

NOTICE OF PROPOSED RULEMAKING

TITLE 11. MINES

CHAPTER 3. STATE MINE INSPECTOR AGGREGATE MINED LAND RECLAMATION

PREAMBLE

**1. Articles, Parts, and Sections Affected**

**Rulemaking Action**

Article 1	New Article
R11-3-101	New Section
Article 2	New Article
R11-3-201	New Section
R11-3-202	New Section
R11-3-203	New Section
R11-3-204	New Section
R11-3-205	New Section
R11-3-206	New Section
R11-3-207	New Section
R11-3-208	New Section
R11-3-209	New Section
R11-3-210	New Section
R11-3-211	New Section
Article 3	New Article
R11-3-301	New Section
R11-3-302	New Section
Article 4	New Article
R11-3-401	New Section
R11-3-402	New Section
Article 5	New Article
R11-3-501	New Section
R11-3-502	New Section
R11-3-503	New Section
R11-3-504	New Section

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R11-3-505	New Section
Article 6	New Article
R11-3-601	New Section
R11-3-602	New Section
R11-3-603	New Section
Article 7	New Article
R11-3-701	New Section
R11-3-702	New Section
R11-3-703	New Section
R11-3-704	New Section
R11-3-705	New Section
Article 8	New Article
R11-3-801	New Section
R11-3-802	New Section
R11-3-803	New Section
R11-3-804	New Section
R11-3-805	New Section
R11-3-806	New Section
R11-3-807	New Section
R11-3-808	New Section
R11-3-809	New Section
R11-3-810	New Section
R11-3-811	New Section
R11-3-812	New Section
R11-3-813	New Section
R11-3-814	New Section
R11-3-815	New Section
R11-3-816	New Section
R11-3-817	New Section
R11-3-818	New Section
R11-3-819	New Section

**2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 27-1204(A)

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Implementing statute: A.R.S. §§ 27-1204, 27-1227, 27-1228, 27-1229, 27-1230, 27-1233, 27-1236, 27-1277, 27-1292, and 27-1292

**3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Rulemaking Docket Opening: XX A.A.R. XX

**4. The agency's contact person who can answer questions about the rulemaking:**

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**5. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**

The legislature enacted the Aggregate Mine Land Reclamation Act (A.R.S. Title 27, Chapter 6) in 2005. The Act requires aggregate exploration operations and aggregate mining units to submit reclamation plans and financial assurance mechanisms to the Office of the State Mine Inspector. The Act requires the Inspector to make rules consistent with the Act for reclamation of surface disturbances at aggregate exploration operations and mining units, financial assurances, and notice and public meetings. This rulemaking makes the required rules.

A Notice of Proposed Rulemaking for the required rules was published at 12 A.A.R. 742, March 10, 2006. The rulemaking process was not completed. However, in the interim, members of the industry have been complying with the proposed rules.

This rulemaking is exempt from Executive Order 2016-03 under paragraph (3)(a) of the Order.

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

The Inspector does not intend to review or rely on a study in the Inspector's evaluation of or justification for a rule in this rulemaking.

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

Not applicable

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

The cost of reclaiming a surface disturbance of more than five acres can be significant. However, it is statute rather than these rules that require the owner or operator of an exploration operation or aggregate mining unit to develop and obtain the Inspector's approval of a reclamation plan and to provide a financial assurance mechanism before creating a surface disturbance of more than five acres (See A.R.S. §§ 27-1221 and 27-1222).

There are some costs associated with developing and obtaining the Inspector's approval of a reclamation plan and financial assurance mechanism. There are also costs associated with the standards a reclamation plan must meet. As specifically authorized by statute (See A.R.S. § 27-1233), there are fees to be paid for review and approval of a reclamation plan or a substantial change to a reclamation plan.

The rules allow use of bond pooling as a financial assurance mechanism. This mechanism was included to reduce the cost of providing financial assurance for small owners and operators.

The legislature required reclamation of aggregate mined lands to protect the environment and to protect public health and safety. The costs associated with reclaiming aggregate mined lands are a cost of doing business offset by the public benefits.

**9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:**

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Web site: <https://asmi.az.gov>

**10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

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An oral proceeding regarding the proposed rules will be held as follows:

Date:

Time:

Location:

**11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

None

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

The approvals required under the Act are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

The rules are not more stringent than federal law because there are no federal laws regulating reclamation of aggregate mining units or facilities on non-federal lands. There are however, numerous federal environmental laws impacting aggregate mining activities (See 40 CFR) and laws regulating mine safety and health issues (See 30 CFR, Chapter 1, Subchapter A). None of these laws is specifically applicable to this rulemaking.

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

No analysis was submitted

**12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

None

**13. The full text of the rules follows:**

**TITLE 11. MINES**

**CHAPTER 3. STATE MINE INSPECTOR**  
**AGGREGATE MINED LAND RECLAMATION**

**ARTICLE 1. DEFINITIONS**

Section

R11-3-101.      Definitions

**ARTICLE 2. GENERAL REGULATORY PROVISIONS**

Section

R11-3-201.      Submitting Documents to the Inspector

R11-3-202.      Retaining Documents

R11-3-203.      Extension of Time for Submitting a Reclamation Plan

R11-3-204.      Reclamation under a Federal Plan

R11-3-205.      Extension of Time to Initiate Reclamation

R11-3-206.      Extension of Time to Complete Reclamation

R11-3-207.      Notice of Proposed Substantial Change to Approved Reclamation Plan

R11-3-208.      Cessation of Mining Activity

R11-3-209.      Fees

R11-3-210.      Public Notices and Meetings

R11-3-211.      Public Record Request

**ARTICLE 3. EXPLORATION OPERATION RECLAMATION PLAN**

Section

R11-3-301.      Content of Exploration Operation Reclamation Plan

R11-3-302.      Annual Renewal of Exploration Operation Reclamation Plan

**ARTICLE 4. EXPLORATION OPERATION RECLAMATION STANDARDS**

Section

R11-3-401.      Restricted Access

R11-3-402.      Trash Removal

**ARTICLE 5. MINING UNIT RECLAMATION PLAN**

Section

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- R11-3-501.     Content of Mining Unit Reclamation Plan
- R11-3-502.     Estimating the Cost of Reclamation
- R11-3-503.     Post-aggregate Mining Land Use
- R11-3-504.     Annual Status Report
- R11-3-505.     Term of an Approved Reclamation Plan

## **ARTICLE 6. MINING UNIT RECLAMATION STANDARDS**

### Section

- R11-3-601.     Public Safety Standards
- R11-3-602.     Erosion Control and Topographic Contouring
- R11-3-603.     Roads

## **ARTICLE 7. REVEGETATION AND SOIL STANDARDS**

### Section

- R11-3-701.     Revegetation Provisions
- R11-3-702.     Revegetation Standards
- R11-3-703.     Soil Conservation
- R11-3-704.     Redistribution of Soil
- R11-3-705.     Off-site Soil and Inert Materials; Final Capping; Slope and Bench Building

## **ARTICLE 8. FINANCIAL ASSURANCE**

### Section

- R11-3-801.     Definitions
- R11-3-802.     Amount of Financial Assurance
- R11-3-803.     Blanket Financial Assurance
- R11-3-804.     Surety Bond
- R11-3-805.     Certificate of Deposit
- R11-3-806.     Trust
- R11-3-807.     Letter of Credit
- R11-3-808.     Insurance Policy
- R11-3-809.     Certificate of Self-insurance
- R11-3-810.     Cash Deposit
- R11-3-811.     Annuity
- R11-3-812.     Bonding Pool

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- R11-3-813.     Limited Individual Financial Assurance
- R11-3-814.     Final Action on Financial Assurance Mechanisms
- R11-3-815.     Incremental Financial Assurance
- R11-3-816.     Application for Release of Financial Assurance
- R11-3-817.     Forfeiture Criteria; Forfeiture of Financial Assurance
- R11-3-818.     Notice of Forfeiture Action; Avoidance of Forfeiture
- R11-3-819.     Municipal, County, or State Government



**ARTICLE 1. DEFINITIONS**

**R11-3-101. Definitions**

The definitions at A.R.S. §§ 27-441 and 27-1201 apply to this Chapter. Additionally, unless the context requires otherwise, in this Chapter:

“Act” means the Arizona Mined Land Reclamation Act, enacted in 2005, A.R.S. § 27-1201 *et seq.*, as amended.

“Approved reclamation plan” means a plan for reclaiming surface disturbances submitted by the responsible party and approved by the Inspector.

“Borrow pit” means an unregulated excavation surface disturbance from which overburden is extracted for use as fill material in the form in which it is extracted.

“Completion,” means permanent discontinuance of mining activity of an exploration operation or aggregate mining unit without the intent to resume mining activity.

“Growth media” means substances or materials that promote or support vegetation.

“Inert material” means broken concrete, asphalt, brick, rock, gravel, sand, soil, and similar materials that are neither chemically nor biologically reactive and will not decompose. When subjected to a water leach test, inert material will not leach substances in a concentration greater than the aquifer water quality standard established under A.R.S. § 49-223.

“Inspection” means a visual review of an exploration operation or aggregate mining unit to assure compliance with the Act, this Chapter, and conditions of an approved reclamation plan.

“Institutional controls” means mechanisms that guide, manage, or exercise restraint or direction, including deed restrictions, to protect public safety, fencing districts, and physical control of access.

“Mining activity” means any action directly involved in mineral exploration, development, or production at or on an exploration operation or aggregate mining unit.

“Operator” means a person or the person’s designated agent, who is legally responsible for directing mining activity at an exploration operation or aggregate mining unit.

“Overburden” means material covering an area that lends itself to economical exploitation.

“Owner” means a person that owns land with surface disturbances subject to the Act and this Chapter.

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“Person” means an individual, corporation, governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

“Responsible party” means the owner or operator designated in an aggregate site reclamation plan as the person responsible under the Act and this Chapter.

“Riprap” means loose stone or other material used to armor shorelines, streambeds, bridge abutments, pilings, and other structures against erosion.

“Showing of good cause” means a demonstration by the responsible party of:

A reason beyond the responsible party’s control that prevents or limits the ability to act within required time limits; or

Good faith efforts toward the coordination and submission of a aggregate site reclamation plan.

Substantial change” means one or more of the following alterations to an approved reclamation plan:

Change in the post-aggregate mining use of the land from that stated in the approved reclamation plan;

New surface disturbance that cannot be reclaimed in a manner substantially similar to that stated in the approved reclamation plan;

Change to the final topography of a surface disturbance that substantially affects the reclamation measures stated in the approved reclamation plan;

Change to reclamation measures stated in the approved reclamation plan that has the effect of lessening restrictions to public access to pits or other surface features that may cause a hazard to persons legally on the premises;

Change to reclamation measures stated in the approved reclamation plan that materially affects post-aggregate mining land use;

Change to reclamation measures stated in the approved reclamation plan that materially affects the reclamation of access roads, drill pads, drill holes, trenches, and other exploration workings;

New surface disturbance or expansion of an existing surface disturbance beyond the contours and boundaries stated in the approved reclamation plan;

Significant change in the cost estimate to perform reclamation measures stated in the approved reclamation plan unless the change results from inflation; or

Extension of more than one year in the date of completion stated in the approved reclamation plan.

“Unregulated excavation surface disturbance” means a surface disturbance or excavation on private property that is not an integral or active part of an aggregate mining activity at an aggregate mining facility and does

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not require reclamation under the Act or this Chapter. Unregulated excavation surface disturbance includes construction excavations, borrow pits, and other site-development excavations that are not used for aggregate development, occur on a one-time or intermittent basis, and involve no milling except use of a scalping screen to remove large rocks, wood, and trash.

## **ARTICLE 2. GENERAL REGULATORY PROVISIONS**

### **R11-3-201. Submitting Documents to the Inspector**

- A.** A responsible party shall submit to the Inspector any document required under the Act or this Chapter by the U.S. Postal Service with a receipt or hand delivery.
- B.** If the document submitted under subsection (A) is a reclamation plan, the responsible party shall ensure an original plus three copies, including any attachments to the plan or amendments, are submitted to the Inspector.
- C.** For all documents submitted under subsection (A), the responsible party shall:
  - 1. Sign and date the documents or ensure the documents are signed and dated by an individual with legal authority from the owner or operator; and
  - 2. Include the names and addresses of the owner and operator.

### **R11-3-202. Retaining Documents**

- A.** A responsible party shall retain:
  - 1. A copy of the current approved reclamation plan,
  - 2. All reclamation plans for areas for which reclamation is complete, and
  - 3. The most recent annual status report required under R11-3-504.
- B.** The responsible party shall retain the documents listed in subsection (A) until all reclamation measures are complete.
- C.** The responsible party shall make the documents listed in subsection (A) available, on site, for examination by the Inspector.

### **R11-3-203. Extension of Time for Submitting a Reclamation Plan**

- A.** As provided under A.R.S. § 27-1222, the responsible party may petition the Inspector for extensions of time in which to submit a reclamation plan for an existing exploration operation or an existing aggregate mining unit.
- B.** The Inspector shall not grant an extension of more than 90 days.

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C. For each extension petition after the first, the responsible party shall ensure the revised petition identifies any changes in relevant factors that warrant an additional extension.

## **R11-3-204. Reclamation under a Federal Plan**

A. As authorized under A.R.S. § 27-1232, the responsible party of an exploration operation or aggregate mining unit located in whole or part on federally administered land may submit notice to the Inspector of the existence of an approved federal reclamation plan and financial assurance mechanism. The responsible party shall attach to the notice a copy of the approved federal reclamation plan and financial assurance mechanism.

B. Within 90 days after receiving the notice referenced in subsection (A), the Inspector shall determine whether the approved federal reclamation plan and financial assurance mechanism are consistent with the requirements of the Act and this Chapter. If the Inspector determines the approved federal reclamation plan and financial assurance mechanism;

1. Are consistent with the requirements of the Act and this Chapter, the Inspector shall provide written notice of the determination to the responsible party.
2. Are not consistent with the requirements of the Act and this Chapter, the Inspector shall provide written notice of the determination to the responsible party and explain the basis for the determination.

## **R11-3-205. Extension of Time to Initiate Reclamation**

A. If the owner or operator of an exploration operation or aggregate mining unit determines believes the conditions specified in A.R.S. § 27-1226(B) are met, the responsible party for the exploration operation or aggregate mining unit may submit a request for an extension of time to begin reclamation. The responsible party shall submit the request of an extension of time at least 45 days before the times specified in A.R.S. § 27-1226(A).

B. Within 90 days after receiving a request under subsection (A), the Inspector shall approve or disapprove the request and send written notice of the decision to the responsible party. If the Inspector fails to act on the request within 90 days after receiving the request, the request shall be deemed approved.

C. If the Inspector disapproves a request submitted under subsection (A), the Inspector shall include an explanation of reasons for the disapproval in the written notice sent under subsection (B).

## **R11-3-206. Extension of Time to Complete Reclamation**

A. A responsible party that submits a reclamation plan under R11-3-301 or R11-3-501 shall ensure the plan includes a time frame for completing the reclamation within two years after reclamation is initiated.

B. The responsible party may request an extension of time to complete the reclamation by complying with R11-3-207.

**R11-3-207. Notice of Proposed Substantial Change to Approved Reclamation Plan**

- A.** As required under A.R.S. § 27-1227(B), a responsible party that intends to make a change to an approved reclamation plan shall file notice of the proposed change with the Inspector and indicate the purpose and scope of the proposed change and whether the proposed change is believed to be substantial.
- B.** If the Inspector provides notice the proposed change is substantial, the responsible party shall submit the fee specified under R11-3-209.
- C.** The Inspector shall provide written notice to the responsible party approving or disapproving the proposed substantial change within 90 days after the notice in subsection (B) is received. If the Inspector disapproves the proposed substantial change, the written notice shall include an explanation of reasons for the disapproval.
- D.** Within 60 days after receiving notice of an approved substantial change, the responsible party shall make any required modifications to the financial assurance.

**R11-3-208. Cessation of Mining Activity**

- A.** If no mining takes place at an aggregate mining facility for 180 consecutive days, the responsible party of the aggregate mining facility shall provide to the Inspector the notice required under A.R.S. § 27-303. The responsible party shall provide the notice using a form acceptable to the Inspector.
- B.** If the responsible party fails to comply with subsection (A), the Inspector shall determine mining has ceased if any of the following occur:

  - 1.** The person conducting the aggregate mining activity has gone out of business and the Inspector has received no notice from a succeeding legal entity;
  - 2.** No aggregate mining activity has occurred during the last 12 months and no mining entity has notified the Inspector of an agreement under A.R.S. § 27-1228 to transfer an approved reclamation plan;
  - 3.** An extension of time to initiate reclamation provided under R11-3-205 has expired and no other extension has been requested; or
  - 4.** The annual status report required under R11-3-504 is at least 180 days overdue.
- C.** If the Inspector determines under subsection (B) that mining has ceased at an aggregate mining facility, the Inspector shall provide written notice of the determination to the last known address of the responsible party by the U.S. Postal Service with receipt or hand delivery. The notice shall inform the responsible party of the determination of cessation of mining and provide 45 days in which to respond to the determination. If the responsible party does not respond within the 45 days provided, the determination of cessation is final.
- D.** The date on which the determination of cessation is final is the date the responsible party shall use to calculate, under A.R.S. § 27-1226, the date for initiation of reclamation.

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## **R11-3-209. Fees**

As specifically authorized under A.R.S. § 27-1233, the Inspector establishes and shall collect the following fees:

1. Reclamation plan for an exploration operation: \$3,800;
2. Substantial change to an approved exploration operation reclamation plan: \$1,565 for up to 20 acres of disturbances, including testing plots or roadway disturbances, plus \$20/acre when the change is greater than 10 percent or 20 acres, whichever is less;
3. Reclamation plan for aggregate mining unit or facility: \$3,800 for up to 160 acres of disturbance plus \$20/acre of additional disturbance; and
4. Substantial change to an approved aggregate mining unit or facility reclamation plan: \$1,565 plus \$20/acre when the change is greater than 10 percent or 20 acres, whichever is less.

## **R11-3-210. Public Notices and Meetings**

**A.** The Inspector shall ensure notices required under A.R.S. § 27-1229 or 27-1230 include:

1. The mailing address of the Inspector;
2. The date and time of the deadline for submitting written comments regarding the proposed reclamation plan or substantial change to an approved reclamation plan;
3. The date, time, and location of a public meeting regarding the proposed reclamation plan or substantial change to an approved reclamation plan; and
4. Information regarding where the proposed reclamation plan or substantial change to an approved reclamation plan may be accessed.

**B.** A person that submits a written comment shall ensure the comment:

1. Includes the name and mailing address of the commenter,
2. States clearly why the proposed reclamation plan or substantial change to an approved reclamation plan should be approved or disapproved by the Inspector, and
3. Is signed by the commenter or the commenter's agent or attorney.

**C.** The Inspector shall ensure public meetings conducted under A.R.S. § 27-1229 or 27-1230:

1. Inform the public of the propose reclamation plan or substantial change to an approved reclamation plan, and
2. Allow time for persons to make statements and submit written comment regarding the propose reclamation plan or substantial change to an approved reclamation plan.

**D.** The person presiding at a public meeting conducted under A.R.S. § 27-1229 or 27-1230 shall maintain order and allot equitable time for oral comments by participants.

**E.** The Inspector may schedule persons who have an interest in or are knowledgeable about the propose

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reclamation plan or substantial change to an approved reclamation plan to speak at the public meeting conducted under A.R.S. § 27-1229 or 27-1230.

**F.** With regard to public meetings conducted under A.R.S. § 27-1229 or 27-1230, the Inspector shall:

1. Maintain a record of the public meetings and make the record available to the public during normal business hours at the Inspector's office; and
2. Include the agenda, written comments submitted by the deadline specified in subsection (A)(2), and electronic recording or transcript of the public meeting in the record maintained under subsection (F)(2).

## **R11-3-211. Public Record Request**

**A.** All records, reports, and other information obtained or prepared by the Inspector are public records.

**B.** Under A.R.S. § 39-121.01, a person may request to review or copy any public record of which the Inspector is custodian.

**C.** If the Inspector determines a requested public record has been designated confidential or a trade secret by the responsible party, the Inspector shall notify the responsible party in writing of the Inspector's intent to disclose the public record 30 days before the disclosure.

## **ARTICLE 3. EXPLORATION OPERATION RECLAMATION PLAN**

### **R11-3-301. Content of Exploration Operation Reclamation Plan**

**A.** The responsible party of an exploration operation shall submit to the Inspector a reclamation plan before the exploration operation disturbs more than five contiguous acres. The responsible party shall ensure the reclamation plan meets the criteria for approval specified in A.R.S. § 27-1253 and includes the following:

1. Information specified under A.R.S. § 27-1251(A);
2. A figure or exhibit of the layout of the exploration operation showing the location, nature, and acreage of each disturbance. The sketch does not need to include specific survey coordinates identifying exact topographic features or geographic locations; and
3. An indication whether the owner or operator is the responsible party and if the operator is the responsible party, a description of the legal relationship between the owner and the operator including the length of the lease and a general description of lease provisions governing reclamation.

**B.** In addition to the requirements under subsection (A) and as made necessary by the financial assurance requirements of the Act and this Chapter, the responsible party of an existing exploration operation shall include in a reclamation plan an estimate of costs to perform the reclamation measures.

**C.** Within 60 days after receiving a reclamation plan submitted under this Section, the Inspector shall approve the reclamation plan if it meets the requirements in this Section.

**R11-3-302. Annual Renewal of Exploration Operation Reclamation Plan**

- A.** As required under A.R.S. § 27-1255, the responsible party for an approved exploration operation reclamation plan shall submit to the Inspector a written request to renew the reclamation plan. The responsible party shall:
1. Submit the request to renew within 60 days after the anniversary date of approval of the reclamation plan, and
  2. Include the following in the request to renew:
    - a. Current status of the exploration operation or reclamation;
    - b. Total number of acres of surface disturbance;
    - c. Number of acres reclaimed during the reporting year;
    - d. Number of acres of surface disturbance that have not been reclaimed;
    - e. Proposed modifications to the approved reclamation plan, if any;
    - f. Estimate of additional financial assurance, if necessary, to address the proposed modifications to the approved reclamation plan; and
    - g. If a proposed modification constitutes a substantial change, the fee specified under R11-3-209.
- B.** Within 60 days after receiving a request to renew an approved exploration operation reclamation plan, the Inspector shall provide the responsible party with written notice the request is approved if the request meets the standards specified in subsection (A) and does not propose a modification that constitutes a substantial change. If the Inspector fails to provide written notice of approval within 60 days, the request to renew, including modifications that do not constitute a substantial change, is approved.
- C.** Within 60 days after renewal under subsection (B), the responsible party shall submit to the Inspector additional financial assurance mechanisms, if applicable, to address approved plan modifications. The Inspector shall accept or reject the additional financial assurance mechanisms within 30 days after receipt.
- D.** If a request to renew an approved exploration operation reclamation plan contains a proposed modification that constitutes a substantial change, the Inspector shall follow the public notice and meeting procedures required under A.R.S. § 27-1229 and specified under R11-3-210.

**ARTICLE 4. EXPLORATION OPERATION RECLAMATION STANDARDS**

**R11-3-401. Restricted Access**

If an open pit or trench will remain at a place frequented by the public, the responsible party for an exploration operation reclamation plan shall ensure access to the place of the open pit or trench is restricted by measures allowed by law. These measures may include fencing and posting visible warning signs.



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## **R11-3-402. Trash Removal**

The responsible party shall ensure that trash and other materials and structures incidental to exploration that pose a threat to public safety, create a public nuisance, or are inconsistent with an approved reclamation plan are removed promptly.

## **ARTICLE 5. MINING UNIT RECLAMATION PLAN**

### **R11-3-501. Content of Mining Unit Reclamation Plan**

- A.** Before beginning any mining activity, the responsible party of an aggregate mining facility shall submit to the Inspector a reclamation plan. The responsible party shall ensure the reclamation plan includes the information specified in A.R.S. § 27-1271, meets the standards in Articles 6 and 7, and includes the following:
- 1.** Maps of the existing or proposed surface disturbances for all aggregate mining units of the aggregate mining facility indicating the following, as applicable:
    - a.** Boundaries of each aggregate mining unit including any offsets and setbacks;
    - b.** Boundaries of the aggregate mining facility on which the aggregate mining unit is located;
    - c.** Existing and proposed post-aggregate mining sites;
    - d.** Post-reclamation physical topography including all surface elevations and approximate under-water surface configurations or elevations;
    - e.** Natural features including surface water and the elevation of any pond or lake;
    - f.** Surface disturbances including pits, excavations, walls, worksite pads, parking lots, storage areas, water dikes or ditches, temporary or permanent structures, temporary trailers or pads, and equipment;
    - g.** Aggregate mine development rock piles, soil or growth media storage piles, overburden stockpiles, and other piles of unconsolidated materials;
    - h.** Settling ponds and waste materials or fines materials;
    - i.** Roads, building or foundations and pads, other structures, stationary equipment, fences, including security fences and gates, and berms;
    - j.** Other features that will be abated or removed including water wells, power lines, utilities, and buildings not required in the post-aggregate mining land use; and
    - k.** Final post-aggregate mining land use objectives for each portion of surface disturbance in each aggregate mining unit. Multiple post-aggregate mining land uses may be listed for an aggregate mining unit but each use is required to meet the requirements of the Act and this Chapter;
  - 2.** An indication whether the owner or operator is the responsible party and if the operator is the responsible party, a description of the legal relationship between the owner and the operator including the length of the lease and a general description of lease provisions governing reclamation.

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- B. The Inspector shall approve or disapprove a submitted reclamation plan for an aggregate mining unit according to the licensing time frames specified in A.R.S. § 27-1272.
- C. If engineered fill required under an approved reclamation plan for an aggregate mining unit cannot be performed within one year after cessation of mining or the last mining activity, the responsible party shall submit to the Inspector a request for additional time. The Inspector shall retain a financial assurance mechanism until all safe slope building and stability procedures are completed consistent with the approved reclamation plan.

## **R11-3-502. Estimating the Cost of Reclamation**

- A. When submitting estimated costs to perform a proposed reclamation, as required under A.R.S. §§ 27-1271(B)(11) and 27-1292, the responsible party shall ensure the estimate equals the amount necessary for a third party to perform each proposed reclamation measure listed in the proposed reclamation plan. The responsible party shall ensure the estimate includes:
  - 1. Itemized calculation of estimated cost to perform all reclamation measures for each category of mining activity;
  - 2. Documentation demonstrating how the estimated cost for each category of mining activity, including subtotals and totals, was calculated; and
  - 3. Identification of the source of information used to estimate each cost.
- B. The responsible party shall ensure the estimated costs submitted under subsection (A) cover all mining activities addressed in the reclamation plan including:
  - 1. Earth moving, regrading, and stabilization of surface disturbances and slopes;
  - 2. Revegetation, preparation of seedbed, and planting or other stabilization methods;
  - 3. Demolition of buildings and other structures not to remain after cessation of mining;
  - 4. Removal of trash, scrap metal, and other materials;
  - 5. Equipment mobilization and demobilization;
  - 6. On-going activities required to maintain the effectiveness of reclamation and stabilization or in place of reclamation. This includes periodic clean-out of sediment basins and maintenance of signs, berms, and fences used to prevent access to areas that pose a threat to public safety;
  - 7. Contractor profit; and
  - 8. Administrative overhead.
- C. The Inspector shall review the estimated costs submitted under subsection (A) and determine whether the estimate is adequate to complete all required reclamation. The Inspector shall use the estimated costs to determine the amount of required financial assurance.
- D. If the Inspector determines the estimated costs submitted under subsection (A) are inadequate to complete all

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required reclamation, the Inspector shall deem the reclamation plan incomplete under A.R.S. §§ 27-1252 or 27-1272.

## **R11-3-503. Post-aggregate Mining Land Use**

- A.** The responsible party shall ensure that a reclamation plan includes reclamation measures for post-aggregate mining land use of each disturbed area in an entire area of disturbances.
- B.** A reclamation plan may identify multiple post-aggregate mining land uses for an entire area of disturbances. However, the responsible party shall ensure each disturbed area has a specifically designated post-aggregate mining land use.

## **R11-3-504. Annual Status Report**

- A.** As required under A.R.S. § 27-1277, a responsible party shall submit an annual status report to the Inspector using a form prescribed by the Inspector.
- B.** The responsible party shall submit the annual status report within 60 days after the anniversary date of the approval of the reclamation plan.
- C.** The responsible party shall submit a separate annual status report for each approved reclamation plan.
- D.** The responsible party shall include in the annual status report the information listed under A.R.S. § 27-1277(B) for the year preceding the anniversary date of the approval of the reclamation plan.
- E.** In reporting the status of the aggregate mining operation at the end of the reporting year, as required under A.R.S. § 27-1277(B)(3), the responsible party shall address:
  - 1.** Whether the aggregate mining operation is currently active, inactive, or in maintenance status;
  - 2.** Changes to the mining site such as phases, borders, and offsets or setbacks;
  - 3.** Changes to security measures such as fences, gates, berms, or dikes;
  - 4.** Changes to costs for reclaiming the area of disturbance;
  - 5.** Financial assurance mechanism currently in effect and whether there has been a change in the financial assurance mechanism during the reporting year; and
  - 6.** A map, aerial photograph, or both identifying changes made during the reporting year. This includes:
    - a.** Location of changes to the boundaries of the area of disturbance including areas not identified in the original approved reclamation plan;
    - b.** Location of changes to the reclaimed area;
    - c.** Any new features such as berms, gates, dikes, or fences; and
    - d.** Any movement of process areas, roads, and stockpile areas.
- F.** If there have been no changes since the previous annual status report, the responsible party shall state in the annual status report that there are no changes since the previous annual status report.

**R11-3-505. Term of an Approved Reclamation Plan**

An approved reclamation plan and any approved substantial changes to the approved reclamation plan remain in effect until the reclamation is complete and all financial assurance is released.

**ARTICLE 6. MINING UNIT RECLAMATION STANDARDS**

**R11-3-601. Public Safety Standards**

- A.** The responsible party shall ensure reclamation activities at a mining unit are designed to reduce hazards to public safety to the extent technically and economically practicable by measures such as:
1. Removing scrap metal, wood, trash, and other debris that pose a threat to public safety, create a public nuisance, or are inconsistent with the approved reclamation plan;
  2. Re-grading slopes as prescribed under R11-3-602 and R11-3-705 for erosion control;
  3. Performing topographic engineering to ensure safe and stable seismic slope conditions; and
  4. Taking other practicable measures necessary to protect surrounding properties.
- B.** The responsible party shall ensure structures, equipment, and excavations at the reclamation site are maintained in a manner that is safe and restricts public access.
- C.** If a hazard to public safety cannot be reduced adequately through reclamation measures, if structures, equipment, or excavations remain as part of the approved post-aggregate mining land use, or if a mining unit is exempt from reclamation under A.R.S. § 27-1275(A), the responsible party shall take the following steps to protect public safety:
1. Construct berms, fences, barriers, or a combination of these measures to restrict public access to the reclamation site;
  2. Post visible warning signs in locations at which public access to the reclamation site is available; and
  3. Implement institutional controls to provide safe and stable conditions by all practicable measures.

**R11-3-602. Erosion Control and Topographic Contouring**

- A.** The responsible party shall ensure an aggregate mining unit is reclaimed to a condition that minimizes response to erosion and seismic activity.
- B.** The responsible party shall ensure grading and other topographic contouring at an aggregate mining unit is performed in a manner that establishes final land forms:
1. Suitable for the post-aggregate mining land use objective in the approved reclamation plan, and
  2. Stable under static and dynamic conditions as certified by a qualified engineer considering the following:
    - a. Site-specific seismic conditions,

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- b. Safety consistent with good engineering practices, and
- c. The hazard to public safety if failure occurs.
- C. The responsible party shall ensure site-specific grading, revegetation, and other erosion control measures are conducted to minimize erosion.
- D. The responsible party shall ensure permanent piles of mine development rock, overburden, or tailings do not restrict surface drainage in a manner that contributes to erosion or compromises the stability of the reclaimed aggregate mining unit.
- E. The responsible party shall ensure a reclamation plan includes:
  - 1. A narrative describing the current topography and proposed final topography of the aggregate mining unit;
  - 2. Measures to be taken, including the final slope configuration, to reclaim overburden dumps, waste-rock stockpiles, sediment ponds, and fines piles; and
  - 3. Re-grading and reclamation measures to be taken regarding excavations, ponds, open pits, and rock faces unless the Inspector has determined measures under this subsection are impractical under A.R.S. § 27-1275.
- F. If an excavation, pond, open pit, or rock face is not to be reclaimed under A.R.S. § 27-1275, the responsible party shall include in the reclamation plan measures adequate to restrict access to the hazard and maintain public safety. The measures may include installing and maintaining berms, fences, and other barriers, posting warning signs, or taking any combination of measures adequate to protect the public.

## **R11-3-603. Roads**

- A. The responsible party shall ensure a reclamation plan includes a narrative describing how a road ~~ensure a road is~~ will be reclaimed when the road is no longer needed for aggregate mining operations, reclamation, monitoring, or a specified post-aggregate mining land use.
- B. The responsible party shall ensure the following steps are taken to achieve the post-aggregate mining land use specified in the approved reclamation plan:
  - 1. Control vehicular traffic on the reclamation area;
  - 2. Restore surface drainage patterns to pre-mining conditions or establish new surface drainage patterns;
  - 3. Remove or stabilize bridges and culverts. If a bridge or culvert remains, protect it from erosion with rock, concrete, and riprap; and
  - 4. Rip, plow, scarify, and revegetate roadbeds as necessary.

## **ARTICLE 7. REVEGETATION AND SOIL STANDARDS**

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## **R11-3-701.    Revegetation Provisions**

- A.** If revegetation is part of a proposed reclamation plan, the responsible party shall ensure the plan is consistent with A.R.S. § 27-1271(B)(9)(c) regarding:
  - 1. Season of revegetation;
  - 2. Species and amounts per acre of seeds or flora;
  - 3. Planting methods; and
  - 4. As required under A.R.S. § 27-1271(B)(9)(c), annual measures to address revegetation, conservation, and care and monitoring of revegetated areas.
- B.** If the post-aggregate mining land use objective is grazing, fish or wildlife habitat, or forestry or recreation, the responsible party shall ensure the type, density, and diversity of vegetation proposed in the reclamation plan is technically and economically practicable based on site-specific characteristics such as climate and soil quality.
- C.** The responsible party shall ensure the proposed reclamation plan specifically describes the techniques, methods, controls, and measures to be used regarding the following, as applicable:
  - 1. Mulching,
  - 2. Irrigating,
  - 3. Controlling pests,
  - 4. Controlling for disease, and
  - 5. Managing growth.
- D.** The responsible party shall ensure no plant defined as a “pest” at A.A.C. R3-4-245 is used for revegetation .

## **R11-3-702.    Revegetation Standards**

- A.** If surface disturbances at an aggregate mining location to be revegetated have caused the soil to compact, the responsible party shall ensure ripping, disking, or other means to reduce the compaction and establish a suitable root zone are used before planting.
- B.** The responsible party shall ensure revegetation is conducted using plant species consistent with the approved post-aggregate mining land use.
- C.** Revegetation that differs in species, density, or diversity from pre-aggregate mining conditions or conditions on adjacent lands may be used only if:
  - 1. Post-aggregate mining land use differs from pre-aggregate mining land use or the use on adjacent lands;
  - 2. Soil conditions, topography, or other site-specific characteristics of the surface disturbance make revegetating the land to pre-aggregate mining conditions or conditions on adjacent lands technically or economically impracticable; and
  - 3. Revegetation that differs in species, density, or diversity from pre-aggregate mining conditions or

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conditions on adjacent lands is preferable for control of erosion.

**D.** The responsible party shall ensure revegetation is conducted during the time of year most favorable for plant establishment.

**E.** The responsible party may use soil stabilizing practices, irrigation measures, or both to establish vegetation.

## **R11-3-703. Soil Conservation**

If soil conservation is required under A.R.S. § 27-1274 at a surface disturbance, the responsible party shall:

1. Mark any stockpile of conserved soil with a legible sign that identifies the stockpile as “SOIL,” and
2. Stabilize a stockpile of conserved soil as necessary to prevent excessive loss from erosion.

## **R11-3-704. Redistribution of Soil**

Before redistributing a stockpile of soil conserved under R11-3-703, the responsible party shall:

1. Treat the area of disturbance as necessary to reduce potential for slippage of the redistributed soil or to enhance root penetration, and
2. Take steps to redistribute the soil in a manner that:
  - a. Prevents excess compaction, and
  - b. Achieves a thickness consistent with the approved post-aggregate mining land use.

## **R11-3-705. Off-site Soil and Inert Materials; Final Capping; Slope and Bench Building**

**A.** In accordance with an approved post-aggregate mining reclamation plan, the responsible party shall ensure:

1. Final capping growth media, including growth media brought from off-site:
  - a. Supports vegetation that is non-invasive and not listed in R3-4-245,
  - b. Provides a stable growing surface, and
  - c. Does not create a hazard to public safety or surrounding properties;
2. All on- and off-site soils and inert materials are used only for fills to build safe slopes and benches; and
3. All slopes and benches:
  - a. Are no steeper than 2H:1V unless otherwise approved by a professional engineer for seismic stability; and
  - b. Meet all applicable federal, state, and local requirements regarding the environment and flood control.

**B.** If all of the filling for engineered slopes in an approved post-aggregate reclamation plan cannot be performed within a year after cessation of aggregate mining or the last aggregate mining activity, the responsible party shall submit a written request to the Inspector for an extension of time. The Inspector shall retain a financial assurance mechanism until all safe slope building and stability procedures in the approved post-aggregate reclamation plan are completed.

**ARTICLE 8. FINANCIAL ASSURANCE**

**R11-3-801. Definitions**

- A.** Unless otherwise defined in the Act or this Chapter, the terms used in this Article have the meaning understood under generally accepted accounting principles and practices.
- B.** In this Article:
- 1.** “ICPA” means Independent Certified Public Account.
  - 2.** “Parent corporation” means a corporation that owns enough voting stock in another corporation to control management and operation of the other corporation. The other corporation is called a subsidiary of the parent corporation.
  - 3.** “Substantial business relationship” means the extent of a business relationship necessary to make a guarantee contract issued incident to that relationship valid and enforceable. A substantial business relationship is demonstrated to the satisfaction of the Inspector by a pattern of recent or ongoing business transactions between a guarantor and the responsible party.
  - 4.** “Tangible net worth” means a responsible party’s total assets minus the value of all liabilities and intangible assets.
  - 5.** “Intangible assets” means non-physical resources and rights, such as goodwill, patents, intellectual property, and copyrights, which have value to the responsible party because they provide a marketing advantage.

**R11-3-802. Amount of Financial Assurance**

- A.** Under the terms of A.R.S. § 27-1271(B)(11) and R11-3-502, the Inspector shall determine the amount of financial assurance required of a responsible party.
- B.** Any financial assurance offered by a responsible party shall meet the requirements of the Act and this Chapter.
- C.** The Inspector shall review financial assurance offered by a responsible party to determine whether the amount of financial assurance is sufficient to meet the standard at A.R.S. § 27-1292(C). The Inspector may rely on standards commonly used by a commercial lender to evaluate the offered financial assurance.
- D.** Financial assurance documents submitted to the Inspector are public records.
- E.** Within 30 days after receiving a responsible party’s offered financial assurance, the Inspector shall provide the responsible party with written notice the financial assurance is approved, disapproved, or additional information is needed. If additional information is needed, the Inspector may require the responsible party to provide the Inspector with a written legal opinion from an attorney admitted to practice law in Arizona that



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the offered financial assurance is lawful, enforceable under existing law, and can be drawn on in case of default. A responsible party required to provide a written legal opinion shall do so at the responsible party's expense.

- F.** If an approved financial assurance mechanism is canceled by the issuing institution, the responsible party shall provide the Inspector, within 90 days after the notice of cancellation, with evidence an alternate financial assurance mechanism has been obtained.
- G.** With approval from the Inspector, a responsible party may cancel a financial assurance mechanism and replace it with an alternate financial assurance mechanism approved by the Inspector.

### **R11-3-803. Blanket Financial Assurance**

- A.** A responsible party may offer a single financial assurance mechanism to cover the reclamation costs of two or more aggregate exploration operations or mining units or facilities rather than a separate financial assurance mechanism for each aggregate exploration operation or mining unit or facility.
- B.** If a single financial assurance mechanism is offered under subsection (A), the responsible party shall ensure the total amount of financial assurance offered equals the total cost to reclaim all aggregate exploration operations or mining units or facilities covered by the single financial assurance mechanism.
- C.** To cover an additional aggregate exploration operation or mining unit or facility under a single financial assurance mechanism offered under subsection (A), the responsible party shall provide an updated financial assurance mechanism that meets the standard in subsection (B).

### **R11-3-804. Surety Bond**

- A.** A responsible party may offer a surety bond as financial assurance required under the Act and this Chapter. The responsible party shall ensure a surety bond offered as financial assurance:
  - 1. Is an indemnity agreement in a sum certain,
  - 2. Is payable to the State of Arizona,
  - 3. Is executed by the responsible party as principal,
  - 4. Is on a form provided by or acceptable to the Inspector,
  - 5. Remains in effect until released by the Inspector or canceled by the surety,
  - 6. Is issued by an insurer authorized to transact surety business in Arizona under A.R.S. Title 20,
  - 7. Has a power of attorney attached, and
  - 8. Is signed by the principal and the surety's attorney-in-fact.
- B.** A surety bond offered as financial assurance under subsection (A) may include a provision allowing the surety to cancel the surety bond by providing 60 days' written notice to the Inspector. Within 45 days after receipt of written notice of cancellation of the surety bond, the responsible party shall provide the Inspector

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with evidence of new financial assurance approved by the Inspector.

## **R11-3-805. Certificate of Deposit**

A responsible party may offer a certificate of deposit as financial assurance required under the Act and this Chapter. The responsible party shall ensure a certificate of deposit offered as financial assurance:

1. Is payable or assigned to the State Treasurer;
2. Complies with A.R.S. § 35-155 and any rules made under it;
3. Is on a form provided by or acceptable to the Inspector;
4. Assigns and transfers all rights, title, and interest in the certificate of deposit to the State Treasurer except accruing interest remains the property of the responsible party;
5. Provides the State Treasurer the right to redeem, collect, and withdraw the full amount of the certificate of deposit at any time without notice to the responsible party; and
6. Provides the assignment remains in effect until the Inspector authorizes its release in writing.

## **R11-3-806. Trust**

A. A responsible party may satisfy the financial assurance requirements in the Act and this Chapter by establishing an irrevocable trust with the State of Arizona as the primary beneficiary.

B. The responsible party shall ensure the entity designated as trustee of a trust established under subsection (A) is an association or corporation doing business under the laws of Arizona as a bank, trust company, savings and loan association, credit union, insurance company, escrow agent, or commercial lender.

C. The responsible party shall:

1. Submit a duplicate of the trust agreement, with an original signature, to the Inspector to be placed in the operating record of the aggregate exploration operation or mining unit or facility;
2. Initially fund the trust in an amount equal to or greater than the estimated cost in the approved reclamation plan to reclaim surface disturbances existing when the trust is established and all other surface disturbances to occur during the first year of the trust;
3. Make payments to the trust at least annually no later than 30 days after the anniversary date of the initial funding made under subsection (C)(2); and
4. Ensure annual payments made to the trust under subsection (C)(3) are in an amount equal to or greater than the amount required to pay all costs to reclaim surface disturbances made during the annual period.

D. If a responsible party establishes a trust under subsection (A) after having used one or more alternative financial assurance mechanisms, the responsible party shall still comply with the provisions in subsection (C) except the amount of initial funding shall be equal to or greater than the estimated cost not covered by the alternative financial assurance mechanisms.

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## **R11-3-807. Letter of Credit**

- A.** A responsible party may satisfy the financial assurance requirements in the Act and this Chapter by obtaining a confirmed, irrevocable letter of credit naming with State of Arizona as the primary beneficiary.
- B.** The responsible party shall ensure the letter of credit is issued by a financial institution that:
1. Has authority to issue letters of credit,
  2. Is federally insured, and
  3. Has letter-of-credit operations regulated by the federal government and examined by an Arizona state agency.
- C.** The responsible party shall ensure the letter of credit:
1. Is for a term of not less than 10 years;
  2. Contains terms acceptable to the Inspector;
  3. Is in an amount equal to or greater than the estimated cost in the approved reclamation plan;
  4. Indicates clearly the conditions under which the State of Arizona may draw on the letter of credit; and
  5. Except as provided in subsection (E), indicates the letter of credit may be cancelled only by the issuing financial institution or the Inspector.
- D.** The financial institution that issued a letter of credit under subsection (A) may cancel the letter of credit by sending notice of cancellation by certified mail to both the responsible party and Inspector at least 120 days before the scheduled cancellation. Within 90 days after receiving the notice of cancellation, the responsible party shall provide the Inspector with evidence an alternate financial assurance mechanism that meets the requirements of the Act and this Chapter has been obtained.
- E.** A responsible party may cancel a letter of credit issued under subsection (A) if the responsible party:
1. Provides 90 days' notice to the Inspector and provides the Inspector with evidence an alternate financial assurance mechanism that meets the requirements of the Act and this Chapter has been substituted; or
  2. Is released by the Inspector under A.R.S. § 27-1296 and R11-3-815 from the financial assurance requirements in the Act and this Chapter.

## **R11-3-808. Insurance Policy**

- A.** A responsible party may satisfy the financial assurance requirements in the Act and this Chapter by obtaining an insurance policy that meets the requirements of this Section.
- B.** The responsible party shall ensure the insurance policy is provided by an insurance company that:
1. Is non-captive;
  2. Is licensed in Arizona or holds an approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers; and

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3. Has an “A.M. Best” rating of not less than A-VII.

**C.** The responsible party shall ensure the insurance policy:

1. Guarantees insurance proceeds will be available to complete all reclamation in the approved reclamation plan if the aggregate exploration operation or mining unit or facility fails to reclaim all surface disturbances;
2. Guarantees insurance proceeds will be paid up to the amount specified on the face of the insurance policy under the direction of the Inspector to the party specified by the Inspector;
3. Indicates the insurance company providing the policy shall not cancel, terminate, or fail to renew the policy except for failure to pay the premium;
4. Provides for automatic renewal of the insurance policy at the existing face value of the insurance policy;
5. Requires that if the policy holder fails to pay the premium, the insurance company providing the insurance policy will send notice by certified mail to both the policyholder and Inspector at least 60 days before cancelling, terminating, or failing to renew the insurance policy; and
6. Requires the insurance policy to remain in full force and effect if, before the date specified in subsection (C)(5), the renewal premium is paid in full.

**D.** If the insurance company issuing an insurance policy under subsection (A) cancels, terminates, or fails to renew the insurance policy because the policy holder failed to pay the premium, the responsible party shall, within 30 days after the cancellation, termination, or failure to renew, provide the Inspector with evidence an alternate financial assurance mechanism that meets the requirements of the Act and this Chapter has been obtained.

**R11-3-809. Certificate of Self-insurance**

**A.** A responsible party may satisfy the financial assurance requirements in the Act and this Chapter by successfully completing the financial test specified in this Section. Successful completion involves:

1. Submitting the information required under subsection (B), and
2. Demonstrating to the Inspector’s satisfaction the responsible party meets the requirements under subsection (C).

**B.** The responsible party shall submit to the Inspector the following information and shall submit updated information annually within 90 days after the close of the responsible party’s fiscal year:

1. Proof the responsible party is authorized to do business in Arizona;
2. A letter signed by the chief financial officer of the responsible party certifying:
  - a. The responsible party is qualified to self-insure as a financial assurance mechanism because the responsible party meets the requirements in subsection (C); and
  - b. The data used to reach the conclusion under subsection (B)(2)(a) are from an independently audited,

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year-end financial statement for the latest fiscal year of the responsible party; and

3. A copy of one of the following:

- a. The financial statements the responsible party is required to submit annually to the U.S. Securities and Exchange Commission; or
- b. A report from an ICPA certifying the ICPA has compared the data under subsection (B)(2)(b) with the financial statement submitted to the U.S. Securities and Exchange Commission and finds no matters requiring the data to be adjusted.

**C.** To qualify to self-insure as a financial assurance mechanism, the responsible party shall meet one of the following criteria:

1. The responsible party has a tangible net worth of at least 10 times the costs estimated in the approved reclamation plan or a tangible net worth of at least \$3 million, whichever is greater;

2. The responsible party has all of the following:

a. Two of the following three ratios:

- i. A ratio of total liabilities to net worth of less than 2.0;
- ii. A ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities great than 0.1; and
- iii. A ratio of current assets to current liabilities greater than 1.5;

b. Both net working capital and tangible net worth at least six times the costs estimated in the approved reclamation plan;

c. Tangible net worth at least \$10 million; and

d. Assets located in the U.S. amounting to at least 90 percent of total assets or at least six times the costs estimated in the approved reclamation plan; or

3. The responsible party has all of the following:

a. A current rating for the most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's;

b. Tangible net worth at least six times the costs estimated in the approved reclamation plan;

c. Tangible net worth at least \$10 million; and

d. Assets located in the U.S. amounting to at least 90 percent of total assets or at least ten times the costs estimated in the approved reclamation plan.

**D.** If a responsible party that is meeting the financial assurance requirements in the Act and this Chapter by self-insuring is no longer qualified under subsection (C), the responsible party shall provide to the Inspector evidence of an alternative financial assurance mechanism within 60 days after the sooner of:

1. The end of the responsible party's fiscal year, or

2. The Inspector provides notice to the responsible party that the responsible party is no longer qualified

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under subsection (C).

- E.** If the Inspector has good cause to believe a responsible party that is meeting the financial assurance requirements in the Act and this Chapter by self-insuring is no longer qualified under subsection (C), the Inspector may require additional reporting of the responsible party's financial condition.
- F.** A responsible party may meet the requirements of this Section by obtaining a written guarantee. If the responsible party obtains a written guarantee:
- 1.** The guarantor shall be:
    - a.** The direct or higher-tier parent corporation of the responsible party;
    - b.** A group of legal entities controlled through stock ownership by a common parent corporation;
    - c.** A firm with a parent corporation that is also the parent corporation of the responsible party; or
    - d.** A firm with a substantial business relationship with the responsible party.
  - 2.** The guarantor shall meet all requirements for a responsible party specified in this Section.
  - 3.** The guarantor shall comply with all terms of the guarantee. The responsible party shall ensure the guarantee includes the following terms:
    - a.** If the responsible party fails to perform the reclamation specified in the approved reclamation plan and covered by the guarantee, the guarantor shall do so or establish a trust as specified in R11-3-806 in the name of the responsible party;
    - b.** The guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to both the responsible party and Inspector and waits at least 120 days after both the responsible party and Inspector receive the notice of cancellation; and
    - c.** If the responsible party fails to provide the Inspector with evidence an alternate financial assurance mechanism that meets the requirements of the Act and this Chapter has been obtained within 90 days after the responsible party and Inspector receive notice of cancellation under subsection (F)(3)(b), the guarantor shall obtain and provide evidence to the Inspector of an alternate financial assurance mechanism in the name of the responsible party.
- G.** A responsible party that meets the requirements of this Section by obtaining a written guarantee shall include with the information submitted under subsection (B):
- 1.** A certified copy of the guarantee;
  - 2.** If the guarantor's parent corporation is also the parent corporation of the responsible party, a letter describing the value received in consideration of the guarantee; and
  - 3.** If the guarantor is a firm with a substantial business relationship with the responsible party, a letter describing the substantial relationship and the value received in consideration of the guarantee.

### **R11-3-810. Cash Deposit**

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A responsible party may satisfy the financial assurance requirements in the Act and this Chapter by depositing with the State Treasurer an amount equal to the estimated costs in the approved reclamation plan. The responsible party shall obtain from the State Treasurer a receipt of deposit showing funds are available for reclamation costs at a specified aggregate exploration operation or mining unit or facility.

### **R11-3-811. Annuity**

- A.** A responsible party may satisfy the financial assurance requirements in the Act and this Chapter by obtaining an annuity that:
1. Meets the requirements of this Section, and
  2. Names the State of Arizona as beneficiary.
- B.** The responsible party shall ensure the annuity is provided by an insurance company that:
1. Is licensed in Arizona or holds an approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers; and
  2. Has an "A.M. Best" rating of not less than A-VII.
- C.** The responsible party shall ensure any incremental or annual payment for the annuity is in an amount adequate to pay all costs to reclaim surface disturbances created during the incremental or annual period.

### **R11-3-812. Bonding Pool**

- A.** A responsible party may satisfy the financial assurance requirements in the Act and this Chapter by providing the Inspector with a certificate of participation in a reclamation bond pool.
- B.** The responsible party shall ensure the certificate of participation:
1. Is an indemnity agreement in a sum certain payable to the State of Arizona;
  2. Is executed by a surety bond pool organization of which the responsible party is a member; and
  3. Is supported by the performance guarantee of a corporation licensed to do business as a surety in Arizona.

### **R11-3-813. Limited Individual Financial Assurance**

If two or more persons are the owners or operators of a single aggregate exploration operation or mining unit or facility, each owner or operator may limit the amount of the owner's or operator's financial assurance if the total financial assurance of all owners and operators satisfies the requirements of the Act and this Chapter.

### **R11-3-814. Final Action on Financial Assurance Mechanisms**

As required under A.R.S. § 27-1292, the Inspector shall take final action on a financial assurance mechanism submitted by a responsible party within 30 days after the financial assurance mechanism is received.

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## **R11-3-815. Incremental Financial Assurance**

A responsible party that provides financial assurance on an incremental basis, as permitted under A.R.S. § 27-1295, shall ensure the amount of financial assurance provided during each increment is equal to or exceeds the estimated cost to reclaim surface disturbances created during the increment.

## **R11-3-816. Application for Release of Financial Assurance**

- A. Except as provided in subsection (E), the Inspector shall not release any financial assurance until the responsible party satisfies all conditions and requirements of the Act and this Chapter.
- B. To obtain release of some or all financial assurance, the responsible party shall submit a written request to the Inspector.
- C. Within 60 days after receiving the request for release of financial assurance submitted under subsection (B), the Inspector or a designated agent shall inspect the aggregate exploration operation or mining unit or facility to determine whether the responsible party has satisfied all conditions and requirements of the Act and this Chapter and either:
  - 1. Approve release of some or all financial assurance; or
  - 2. Provide written notice to the responsible party that release of some or all financial assurance is denied, reasons for the denial, and measures necessary to satisfy all conditions and requirements of the Act and this Chapter.
- D. By agreement of the Inspector and responsible party, the time for inspection designated under subsection (C) may be extended if conditions prevent an inspection of the reclaimed land within the time specified.
- E. If the responsible party transfers the aggregate exploration operation or mining unit or facility to another owner, the Inspector shall release the transferor's financial assurance mechanism when the transferee provides an alternate financial assurance mechanism that meets the requirements of this Act and this Chapter.

## **R11-3-817. Forfeiture Criteria; Forfeiture of Financial Assurance**

- A. A financial assurance mechanism filed with the Inspector or a state agency is subject to forfeiture if any of the following occurs:
  - 1. The time specified under A.R.S. § 27-1226 in which to initiate reclamation expires without reclamation being initiated;
  - 2. The responsible party fails to comply with the conditions of the financial assurance mechanism; or
  - 3. The responsible party fails to reclaim surface disturbances in accordance with the approved reclamation plan, the Act, or this Chapter.



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**B.** After determining one or more of the criteria specified in subsection (A) has occurred, the Inspector shall initiate forfeiture action or contact any federal or state agency with which the financial assurance mechanism was filed and ask the agency to initiate forfeiture action.

### **R11-3-818.** **Notice of Forfeiture Action; Avoidance of Forfeiture**

At least 30 days before initiating forfeiture action, the Inspector shall provide written notice to both the responsible party and all principals and sureties by certified mail with receipt, express mail with receipt, or hand delivery that:

1. The financial assurance is subject to forfeiture;
2. The responsible party has a right to a hearing under A.R.S. Title 41, Chapter 6, Article 10; and
3. The conditions under which the responsible party may avoid forfeiture including:
  - a. Reaching an agreement with the Inspector regarding a compliance schedule under which the responsible party or another party will perform reclamation operations that meet the conditions and requirements of the approved reclamation plan, the Act, and this Chapter; and
  - b. Obtaining a surety bond to replace the financial assurance mechanism subject to forfeiture in an amount sufficient to complete the reclamation as agreed under subsection (3)(a).

### **R11-3-819.** **Municipal, County, or State Government**

If the owner of an aggregate exploration operation or mining unit or facility is a municipal, county, or state governmental entity, the Inspector shall not require a financial assurance mechanism. However, the owner shall submit to the Inspector a written guarantee that private lands involved in the aggregate exploration operation or mining unit or facility will be reclaimed in accordance with the Act and this Chapter.