

JIM IRVIN
COMMISSIONER-CHAIRMAN

RENZ D. JENNINGS
COMMISSIONER

CARL J. KUNASEK
COMMISSIONER



ARIZONA CORPORATION COMMISSION



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JOANNE C. MACDONNELL
DIRECTOR, CORPORATIONS DIVISION

OPEN MEETING ITEM

MEMORANDUM

To: Commissioner-Chairman Jim Irvin
Commissioner Renz D. Jennings
Commissioner Carl J. Kunasek

Arizona Corporation Commission

DOCKETED

SEP 04 1998

From: Joanne MacDonnell *JCM*
Director of Corporations

DOCKETED BY *[Signature]*

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Date: September 4, 1998

Re: Proposed Rule R14-1-103, Licensing Time Frames
Docket No. RC-0000A-98-0494

Cc: Jack Rose, Executive Secretary

SUMMARY

Proposed Rule A.A.C. R14-1-103 (the "Rule") establishes time-frames within which the Corporations Division (the "Division") shall process regular applications pursuant to Title 10 and Title 29 of the Arizona Revised Statutes. The Rule is mandated by A.R.S. ' 41-1072, et. seq. (the "time frame statutes"), which requires any state agency that issues licenses to promulgate final rules establishing the time frames during which the agency will either grant or deny each type of license issued. This Rule shall not apply to expedited applications already covered by '10-122. Under the time frame statutes, the time frames must be in place no later than December 31, 1998.

DISCUSSION

The Rule establishes time frames in which the Division shall process applications for licenses issued by the agency pursuant to Title 10 and Title 29 of the Arizona Revised Statutes. The Rule's time frames incorporate certain categories. Each agency must establish an "overall time frame" consisting of two components: (I) an "administrative completeness review time frame", and (ii) a "substantive review time frame." The time frame statutes define "administrative completeness review" to include the number of days from an agency's receipt of

an application for a license until a determination by the agency that the application contains all components required by rule or law. The time frame statutes define "substantive review" to include the number of days after completion of the administrative completeness review during which an agency determines whether an application meets all substantive criteria required by rule or law. The rule establishes separate time frames for each of these components.

The Rule contemplates one general track for all licensing applications processed by the Corporations Division. Due to the current and historic volume of filings, the administrative completeness review time frame shall be 270 days after receipt of the initial application. If an application is deemed sufficient, the administrative completeness review process effectively is over. However, if an application is deemed deficient, written notice shall be sent to the applicant specifying all deficiencies. Once the notice of deficiency is received, the applicant shall then have 30 days in which to satisfy those deficiencies.

After the application is deemed administratively complete, the Division shall then have 90 days in which to determine whether the application meets all substantive criteria, if applicable. Under the time frame statutes, an applicant and the Commission may agree to extend the substantive time frame for a period up to 25% of the overall time frame. The Division believes that this provides enough flexibility to address any unanticipated delays in the application process.

The overall time frame for the processing of applications for licenses pursuant to Title 10 and Title 29 of the Arizona Revised Statutes will be 360 days. Provisions in the time frame statute allow this period to be tolled if the applicant requests, and is granted, an extension or continuance. The Division believes that this provision provides adequate safeguards to ensure that all applications can be processed within the overall time frame period.

1 **R14-1-103. Licensing time-frames**

2 **A. This rule prescribes time-frames for the processing of any certificate or license issued by**
3 **the Arizona Corporation Commission pursuant to Title 10 and Title 29 of the Arizona**
4 **Revised Statutes.**

5 **B. Within 270 calendar days after receipt of an initial or renewal application for any**
6 **certificate or license provided pursuant to Title 10 or Title 29 of the Arizona Revised**
7 **Statutes, staff shall notify the applicant, in writing, that the application is either**
8 **administratively complete or deficient. If the application is deficient, the notice shall**
9 **specify all deficiencies.**

10 **C. The Commission may terminate an application if the applicant does not remedy all**
11 **deficiencies within 30 calendar days of the notice of deficiency.**

12 **D. After an application has been deemed administratively complete, and the applicant has**
13 **been notified in writing, staff shall have 90 calendar days for substantive review of the**
14 **application.**

15 **E. For purposes of A.R.S. § 41-1072, et seq., the Commission has established the following**
16 **time-frames:**

17 1. **Administrative review time-frame:** **270 calendar days.**

18 2. **Substantive review time-frame:** **90 calendar days.**

19 3. **Overall time-frame:** **360 calendar days.**

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Arizona Corporation Commission
Time-frame Rules For Processing Licensing Applications
ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

A. Economic, Small Business, and Consumer Impact Summary.

1. Proposed Rulemaking.

Proposed rule 103 establishes time frames within which the Corporations Division ("the Division") shall process articles of incorporation filed with the Commission pursuant to Title 10 and Title 29 of the Arizona Revised Statutes. Proposed rule 103 is mandated by A.R.S. §§ 41-1072 through -1078 ("the time-frame statutes").

Proposed rule 103 sets forth the following time-frames: 1) administrative review time-frame, 270 days; 2) substantive review time-frame, 90 days; and 3) overall time frame, 360 days. These proposed time-frames more or less codify the average amount of time currently necessary to process applications for licenses covered by the time-frame rules, with additional time included in order to accommodate seasonal fluctuations in work load. These time-frames also assume that the Division will continue to maintain its current number of full time employees, will receive necessary budget appropriations in the future, and will continue to receive approximately the same number of filings at present levels.

In general, there should be no economic impact from the adoption of the proposed rules. Because proposed rule 103 essentially codifies the Division's existing practices, the economic impact of the adoption of the rule is minimal.

2. Information contained in this report.

This economic, small business, and consumer impact statement for the Proposed Rule 103 analyzes the costs, savings, and benefits that will accrue to the Commission and the public. With the adoption of the proposed rule, the impact upon established Commission procedures, Commission staff time, and other administrative costs is minimal. The benefits to the Commission are minimal. The benefits provided to the public are non-quantifiable. The proposed rule should benefit the Commission's relations with the regulated public by providing clear time-frames for processing applications.

3. Name and address of agency employees to contact regarding this report.

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Phoenix, Az. 85007

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Phoenix, Az. 85007

B. Economic, Small Business, and Consumer Impact Statement.

1. Proposed Rulemaking.

Proposed rule 103 establishes time frames within which the Corporations Division ("the Division") shall process articles of incorporation filed with the Commission pursuant to Title 10 and Title 29 of the Arizona Revised Statutes. Proposed rule 103 is mandated by A.R.S. §§ 41-1072 through -1078 ("the time-frame statutes").

Proposed rule 103 sets forth the following time-frames: 1) administrative review time-frame, 270 days; 2) substantive review time-frame, 90 days; and 3) overall time frame, 360 days. The Corporate Filings Section of the Division receives an average of 860 items each week. These items include articles of incorporation, articles of merger, articles of correction, notices of publication, and applications for authority to transact business. Although the time-frame statutes apply only to applications for licenses, the Division believes that it is important to process all filings as expeditiously as possible. The Division currently processes approximately 860 items per week, though the filings received by the Division are seasonal and peak at the end of the year and at the end of June. Accordingly, the Division has chosen time-frames that consider the Division's overall work load as well as the work necessary to process the items covered by the time-frame statutes.

These proposed time-frames more or less codify the average amount of time currently necessary to process applications for licenses covered by the time-frame rules, with additional time included in order to accommodate seasonal fluctuations in work load. These time-frames also assume that the Division will continue to have its current number of full time employees, will receive necessary budget appropriations in the future, and will continue to receive approximately the same number of filings as we receive at present.

In general, there should be no economic impact from the adoption of the proposed rules. Because proposed rule 103 essentially codifies the Division's existing practices, the economic impact of the adoption of the rule is minimal.

2. Person who are affected, bear costs or directly benefit from the proposed rulemaking.

a. Those Affected

Those affected by the proposed rulemaking include persons seeking to file articles of incorporation, articles of merger, and applications for authority to transact business. For fiscal year 1998, the Division processed 13190 articles of incorporation, 1118 articles of merger, 3841

applications for authority for corporations, 8733 articles of organizations, and 782 applications for registration for limited liability companies.

b. Cost Bearers

The costs of the Proposed rule 103 shall be borne by the Corporations Division.

c. Beneficiaries

The citizens of Arizona and the corporations and limited liability companies governed by Title 10 and Title 29 of the Arizona Revised Statutes may benefit from clear time-frames for the application processes.

3. Cost/Benefit Analysis.

a. Probable costs and benefits to the implementing agencies

The Proposed Rule will have minimal financial impact unless the Commission routinely fails to meet the time-frames. Such a failure would require the Commission to refund the filing fee to the applicant, resulting in a small cost savings to the regulated public. The Commission would also pay a penalty into the general fund. The Division, however, does not foresee difficulty in complying with the proposed time-frames.

b. Probable costs and benefits to political subdivisions

None.

c. Probable costs and benefits to business

None.

4. Private and public employment impact

The rule should have no impact upon private and public employment.

5. Impact on small business

a. Identification of the small businesses subject to the proposed rulemaking.

No small business will be subject to the requirements of the proposed rulemaking. Any profit corporation, non-profit corporation, or *limited liability company* that meets the definition of "small business" set forth in A.R.S. § 41-1001.19 may benefit from the rule.

b. Administrative and other costs required for compliance with the proposed rulemaking.

None.

- c. Description of the methods that the agency may use to reduce the impact on small business.

Not applicable.

- d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

Private persons and consumers who file articles of incorporation, articles of merger, or applications with the Commission pursuant to Title 10 and Title 29 shall be affected by the proposed rulemaking. The rule will have no financial impact upon applicants unless the Commission fails to meet the time-frames. If the Commission fails to meet the time-frames, the application fee is returned to the individual(s), and the application process continues. The Division does not foresee difficulty in complying with the time-frames set forth in Proposed Rule 103.

6. Probable Effect on State Revenues.

The proposed rulemaking will have no effect upon state revenues unless the Commission fails to meet the time-frames. The Commission would then pay a penalty, as established in A.R.S. § 41-1077, into the general fund. It is unlikely that this penalty will occur.

7. Less intrusive or less costly alternative methods of achieving the proposed rulemaking.

The rulemaking is mandated by A.R.S. §§ 41-1072 through -1078; therefore, no alternative is possible.

8. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms.

Not applicable.

1 **R14-1-103. Licensing time-frames**

2 **A.** This rule prescribes time-frames for the processing of any certificate or license issued by
3 the Arizona Corporation Commission pursuant to Title 10 and Title 29 of the Arizona
4 Revised Statutes.

5 **B.** Within 270 calendar days after receipt of an initial or renewal application for any
6 certificate or license provided pursuant to Title 10 or Title 29 of the Arizona Revised
7 Statutes, staff shall notify the applicant, in writing, that the application is either
8 administratively complete or deficient. If the application is deficient, the notice shall
9 specify all deficiencies.

10 **C.** The Commission may terminate an application if the applicant does not remedy all
11 deficiencies within 30 calendar days of the notice of deficiency.

12 **D.** After an application has been deemed administratively complete, and the applicant has
13 been notified in writing, staff shall have 90 calendar days for substantive review of the
14 application.

15 **E.** For purposes of A.R.S. § 41-1072, et seq., the Commission has established the following
16 time-frames:

17 1. Administrative review time-frame: 270 calendar days,

18 2. Substantive review time-frame: 90 calendar days,

19 3. Overall time-frame: 360 calendar days.

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 JIM IRVIN
Chairman-Commissioner
3 RENZ D. JENNINGS
Commissioner
4 CARL KUNASEK
Commissioner
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6 In the Matter of)
PROPOSED RULEMAKING TO)
7 PROVIDE TIME FRAMES FOR THE)
PROCESSING OF APPLICATIONS)
8 PURSUANT TO TITLE 10 AND)
TITLE 29 OF THE)
9 ARIZONA REVISED STATUTES)
_____)

DOCKET NO. RC-00000A-98-0494

DECISION NO. _____

PROPOSED ORDER

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11 Open Meeting
September 15 and 16, 1998
12 Phoenix, Arizona

13 FINDINGS OF FACT

14 1. The Corporations Division ("the Division") of the Arizona Corporation Commission
15 ("the Commission") has forwarded to the Commission a proposal recommending that the
16 Commission adopt A.A.C. R14-1-103 ("Rule 103") as an addition to the Arizona Administrative
17 Code.

18 2. Proposed Rule 103 establishes time-frames within which the Division shall process
19 applications filed with the Division pursuant to Title 10 and Title 29 of the Arizona Revised Statutes.
20 Title 10 and Title 29 empower the Commission to approve articles of incorporation for profit
21 corporations, non-profit corporations, and limited liability companies.

22 3. Proposed Rule 103 is mandated by A.R.S. §§ 41-1072 through 1078, which require
23 state agencies to promulgate rules establishing the time-frames during which the agency will either
24 grant or deny any license issued by the agency.

25 4. The Division's staff has recommended that Proposed Rule 103 be forwarded to the
26 Secretary of State as a Notice of Proposed Rulemaking. The Division's staff also has recommended
27 that the Hearing Division schedule a hearing on Proposed Rule 103 after November 9, 1998.
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CONCLUSION OF LAW

The Commission has authority for the proposed rulemaking under Article XV, sections 5, 6, and 13 of the Arizona Constitution, and Title 10 and Title 29 of the Arizona Revised Statutes generally.

ORDER

THEREFORE, IT IS ORDERED that a hearing be set on this matter at the Commission Offices in Phoenix, Arizona no earlier than November 9, 1998.

IT IS FURTHER ORDERED that a Notice of Proposed Rulemaking be forwarded to the Office of the Secretary of State for publication in the Arizona Administrative Register.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

COMMISSIONER-CHAIRMAN

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JACK ROSE, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ___ day of _____, 1998.

JACK ROSE
Executive Secretary

DISSENT

(JW/js)