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Secretary of State

Public Services Division

1700 West Washington, 7th Floor

Phoenix, Arizona 85007

(602) 542-4086

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APR 21 1999

LEGAL DIV.
ARIZ. CORPORATION COMMISSION

MEMORANDUM

TO: Joanne MacDonnell, Director, Corporations Div.
AZ Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

FROM: Rhonda Paschal *R-P*
Editor, *Arizona Administrative Register*

RE: *Register Material*

DATE: April 15, 1999

The item[s] listed below appeared in the April 9 1999, issue of the *Register*.

- Notice of Final Rulemaking

If you detect any errors in the printing of these notices, please let me know. If you have any comments or questions, please contact me at (602) 542-4086.

R99-98 Apr. 9 Key

GOVERNOR'S REGULATORY REVIEW COUNCIL
(G. R. R.C.)
CERTIFICATE OF APPROVAL OF FINAL RULES

APR 27 PM '99

- 1. Agency Name: CORPORATION COMMISSION
- 2. Chapter Heading: Corporation Commission - Corporations and Associations
- 3. Code Citation for the Chapter: 14 A.A.C. 1
- 4. The Subchapters, if applicable; the Articles; the Parts, if applicable, and the Sections involved in the rulemaking, listed in alphabetical and numerical order:

Subchapters, Articles, Parts and Sections
(in alphabetical and numerical order)

Action:
(preferred, not required)

R14-1-103

New Section

- 5. The rules contained in this package are approved as final rules.

6. Jeanne Hann
Signature of Jeanne Hann
GRRC Administrator

3/3/99
Date of Signing

Jeanne Hann
Typed Name of Jeanne Hann
GRRC Administrator

R99-98 Apr. 9 1999

AGENCY CERTIFICATE

- 1. Agency name: Arizona Corporation Commission
- 2. Chapter heading: Chapter 1. Corporation Commission-Corporations and Associations
- 3. Code citation for the Chapter: 14 A.A.C. 1
- 4. The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, listed in alphabetical and numerical order:

Subchapters, Articles, Parts, and Sections	Action:
Article 1.	
R14-1-103	New Section

- 5. The rules contained in this package are true and correct as adopted.

6. Stuart Bracknev 3-17-99

Signature of Agency Chief Executive Officer

Date of signing

Stuart Bracknev

Acting Executive Secretary

Printed or typed name of signer

Title of signer

- 7. No changes have been made to these rules since the Governor's Regulatory Review Council approved the rules.

Apr. 9 Re
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R99-98

NOTICE OF FINAL RULEMAKING

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;

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SECURITIES REGULATION

CHAPTER 1. CORPORATION COMMISSION

MAR 10 11 08 AM '99

CORPORATIONS AND ASSOCIATIONS

PREAMBLE

- 1. Sections Affected Rulemaking Action
R14-1-103 New Section
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Arizona Constitution, Article XV, §§ 4, 5, 6, and 19

Authorizing statute: A.R.S. § 10-130

Implementing statute: A.R.S. §§ 41-1072 through -1078

- 3. The effective date of the rules: Upon filing with the Secretary of State
- 4. A list of all previous notices appearing in the Register addressing the final rule:
4 A.A.R. 2710, September 25, 1998 (Notice of Docket Opening).
4 A.A.R. 2905, October 9, 1998 (Notice of Proposed Rulemaking)

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

Name: Joanne MacDonnell, Director, Corporations Division
Bill Parkerson, Deputy Director, Corporations Division

Address: Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Telephone: (602) 542-3521

Facsimile number: (602) 542-0900

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

The purpose of this rulemaking is to implement time-frames for the processing of applications for licenses issued by the Corporations Division ("Division") of the Arizona Corporation Commission. These licenses include articles of incorporation, applications for authority to transact business, applications for authority to conduct affairs, articles of merger, articles of domestication, articles of organization, and applications for registration of foreign limited liabilities companies. The new rule implements requirements identified in A.R.S. §§ 41-1072 through -1078. The majority of applications for licenses filed with the Division are handled on an "expedited" basis. This expedited process is prescribed by statute in A.R.S. § 10-122.F.2 and is not covered by R14-1-103.

The Commission believes that the overall time frame of 360 days prescribed in R14-1-103 is necessary in order to ensure that the Division will be able to timely process all applications. The Division cannot control the number of filings it receives and the timing of those filings. Corporate filings have risen steadily since 1981, and last year continued this trend.

The Division's backlog of unprocessed non-expedited applications is currently five to seven weeks. However, during January and February of 1998, the Division had approximately nine to ten months of backlogged applications. This resulted from a high number of year-end filings. In the ensuing year, the Division has made changes to increase productivity, such as redesigning its phone bank and making additional information available on its web page. The Division also received an infusion of \$60,000 from the Commission's Securities Division in order to hire temporary employees. These measures have reduced the backlog considerably, but the additional money received from the Securities Division was an extraordinary circumstance that will not recur.

Several new procedures that will soon be implemented have the potential to slow processing time of corporate filings. In the coming year, the Division will be redesigning its computer system and acquiring an imaging system. Both of these projects will improve the quality of the public records maintained by the Commission. However, at least during the implementation period and possibly thereafter, these systems will add to processing time.

In summary, based on historical experience, expected seasonal fluctuations in workload, staffing levels which have remained relatively constant since 1994, and the estimated time associated with the implementation of new systems, the Division believes that a time period of 360 days is necessary in order to ensure its ability to comply with the proposed rule.

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

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

The Proposed Rule will have minimal financial impact unless the Commission routinely fails to meet the time-frames. Such 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, however, does not foresee difficulty in complying with the proposed time-frames.

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

R14-1-103(C): insert "of the date" after "days"

R14-1-103(C): replace "of" with "on" after "date"

R14-1-103(C): after "deficiency", insert "or permit the applicant to remedy the deficiencies

based on the following two factors:

1. Amount of information or work necessary to remedy the deficiencies; or
2. Effect on other Commission priorities."

R14-1-103(E)(1): insert "completeness" after "Administrative"

Other grammatical and stylistic changes have been made to the text of the proposed rule at the recommendation of the Staff of the Governor's Regulatory Review Council.

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

No written comments on the Rule have been filed in this Docket, and there were no public comments on the Rule at the hearing. Prior to the hearing, the Corporations Division discussed the Rule with its advisory council, which consists of representatives from businesses that follow corporations issues, and of attorneys from various law practices around the state. The Corporations Division stated that the advisory council did not suggest any changes to the Rule as proposed.

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:

Not applicable

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

No

15. The full text of the rules follows:

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND
ASSOCIATIONS; SECURITIES REGULATION
CHAPTER 1. CORPORATION COMMISSION
CORPORATIONS AND ASSOCIATIONS
ARTICLE 1. IN GENERAL

Section

R14-1-103. Licensing Time-frames

TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND
ASSOCIATIONS; SECURITIES REGULATION
CHAPTER 1. CORPORATION COMMISSION
CORPORATIONS AND ASSOCIATIONS
ARTICLE 1. IN GENERAL

Section

R14-1-103. Licensing Time-frames

- A. This rule prescribes time-frames for the processing of any certificate or license issued by the Arizona Corporation Commission pursuant to Title 10 and Title 29 of the Arizona Revised Statutes.
- B. Within 270 calendar days after receipt of an initial or renewal application for any certificate or license provided pursuant to Title 10 or Title 29 of the Arizona Revised Statutes, staff shall notify the applicant, in writing, that the application is either administratively complete or deficient. If the application is deficient, the notice shall specify all deficiencies.
- C. The Commission may terminate an application if the applicant does not remedy all deficiencies within 30 calendar days of the date on the notice of deficiency or permit the applicant to remedy the deficiencies based on the following two factors:
1. Amount of information or work necessary to remedy the deficiencies; or
 2. Effect on other Commission priorities.
- D. After an application has been deemed administratively complete, and the applicant has been notified in writing, staff shall have 90 calendar days for substantive review of the application.
- E. For purposes of A.R.S. Title 41, Chapter 6, Article 7.1, the Commission has established the following time-frames:
1. Administrative completeness review time-frame: 270 calendar days.
 2. Substantive review time-frame: 90 calendar days.
 3. Overall time-frame: 360 calendar days.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

A.A.C. R14-1-103

This explanatory statement is provided to comply with the provisions of A.R.S. §§ 41-1052 and 41-1055.

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

1. Proposed Rulemaking.

Proposed rule A.A.C. R14-1-103 ("Rule") establishes time-frames within which the Corporations Division ("Division") shall process articles of incorporation filed with the Commission pursuant to Title 10 and Title 29 of the Arizona Revised Statutes. The Rule is mandated by A.R.S. §§ 41-1072 et seq. ("Time-Frame Statutes").

The Rule 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 amount of time currently necessary to process applications for licenses covered by the Time Frame Statutes, 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 the Rule 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 Rule analyzes the costs, savings, and benefits that will accrue to the Commission and the public. The Rule's 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 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.

Joanne MacDonnell
Director of Corporations
Arizona Corporation Commission
1300 West Washington
Phoenix, AZ 85007

Bill Parkerson
Deputy Director of Corporations
Arizona Corporation Commission
1300 West Washington
Phoenix, AZ 85007

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

1. Proposed Rulemaking.

Proposed A.A.C. R14-1-103 ("Rule") establishes time frames within which the Corporations Division ("Division") shall process articles of incorporation filed with the Commission pursuant to Title 10 and Title 20 of the Arizona Revised Statutes. The Rule is mandated by A.R.S. §§ 41-1072 et seq. ("Time-Frame Statutes").

The Rule 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 amount of time currently necessary to process applications for licenses covered by the Time Frame Statutes, 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 and will receive necessary budget appropriations in the future.

Further, the Commission has assumed that the number of corporate filings will continue to increase.

In general there should be no economic impact from the adoption of the Rule. Because the Rule 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 13,190 articles of incorporation, 1,118 articles of merger, 3,841 applications for authority for corporations, 8,733 articles of organization, and 782 applications for registration for limited liability companies.

b. Cost Bearers

The costs associated with the rulemaking process will 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 the imposition of clear time-frames for the application process.

3. Cost/Benefit Analysis.

a. Probable costs and benefits to the implementing agencies

The 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 adversely affected by the proposed Rule. 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 imposition of clear time-frames for the application process.

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 will 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 the Rule.

6. Probable Effect on State Revenues.

The Rule 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 et seq.; 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.

CONCISE EXPLANATORY STATEMENT

A.A.C. R14-1-103

This explanatory statement is provided to comply with the provisions of A.R.S. § 41-1036.

I. CHANGES IN THE TEXT OF THE PROPOSED RULE FROM THAT CONTAINED IN THE NOTICE OF RULEMAKING FILED WITH THE SECRETARY OF STATE

R14-1-103(C): insert "of date" after "days"

R14-1-103(C): replace "of" with "on" after "date"

R14-1-103(C): after "deficiency", insert "or permit the applicant to remedy the deficiencies based on the following two factors:

1. Amount of information or work necessary to remedy the deficiencies; or
2. Effect on other Commission priorities."

R14-1-103(E)(1): insert "completeness" after "Administrative"

Other grammatical and stylistic changes have been made to the text of the proposed rule at the recommendation of the Staff of the Governor's Regulatory Review Council.

II. EVALUATION OF THE ARGUMENTS FOR AND AGAINST THE PROPOSED RULE

ARTICLE 1. IN GENERAL

A.A.C. R14-1-103: In response to the requirement of A.R.S. § 41-1072 et seq. to enact licensing time-frame rules, the Arizona Corporation Commission initiated rulemaking to prescribe time-frames for the processing of any certificate or license issued by the Arizona Corporation Commission pursuant to Title 10 and Title 29 of the Arizona Revised Statutes. To provide the public with clear time-frames for processing certificate or license applications, the

Commission has promulgated new rule A.A.C. R14-1-103. A.A.C. R14-1-103 establishes an overall time-frame of 360 calendar days, which includes an administrative review time-frame of 270 calendar days and a substantive review time-frame of 90 calendar days.

The Corporation Commission recognized a need for specific time-frames applicable to the procedures mandated by A.R.S. § 41-1074 for deficient applications. A.A.C. R14-1-103 therefore provides that once a notice of deficiency has issued, the applicant has thirty calendar days in which to satisfy those deficiencies. If the applicant does not remedy all deficiencies within thirty days of notice, the Commission may terminate the application. Once an application is terminated, the time-frames required by A.A.C. R14-1-103 will begin anew upon re-application.

A.A.C. 14-1-103 is designed to provide the public with clear time-frames for the processing of applications. No oral or written public comments were received concerning the rule.