01

The Department made no substantive changes to this rule, but did reorganize the subsections and add new subsection headings to improve clarity and organization of the rule.

R20-6-604.02(C)

C. While in effect, the rates described in ~~R20-6-604.03~~ R20-6-603.04 and ~~R20-6-604.04~~ R20-6-604.05, subject to any deviations approved under ~~R20-6-604.07~~ R20-6-604.08 ~~("final adjusted rates")~~ are conclusively presumed to develop the loss ratios described in subsection (B). For purposes of prospective effect, the Department may rebut this presumption by disapproving or withdrawing approval for the rates as prescribed in A.R.S. § 20-1610.

R20-6-604.02(D)

D. ~~If an insurer wants to~~ An insurer may provide coverage other than the standard coverage described in R20-6-604.04 and R20-6-604.05~~,~~. ~~the~~ An insurer that wishes to provide nonstandard coverage shall:

1. File the nonstandard coverage policy information as prescribed in A.R.S. § 20-1609, and
2. ~~shall~~ Demonstrate that the rates for the coverage are reasonably expected to develop a loss ratio of not less than 50% for credit life insurance and not less than 60% for credit disability insurance.

R20-6-604.04(C)(1)

1. Provide coverage for death, by whatever means caused, to all eligible debtors, with or without evidence of individual insurability for debtors that purchase coverage within 30 days of ~~becoming~~ being eligible.

R20-6-604.04(C)(2)

2. Have no exclusions other than for:
   a. Suicide within ~~6~~ six months after the effective date of coverage~~.~~, or
   b. A preexisting condition~~s for coverage on revolving accounts~~.

R20-6-604.04(C)(3)

3. Have no age restrictions, except the following permissible exclusions:
   a. ~~A policy may exclude coverage for debtors who will be age 70 or older on the maturity date of the debt;~~ An age restriction providing that no insurance will become effective on a debtor on or after the attainment of age 70 and that all insurance shall terminate on a debtor attaining age 70; and
   b. An age restriction for a revolving credit life insurance policy ~~may~~ that:
      i. Exclude~~s~~ a class~~es~~ of debtors determined by age; or
      ii. Provide~~s~~ for termination of insurance or reduction in the amount of insurance when a debtor reaches age 70.

R20-6-604.05(C)(1)

1. Provide coverage for disability, by whatever means caused, to all eligible debtors, with or without evidence of individual insurability for debtors that purchase coverage within 30 days of becoming eligible.

R20-6-604.05(C)(6)

6. ~~Not include an~~ Have no age ~~restrictions~~ restrictions, except ~~that~~ the following ~~age restrictions are~~ permissible exclusion:
   ~~a. A provision that no insurance is effective on a debtor who is age 66 or older; and~~
   ~~b.~~ ~~A provision terminating coverage for a debtor who reaches age 66 after coverage became effective.~~ An age restriction that provides that no insurance will become effective on a debtor on or after the attainment of age 65 and that all insurance shall terminate on a debtor attaining age 66; and

R20-6-604.06. Refund Formulas

A. When refunding premiums as prescribed in A.R.S. § 20-1611, an insurer shall use the following methods: ~~a refund formula that is actuarially equivalent to the type of coverage the debtor purchased. An insurer's refund formula may recognize adjustments to a daily basis for interest or payments if the adjustments are consistent with the underlying credit transaction.~~

1. For insurance paid by a single premium, the Rule of Anticipation method; and
2. For insurance paid by other than a single premium, a method that refunds at least the pro rata gross unearned amount charged to the debtor.

B. The Director may approve other refund methods similar to those described in subsection (A), that are actuarially equivalent to the type of coverage the debtor purchased.

C. An insurer's refund method may recognize adjustments to a daily basis for interest or payments if the adjustments are consistent with the underlying credit transaction.

~~**B.**~~**D.** An insurer is not required to refund any amount ~~under~~ less than $5.

R20-6-604.07(A):

1. In this subsection, a "class of business" means:
   a. Credit unions~~,~~ ;
   b. Banks, ~~and~~ savings and loan institutions, and mortgage companies;~~,~~
   c. ~~Cash loans~~ Finance companies, small loan companies, and consumer lenders as defined in A.R.S. § 6-601(5)~~,~~ ;
   d. ~~Sales finance~~ Dealers, including auto, truck and boat dealers, and retail stores, and other persons selling financed goods~~,~~ ; and
   e. All other persons selling credit insurance not specifically listed in subsection (A)(1)(a) through (d).

R20-6-604.07(D)

D. For each day a report is late, the Director may assess a penalty ~~in the same amounts~~ as prescribed in A.R.S. § ~~20-220~~ 20-223.

R20-6-604.09

B. The insurer shall maintain for the Director's inspection a written record of each review and action the insurer takes to address any creditor noncompliance found by the insurer, for at least ~~3~~ three years following the end of the review~~, for the Director's inspection~~.

~~**C.** Within 30 days of completing a review, the insurer shall notify the Director of any material noncompliance that the insurer finds.~~

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

General comments: Before publishing proposed rules, the Department circulated draft rules for informal comment. Both the draft rules and the proposed rules include a repeal of the current prima facie rate tables. As part of the informal rulemaking process, the Department also provided interested parties with the actuary's proposed recommendations for changes in the prima facie rates, based on the actuary's review of experience for the period 1997-1999. The Department published the actuary's recommendation so that interested insurers would be fully advised of the Department's proposed action, and thus able to frame comments from that perspective.

However, the new recommended prima facie rates are not part of the rulemaking under consideration. Under the new rules, new prima facie rates will be adopted in an entirely separate proceeding that cannot occur until after the new rules are effective.

Nonetheless, the Department received several general comments directed to the proposed new prima facie rates. The Department has responded to those comments from the perspective that the proposed prima facie rates are not the subject of the pending rulemaking.

Issue: A commenter recommended that the Department not reduce rates.

Response: As indicated above, the revised prima facie rates are not the subject of the current rulemaking. However, the Department disagrees with this comment. A.R.S. § 20-1610 requires the Director to disapprove premium rates that are excessive in relation to benefits provided under a policy. To implement this "reasonableness" standard, the Department adopted the current rule which establishes required loss ratios: a 50% loss ratio for credit life insurance and a 60% loss ratio for credit disability insurance. (See A.A.C. R20-6-604(D)(1).). "Loss ratio" means premiums charged in relation to losses paid. (A required loss ratio of 60% means that for every dollar of premium collected, the insurer must pay out at least 60¢ in claims.) The "reasonableness" requirement is presumed to be satisfied if the premium rate charged develops, or may reasonably be expected to develop, an actual loss ratio of 50% for Credit Life insurance and 60% for Credit Disability insurance. The current rule includes tables of "prima facie" rates, which are presumed to generate the required loss ratios. Finally, the current rule also provides for the Director to adjust the prima facie rates based on actual experience. (See A.A.C. R20-6-604(H)(3)(b).)

As required by the current rules, the Department conducted an actuarial review of experience for the years 1997, 1998, and 1999. That experience shows that the actual loss ratios for some of the credit life and credit disability plans

were much lower than required by the provisions of current R20-4-604. Appendix 1 (attached) is a summary of the three year study of loss experience for the credit life and credit disability business in the state of Arizona. The actual loss ratios for some of the credit insurance plans that did not meet the loss ratio requirements are as follows:

Credit Life Insurance Plans (50% Loss Ratio required)	
Single Life, Single Premium, Decreasing Gross and Net Plans 11 and 12	29.88%
Joint Life, Single Premium, Decreasing Gross and Net Plans 21 and 22	41.90%
Credit Disability Insurance Plans (60% Loss Ratio required)	
Non-Retroactive Benefit Plans:	
14 Day – Single Premium, Decreasing Gross and Net Plans 51 and 52	17.13%
30 Day – Outstanding Balance and Revolving Acct. Plans 94 and 95	42.15%
Retroactive Benefit Plans:	
14 Day - Single Premium, Decreasing Gross and Net Plans 31 and 32	28.36%
14 Day - Outstanding Balance and Revolving Acct. Plans 34 and 35	46.62%
30 Day - Single Premium, Decreasing Gross and Net Plans 71 and 72	38.17%
30 Day - Outstanding Balance and Revolving Acct. Plans 74 and 75	30.63%

Based upon the results of the loss ratio experience study, the Department determined that it was necessary to reduce the prima facie rates for all of the plans listed above, and initiated the current rulemaking to repeal the current prima facie rates. After the new rules are adopted, the Department will conduct a separate proceeding to determine revised prima facie rates based on an analysis of the experience then available, and other evidence presented at a public hearing.

Notably, the Department did not recommend rate reductions for plans unless the experience warranted a reduction. The Department has recommended increases in prima facie rates for credit life insurance plans where combined actual loss ratios exceeded 50%.

Issue: A commenter stated that the rates have been adjusted excessively.

Response: The rulemaking does not adjust any rates. It merely repeals the current prima facie rates. However, the Department disagrees with this comment. As indicated in the response above, the actuarial review of experience demonstrates the need for the adjustments. The Department notes that the proposed reduced rates are higher than the lowest possible rates supported by the loss experience. An example of this may be shown by calculating the indicated rate derived from the 29.67% prima facie loss ratio for the Single Life, Single Premium, Decreasing Gross and Net Plans 11 and 12. (See Appendix 1 to Actuary's report for the prima facie loss ratio.) The calculated new indicated rate, based on the requirement of a 50% loss ratio and using the current rate for these plans of 44¢, would be 26.1¢ (44¢ x 29.67%/50.00% = 26.1¢). The new recommended rate of 30¢ is 15% higher than this indicated rate. The Department recommended this 30 cent rate to provide insurers with some margin for fluctuations in future experience.

The Department used a similar approach of providing some margin in its recommendations for prima facie rates for the credit disability plans. The non-retroactive plans had a total combined loss ratio of 42.59%, a figure well below the 60% required loss ratio. Based on the experience, the indicated prima facie rate level for new rates would be 71.0% of the old rates (42.59%/60.00% = 71.0%). Instead of using 71.0%, the Department has recommended a reduction to 75.0% of the old prima facie rate level to provide some margin for fluctuations in future experience.

The Department used the same "margin" methodology to develop the rate reductions for credit disability retroactive plans. The total combined loss ratio for retroactive plans was 29.34%, which is less than one-half of the required 60% loss ratio. Based on the experience, the indicated prima facie rate level for new rates would be 48.9% of the old rates (29.34%/60.00% = 48.9%). Instead of using 48.9%, the Department has recommended a reduction to 52.0% of the old prima facie rate level to provide insurers with some margin for fluctuations in future experience.

Using the loss experience to establish new recommended prima facie rates did cause one anomalous result. The new recommended rates for credit disability, non-retroactive plans are higher than the rates for retroactive plans. The reason for this is found in Appendix 2 (attached). Credit unions write a large portion of the non-retroactive business and have a loss ratio of about 55%. The opposite is true when reviewing the retroactive plan experience, which is written primarily by dealers. The loss ratios for the dealers' business are shown in the results for the classes of business labeled "sales finance and all others." These classes of business (sales finance and all others) have a combined loss ratio of 25.3%, which is far below the credit unions' 55% loss experience. These are significant variances and arise because of the basic and historical differences in the philosophies for credit insurance marketing and underwriting, between the credit unions and the dealers.

Finally, the recommended adjustments are not excessive when viewed in light of the commenter's actual experience. Using the prima facie rates in the current rule, the particular commenter has generated a three-year credit life loss

ratio of 32%, which is well below the required loss ratios. The proposed adjustments would bring the future loss ratio within the prescribed limits.

Issue: A commenter objected to the rulemaking in general and stated that the Department's actuarial study does not portray an accurate image because it is based on only 40% of the entire block of credit life business in the state and that only the blocks of business with the lowest loss ratios were selected for the study, skewing the results overall. The commenter further contends that the report encompasses only recent results that distort the study.

Response: The Department disagrees with this comment. The Department recommended the new prima facie rates for each plan of insurance based on the combined three-year loss ratio experience results. The current rule specifies a three-year period for reviewing experience and developing new rates. The Department used the three-year period to avoid distortions in the study that could result from using a shorter period. In making recommendations for new rates, the Department selected 100% of all of the business for study, and not just blocks of business with the lowest loss ratios. Actuary's Report, Appendix 1 shows the summary, by plan type, for both credit life and credit disability business for the three years of experience (1997 - 1999). Credit life consists of six plans of business. However, when premium volume is considered, there are only four main blocks of business for credit life:

(1) single life-single premium; (2) single life – monthly outstanding balance/revolving account; (3) joint life – single premium; and (4) joint life – monthly outstanding balance/revolving account. Within these four types, there are two major sub-blocks of business based on how premiums are paid (single premium and monthly outstanding balance/ revolving account). The largest of these sub-blocks is single premium business, which comprises approximately 63% of the credit life business in Arizona. The remaining block (monthly outstanding balance/revolving account) comprises only 37% of the business.

As set forth in the actuary's memorandum, the experience reports show that the loss ratio experience differs significantly among plans of business, as follows:

Single life – single premium, decreasing	29.88%
Joint life – single premium, decreasing	41.90%
Single life – MOB/rev. acct.	70.92%
Joint life – MOB/rev. acct.	71.08%

The actuary considered all experience in making recommendations for new prima facie rates; however, the experience was divided into two pieces, based on the loss experience for the two large sub-blocks of business. New recommended rates for single premium plans were computed separately from the new recommended rates for monthly outstanding balance/revolving account plans.

Issue: The Department received several comments indicating that less regulatory oversight is required for insurance coverage provided at no separate charge to a debtor and suggesting that the Department omit this type of coverage from the scope of the rules. A commenter stated that less regulation is required for non-contributory coverages; because the creditor is looking for the lowest cost group policy, normal market forces lead to lower rates. Another commenter suggested that the rule be revised to add the "no separate charge" language in the existing R20-6-604(D)(3) and include a definition of what is and is not an identifiable charge. The commenter urges the Department to continue the position of not subjecting non-contributory coverage to all the provisions of the rule.

Another commenter stated that this insurance (no separate charge) should not be subject to credit insurance rate regulation because the additional regulation provides no additional consumer protection and could lead to increased complexity and cost. The commenter suggests the following be added as an additional subsection to R20-6-604.02:

> Coverage without separate charge. If no specific charge is made to the debtor for credit insurance the standards of R20-6-604.02, are not required to be met by premium rates used for that coverage. For purposes of this subsection, it will be considered that the debtor is charged a specific amount for insurance if an identifiable charge for insurance is disclosed in the credit or other instrument furnished the debtor which sets out the financial elements of the credit transactions, or if there is a differential in finance, interest, service or other similar charge made to debtors who are in like circumstances, except for their insured or noninsured status.

Response: The Department agrees with the comments. The Department revised the definition of the credit insurance subject to this rule to indicate that credit insurance for which there is not an identifiable charge is not covered by this Article. The Department also added a definition of "identifiable charge." The definition is taken directly from the NAIC model act. The R20-6-604 has been revised as follows:

~~3.~~ "Credit insurance" means credit life insurance, credit disability insurance, or both, but does not include any such insurance for which there is no identifiable charge.

"Identifiable charge" means a charge for credit insurance that is imposed on a debtor with credit insurance but not on a debtor without credit insurance, and includes a charge for insurance that is disclosed in the credit or other financial instrument furnished to the debtor, which sets forth the financial elements of a credit

transaction, and any difference in finance, interest, service charges, or other similar charges made to a debtor in like circumstances except for the debtor's status as insured or noninsured.

R20-6-604. Definitions

Issue: The commenter believes that the phrase "outstanding balance insured indebtedness" should be defined to equate or contrast it to "outstanding indebtedness." The commenter noted that the defined phrase and the other phrases are not used consistently throughout the rule.

Response: The Department agrees with this comment and deleted the definition of "outstanding indebtedness" as follows:

~~13. Outstanding indebtedness" means the amount a debtor has borrowed, plus any unearned interest or finance charges.~~

The Department did not make any other changes in the body of the rules where the terms "outstanding" or "outstanding balance" are used because the terms are used in the ordinary context and their meaning is clear in context.

Issue: A commenter suggested utilizing the definitions of gross and net debt as a way to implement the more general statutory language for "indebtedness." Additionally, the commenter recommended including definitions of gross and net debt to enable the regulation to address some of the problems with single premium credit life insurance.

Response: The Department chose the term "debt" as a more concise substitute for the term "indebtedness" which appears in the statute (A.R.S. § 20-1603(6)). The Department agrees with the comment that the definitions should be changed to "gross debt" and "net debt," which are more precise terms. These terms will eventually be used in the order establishing new prima facie rates. The Department revised R20-6-604 as follows:

~~5. "Debt" has the same meaning as indebtedness in A.R.S. § 20-1603(6)~~

~~13. "Outstanding indebtedness" means the amount a debtor has borrowed, plus any unearned interest or finance charges.~~

"Gross debt" means the sum of the remaining payments that a debtor owes a creditor.

"Net debt" means the amount necessary to liquidate a debt in a single lump-sum payment excluding unearned interest and other unearned finance charges.

The Department addressed the comment about using net debt as the basis for insurance coverage in the response to an issue involving R20-6-604.04.

Issue: A definition for "class of business" should be included as "type of lender through which the credit insurance is sold" and the categories should be credit union, banks, finance companies, auto dealers, other dealers, and all other.

Response: The Department generally agrees with this comment, but has addressed it in a different Section. R20-6-604.07 governs experience reports that an insurer must file, and lists the classes of business that must be reported. The Department revised R20-6-604.07(A) as follows:

1. In this ~~subsection~~ Section, a "class of business" means:
   a. Credit unions~~,~~ ;
   b. Banks~~, and~~ savings and loan institutions, and mortgage companies;~~,~~
   c. ~~Cash loans~~ Finance companies, small loan companies, and consumer lenders defined in A.R.S. § 6-601(5)~~,~~ ;
   d. ~~Sales finance~~ Dealers, including auto, truck, and boat dealers, retail stores, and other persons selling financed goods~~,~~ ; and
   e. All other persons selling credit insurance not specifically listed in subsection (A)(1)(a) through (d).

R20-6-604.01(E)(4)

Issue: In addition to permitting the exclusion of increased loan amounts from this provision, it should also not apply if the insurer on the refinanced debt is different from the insurer on the original debt.

Response: The Department disagrees with this comment because the Department believes it would be unfair to a debtor to impose new limitation and exclusion periods (that a debtor has already fulfilled under the original loan and insurance policy) to a refinanced debt, at least as to the original loan amount. For example, a six-month limitation period for death by suicide is included in most credit life insurance policies. If the debt is refinanced and new insurance is purchased to cover the refinanced debt, the debtor should not have to serve another six-month suicide limita-

tion period, except as to insurance covering any new loan amount, regardless of who the insurer is on the refinanced debt.

R20-6-604.02(C)

Several commenters expressed concern that the Department had eliminated certain "safe harbor" provisions from the existing rule, and that the new rule does not adequately shield prima facie rates from retrospective challenge by clearly stating a conclusive presumption that the prima facie rates satisfy the reasonableness standard.

Issue: The last sentence of proposed R20-6-604(C) [R20-6-604.02(C)] must be deleted to not undermine the functionality of prima facie rates. The proposed addition to the rule could be interpreted as intended to make the reasonableness standard retroactive. The Department should remove the added language or rephrase it to better clarify that prima facie rates are presumed reasonable as long as they are in effect.

One commenter asked that the following language from the current rule be reinserted: "The prima facie rates shall be presumed to be not excessive and to develop the loss ratios prescribed…" This commenter also objected to the following language in subsection (C): "The Department may rebut this presumption by disapproving the rates as prescribed in A.R.S. § 20-1610."

A commenter questioned whether there would be a safe harbor if an insurer realizes a loss ratio of 40%, as opposed to 50% or 60%. A commenter also expressed concern that there will be individual insurer prima facie rate disapproval for not meeting a loss ratio the insurer was told it would realize if it used a prima facie rate. Commenters requested that the safe harbor provision in the current R20-6-604(E) be retained, or that the Department delete the last sentence of R20-6-604.02 or change it to be clear the Department does not intend to set rates on an insurer by insurer basis.

A commenter suggested the following change to subsection (C): "The rates described…are conclusively presumed to develop the loss ratios described in subsection (B)."

Response: The Department disagrees with these comments. The Department believes that the proposed rule does not take away any "safe harbors" but merely clarifies what has always been the legal standard, and the assurance afforded by the prima facie rates. The prima facie rates have never established more than a presumption. If an insurer charges the prima facie rates, the burden would shift to the Department to prove that the rates do not meet the required loss ratios. If an insurer charges the prima facie rates, the insurer may rely on those rates unless and until the Department establishes they are excessive in relation to the loss ratio standards and disapproves them under A.R.S. § 20-1610. If the Department issues an order disapproving the insurer's rates, that disapproval order would be an appealable agency action under Arizona's Administrative Procedure Act, and the insurer could challenge the Director's order through the normal administrative appeal process. See A.R.S. § 20-1610(B) and (C). Under A.R.S. § 20-162(A), a timely request for hearing on an order will stay the effectiveness of the order until after the hearing. A.R.S. § 20-1610 clearly provides only for prospective, and not retroactive, disapproval or withdrawal of approval of rates.

Nonetheless, to alleviate insurers' concerns about retroactive application of a disapproval order, the Department revised R20-6-604.02 as set forth below, including correction of a typographical error in the cross-referenced Sections.

C. While in effect, the rates described in ~~R20-6-604.03~~ R20-6-603.04 and ~~R20-6-604.04~~ R20-6-604.05, subject to any deviations approved under ~~R20-6-604.07~~ R20-6-604.07 ~~("final adjusted rates")~~ are conclusively presumed to develop the loss ratios described in subsection (B). For purposes of prospective effect, the Department may rebut this presumption by disapproving or withdrawing approval for the rates as prescribed in A.R.S. § 20-1610.

R20-6-604.04(B) and R20-6-604.05(B)

Issue: R20-6-604.04(B) and R20-6-604.05(B), for consistency should also incorporate the conclusive presumption and be amended as follows: "An insurer is conclusively presumed to meet the loss ratios…"

Response: Both subsections referred to in this comment cite back to R20-6-604.02. The Department believes that this concern is addressed through the changes made to R20-6-604.02(C) described above.

R20-6-604.02(B)

There were a number of comments regarding the use of component rating. The comments usually asked that the provisions of the rule be revised to include reference to component rating.

Issue: The Department received several comments that a 50% loss ratio standard for life and 60% for disability cannot be determined to be reasonable without examining all costs involved with providing the product. Commenters urged the Department to consider the use of component rating rather than using only loss ratios to set premium rates. A commenter suggested the rule be revised as follows:

> An insurer may satisfy the reasonableness standard in A.R.S. § 20-1610(b) if the insurer's premium rate develops a loss ratio of not less than 50% for credit life insurance and not less than 60% for credit disability insurance, or, pursuant to the review process of R20-6-604.03, such lower loss ratios…

Another commenter suggested that the example of component rating in the actuarial opinion be reviewed and examined to ensure it accurately reflects the business environment in the state of Arizona.

A commenter expressed support for continuation of a minimum loss ratio, as opposed to pure component rating, as the basis for determining whether rates meets the statutory standard that premium rates not be excessive in relation to benefits provided.

Response: The Department actively considered whether to adopt a component rating methodology. The NAIC Model Regulation (on which these rules are based) does address component rating in "Alternative Section 4A". The NAIC model allows the Director to lower the 60% NAIC loss ratio requirement based upon the values selected for the different components that are used in the procedure of calculating a component rate.

Although the NAIC model does contain an alternative section on component rating, the Department believes that this section, standing alone, is inadequate to assure that an insurer's rates satisfy the statutory requirement that premiums shall not be excessive in relation to benefits provided. Use of component rating would require the Department to prescribe, in rule, specific amounts for each component of a rate. The Department believes that this would be micromanagement of the insurer's business, and that the better approach is simply to prescribe required loss ratios, (the rating component that measures the value of the product to the consumer,) and require insurers to meet those loss ratios. The Department's rule prescribes the required outcome, rather than the path for reaching that outcome. Component rating would also require much greater use of resources to evaluate and monitor compliance.

Moreover, the Department does not believe that use of component rating, which is administratively more burdensome, would yield a significantly different rate. The Actuary's Memorandum and recommendations, which provide much of the support for the Department's rulemaking action, contain an entire section on component rating. Appendix 12 of the Memorandum includes a hypothetical using component rating. The Actuary calculated a component rate for the single life - single premium, decreasing plan of business. This was done in order to compare rates obtained by the two methods (loss ratio vs. component rating). The result was that the rate calculated in the component rating example was almost identical to the $0.30 rate derived by the loss ratio method.

While comments were made in favor of component rating, most commenters did not offer any examples of the numerical assumptions that might be used to calculate alternative rates. One insurer did calculate a component based rate for a single premium, single life, decreasing plan, which resulted in a $0.36 rate in substitution of the proposed $0.30 rate per $100 per annum. This $0.36 rate was based on the insurer's current commission level of 37.5% as one of the components. ("Alternative Section 4A" refers to the use of 'reasonable creditor compensation' in component rating. "NAIC Model Optional Section 5." limits compensation for a creditor to 25%). In other words, this insurer's calculations determined that out of every dollar of premium received from a consumer, 36¢ should go to pay covered losses, and 37.5¢ should be paid as commission to the producer who sold the policy. The insurer's calculation presumes that its 37.5% commission rate is reasonable and justified, and should thus be used as a component for establishing rates.

The insurer that proposed this $0.36 rate had a combined three-year (1997-1999) loss ratio for this Plan of 31.73%. If the insurer had used the $0.36 rate during the 1997-1999 period instead of the current $0.44 rate, the insurer's loss ratio would have been raised to only 38.78% (31.73% x .44/.36), which is still well below the minimum loss ratio requirement of 50%. This example of rate making, as was pointed out in the Appendix 12 discussion, illustrates the difficulties of selecting the assumptions for the components that comprise the rate calculation.

A different commenter submitted a component rate calculation with a recommended rate of $0.3871 per $100 per annum vs. the Department's $0.30 rate. However, this commenter used an overall loss ratio of 47.4% to obtain the $0.3871 rate. The 47.4% is the loss ratio for all credit life business; (single life and joint life, plus single premium and outstanding balance business) (See Appendix 1). This calculation ignores the material differences in loss ratios among the different plans and classes of business. For example, using the $0.3871 rate for just the single premium - single life, decreasing plan business during the 1997-1999 period (instead of the current $0.44 rate) would have yielded a loss ratio of only 33.72% (29.67% x .44/.3871). Once again, the loss ratio would fall well below the minimum loss ratio requirement of 50%.

Because component rating methodology would require substantially greater administrative oversight and expenditure of resources, without yielding a substantially different result, the Department rejected the suggestion to adopt the component rating methodology.

Individual Filings

Issue: A commenter recommended that the Department require each credit insurer to file rates that will produce at least the minimum loss ratio standard set out in the rule. In the alternative, if the Director retains prima facie rate regulation, then establishing rates by class of business is an essential consumer safeguard.

Response: The Department disagrees with this comment. This would mean that prima facie rate regulation would be replaced by insurers filing rates that would hopefully produce at least the minimum loss ratios on each line of business, or alternatively, have prima facie rates established by class of business. The first suggestion is impractical because not all insurers have sufficient business to file credible rates. This means that the Department would still be required to develop prima facie rates for those lacking needed loss experience. Also, implementing this suggestion would require additional Department resources to review the proposed rate filings and to verify insurer compliance. The second suggestion regarding rates by class of business is close to being realized by the rate increases being recommended. These class distinctions are:

- Credit Life: Single premium; single and joint lives (largely Dealer business).
- Credit Life: Monthly MOB and Rev. Acct; single and joint lives. (primarily credit union and bank business).
- Credit Disability: Non-retro Plans; (83% monthly outstanding balance business and revolving accounts with credit unions and banks).
- Credit Disability: Retro Plans (approximately 56% dealer business on 14-day retro plans; 32% monthly premium business with credit unions and bank business on 30-day retro plans).

R20-6-604.02(D)

Issue: A commenter stated that R20-6-604.02(D) should be amended if the Department accepts its recommendation regarding component analysis and the possibility of prima facie rates for 'standard coverage' developing loss ratios less than 50% for life or 60% for disability as follows:

If an insurer wants to provide coverage other than the standard coverage…shall demonstrate that the rates for coverage are reasonably be expected to develop a loss ratio not less than that contemplated for standard coverage at the prima facie rates ~~50% for credit life insurance and not less than 60% for credit disability insurance~~.

Response: The Department disagrees with this comment for the reasons discussed regarding component rating and also because it substitutes vague language about a "contemplated" ratio for precise language about the specific loss ratios required.

R20-6-604.04

Issue: A commenter requested that the final rule require that single premium credit life coverages be restricted to the net debt basis, or, at a minimum, that the rule require net debt for single premium credit life for longer-term coverages.

Response: The Department did not make this change for several reasons. The Department was concerned that limiting coverage to a net debt basis, in addition to the changes contemplated for the prima facie rates, would be extremely disruptive to the marketplace that has historically written coverage on a gross debt basis. Second, the Department does not have sufficient loss experience to determine credible prima facie rates for net debt coverage. Third, making the change to impose a net debt limitation could arguably be construed as a substantive change to the rulemaking.

The Department notes that a number of insurers have recently announced that they are voluntarily writing on only a net debt basis due to changes in policies announced by federal mortgage lenders. There appears to be the beginning of an industry trend to write on a net debt basis, which the Department believes will lead to credible experience on which the Department might, in the future, calculate new prima facie rates.

The Department did consider amending the rule to require net debt coverage on longer-term single premium credit line business only, but was concerned that this would be a substantive change. Changing to a net debt basis would further reduce the premium revenue to insurers, in addition to the expected changes in the prima facie rates, and would trigger significant objection from affected insurers. The Department will continue to evaluate this issue in future rulemakings.

R20-6-604.04(C) and R20-6-605(C)(1)

Several commenters expressed concern that the rule would limit insurers' ability to underwrite risks.

Issue: R20-6-604.04 and R20-6-604.05 now prohibit initial underwriting of risks, however, the language of the Title 20, Article 10, Arizona Credit Life Insurance and Credit Disability Act seems to support use of an application for underwriting as in all other forms of insurance.

R20-6-604.04(C)(1) and R20-6-604.05(C)(1) permit the use of prima facie rates without filing additional actuarial support only if all eligible debtors can be insured without evidence of insurability. The commenter recommends that prima facie rates be permitted to be used "with or without evidence of insurability" as it exists in the current rule.

A commenter objected to the elimination of an insurer's ability to underwrite larger loan risks for credit disability and requested that the Department reinstate the provision regarding nonstandard coverage with actuarially equivalent rates and an insurer's ability to request evidence of insurability.

Response: The Department agrees with the comments. The Department did not intend to prohibit insurers from underwriting applicants and made the following changes:

R20-6-604.04(C)(1)

1. Provide coverage for death, by whatever means caused, to all eligible debtors, with or without evidence of individual insurability…"

R20-6-604.05(C)(1)

1. Provide coverage for disability, by whatever means caused, to all eligible debtors, with or without evidence of individual insurability…"

R20-6-604.04(C)(3) and R20-6-604.05(C)(6)

Several commenters expressed concern with the provisions limiting exclusions on the basis of age, and requested that the Department substitute NAIC model language. As set forth below, the Department agreed with the comments and has made changes to these provisions, as set forth at the end of all comments.

Issue: The requirement in R20-6-604.05(C)(6) that permits making debtors 65 or older ineligible should be retained. The new rule changes the provision from age 65 to age 66.

Response: The Department agrees with this comment and with the additional comment below regarding the language for the age exclusions. See changes made below.

Issue: The current provision that permits making ineligible those debtors who will be age 66 or older on the maturity date of the loan should be retained.

Response: The Department believes that the proposed rule already provides the result sought by the commenter. The Department does agree that this provision should be revised to incorporate the NAIC language, as requested by other commenters. The Department is making the changes described below to the age exclusion provisions.

Issue: The Department received comments that the rule should be changed so that the credit life age restriction has the same language as the credit disability restriction so that partial credit life coverage may be purchased.

One commenter suggested that the following NAIC Model Regulation language be used filling the blanks for credit disability with 66 and 70 for credit life:

An age restriction providing that no insurance will become effective on debtors on or after the attainment of age___ and that all insurance will terminate upon attainment by the debtor of age___.

Response: The Department agrees with the comments and changed the rules as follows:

R20-6-604.04(C)(3)

3. Have no age restrictions, except the following permissible exclusions:
   ~~a. A policy may exclude coverage for debtors who will be age 70 or older on the maturity date of the debt; and~~
   a. An age restriction providing that no insurance will become effective on a debtor on or after the attainment of age 70 and that all insurance shall terminate on a debtor attaining age 70; and...

R20-6-604.05(C)(6)

6. ~~Not include an~~ Have no age ~~restriction~~ restrictions, except ~~that~~ the following ~~age restrictions are~~ permissible exclusion:
   ~~a. A provision that no insurance is effective on a debtor who is age 66 or older; and~~

~~b. A provision terminating coverage for a debtor who reaches age 66 after coverage became effective.~~

An age restriction providing that no insurance will become effective on a debtor on or after the attainment of age 65 and that all insurance will terminate on a debtor attaining age 66; and

R20-6-604.04(C)(2)

Issue: A commenter expressed support for inclusion of the provision for pre-existing condition in the rule, but objected to the difference between the credit life and the credit disability exclusions. The commenter recommends that the credit disability exclusion be used for credit life for fixed term credit transactions.

Issue: A commenter requested inclusion of the "standard" 6/6 pre-existing condition limitation, without limitation as to loan type for credit life as well as credit disability. The commenter believes the provision in the rule that permits insurers to choose between short form underwriting and the pre-existing condition limitation for certain types of loans would also be a reasonable approach.

Responses: The Department agrees with the comments and revised R20-6-604.04(C)(2) as follows:

1. Have no exclusions other than for:
   a. Suicide within 6 months after the effective date of coverage.
   b. Preexisting conditions ~~for coverage on revolving accounts~~.

R20-6-604.04 regarding nonstandard coverage

Issue: One commenter questioned why the Department deleted a particular subsection (C) from a draft rule regarding nonstandard coverage and the requirement that rates for nonstandard coverage must be actuarially consistent. The commenter requested that the language be reinserted, using the term actuarially "equivalent" rather than "consistent."

Response: The Department disagrees with this comment. The Department deleted the described draft language from both R20-6-604.04 and R20-6-604.05 in an effort to make the rules more concise. The Department thinks the point is adequately covered under R20-6-604.02(D) and deleted the language in the other rules as redundant.

In an effort to address the concern however, the Department revised R20-6-604.02(D) as follows:

D. ~~If an insurer wants to~~ An insurer may provide coverage other than the standard coverage described in R20-6-604.04 and R20-6-604.05~~,~~. An ~~the~~ insurer that wishes to provide nonstandard coverage shall file…"

R20-4-604.06 Refund Formulas

Issue: The commenter believes the current rule R20-6-604(C)(4) is specific relative to refund formulas and believes substituting "actuarial equivalency" for named refund methods would introduce uncertainty and vagueness. The commenter requests specificity in the rule if the Department contemplates a different refund method.

Response: The Department agrees that greater specificity as to allowable formulas will improve the rule and made changes to R20-6-604.06 as described below.

A. When refunding premiums as prescribed in A.R.S. § 20-1611, an insurer shall use the following methods: ~~a refund formula that is actuarially equivalent to the type of coverage the debtor purchased. An insurer's refund formula may recognize adjustments to a daily basis for interest or payments if the adjustments are consistent with the underlying credit transaction.~~

1. For insurance paid by a single premium, the Rule of Anticipation method; and
2. For insurance paid by other than a single premium, a method that refunds at least the pro rata gross unearned amount charged to the debtor

B. The Director may approve other refund methods similar to those described in subsection (A), that are actuarially equivalent to the type of coverage the debtor purchased.

C. An insurer's refund method may recognize adjustments to a daily basis for interest or payments if the adjustments are consistent with the underlying credit transaction.

~~**B.**~~**D.** An insurer is not required to refund any amount ~~under~~ less than $5.

Issue: A commenter stated that the requirements for refunds be that insurers must use a method at least as favorable to consumers as the Rule of Anticipation. The commenter believes the proposed Section will lead to confusion by insurers or the use of refund methods that are very unfavorable to consumers

Response: The Department agrees that greater specificity would improve the rule, and changed R20-6-604 as follows:

20. "Rule of Anticipation" means the product of the gross single premium per $100 of indebtedness for the debtor's remaining term of indebtedness, times the number of hundreds of dollars of remaining indebtedness.

R20-6-604.08 Rate Deviations

Issue: This Section of the rules fails to provide for downward deviations due to nonstandard coverage or for challenges to the presumption of reasonableness of prima facie rates even when using standard coverage. Without such standards, insurers face the possibility of unequal treatment and the inability to make informed business decisions that are in their best interest.

Response: The Department disagrees with this comment and believes that the rules and statute adequately address the issue of downward deviations in rates. R20-6-604.02(D) provides that if an insurer wishes to offer nonstandard coverage, the insurer must file the policy information under A.R.S. § 20-1609 and demonstrate that rates for the nonstandard coverage will develop at least the required loss ratios. Under A.R.S. § 20-1610, the Director may disapprove rates the Director finds excessive. The Department does not understand how the rules will permit unequal treatment of insurers.

R20-4-604.09 Supervision of Consumer Credit Insurance Operations

Several commenters expressed concern about the provision that requires an insurer to do a triennial review of a lender's operations and to report material noncompliance to the Department.

Issue: A commenter expressed support for the requirement for a triennial review of credit insurance operations, but requested that before enacting the provision, the Department review its insurance code to determine whether the Department has general protective provision for insurers providing information on third parties to the Department.

Issue: The commenter objects to the requirement of notification to the Director of any material noncompliance and believes that without a definition for "material noncompliance" the rule is not clear, concise, and understandable, and that no insurer will be able to determine whether an insurer is meeting the requirement.

Issue: A commenter states that R20-6-604.09(C) should be deleted because it will increase litigation exposure.

Responses: The Department disagrees with the comment that material compliance is a vague term. "Material" is a term that has definition via the common law, and must be read in the context of the entire rule, in particular, subsection (A), which specifies the areas that an insurer is required to consider.

The Department agrees with the comment about reporting creditor noncompliance to the Department, and deleted subsection (C). The Department has added language to specify that the insurer should also maintain records of any corrective action the insurer has undertaken to address a problem that the insurer has found. R20-6-604.09 is revised as follows:

B. The insurer shall maintain a written record of each review and action the insurer takes to address any creditor noncompliance found by the insurer, for at least three years following the end of the review, for the Director's inspection.

~~**C.** Within 30 days of completing a review, the insurer shall notify the Director of any material noncompliance that the insurer finds.~~

Delayed effective date

Issue: The rule has no effective date provision that gives insurers and creditors a reasonable amount of time to implement changes mandated. The commenter believes it would be appropriate for the Department to provide a proposed effective date.

Response: The Department disagrees with the need to delay the effective date of these rules. The Department does agree that it will take insurers and the Department some time to implement the new rules. Under the new process established under R20-6-604.03, the Department cannot adopt new prima facie rates until the Department conducts the process prescribed in the rule. Thus, insurers will have adequate time after these rules are adopted to implement new prima facie rates. This rulemaking does not alter the statutory reasonableness standard or the minimum loss ratios. Until new prima facie rates are adopted through the process under R20-6-604.03, the Department would con-

tinue to apply those general standards to any rates that insurers may file with the Department. The Department expects that insurers will continue to use the current prima facie rates until new prima rates are established.

Protection of Consumers

Issue: A commenter said that the Department should err on the side of consumers when establishing prima facie rates.

Response: As noted above, the current rulemaking merely repeals the existing prima facie rates. After these rules are effective, the Department must go through a separate process to establish new prima facie rates. In doing so, the Department will strive to strike a reasonable balance between the interests of insurers and the interests of consumers, consistent with the statutory standard that premiums charged shall not be excessive in relation to benefits. A.R.S. § 20-1610(B). Based on the report of the Department's actuary, the Department estimates that for the first full year that the new recommended rates are in effect, Arizona's consumers will realize a savings of $19 million in credit life and disability insurance premiums as a result of this rulemaking and subsequent proceedings to establish new prima facie rates.

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. Incorporations by reference and their location in the rule:

None

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

Not applicable

15. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

ARTICLE 6. TYPES OF INSURANCE CONTRACTS

Section

ARTICLE 6. TYPES OF INSURANCE CONTRACTS

R20-6-604. ~~Credit Life Insurance and Credit Disability Insurance~~ Definitions

~~**A.** Applicability. This rule applies to all credit life insurance and credit disability insurance issued or made effective in connection with a loan or other credit transaction as provided in A.R.S. § 20-1602.~~

~~**B.** Definitions~~

~~1. "Account" is one plan of credit life or credit disability coverage on one class of business written through one creditor.~~
~~2. "Class of business" means similar industry or business which, through its business activity, sells credit insurance, as illustrated in subsection (G), paragraph (2).~~
~~3. "Compensation" means money or anything else of value.~~
~~4. "Credit insurance" means both credit life insurance and credit disability insurance.~~
~~5. "Earned premium at prima facie rate" means actual earned premiums adjusted to the amount which would have been earned had the premium rate during the experience period been equal to the current prima facie rate in accordance with instructions and method of calculation for Reporting Form A. Reasonable methods of approximation may be used.~~

6. "Earned premiums at rates in use" means actual earned premiums, that is, the premiums earned at the premium rates actually charged in force during the experience period in accordance with the instructions and method of calculation for Reporting Form A.
7. "Experience" means "earned premiums" and incurred claims during the experience period.
8. "Experience period" means the most recent period of time for which experience is reported, but not for a period longer than 1 full year. (Note: the term "year" for individual policies means calendar year and for group policies means either a calendar year or a policy year at the option of the insurer.)
9. "Incurred claims" means total claims paid during the experience period, adjusted for the change in the claim reserve.
10. "Net written premium" means gross written premium before deduction for dividends and experience rating credits minus refunds on termination.
11. "Outstanding indebtedness" means the amount borrowed by the debtor plus any unearned interest or finance charge.
12. "Plan of insurance", unless otherwise filed and approved, means a separate and unique plan based upon the following types of rating and coverage categories:
    a. Credit life insurance on a flat rated basis other than revolving accounts (i.e., including joint and single life coverage, decreasing and level insurance, outstanding balance and single premium),
    b. Credit life insurance on a revolving account basis,
    c. Credit life insurance on an age-graded basis,
    d. Credit disability insurance other than on revolving accounts combining outstanding balance and single premium but separately for each combination of waiting period and retroactive or non-retroactive.
    e. Credit disability insurance on a revolving account basis separately for each combination of waiting period and retroactive or non-retroactive.
13. "Prima facie rates" means rates shown in subsections (E) and (F).

C. Rights and treatment of debtors

1. Multiple plans of insurance. If a creditor makes available to the debtors under the same account more than 1 plan of credit life insurance or more than 1 plan of credit disability insurance, all debtors under said account must be informed of such plans.
2. Substitution. When a creditor requires credit life insurance, credit disability insurance, or both, as additional security for an indebtedness, the debtor shall be given the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by the debtor or procuring and furnishing the required coverage through any insurer authorized to transact insurance business in this state. The debtor shall be informed by the creditor of the right to provide alternative coverage before the transaction is completed.
3. Whenever the amount of insurance may exceed the unpaid indebtedness such excess shall be paid to a beneficiary, other than the creditor, named by the debtor, or to the debtor's estate. If payment of insurance proceeds is made by a creditor, the insurer shall require the creditor to file with the insurer monthly reports detailing all payments to creditors and second beneficiaries or estates in accordance with Form D of this rule or its equivalent. Such reports shall be available to the Director on request.
4. Refund formulas to be used in computing refunds shall be filed with and approved in writing by the Director prior to use.
    a. No refund need be made in the event that the amount to be refunded does not exceed five dollars ($5).
    b. The following refund formulas shall be deemed to be approved by the Director of Insurance:
        i. The pure premium method which requires that the amount of the refund equal the amount of the unearned premium for the balance of the term of the policy or certificate;
        ii. The actuarial method as prescribed in A.R.S. § 6-626;
        iii. The pro rata method. The pro rata unearned gross premium method shall be used for level term credit life insurance, and credit accident and health insurance wherein the insured is covered for a constant maximum indemnity and for credit insurance coverage under which premiums are collected from the debtor on a basis other than the single premium basis.
        iv. The sum of the digits method. The rule of 78's or sum of the digits unearned premium method for coverages other than those included in subdivision (iii) may be used; provided coverage is also on the sum of the digits method.
        v. Combination methods. An appropriate combination of the pro rata method and the rule of 78's shall be used or, at the option of the insurer, the pro rata method for credit life insurance provided as a combination of level and decreasing term coverage and for credit accident and health insurance wherein the insured is covered for a constant maximum indemnity for a given period of time, after which the maximum indemnity begins to decrease in even amounts per month.
    c. Other refund methods shall be filed and subject to the review and prior written approval of the Director.
    d. Refund formulas may recognize adjustments to a daily basis, for interest or payments, which are consistent with the underlying credit transaction.
5. Termination of group credit insurance policy

a. If a debtor is covered by a group insurance policy providing for the payment of single premiums to the insurer, then provision shall be made by the insurer that in the event of termination of the policy for any reason, insurance coverage with respect to any debtor insured under such policy shall be continued for the entire period for which the single premium has been paid.

b. If a debtor is covered by a group credit insurance policy providing for the payment of premiums to the insurer on a monthly outstanding balance basis, then the policy shall provide that, in the event of termination of such policy for whatever reason, termination notice thereof shall be given to the insured debtor at least 30 days prior to the effective date of termination except where replacement of the coverage by the same or another insurer in the same or greater amount takes place without lapse of coverage. The notice required in this subparagraph shall be given by the insurer, or, at the option of the insurer, by the creditor.

6. Interest on premiums. If the creditor adds identifiable insurance charges or premiums for credit insurance to the indebtedness, and any direct or indirect finance, carrying, credit, or service charge is made to the debtor on such insurance charges or premiums, the creditor must remit and the insurer shall collect such premium within 60 days after it is added to the indebtedness.

7. Renewal or refinancing of indebtedness. In any renewal or refinancing of the indebtedness, the effective date of the coverage as respects any policy provision shall be deemed to be the first date on which the debtor became insured under the policy covering the indebtedness which was renewed or refinanced, at least to the extent of the amount and term of the indebtedness outstanding at the time of renewal and refinancing of the debt.

8. Maximum aggregate provisions. A provision in a policy or certificate that sets a maximum limit on total payments must apply only to that policy or certificate.

9. Voluntary prepayment of indebtedness. If a debtor prepays the indebtedness other than as a result of death or through a lump sum disability payment:

a. Any credit life insurance covering such indebtedness shall be terminated and an appropriate refund of the credit life insurance premium shall be made to the debtor; and

b. Any credit disability insurance covering such indebtedness shall be terminated and an appropriate refund of the credit disability insurance premium shall be made to the debtor. If a disability claim is in progress at the time of prepayment, the amount of refund may be determined as if the prepayment did not occur until the payment of benefits terminates.

10. Involuntary prepayment of indebtedness. If an indebtedness is prepaid by the proceeds of a credit life insurance policy or by a lump sum payment of a disability claim under a credit insurance policy, then it shall be the responsibility of the insurer to see that the following are paid to the insured debtor if living or the beneficiary, other than the creditor, named by the debtor or to the debtor's estate:

a. In the case of prepayment by the proceeds of a credit life insurance policy, or by the proceeds of a lump sum total and permanent disability benefit under credit life coverage, an appropriate refund of the credit disability insurance premium,

b. In the case of prepayment by a lump sum disability claim, an appropriate refund of the credit life insurance premium.

c. In either case, the amount of the benefits in excess of the amount required to repay the indebtedness.

11. Charges for insurance upon termination. In the event of voluntary or involuntary prepayment of the indebtedness or termination of the credit insurance, the insurer may:

a. Not charge for the first 15 days of a loan month but may charge a full month for 16 days or more of a loan month; or

b. Charge for credit insurance on a daily basis if premiums, pursuant to the credit transaction, are computed on a daily basis.

12. Amounts to be insured; election of coverage, net or gross

a. Credit life insurance may provide benefits not exceeding the amount of indebtedness outstanding or, at the option of the insurer, provide benefits not exceeding the amount of indebtedness outstanding less the unearned interest or finance charges. Premium charges shall be computed on the same basis as the benefits provided.

b. Credit disability insurance may provide benefits not exceeding the amount of outstanding indebtedness.

D. Determination of reasonableness of benefits in relation to the premium charged

1. General standard. Benefits provided by credit insurance policies must be reasonable in relation to the premium charged. This requirement shall be presumed to be satisfied if the premium rate charged develops or may reasonably be expected to develop an actual loss ratio, as shown on line 3a of Form A, of not less than 50% for credit life insurance and 60% for credit disability insurance.

2. Nonstandard coverage. If any insurer files for approval of any form providing coverage more restrictive than that described in subsections (E) and (F), the insurer shall demonstrate to the satisfaction of the Director that the premium rates to be charged for such restricted coverage will develop or may be reasonably expected to develop a loss ratio not less than that contemplated for standard coverage at the premium rates described in these Sections.

3. Coverage without separate charge. If no specific charge is made to the debtor for credit insurance the standards of subsection (D) are not required to be used but any premium rates resulting from such standards as are used which exceed the premium rate standards set out in subsections (E) and (F) must be filed with and approved by the Director. For purposes of this subsection, it will be considered that the debtor is charged a specific amount for insurance if an identifiable charge for insurance is disclosed in the credit or other instrument furnished the debtor which sets out the financial elements of the credit transactions, or if there is a differential in finance, interest, service or other similar charge made to debtors who are in like circumstances, except for their insured or noninsured status.

E. Prima facie credit life insurance rates

1. The following rates shall be presumed to be not excessive and to develop the loss ratios prescribed by subsection (D). Credit life insurance premium rates for the insured portion of an indebtedness which decreases uniformly by the amount of the monthly installment paid, shall be as set forth in subparagraphs (a) and (c). Subparagraphs (b), (d) and (e), refer to premium rates for other types of benefits applicable.
   a. Single premium decreasing term: $.44 per $100 per annum.
   b. Level term premium: $.82 per $100 per annum.
   c. Outstanding balance: $.68 per month per $1,000.
   d. Joint coverage on either of the basis in subparagraphs (a), (b), or (c), of paragraph (1), shall be 150% of the specific rate for that type of coverage.
   e. If the benefits provided are on an age-graded basis, rates for such benefits shall be actuarially consistent with the rates provided in subparagraphs (a), (b), (c), and (d) and shall be filed and approved by the Director prior to use. Such rates shall be deemed approved after 30 days from the date of filing unless disapproved.
   f. Single premium decreasing term rates for benefits provided on the outstanding balance less unearned interest or finance charges, or other basis, shall be actuarially consistent with the rates provided in subparagraph (a).
   g. Rate calculations may recognize adjustments to a daily basis, for interest or payments, which are consistent with the underlying credit transaction.
2. The premium rates in paragraph (1) shall apply to policies providing credit life insurance to be issued with or without evidence of insurability, to be offered to all debtors, and containing:
   a. No exclusions other than suicide within 6 months of the incurred indebtedness; and
   b. Either no age restrictions or age restrictions making ineligible for coverage debtors who will attain age 70 or over on the maturity date of the indebtedness.
   c. A revolving credit insurance policy may exclude from the classes eligible for insurance, class of debtors determined by age, and provide for the cessation of insurance or reduction in the amount of insurance upon attainment of not less than age 70.

F. Credit disability insurance rates

1. Credit disability insurance premium rates for the insured portion of an indebtedness repayable in equal monthly installments, where the insured portion of the indebtedness decreases uniformly by the amount of the monthly installment paid, shall be as set forth in subparagraphs (a) and (b). Subparagraphs (c), (d) and (e) refer to premium rates for other types of benefits applicable to subparagraphs (a) and (b).
   a. As set forth in Exhibit A if premiums are payable on a single-premium basis for the duration of the coverage; or
   b. If premiums are paid on the basis of a premium rate per month per thousand of outstanding insured indebtedness, these premiums shall be computed according to the following formula or according to a formula approved by the Director which produces rates actuarially equivalent to the single premium rates in Exhibit A:

$$\frac{OP}{n} = \frac{SP}{\frac{20}{n+1}}$$

   Where SPn = Single Premium Rate per $100 of initial insured indebtedness repayable in n equal monthly installments (Exhibit A).

   OPn = Monthly Outstanding Balance Premium Rate per $1,000.

   n = Original repayment period, in months.
   c. The actuarial equivalent of subparagraphs (a) and (b) shall be used if the coverage provided is a constant maximum indemnity for a given period of time.
   d. An appropriate combination of the premium rate for a constant maximum indemnity for a given period of time and the premium rate for a maximum indemnity which decreases in even amounts per month, if the coverage provided is a combination of a constant maximum indemnity for a given period of time after which the maximum indemnity begins to decrease in even amounts per month.
   e. If the benefits provided are other than those described in paragraph (1) above, rates for such benefits shall be actuarially consistent with rates provided in subparagraphs (a), (b), (c), and (d) and shall be filed with and approved by the Director prior to use. Such rates shall be deemed approved after 30 days from the date of filing unless disapproved.

f. The outstanding balance rate for credit disability insurance may be either a term specified rate or may be a single composite term outstanding balance rate applicable to all loans made under an open-end credit plan.

2. The premium rates in paragraph (1) shall apply to policies providing credit disability insurance to be issued with or without evidence of insurability, to be offered to all eligible debtors and containing:
   a. No provision excluding or denying a claim for disability resulting from preexisting conditions except for those conditions for which the insured debtor received medical advice, diagnosis or treatment within 6 months preceding the effective date of the debtor's coverage and which caused loss within the 6 months following the effective date of coverage.
   b. No other provision which excludes or restricts liability in the event of disability caused in a specified manner except that it may contain provisions excluding or restricting coverage in the event of normal pregnancy and intentionally self-inflicted injuries.
   c. No Actively at Work Test may require that the debtor be employed more than 30 hours per week.
   d. No age restrictions or only age restrictions making ineligible for coverage debtors 65 or over at the time the indebtedness is incurred or debtors who will have attained age 66 or over on the maturity date of indebtedness;
   e. A daily benefit equal in amount to 1/30 of the monthly benefit payable under the policy for the indebtedness;
   f. A definition of "disability" which provides that during the first 12 months of disability the insured shall be unable to perform the duties of his occupation at the time the disability occurred, and thereafter the duties of any occupation for which the insured is reasonably fitted by education, training or experience. This subparagraph shall not apply to lump sum disability coverage.
   g. A revolving credit insurance policy may exclude from the classes eligible for insurance classes of debtors determined by age, and provide for the cessation of insurance or reduction in the amount of insurance upon attainment of not less than age 65.

G. Experience reports
1. Each insurer doing credit insurance business in this state shall submit experience reports as provided in this subsection for the experience period of each class of business which it writes.
2. Each of the following constitutes a separate "class of business":
   a. Credit unions;
   b. Banks, and savings and loan institutions;
   c. Cash loans;
   d. Sales finance;
   e. All others.
3. The reports required by this subsection shall be submitted in the manner prescribed by Forms A, B1, B2, C1 and C2 attached to this rule. Insurers are expected to reproduce the forms for use according to their needs. Such experience reports shall be submitted not later than April 1st of each calendar year following the effective date of this rule and filed with the Life and Disability Division of the Department. The Director shall publish and provide instructions to be followed for completing annual experience reports.

H. Rates and adjustments
1. Minimum Loss Ratio Test
   a. Benefits will be presumed to be reasonable in relation to the premium charged if the ratio of claims incurred to premium earned during the most recent experience period at the rates in use produces a loss ratio that equals or exceeds the Minimum Loss Ratio Standard specified in subsection (D).
   b. If an insurer has deviated rates approved under paragraph (3), subparagraph (a), the test will exclude the experience of the accounts for which deviated rates are in use. The reasonableness of rates for those accounts will be determined by paragraph (3).
2. Use of prima facie rates. An insurer that has rates on file which are equal to or lower than prima facie rates may retain on file and use those rates without further proof of their reasonableness. An insurer may at any time use a rate for an account that is lower than its filed rate but must file that rate with the Director within 30 days of its use.
3. Rate adjustments
   a. Upward rate adjustments will not be considered unless the loss ratio which results from the Loss Ratio Test is more than 5 percentage points higher than the Minimum Loss Ratio Standard. The insurer may file for approval and upon approval use rates that are higher than prima facie rates if it can be expected that the use of such higher rates will continue to produce the minimum loss ratio standard for the accounts to which they are applied. The Director will provide instructions to be followed when calculating any upward deviation of rates.
   b. The Director may review credit insurance experience, insurer administrative expenses, other pertinent information and prima facie rates on a class basis as frequently as he deems necessary but at least every 3 years. The Director may then amend this rule to make appropriate adjustments in the prima facie rate for a class or combination of classes.
   c. If deviated rates are to be filed under (3)(a) of this subsection, the rate for each account which has been deviated must be redetermined on the same basis thereafter, or until the rate for the account is no longer deviated.

d. A deviated rate filed under (3)(a) of this subsection will be in effect for a period of time not longer than 12 months.

I. Supervision of credit insurance operations

1. Each insurer transacting credit insurance in this state shall periodically review creditors with which it does business to assure compliance with the insurance laws and this rule.

2. Written records of such reviews shall be maintained by the insurer for review by the Director.

J. Disclosure

1. When a premium or identifiable charge is payable by a debtor for credit insurance coverage offered by a creditor, at the time such insurance is applied for, disclosures shall be made to the principal debtor and copies given and retained, in accordance with state and federal law. The creditor shall also disclose the optional nature of the coverage, premium or identifiable charge separately by type of coverage, eligibility requirements, and policy limitations and exclusions. These disclosures may be made in conjunction with either

   a. The Federal Truth-in-Lending disclosure, or

   b. A notice of proposed insurance, or insurance policy or certificate.

K. Reserves

1. Credit life. For annual statement purposes, statutory reserves shall be held on a recognized mortality table, method, and rate of interest, consistent with Title 20, A.R.S.

2. Credit disability insurance. The unearned premium reserve as defined in "D. Premium Reserves" of the Instructions to Form A of the Experience Report shall be the minimum statutory reserve for annual statement purposes.

   The minimum statutory reserve defined by this subsection shall be construed to be at least the equivalent of the pro rata reserve for disability insurance as required by A.R.S. § 20-508.

L. Prohibited transactions. The following practices, when engaged in by insurers in connection with the sale or placement of credit insurance, or as an inducement thereto, shall constitute unfair methods of competition and shall be subject to the Unfair Trade Practices Act of this state.

1. The offer or grant by an insurer to a creditor of any special advantage or any service not set out in either the group insurance contract or in the agency contract, other than the payment of agent's commissions;

2. Agreement by an insurer to deposit with a bank or financial institution money or securities of the insurer with the design or intent that the same shall affect or take the place of a deposit of money or securities which otherwise would be required of the creditor by such bank or financial institution as a compensating balance or offsetting deposit for a loan or other advancement;

3. Deposit by an insurer of money or securities without interest or at a lesser rate of interest than is currently being paid by the creditor, bank or financial institution to other depositors of like amounts. This paragraph shall not be construed to prohibit the maintenance by an insurer of such demand deposits or premium deposit accounts as are reasonably necessary for use in the ordinary course of the insurer's business.

M. Severability. If any provision or clause of this rule or the application thereof to any person or situation is held invalid, such invalidity shall not affect any other provision or application of the rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared severable.

N. Effective date.

1. This rule shall take effect on June 1, 1983, and shall apply to all individual and group policies issued on or after that date.

2. Certificates, notices of proposed insurance and premium rates issued or delivered after the anniversary date of existing group policies shall conform to the requirements of this rule not later than the anniversary date of the group policy next following June 1, 1983.

3. Any group policy issued to replace an existing group policy of credit insurance or an amendment to an existing group policy of credit insurance shall be ignored for the purposes of determining the anniversary date if such change is made after January 1, 1983.

EXHIBIT A
CREDIT DISABILITY RATES

RATE EXTENSIONS

	NON-RETROACTIVE		RETROACTIVE	
DURATION	14 day	30 Day	14 Day	30 Day
1	.23	.00	.29	0.00
2	.35	.26	.43	.39
3	.47	.35	.56	.52
4	.59	.43	.71	.65
5	.70	.51	.85	.78
6	.82	.60	.98	.91
7	.93	.68	1.13	1.04
8	1.05	.77	1.27	1.17
9	1.16	.86	1.40	1.30
10	1.28	.94	1.55	1.43
11	1.40	1.02	1.69	1.55
12	1.51	1.10	1.82	1.68
13	1.58	1.16	1.89	1.74
14	1.64	1.22	1.96	1.80
15	1.70	1.28	2.02	1.85
16	1.76	1.34	2.09	1.91
17	1.82	2.40	2.15	1.97
18	1.88	1.46	2.21	2.03
19	1.94	1.52	2.27	2.09
20	2.00	1.58	2.33	2.14
21	2.06	1.64	2.39	2.20
22	2.12	1.69	2.45	2.25
23	2.18	1.75	2.51	2.30
24	2.24	1.80	2.57	2.36
25	2.29	1.85	2.63	2.41
26	2.34	1.91	2.69	2.46
27	2.39	1.96	2.75	2.51
28	2.45	2.01	2.80	2.57
29	2.51	2.06	2.85	2.62
30	2.56	2.12	2.91	2.66
31	2.60	2.17	2.96	2.72
32	2.66	2.21	3.02	2.76
33	2.71	2.27	3.07	2.81
34	2.75	2.31	3.12	2.86
35	2.81	2.36	3.17	2.90
36	2.85	2.41	3.23	2.96
37	2.90	2.45	3.27	3.00
38	2.95	2.50	3.32	3.05
39	2.99	2.54	3.38	3.09
40	3.04	2.59	3.42	3.14
41	3.08	2.63	3.47	3.18
42	3.13	2.68	3.52	3.23
43	3.17	2.72	3.56	3.26
44	3.21	2.77	3.61	3.31
45	3.26	2.81	3.65	3.35
46	3.30	2.85	3.70	3.39
47	3.34	2.90	3.74	3.44
48	3.38	2.93	3.79	3.47
49	3.42	2.98	3.83	3.52
50	3.46	3.02	3.88	3.56
51	3.50	3.05	3.92	3.59
52	3.54	3.09	3.96	3.63
53	3.58	3.14	4.00	3.68
54	3.62	3.17	4.04	3.71
55	3.65	3.21	4.08	3.75
56	3.69	3.25	4.13	3.79
57	3.73	3.28	4.16	3.83
58	3.76	3.32	4.20	3.86
59	3.80	3.35	4.24	3.89
60	3.83	3.39	4.28	3.93
61	3.86	3.43	4.31	3.97
62	3.90	3.46	4.35	4.00
63	3.93	3.50	4.39	4.04
64	3.97	3.53	4.43	4.07
65	4.00	3.56	4.46	4.10
66	4.03	3.59	4.49	4.13
67	4.07	3.62	4.53	4.17
68	4.10	3.66	4.57	4.20
69	4.13	3.69	4.60	4.23
70	4.16	3.72	4.64	4.27
71	4.19	3.75	4.67	4.30
72	4.22	3.78	4.70	4.33
73	4.25	3.81	4.73	4.36
74	4.28	3.84	4.76	4.39
75	4.30	3.87	4.79	4.42
76	4.33	3.90	4.82	4.45
77	4.36	3.93	4.85	4.48
78	4.38	3.96	4.89	4.51
79	4.41	3.99	4.92	4.54
80	4.44	4.02	4.94	4.57
81	4.46	4.04	4.97	4.60
82	4.49	4.07	5.00	4.62
83	4.52	4.10	5.03	4.65
84	4.54	4.13	5.06	4.68
85	4.57	4.16	5.09	4.70
86	4.59	4.18	5.12	4.73
87	4.61	4.21	5.15	4.76
88	4.64	4.23	5.17	4.79
89	4.67	4.25	5.20	4.81
90	4.69	4.28	5.23	4.84
91	4.71	4.31	5.25	4.86
92	4.73	4.33	5.27	4.89
93	4.76	4.36	5.30	4.91
94	4.78	4.38	5.33	4.94
95	4.80	4.40	5.35	4.97
96	4.82	4.43	5.38	4.99
97	4.85	4.45	5.40	5.01
98	4.87	4.48	5.42	5.03
99	4.88	4.50	5.45	5.06
100	4.91	4.52	5.47	5.09
101	4.93	4.55	5.50	5.11
102	4.95	4.57	5.52	5.14
103	4.97	4.59	5.54	5.15
104	4.99	4.61	5.57	5.18
105	5.01	4.64	5.59	5.20
106	5.03	4.66	5.61	5.22
107	5.05	4.67	5.63	5.24
108	5.07	4.70	5.65	5.27
109	5.09	4.72	5.67	5.29
110	5.11	4.74	5.69	5.31
111	5.13	4.76	5.72	5.33
112	5.15	4.79	5.74	5.36
113	5.17	4.80	5.75	5.37
114	5.18	4.82	5.78	5.39

	NON-RETROACTIVE		RETROACTIVE	
DURATION	14 day	30 Day	14 Day	30 Day
115	5.21	4.85	5.80	5.42
116	5.22	4.87	5.81	5.44
117	5.24	4.88	5.84	5.46
118	5.26	4.91	5.86	5.48
119	5.27	4.93	5.87	5.50
120	5.30	4.94	5.89	5.52
121	5.32	4.97	5.92	5.54
122	5.34	4.99	5.94	5.57
123	5.36	5.01	5.96	5.59
124	5.39	5.03	5.99	5.61
125	5.41	5.06	6.01	5.63
126	5.43	5.08	6.03	5.66
127	5.45	5.10	6.05	5.68
128	5.48	5.12	6.08	5.70
129	5.50	5.15	6.10	5.72
130	5.52	5.17	6.12	5.75
131	5.54	5.19	6.14	5.77
132	5.57	5.21	6.17	5.79
133	5.59	5.24	6.19	5.81
134	5.61	5.26	6.21	5.84
135	5.63	5.28	6.23	5.86
136	5.66	5.30	6.26	5.88
137	5.68	5.33	6.28	5.90
138	5.70	5.35	6.30	5.93
139	5.72	5.37	6.32	5.95
140	5.75	5.39	6.35	5.97
141	5.77	5.42	6.37	5.99
142	5.79	5.44	6.39	6.02
143	5.81	5.46	6.41	6.04
144	5.84	5.48	6.44	6.06
145	5.86	5.51	6.46	6.08
146	5.88	5.53	6.48	6.11
147	5.90	5.55	6.50	6.13
148	5.93	5.57	6.53	6.15
149	5.95	5.60	6.55	6.17
150	5.97	5.62	6.57	6.20
151	5.99	5.64	6.59	6.22
152	6.02	5.66	6.62	6.24
153	6.04	5.69	6.64	6.26
154	6.06	5.71	6.66	6.29
155	6.08	5.73	6.68	6.31
156	6.11	5.75	6.71	6.33
157	6.13	5.78	6.73	6.35
158	6.15	5.80	6.75	6.38
159	6.17	5.82	6.77	6.40
160	6.20	5.84	6.80	6.42
161	6.22	5.87	6.82	6.44
162	6.24	5.89	6.84	6.47
163	6.26	5.91	6.86	6.49
164	6.29	5.93	6.89	6.51
165	6.31	5.96	6.91	6.53
166	6.33	5.98	6.93	6.56
167	6.35	6.00	6.95	6.58
168	6.38	6.02	6.98	6.60
169	6.40	6.05	7.00	6.62
170	6.42	6.07	7.02	5.65
171	6.44	6.09	7.04	6.67
172	6.47	6.11	7.07	6.69
173	6.49	6.14	7.09	6.71
174	6.51	6.16	7.11	6.74
175	6.53	6.18	7.13	6.76
176	6.56	6.20	7.16	6.78
177	6.58	6.23	7.18	6.80
178	6.60	6.25	7.20	6.83
179	6.62	6.27	7.22	6.85
180	6.65	6.29	7.25	6.87

FORM A

STATE OF ARIZONA

DEPARTMENT OF INSURANCE
1601 WEST JEFFERSON
PHOENIX, ARIZONA 85007

CREDIT LIFE & DISABILITY INSURANCE EXPERIENCE REPORT

CALENDAR YEAR OF 19____

FORM A (SEE INSTRUCTIONS)

CLASSES OF BUSINESS: Check one;

- ☐ (a) Credit Unions
- ☐ (b) Banks, and Savings
- ☐ (c) and Loan Associations
- ☐ (c) Cash Loans
- ☐ (d) Sales Finance
- ☐ (e) All Others

Mode of Premium Payment:

- ☐ Single Premium
- ☐ Revolving Account
- ☐ Outstanding Balance (Monthly Premium)

Plan of Benefits: Policy Form No: _____

Credit Life: ☐ Decreasing ☐ Level ☐ Single Life ☐ Joint Life ☐ Gross ☐ Net ☐ Group ☐ Individual

Credit Disability_____Days, ☐ Retro ☐ Non-Retro

		Mean Insurance in Force
1.	**Actual Earned Premiums**	
a.	Gross premium written (before deduction for Dividends and Experience Rating Credits)	
b.	Refunds on terminations	
c.	Net (a-b)	
d.	Premium reserve, beginning of period	
e.	Premium reserve, end of period	
f.	Actual earned premiums (c+d-e)	
g.	Earned premiums at prima facie rate (Form B)	
2.	**Incurred Claims**	
a.	Claims paid	
b.	Unreported claims, beginning of period	
c.	Unreported claims, end of period	
d.	Claim reserve, beginning of period	
e.	Claim reserve, end of period	
f.	Incurred Claims (a-b+c-d+e)	
3.	**Loss Ratio**	
a.	Actual loss ratio (2f ÷ 1f)	
b.	Loss ratio at prima facie rate (2f ÷ 1g) (See Instructions)	

(Company) (Signature) (Title)

STATE OF ARIZONA

FORM B1

DEPARTMENT OF INSURANCE

1601 WEST JEFFERSON

PHOENIX, ARIZONA 85007

CREDIT LIFE INSURANCE EXPERIENCE REPORT

PRIMA FACIE EARNED PREMIUM

FORM B1 (SEE INSTRUCTIONS)

Class of business_____ Calendar Year 19 _____

Premium Mode_____ Plan of Benefits_____

Credit Life Insurance

	Actual Earned Premiums	Prima Facie Rate	Actual Premium Rate	Prima Facie Earned Premium
	Col. 1	Col. 2	Col. 3	Col. 4
A. Earned premiums at prima facie rate	_____	XXX	XXX	_____
B. Earned premiums at other than prima facie rates:				
1. _____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____
4. _____	_____	_____	_____	_____
5. _____	_____	_____	_____	_____
6. _____	_____	_____	_____	_____
	_____	_____	_____	_____
Totals	_____	XXX	XXX	_____
	To form A, Line 1f			To Form A Line 1g

_____

(Company)

STATE OF ARIZONA

FORM B2

DEPARTMENT OF INSURANCE

1601 WEST JEFFERSON

PHOENIX, ARIZONA 85007

CREDIT DISABILITY INSURANCE EXPERIENCE REPORT

PRIMA FACIE EARNED PREMIUM

FORM B2 (SEE INSTRUCTIONS)

Class of business_____ Calendar Year 19 _____

Premium Mode_____ Plan of Benefits_____

Credit Disability Insurance

			Actual Earned Premium	Premium Rates: 12 mo	24 mo	36 mo	Prima Facie Earned Premium
			Col. 1	Col. 2	Col. 3	Col. 4	Col. 5
A.	Earned premiums at prima facie rate		_____	_____	_____	_____	_____
B.	Earned premiums at other than prima facie rates:						
1.	a.	Actual Rate	XXX	_____	_____	_____	_____
	b.	Ratio	XXX	_____	_____	_____	_____
	c.	Earned Premium	_____	_____	_____	_____	_____
2.	a.	Actual Rate	XXX	_____	_____	_____	_____
	b.	Ratio	XXX	_____	_____	_____	_____
	c.	Earned Premium	_____	_____	_____	_____	_____
3.	a.	Actual Rate	XXX	_____	_____	_____	_____
	b.	Ratio	XXX	_____	_____	_____	_____
	c.	Earned Premium	_____	_____	_____	_____	_____
			_____	_____	_____	_____	_____
Totals			_____	XXX	XXX	XXX	_____
			To Form A, Line 1f				To Form A, Line 1g

_____

(Company)

FORM C1

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

1601 WEST JEFFERSON

PHOENIX, ARIZONA 85007

CREDIT DISABILITY INSURANCE EXPERIENCE REPORT

RECONCILIATION TO STATE PAGE

FOR THE CURRENT YEAR OF 19 _____

FORM C1 (SEE INSTRUCTIONS)

	Premiums		Claims	
	Written	Earned	Paid	Incurred
	(Line 1c)	(Line 1f)	(Line 2a)	(Line 2f)
Credit Life:				
Page _____of _____	_____	_____	_____	_____
Page _____of _____	_____	_____	_____	_____
Page _____of _____	_____	_____	_____	_____
Page _____of _____	_____	_____	_____	_____
Page _____of _____	_____	_____	_____	_____
Page _____of _____	_____	_____	_____	_____
Page _____of _____	_____	_____	_____	_____
Page _____of _____	_____	_____	_____	_____
Page _____of _____	_____	_____	_____	_____
Page _____of _____	_____	_____	_____	_____
Page _____of _____	_____	_____	_____	_____
	_____	_____	_____	_____
Total Life	_____	_____	_____	_____
Annual Statement Page 46, Line 31	_____	_____	_____	_____

Explain any differences between “Total Life” and Page 46, Line 28.

_____

(Company)

FORM C2

STATE OF ARIZONA

DEPARTMENT OF INSURANCE

1601 WEST JEFFERSON

PHOENIX, ARIZONA 85007

CREDIT DISABILITY INSURANCE EXPERIENCE REPORT

RECONCILIATION TO STATE PAGE

FOR THE CURRENT YEAR OF 19 _____

FORM C2 (SEE INSTRUCTIONS)

	Premiums		Claims	
	Written	Earned	Paid	Incurred
	(Line 1c)	(Line 1f)	(Line 2a)	(Line 2f)
Credit Life:				
Page _____of _____	_____	_____	_____	_____
Page _____of _____	_____	_____	_____	_____
Page _____of _____	_____	_____	_____	_____
Page _____of _____	_____	_____	_____	_____
Page _____of _____	_____	_____	_____	_____
Page _____of _____	_____	_____	_____	_____
Page _____of _____	_____	_____	_____	_____
Page _____of _____	_____	_____	_____	_____
Page _____of _____	_____	_____	_____	_____
Page _____of _____	_____	_____	_____	_____
Page _____of _____	_____	_____	_____	_____
	_____	_____	_____	_____
Total Life	_____	_____	_____	_____
Annual Statement Page 46, Line 31	_____	_____	_____	_____

Explain any differences between “Total Disability” and Page 46, Line 31.

_____

(Company)

FORM D

DISTRIBUTION OF BENEFITS

Claim # _____ Group Policy # _____ Certificate # _____

Insured _____

Check(s) Enclosed _____ Date Account Settled _____, 19 _____

_____

Payment of proceeds under your Group Policy provides, and the law requires that the net indebtedness be discharged and any excess be paid to the named beneficiary (if any) or to estate or person/institution entitled to receive payment, and a report of distribution be filed with the Company

Paid to Lender Name_____ Amount_____

Paid to Beneficiary/Estate/Other Name_____ Amount_____

Certified By: Signature_____ Title _____

For _____

Group Policyholder/Agent

(Upon execution - forward to Company)

The definitions in A.R.S. § 20-1603 and this Section apply to R20-6-604 through R20-6-604.10.

"Actual loss ratio" means incurred claims divided by earned premiums at rates in use.

"Actuarially equivalent" means of equal actuarial present value determined as of a given date with each value based on the same set of actuarial assumptions. When used in this Article in reference to rates and coverage, "actuarially equivalent" means a rate or coverage that is actuarially determined to yield loss ratios of 50% for credit life insurance and 60% for credit disability insurance.

"Credit insurance" means credit life insurance, credit disability insurance, or both, but does not include any insurance for which there is no identifiable charge.

"Earned premiums" means earned premiums at prima facie rates and earned premiums at rates in use.

"Earned premiums at prima facie rates" means an insurer's actual earned premiums, adjusted to the amount that the insurer would have earned if the insurer's premium rates had equaled the prima facie rates in effect during the experience period.

"Earned premiums at rates in use" means the premiums that an insurer actually earns on the premium rates the insurer charges during an experience period.

"Evidence of individual insurability" means information about a debtor's health status or medical history that a debtor provides as a condition of credit insurance becoming effective.

"Experience" means an insurer's earned premiums and incurred claims during an experience period.

"Experience period" means a period of time for which an insurer reports income and expense information on the insurer's credit insurance business.

"Final adjusted rates" means the prima facie rates referred to in R20-6-604.04 and R20-6-604.05, subject to any deviations approved under R20-6-604.08.

"Gross debt" means the sum of the remaining payments that a debtor owes a creditor.

"Identifiable charge" means a charge for credit insurance that is imposed on a debtor with credit insurance but not on a debtor without credit insurance, and includes a charge for insurance that is disclosed in the credit or other financial instrument furnished to the debtor, which sets forth the financial elements of a credit transaction, and any difference in finance, interest, service charges, or other similar charges made to a debtor in like circumstances except for the debtor's status as insured or noninsured.

"Incurred claims" means the total claims an insurer pays during an experience period, adjusted for the change in the claim reserves.

"Net debt" means the amount necessary to liquidate a debt in a single lump-sum payment excluding unearned interest and other unearned finance charges.

"Plan of credit insurance" means an insurance plan based on one of the following rate and coverage categories:

Credit life insurance, other than on revolving accounts, including joint and single life coverage, decreasing and level insurance, and outstanding balance and single premium;

Credit life insurance on revolving accounts;

Credit life insurance on an age-graded basis;

Credit disability insurance, other than on revolving accounts, including outstanding balance and single premium, and each combination of waiting period and retroactive or non-retroactive benefits;

Credit disability insurance on revolving accounts, including each combination of waiting period and retroactive or non-retroactive benefits.

"Preexisting condition" means a condition:

For which a debtor received medical advice, consultation, or treatment within six months before the effective date of credit insurance coverage; and

From which the debtor dies, in the case of life insurance, or becomes disabled, in the case of disability insurance, within six months after the effective date of coverage.

"Prima facie adjusted loss ratio" means incurred claims divided by earned premiums at prima facie rates.

"Prima facie rates" means the rates established by the Director as prescribed in R20-6-604.03.

"Reasonableness standard" means the requirement in A.R.S. § 20-1610(B) that an insurer's premiums for credit insurance shall not be excessive in relation to the benefits provided under the policy.

"Rule of Anticipation" means the product of the gross single premium per $100 of indebtedness for a debtor's remaining term of indebtedness, times the number of hundreds of dollars of remaining indebtedness.

R20-6-604.01. Rights and Treatment of Debtors

A. Creditor Obligations.

1. Multiple plans of insurance. If a creditor makes more than one plan of credit insurance available to debtors, the creditor shall inform each debtor of each plan for which the debtor is eligible and of the premium and charges for each plan.
2. Substitution. If a creditor requires a debtor to have credit insurance as additional security for a debt, the creditor shall inform the debtor in writing of the debtor's right to obtain alternative coverage as prescribed in A.R.S. § 20-1614 before the loan transaction is completed.
3. Remittance of premiums. If a creditor adds an insurance charge or premium to a debt, the creditor shall remit the insurance charge or premium to the insurer within 60 days after it is added to the debt.

B. Creditor and insurer obligations regarding insurance on refinanced debt.

1. If a debt is discharged because the debtor refinances the debt before the scheduled maturity date, the creditor shall notify the insurer that issued the credit insurance on the discharged debt.
2. An insurer shall not issue any credit insurance that covers the refinanced debt with an effective date preceding the termination date of the insurance on the original debt.
3. The insurer issuing the coverage on the discharged debt shall refund to or credit the debtor with all unearned insurance charges or premium according to R20-6-604.06.
4. If a debt is refinanced, the effective date of the policy provisions in any new insurance covering the refinanced debt shall be the first date on which the debtor became insured under the previous policy. An insurer may apply any new exclusion period or preexisting condition limitation only to the portion of the new loan that exceeds the previous loan.

C. Required policy provisions.

1. Termination provisions for group policies. A group credit insurance policy shall provide for continued coverage of debtors covered under the policy if the policy terminates, as follows:
   a. For a policy with a single premium payment, or any other payment method that prepays coverage for more than one month, a provision requiring continued insurance coverage for the entire period for which the premium has been paid; and
   b. For a policy with a monthly premium payment, a provision requiring the insurer to send the debtor a termination notice at least 30 days before the effective date of termination, unless an insurer is issuing replacement coverage in at least the same amount, without lapse of coverage.
2. Maximum aggregate provisions. A provision in an individual policy or group certificate that sets a maximum limit on total claim payments shall apply only to that individual policy or group certificate.

D. Creditor and insurer obligations when debtor prepays debt.
1. Except as provided in subsection (D)(2), if a debtor prepays a debt in full, any credit insurance covering the debt shall terminate on the date of prepayment. The creditor and insurer shall refund to or credit the debtor with any unearned premium according to R20-6-604.06.
2. If a debt is fully prepaid because of the debtor's death or any other lump-sum credit insurance payment, a creditor or insurer is not required to refund premium for the coverage under which the lump sum was paid.
3. If a claim under credit disability coverage is in progress at the time of prepayment, the insurer:
   a. May calculate the refund as if the prepayment did not occur until the end of the period for payment of benefits, and
   b. Is not required to refund premiums for any period for which credit disability benefits are payable.

E. Benefits payable on revolving account. If a debtor is paying for credit insurance coverage on a revolving account and dies, the insurer shall pay a benefit amount equal to the amount of indebtedness outstanding on the date of death. The insurer may exclude preexisting conditions occurring within six months of any advance on the revolving account, running separately for each advance or charge.

R20-6-604.02. Satisfying the Reasonableness Standard

A. An insurer shall comply with all requirements of A.R.S. § 20-1610 regarding premium and insurance charges.

B. An insurer may satisfy the reasonableness standard in A.R.S. § 20-1610(B) if the insurer's premium rate develops a loss ratio of not less than 50% for credit life insurance and not less than 60% for credit disability insurance.

C. While in effect, the rates described in R20-6-604.04 and R20-6-604.05, subject to any deviations approved under R20-6-604.08 are conclusively presumed to develop the loss ratios described in subsection (B). For purposes of prospective effect, the Department may rebut this presumption by disapproving or withdrawing approval for the rates as prescribed in A.R.S. § 20-1610.

D. An insurer may provide coverage other than the standard coverage described in R20-6-604.04 and R20-6-604.05. An insurer that wishes to provide nonstandard coverage shall:
1. File the nonstandard coverage policy information as prescribed in A.R.S. § 20-1609, and
2. Demonstrate that the rates for the coverage are reasonably expected to develop a loss ratio of not less than 50% for credit life insurance and not less than 60% for credit disability insurance.

R20-6-604.03. Determination of Prima Facie Rates

A. The Director shall, by order, establish prima facie rates as prescribed in this Section.

B. At least once every three years, the Director shall:
1. Determine the rate of expected claims on a statewide basis;
2. Compare the rate of expected claims with the rate of actual claims for the past three years determined from the incurred claims and earned premiums at prima facie rates; and
3. If the Director determines that the prima facie rates require adjustment, issue a notice of hearing and proposed order adjusting the actual statewide prima facie rates. The hearing date on the proposed order shall be no earlier than 45 days from the date of the notice.

C. The Director shall mail a copy of the notice and proposed order to:
1. Each insurer that reported transaction of credit insurance on its annual statement immediately preceding the date of the notice, and
2. Any other person who sends the Director a written request for notice of proceedings to adjust the prima facie rates.

D. Any person may submit written comments to the Director or appear at the hearing and provide oral comments on the record. Written comments shall be received no later than the close of record date specified in the notice of hearing.

E. The Director shall:
1. Consider written and oral comments; and
2. Issue a final order setting prima facie rates no later than 30 days after the close of record date specified in the notice of hearing.

R20-6-604.04. Credit Life Insurance Rates and Provisions

A. Under the process prescribed in R20-6-604.03, the Director shall issue an order establishing prima facie rates for credit life insurance.

B. The Department shall presume that an insurer meets the loss ratios prescribed in R20-6-604.02(B) if the insurer uses the prima facie rates, subject to the requirements in this Section and R20-6-604.08. An insurer may use the prima facie rates without filing additional actuarial support.

C. A credit life insurance policy shall meet the requirements listed in this Section. The policy shall:
1. Provide coverage for death, by whatever means caused, to all eligible debtors, with or without evidence of individual insurability for debtors that purchase coverage within 30 days of being eligible;
2. Have no exclusions other than for:
   a. Suicide within six months after the effective date of coverage, or
   b. A preexisting condition;

3. Have no age restrictions, except the following permissible exclusions:
   a. An age restriction providing that no insurance will become effective on a debtor on or after the attainment of age 70 and that all insurance shall terminate on a debtor attaining age 70; and
   b. An age restriction for a revolving credit life insurance policy that:
      i. Excludes a class of debtors determined by age, or
      ii. Provides for termination of insurance or reduction in the amount of insurance when a debtor reaches age 70; and
4. For insurance on revolving accounts, have the date on which an advance or charge occurs as the effective date of coverage for each part of the insurance attributable to a different advance or a charge to the plan account. Any exclusion period or preexisting condition limitation shall run separately for each advance or charge.

R20-6-604.05. Credit Disability Insurance Rates and Provisions

A. Under the process prescribed in R20-6-604.03, the Director shall issue an order establishing prima facie rates for credit disability insurance.

B. The Department shall presume that an insurer meets the loss ratios prescribed in R20-6-604.02(B) if the insurer uses the prima facie rates, subject to the requirements in this Section and R20-6-604.08. An insurer may use the prima facie rates without filing additional actuarial support.

C. A credit disability insurance policy shall meet the requirements listed in this Section. The policy shall:
1. Provide coverage for disability, by whatever means caused, to all eligible debtors, with or without evidence of individual insurability for debtors that purchase coverage within 30 days of becoming eligible;
2. Include a definition of disability that is no more restrictive than the following:
   a. For the first 12 months of disability, the inability of the insured to perform the essential functions of the insured's occupation; and
   b. After the first 12 months of disability, the inability of the insured to perform the essential functions of any occupation for which the insured is reasonably suited by virtue of education, training, or experience;
3. Not include any employment requirement that a debtor be employed more than full-time on the effective date of coverage, with a definition of "full-time" as a regular work week of at least 30 hours;
4. Have no exclusions other than for disabilities resulting from:
   a. Normal pregnancy,
   b. Intentionally self-inflicted injury, or
   c. A preexisting condition;
5. For insurance on revolving accounts, have the date on which an advance or charge occurs as the effective date of coverage for each part of the insurance attributable to a different advance or a charge to the plan account. Any exclusion period or preexisting condition limitation shall run separately for each advance or charge;
6. Have no age restrictions, except the following permissible exclusion:
   An age restriction providing that no insurance will become effective on a debtor on or after the attainment of age 65 and that all insurance shall terminate on a debtor attaining age 66; and
7. Include a provision for a daily benefit of not less than one-thirtieth of the monthly benefit payable under the policy.

R20-6-604.06. Refund Methods

A. When refunding premiums as prescribed in A.R.S. § 20-1611, an insurer shall use the following methods:
1. For insurance paid by a single premium, the Rule of Anticipation method; and
2. For insurance paid by other than a single premium, a method that refunds at least the pro rata gross unearned amount charged to the debtor.

B. The Director may approve other refund methods similar to those described in subsection (A), that are actuarially equivalent to the type of coverage the debtor purchased.

C. An insurer's refund method may recognize adjustments to a daily basis for interest or payments if the adjustments are consistent with the underlying credit transaction.

D. An insurer is not required to refund any amount less than $5.

R20-6-604.07. Experience Reports

A. By April 1st of each year, an insurer that transacts credit insurance in this state shall file with the Director an experience report, on a form specified by the Director, for each class of business that the insurer transacts as provided in this Section.
1. In this Section, a "class of business" means:
   a. Credit unions;
   b. Banks, savings and loan institutions, and mortgage companies;
   c. Finance companies, small loan companies, and consumer lenders defined in A.R.S. § 6-601(5);
   d. Dealers, including auto, truck, and boat dealers, retail stores, and other persons selling financed goods; and
   e. All other persons selling credit insurance not specifically listed in subsection (A)(1)(a) through (d).

2. The report shall include the following information:
   a. Mode of premium payment,
   b. Plan of benefits description,
   c. Earned premiums,
   d. Incurred claims,
   e. Loss ratios, and
   f. For credit life insurance, mean insurance in force.

B. For each day a report is late, the Director may assess a penalty as prescribed in A.R.S. § 20-223.

R20-6-604.08. Use of Prima Facie Rates; Rate Deviations

A. Use of rates greater than prima facie rates. An insurer may file for approval and use of any deviated rates that are higher than the prima facie rates referred to in R20-6-604.04 and R20-6-604.05 as prescribed in A.R.S. § 20-1610.
1. The deviated rates shall meet the minimum loss ratio standards and other requirements prescribed by R20-6-604.02.
2. The filing shall specify the accounts to which the rates apply.
3. The rates may be:
   a. Applied uniformly to all accounts of the insurer; or
   b. Applied on an equitable basis approved by the Director to accounts of the insurer for which the insurer's experience has been less favorable than expected.

B. Approval period of deviated rates. An insurer may use a deviated rate for the same period of time as the experience period used to establish the rate, not to exceed a period of three years from the date of approval. An insurer may file for a new deviated rate before the end of the approval period, but not more often than once in any 12 month period.

C. Approval is non-transferable. The Director's approval of a deviated rate is not transferable to another insurer. If an insurer acquires an account for which another insurer obtained a deviated rate, the successor insurer may not charge the deviated rate without obtaining approval for the deviated rate as prescribed in subsection (B).

D. Use of rates lower than filed rates. An insurer may use a rate that is less than its filed rate without notice to the Director.

R20-6-604.09. Supervision of Consumer Credit Insurance Operations

A. At least once every three years, an insurer transacting credit insurance in Arizona shall review the credit insurance operations of each creditor with whom the insurer does business to ensure that each creditor is complying with applicable credit insurance laws. The insurer shall review the following:
1. The creditor does not charge rates in excess of the prima facie rates or any deviated rates for which the insurer obtains approval;
2. The creditor makes benefit payments as prescribed in the policy; and
3. The creditor refunds unearned premiums as prescribed in R20-6-604.06.

B. The insurer shall maintain for the Director's inspection a written record of each review and action the insurer takes to address any creditor noncompliance found by the insurer, for at least three years following the end of the review.

R20-6-604.10. Prohibited Transactions

A. The practices listed in this Section are deemed unfair trade practices under A.R.S. § 20-442. An insurer that commits any of the following practices is subject to penalties as prescribed in A.R.S. § 20-456:
1. Offering or providing a creditor with any special advantage or any service not set out in either the group insurance contract or in the agency contract, other than payment of commissions;
2. Agreeing to deposit with a bank or financial institution, the insurer's money or securities as a substitute for a deposit of money or securities that the financial institution would otherwise require from the creditor as a compensating balance or deposit offset for a loan or other advancement; or
3. Depositing money or securities without interest or at a lesser rate of interest than the creditor, bank, or financial institution is currently paying on other similar deposits.

B. This Section does not prohibit an insurer from maintaining demand deposits or premium deposit accounts that are reasonably necessary for use in the ordinary course of the insurer's business.