

**TITLE 11. MINES****CHAPTER 2. STATE MINE INSPECTOR  
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*Article 1, consisting of Section R11-2-101, adopted effective January 6, 1997 (Supp. 97-1).*

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*Article 2, consisting of Sections R11-2-201 through R11-2-207, adopted effective January 6, 1997 (Supp. 97-1).*

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*Article 4, consisting of Sections R11-2-401 and R11-2-402, adopted effective January 6, 1997 (Supp. 97-1).*

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*Article 5, consisting of Sections R11-2-501 through R11-2-504, adopted effective January 6, 1997 (Supp. 97-1).*

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**ARTICLE 1. DEFINITIONS****R11-2-101. Definitions**

In this Chapter and the Act, unless the context otherwise requires:

“Act” means the Arizona Mined Land Reclamation Act, enacted in 1994, A.R.S. § 27-901 et seq., as amended.

“Approved reclamation plan” means the owner’s or operator’s plan for reclaiming surface disturbances after approval by the State Mine Inspector.

“Backfill” means earth, overburden, mine development rock, or imported material used to replace material removed during mining.

“Commodities in commerce” means commodities that are mined for use or conversion into a salable or usable product.

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

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

“Inspection” means a visual review of an exploration operation or mining unit to assure compliance with the Act, this Chapter, or any condition 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 activity directly involved in mineral exploration, development, or production at or on an exploration operation or a mining unit.

“Operator” means any person who is legally responsible for directing mining activity at an exploration operation or a mining unit.

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

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

“Showing of good cause” means a demonstration by the owner or operator of a reason beyond the owner’s or operator’s control which prevents or limits the ability to act within required time limits or a demonstration by the owner or operator that the owner or operator is making good faith efforts toward the coordination and submittal of a reclamation plan.

“Subsidence” means the measurable lowering of a portion of the earth’s surface or substrata.

#### Historical Note

Adopted effective January 6, 1997 (Supp. 97-1).

### ARTICLE 2. GENERAL REGULATORY PROVISIONS

#### R11-2-201. Document Submittals

- A. An owner or operator shall submit to the State Mine Inspector by certified mail (return receipt requested), express mail (with a receipt), or by hand delivery the following:
1. Reclamation plans and amendments (1 original and 4 copies);
  2. Certificates of disclosure;
  3. Financial assurance mechanisms;
  4. Notices of transfer;
  5. Applications, petitions or requests for or objections to substantial changes, variances, notices of proposed changes, amendments, releases of financial assurance mechanisms; or
  6. Any other matter that may require action by the State Mine Inspector.
- B. All submittals shall be dated and signed by the owner or operator or by a person who has legal authority to sign on behalf of the owner or operator. All submittals shall include the names and addresses of the owner and operator and any individuals who will be regulatory contacts.

#### Historical Note

Adopted effective January 6, 1997 (Supp. 97-1).

#### R11-2-202. Preservation of Documents

An owner or operator shall retain a copy of the current approved reclamation plan, reclamation plans for areas for which reclamation has been completed, and the most recent annual status report until all reclamation measures have been completed. These documents shall be available for examination by the inspector.

#### Historical Note

Adopted effective January 6, 1997 (Supp. 97-1).

#### R11-2-203. Extension of Time for Submittal of Plan

The owner or operator may request 1 or more extensions of time for submittal of a reclamation plan for an existing exploration operation or an existing mining unit. If the State Mine Inspector grants an extension of time to submit a reclamation plan for an existing exploration operation or an existing mining unit, the extension shall not exceed 90 days. For each subsequent extension, the owner or operator shall submit a revised request which indicates any changes

in the relevant factors for consideration shown in the previous request for extension.

#### Historical Note

Adopted effective January 6, 1997 (Supp. 97-1).

#### R11-2-204. Supersedure by Federal Plan

- A. The owner or operator of an exploration operation or a mining unit which is located in part or in whole on land administered by a federal agency may submit to the State Mine Inspector a request for supersedure pursuant to A.R.S. § 27-932. Such a request shall include a copy of the federal reclamation plan and the financial assurance mechanism.
- B. Within 30 days after receiving a request for supersedure, the State Mine Inspector shall determine in writing whether the federal reclamation plan and financial assurance mechanism are consistent with and shall supersede the requirements of the Act and this Chapter. If the State Mine Inspector denies the request to supersede, the State Mine Inspector shall provide an explanation of the reasons for denial in the written determination.

#### Historical Note

Adopted effective January 6, 1997 (Supp. 97-1).

#### R11-2-205. Extension of Time for Initiation of Reclamation

- A. The owner or operator of an exploration operation or mining unit shall submit a written request for an extension of time to begin reclamation under A.R.S. § 27-926(B) at least 45 days before the time to begin reclamation under A.R.S. § 27-926.
- B. The State Mine Inspector shall evaluate and either approve or deny the request within 30 days. If the State Mine Inspector fails to act on the request within 30 days after receipt, the request shall be considered approved. If the State Mine Inspector denies the request for an extension, the State Mine Inspector shall state the reasons for denial in writing.

#### Historical Note

Adopted effective January 6, 1997 (Supp. 97-1).

#### R11-2-206. Variance

- A. In addition to information required by the Act or elsewhere in this Chapter, a request for variance submitted pursuant to A.R.S. § 27-931(A) shall include:
1. Identification by owner or operator and mine name, if any, of the exploration operation or mining unit for which the variance is sought;
  2. A descriptive location of the property on which the exploration operation or mining unit is located;
  3. Identification of the Section of this Chapter or requirement or condition of the approved reclamation plan from which the variance is sought;
  4. The justification for the variance; and
  5. Alternative methods or measures to be used.
- B. Within 30 days after receiving a variance request pursuant to A.R.S. § 27-931(A), the State Mine Inspector shall grant a conditional order authorizing the variance or deny the request in writing. The State Mine Inspector shall state the reasons for the determination.

#### Historical Note

Adopted effective January 6, 1997 (Supp. 97-1).

#### R11-2-207. Cessation of Mining Activity

- A. The cessation of mining will be considered to have occurred if any of the following occur:
1. The person conducting the mining activity has gone out of business and there is no succeeding legal entity;
  2. No mining activity has taken place within 1 year from the date the most recent annual status report was filed with

the State Mine Inspector and no staffed office remains on the site;

3. The extension of the time to begin reclamation requested by the owner or operator and approved by the State Mine Inspector under R11-2-205 has expired and no other extension has been granted, or
4. The State Mine Inspector has made a written determination that the mine has been temporarily or permanently abandoned.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**ARTICLE 3. EXPLORATION OPERATION RECLAMATION PLAN**

**R11-2-301. Exploration Operation Reclamation Plan Content**

- A. In addition to the content requirements found in A.R.S. § 27-951(A), the reclamation plan shall also include a sketch of the layout of the exploration project, showing the locations, nature, and acreage of each disturbance. The owner or operator shall not be required to include specific survey coordinates, identifying exact topographic features, or exact geographic locations.
- B. For existing exploration operations, the owner or operator shall include the estimated costs to perform the reclamation measures to determine financial assurance requirements under Article 5 of the Act and Article 8 of this Chapter.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-302. Annual Renewal**

- A. Every owner or operator with an approved reclamation plan shall annually, within 60 days after the anniversary date of the approved reclamation plan, submit to the State Mine Inspector a request for annual renewal pursuant to A.R.S. § 27-955. The request shall:
  1. Provide the status of the exploration operation reclamation;
  2. Include the total number of acres of surface disturbances, the number of acres reclaimed during the reporting year, and the number of acres of surface disturbances which have not yet been reclaimed; and
  3. Include any modifications to the approved reclamation plan.
- B. The State Mine Inspector shall renew the approved reclamation plan, including modifications, if the renewal includes modifications that are consistent with the criteria of the Act and this Chapter and if additional financial assurance required by the Act has been submitted to the State Mine Inspector. If the renewal includes modifications to the approved plan that constitute a substantial change, the State Mine Inspector shall renew the approved reclamation plan under the procedures of A.R.S. §§ 27-927 and 27-929 or deny the proposed substantial change.
- C. If the State Mine Inspector fails to provide the owner or operator with a written renewal determination within 60 days after receipt of the request for annual renewal, the approved reclamation, including modifications that do not constitute substantial changes, shall be deemed renewed.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**ARTICLE 4. EXPLORATION OPERATION RECLAMATION STANDARDS**

**R11-2-401. Restricted Access**

Under A.R.S. § 27-953(5), access to those portions or places of open pits or trenches in places frequented by the public shall be restricted by measures including fencing and the posting of visible warning signs.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-402. Trash Removal**

The owner or operator shall remove 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.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**ARTICLE 5. MINING UNIT RECLAMATION PLAN**

**R11-2-501. Mining Unit Reclamation Plan Content**

- A. In addition to the proposed reclamation measures that are necessary to achieve the post-mining land use found under A.R.S. §§ 27-971(B)(9)(a) through (d), the reclamation plan shall include procedures to aid in the development of vegetation consistent with the proposed post-mining land use objective for surface disturbances where the post-mining land use objective is grazing, wildlife habitat, or forestry. The type, density, and diversity of vegetation proposed shall depend on what is technically and economically practicable given site-specific characteristics such as climate and the availability and quality of soil.
- B. Maps of the existing or proposed surface disturbances submitted pursuant to A.R.S. § 27-971(B)(8) for mining units shall indicate the following:
  1. Existing and proposed post-mining and post-reclamation physical topography;
  2. Natural features, including surface water;
  3. Surface disturbances, pits, excavations, and building sites;
  4. Development rock piles, tailings dams and impoundments, heaps for leaching, spoil, soil or growth media storage piles, overburden stockpiles, and other piles of unconsolidated material;
  5. Solution ponds, settling ponds, and non-tailings impoundments;
  6. Roads, buildings, structures, and stationary equipment;
  7. Final post-mining land use objectives for each portion of the surface disturbance; and
  8. Boundaries of the mining unit.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-502. Life of Approved Reclamation Plan**

An approved reclamation plan, along with any approved substantial changes, shall remain in effect until reclamation is complete and all financial assurance is released.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-503. Multiple Post-Mining Land Uses**

An owner or operator may list multiple post-mining land uses for a mining unit if the reclamation plan shows the post-mining land use for each area and each use satisfies the requirements of the Act and this Chapter.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-504. Annual Status Report**

- A.** An owner or operator with an approved reclamation plan shall submit an annual status report for the preceding year to the State Mine Inspector within 60 days after the anniversary date of reclamation plan approval. The status report shall:
1. Provide the status of the mining unit;
  2. Include a map, an aerial photograph, or both, identifying the location of the surface disturbance and reclaimed area and the year in which the surface disturbance and reclamation was completed. If there have been no changes in the previous year, then neither new maps nor new aerial photographs are necessary, and the owner or operator shall state there have been no changes in the annual status report; and
  3. Include the total number of acres of surface disturbances, the number of acres reclaimed during the reporting year, and the number of acres of surface disturbances which have not yet been reclaimed.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**ARTICLE 6. MINING UNIT RECLAMATION STANDARDS****R11-2-601. Public Safety Standards**

- A.** Reclamation activities at mining units shall be designed to reduce hazards to public safety to the extent technically and economically practicable by measures, including:
1. Removal of scrap metal, wood, trash, and other debris that pose a threat to public safety, or create a public nuisance, or are inconsistent with an approved reclamation plan; and
  2. Regrading slopes as prescribed under R11-2-602.
- B.** The owner or operator shall maintain structures, equipment, and excavations at the reclamation site in a safe manner and shall restrict access to provide for public safety. Where hazards to public safety cannot be adequately reduced through reclamation measures; where buildings, structures, and excavations remain as part of the approved post-mining land use; or where a mining unit has been exempted from reclamation under A.R.S. § 27-975(A), any hazard to public safety shall be reduced by:
1. Constructing berms, fences, barriers, or any combination of these measures to restrict public access when technically and economically practicable; and
  2. Posting visible warning signs in locations where public access is available.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-602. Erosion Control and Topographic Contouring**

- A.** Mining units shall be reclaimed to a stable condition for erosion and seismic activity.
- B.** Grading and other topographic contouring methods shall be conducted, as necessary, to establish final land forms which are:
1. Suitable for the post-mining land use objective in the approved reclamation plan.
  2. Stable under static and dynamic conditions as certified by a qualified engineer considering the following:
    - a. Site-specific seismic conditions;
    - b. Safety consistent with good engineering practices; and
    - c. The hazard to public safety, if failure occurs.

- C.** Site-specific grading, revegetation, or other proposed erosion-control measures shall be conducted, as necessary, to address erosion so that permanent piles of mine development rock, overburden, and tailings shall not restrict surface drainages in a manner that contributes to excessive erosion or which compromises the stability of the reclaimed facility.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-603. Roads**

- A.** Reclamation of a road that is not included in the approved reclamation plan as part of the approved post-mining land use shall begin once the road is no longer needed for operations, reclamation, or monitoring.
- B.** The following reclamation measures shall be conducted, as necessary, to achieve the post-mining land use included in the approved reclamation plan:
1. Vehicular traffic shall be controlled on the reclamation area to achieve the reclamation objectives;
  2. Surface drainage patterns shall be restored to pre-mining conditions or new patterns shall be established;
  3. All bridges and culverts shall be removed or stabilized in place;
  4. Bridges and culverts left in place shall be protected from erosion with rock, concrete, or riprap; and
  5. Roadbeds shall be ripped, plowed, and scarified and revegetated, as necessary, to achieve the post-mining land use.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**ARTICLE 7. REVEGETATION AND SOIL STANDARDS****R11-2-701. Revegetation Provisions**

- A.** If revegetation is part of the proposed reclamation plan, the plan shall describe the:
1. Season of revegetation,
  2. Species and amounts per acre of seeds or flora, and
  3. Planting methods.
- B.** If the proposed reclamation plan includes mulching, irrigation, pest control, disease control, or growth management measures, the proposed reclamation plan shall specifically describe the techniques, methods, controls, or measures to be used.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-702. Revegetation Standards**

- A.** Where surface disturbances result in compaction of the soil, ripping, disking, or other means shall be used in areas to be revegetated to reduce compaction and to establish a suitable root zone in preparation for planting.
- B.** Revegetation shall be conducted to establish plant species that will support the approved post-mining land use. The establishment of vegetation species, density, or diversity which is different than pre-existing conditions or on adjacent lands shall constitute successful reclamation if any of the following apply:
1. The post-mining land use is different than the pre-mining land use or the use of adjacent lands;
  2. The site-specific nature of the surface disturbance, including soil conditions and topography, is such that the establishment of pre-existing or adjacent conditions is not technically or economically practicable; or
  3. The establishment of different species is preferable for control of erosion.
- C.** Planting shall be conducted during the most favorable period of the year for plant establishment.

- D. Soil stabilizing practices or irrigation measures, or both, may be used to establish vegetation.
- E. This Section only applies if vegetation or revegetation measures are included in the approved reclamation plan.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-703. Soil Conservation**

If soil conservation is required by A.R.S. § 27-974, any stockpiles of conserved soil shall be marked with legible signs that identify the stockpile as "SOIL." A soil stockpile shall be stabilized, if necessary, to prevent excessive losses from erosion.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-704. Redistribution of Soil**

Before redistribution of soil, the regraded land shall be treated, if necessary, to reduce the potential for slippage of the redistributed material or to enhance root penetration, or both. Soil and other materials shall be redistributed in a manner that prevents excess compaction and achieves a thickness consistent with the approved post-mining land use.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-705. Off-site Soil**

Soil may be brought in from an off-site location, and may include any growth media that will support vegetation, will provide a stable growing surface, and will not create a hazard to public safety.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**ARTICLE 8. FINANCIAL ASSURANCE****R11-2-801. Definitions**

- A. Unless expressly defined in the Act or this Chapter, the terms used in this Article have the same meanings as understood pursuant to generally accepted accounting principles and practices.
- B. In addition to the definitions provided in A.R.S. § 27-901, the following definitions apply to this Article:
  - "ICPA" means Independent Certified Public Accountant.
  - "Parent corporation" means a corporation which directly owns at least 50% of the voting stock of the corporation which is the owner or operator. Any latter corporation is considered a "subsidiary" of the parent corporation.
  - "Substantial business relationship" means the extent of a business relationship which is necessary, under applicable state law, to make a guarantee contract (issued on the basis of that relationship) valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, so that a currently existing business relationship between guarantor and the owner or operator is shown to the satisfaction of the State Mine Inspector.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-802. Amount of Financial Assurance**

- A. In estimating the cost of executing the reclamation plan, all activities in the reclamation plan shall be addressed, including, if applicable:
  1. Earth moving, regrading, and stabilization of surface disturbances included in the reclamation plan;
  2. Revegetation, preparation of seedbed, and planting;

3. Demolition of buildings and other structures;
4. For new exploration operations, removal of trash and other materials and structures incidental to exploration;
5. Any ongoing or long-term activities which are required to maintain the effectiveness of reclamation or are necessary in place of reclamation, including periodic clean-out of sediment basins or maintenance of berms and fences which are used to prevent access to areas which pose a threat to public safety;
6. Equipment mobilization and demobilization;
7. Contractor profit; and
8. Administrative overhead.

- B. In addition to submitting the estimated costs to perform each of the proposed reclamation measures required under A.R.S. § 27-971(B)(11) or R11-2-301(B), the owner or operator of a mining unit or existing exploration operation shall submit to the State Mine Inspector:
  1. Documentation for the calculation of the estimated costs, and
  2. The source of the estimated costs.
- C. The State Mine Inspector shall review the owner's or operator's estimate of the cost for reclamation and determine if the estimate is adequate to complete all required reclamation.
- D. If the State Mine Inspector determines the estimated cost of executing the reclamation plan is not adequate to complete all required reclamation, the reclamation plan shall be considered incomplete under A.R.S. §§ 27-952 or 27-972.
- E. If an owner or operator submits a written request for a reduction of financial assurance, along with a demonstration of sufficient financial ability pursuant to A.R.S. § 27-992(B), the State Mine Inspector shall grant or deny the request in writing within 30 days after receiving the request.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-803. Blanket Financial Assurance**

- A. A single financial assurance mechanism covering 2 or more mining units or facilities may be provided by an owner or operator instead of separate financial assurances for each unit or facility. If an owner or operator provides a single financial assurance mechanism, it shall demonstrate the financial ability to fulfill the aggregate reclamation costs of the mining units or facilities covered by the single financial assurance mechanism.
- B. If an additional unit or facility is to be covered under a single financial assurance mechanism previously provided to the State Mine Inspector, the owner or operator shall provide an updated financial assurance mechanism which demonstrates the financial ability to fulfill the aggregate reclamation costs of the mining units or facilities covered by the single financial assurance mechanism.
- C. A single financial assurance mechanism covering 2 or more exploration operations may be provided by the owner or operator pursuant to A.R.S. § 27-993.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-804. Surety Bonds**

An owner or operator may provide the State Mine Inspector with a surety bond as financial assurance for reclamation. The surety bond shall be an indemnity agreement in a sum certain payable to the state of Arizona, executed by the owner or operator as principal and shall be supported by the performance guarantee of a corporation licensed to do business as a surety in the state of Arizona.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-805. Certificates of Deposit**

- A. An owner or operator may provide the State Mine Inspector with a certificate of deposit which shows funds are available for reclamation of surface disturbances. The certificate of deposit shall name the state of Arizona as beneficiary. The financial institution issuing the certificate of deposit shall be a Federal Deposit Insurance Corporation-insured entity whose operations are regulated by a federal or state agency.
- B. The owner or operator may redeem the certificate of deposit if alternative financial assurance that meets the requirements of the Act and this Chapter is substituted.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-806. Trust Funds**

- A. An owner or operator may satisfy the requirements of this Article by establishing a trust fund that meets the requirements of the Act and this Chapter. The trust fund shall name the state of Arizona as the primary beneficiary. The trustee shall be an entity which has the authority to act as trustee and whose trust operations are regulated and examined by a federal or state agency.
- B. An owner or operator may satisfy the requirements of the trust fund by establishing a trust fund with a pay-in period that meets the requirements of the Act and this Chapter and by submitting an original signed duplicate of the trust agreement to the State Mine Inspector.
- C. A copy of the trust agreement shall be placed in the facility's operating record.
- D. The trust fund shall be initially funded in an amount at least equal to the costs estimated in the approved reclamation plan for reclamation of existing surface disturbances covered by the Act and any surface disturbances to occur in the 1st year of the trust fund.
- E. Payments into the trust fund, other than the initial funding, shall be made annually, at a minimum, with subsequent payments made not later than 30 days after each annual anniversary of the date of the 1st payment by the owner or operator. Annual payments shall be in an amount adequate to pay all costs of reclamation for land to be disturbed in that annual period.
- F. If the property owner or operator establishes a trust fund after having used 1 or more alternate mechanisms specified in this Article, the initial payment into the trust fund shall be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this Section.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-807. Letters of Credit**

- A. An owner or operator may satisfy the requirements of this Article by obtaining an irrevocable stand-by letter of credit. The letter of credit shall be effective to receive financial assurance approval. The issuing institution shall be an entity which has the authority to issue letters of credit, is federally insured, and whose letter-of-credit operations are regulated and examined by a federal or state agency.
- B. The letter of credit shall be irrevocable and issued for a period set to exceed 1 year by at least 90 days and in an amount at least equal to the costs estimated in the approved reclamation plan for reclamation. The letter of credit shall provide that the expiration date will automatically renew as approved by the State Mine Inspector for a period of at least 1 year, unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or opera-

tor and to the State Mine Inspector 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the owner or operator shall obtain alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after the notice of cancellation.

- C. The letter of credit shall indicate the conditions on which the state of Arizona may draw on the letter of credit.
- D. The property owner or operator may, with notification to the State Mine Inspector, cancel the letter of credit if alternate financial assurance that meets the requirements of the Act and this Chapter is substituted or if the owner or operator is released from the requirements of this Article under A.R.S. § 27-996, R11-2-817, or R11-2-822.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-808. Insurance**

- A. An owner or operator may show financial assurance for reclamation by obtaining insurance that meets the requirements of this Section. At a minimum, the insurer shall be a non-captive insurance company licensed to transact the business of insurance by the Department of Insurance, or eligible to provide insurance as an excess or surplus lines insurer in the state of Arizona.
- B. The reclamation insurance policy shall guarantee funds will be available to reclaim all disturbed lands and be available when the operation fails to comply with the approved reclamation plan. The policy shall also guarantee that, once reclamation begins, the insurer will be responsible for payment up to an amount equal to the face amount of the policy, under the direction of the State Mine Inspector to the party specified by the State Mine Inspector.
- C. A policyholder may, with notification to the State Mine Inspector, receive partial payment for reclaimed areas. The insurance policy shall provide that requests for payment will be granted by the insurer only if the remaining value of the policy is adequate to cover the remaining costs of reclamation. The policyholder shall notify the State Mine Inspector that payment has been received.
- D. The insurance policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for the failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. The insurance policy shall provide that if there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the policyholder and to the State Mine Inspector 120 days in advance of the action. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect if, before the date of expiration, the premium due is paid.
- E. The insured may cancel the insurance policy, with notification to the State Mine Inspector, if alternate financial assurance that meets the requirements of the Act and this Chapter is substituted.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-809. Certificates of Self-insurance**

- A. An owner or operator may use self insurance in combination with a guarantee only if, to meet the requirement of the financial test under this Article, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

- B.** An owner or operator, and/or guarantor, may satisfy the requirements of this Article upon successful completion of the financial test specified in this Section. Successful completion is determined by meeting the criteria of subsection (C) or (D) based on year-end financial statements for the latest completed fiscal year.
- C.** The criteria of this subsection for successful completion of the financial test are:
1. The owner or operator, and/or guarantor, shall have a tangible net worth of at least 10 times the costs estimated in the approved reclamation plan for reclamation.
  2. The owner or operator, and/or guarantor, shall have a tangible net worth of at least \$10 million.
  3. The owner or operator, and/or guarantor, shall submit to the State Mine Inspector a letter signed by the chief financial officer showing compliance with this Section.
  4. The owner or operator, and/or guarantor, shall either:
    - a. File financial statements annually with the U.S. Securities and Exchange Commission; or
    - b. Report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet shall have assigned the firm a financial-strength rating of 4A or 5A.
  5. The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
- D.** The criteria of this subsection for successful completion of the financial test are:
1. The owner or operator, and/or guarantor, shall meet the financial test requirements of R11-2-811.
  2. The fiscal year-end financial statements of the owner or operator, and/or guarantor, shall be examined by an Independent Certified Public Accountant (ICPA) and included with the ICPA's report of the examination.
  3. The firm's year-end financial statements cannot include an adverse opinion, a disclaimer of opinion, or a "going concern" qualification.
  4. The owner or operator, and/or guarantor, shall submit to the State Mine Inspector a letter signed by the chief financial officer demonstrating compliance with this Section.
  5. If the financial statements of the owner or operator, and/or guarantor, are not submitted annually to the U.S. Securities and Exchange Commission, the owner or operator, and/or guarantor, shall obtain a special report by an ICPA saying:
    - a. The ICPA has compared the data (which the letter from the chief financial officer specifies) as having been derived from the latest year-end financial statements of the owner or operator, and/or guarantor, with the amounts in the financial statements; and
    - b. No matters caused the ICPA to believe the specified data should be adjusted.
- E.** If an owner or operator using the test to provide financial assurance finds the requirements of the financial test are no longer met, based on the year-end financial statements, the owner or operator shall obtain alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after the end of the year for which financial statements have been prepared.
- F.** The State Mine Inspector may require reports of financial condition, at any time, from the owner or operator, and/or guarantor. If the State Mine Inspector makes a written finding, on the basis of the reports or other information, that the owner or operator, and/or guarantor, no longer meets the financial test requirements of subsection (C) or (D), the owner or operator shall obtain alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after notification of this written finding.
- G.** After the initial submission of the items specified in subsection (C) or (D), the owner or operator shall send updated information to the State Mine Inspector within 90 days after the close of each succeeding fiscal year. This information shall consist of all items specified in subsection (C) or (D).

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-810. Cash Deposits**

- A.** An owner or operator may use a receipt of deposit with the State Treasurer for the estimated costs of reclamation. The receipt of deposit shall show funds are available for reclamation costs. The owner or operator shall complete a treasurer's financial warranty deposit under the State Mine Inspector's instructions. The deposit shall be in the name of the state of Arizona.
- B.** The owner or operator may cancel the deposit with the State Treasurer, with notification to the State Mine Inspector, if alternate financial assurance that meets the requirements of the Act and this Chapter is substituted.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-811. Corporate Financial Tests**

An owner or operator may satisfy the requirements of this Section upon successful completion of a financial test specified in subsection (A) or (B). Successful completion is determined by meeting the criteria of subsection (C):

- A.** The owner or operator shall have:
1. 2 of the following 3 ratios: a ratio of total liabilities to net worth of less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; or a ratio of current assets to current liabilities greater than 1.5;
  2. Net working capital and tangible net worth each at least 6 times the costs estimated in the approved reclamation plan for reclamation;
  3. Tangible net worth of at least \$10 million; and
  4. Assets located in the United States amounting to at least 90% of total assets or at least 6 times the costs estimated in the approved reclamation plan for reclamation.
- B.** The owner or operator shall have all of the following:
1. 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;
  2. Tangible net worth at least 6 times the sum of the costs estimated in the approved reclamation plan for reclamation;
  3. Tangible net worth of at least \$10 million; and
  4. Assets located in the United States amounting to at least 90% of total assets or at least 6 times the costs estimated in the approved reclamation plan for reclamation.
- C.** To show successful completion of the corporate financial test, the owner or operator shall submit the following to the State Mine Inspector:
1. A letter signed by the owner's or operator's chief financial officer demonstrating compliance with this Section;
  2. A copy of the ICPA's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and
  3. A special report from the owner's or operator's ICPA to the owner or operator saying:

- a. The ICPA has compared the data (which the letter from the chief financial officer specified) as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in the financial statements; and
  - b. No matters caused the ICPA to believe the specified data should be adjusted.
- D.** After the initial submission of items specified in subsection (C), the owner or operator shall send updated information to the State Mine Inspector within 90 days after the close of each succeeding fiscal year. This information shall consist of all items specified in subsection (C).
- E.** If the owner or operator no longer meets the requirements of subsection (A) or (B), the owner or operator shall send notice of intent to establish alternative financial assurance to the State Mine Inspector. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternative financial assurance that meets the requirements of the Act and this Chapter within 120 days after the end of the fiscal year.
- F.** The State Mine Inspector may, based on reasonable belief that the owner or operator may no longer meet the requirements of subsection (A) or (B), require reports of financial condition by written request, at any time, from the owner or operator, in addition to those specified in subsection (C). If the State Mine Inspector makes a written finding, on the basis of the reports or other information, that the owner or operator no longer meets the requirements of subsection (A) or (B), the owner or operator shall provide alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after notification of this written finding.
- G.** The State Mine Inspector may disallow use of this test on the basis of qualifications in the opinion expressed by the ICPA in the report on examination of the owner's or operator's financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The State Mine Inspector will evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after notification of this disallowance.
- H.** The owner or operator is no longer required to submit the items specified in subsection (C) when:
1. An owner or operator substitutes alternate financial assurance that meets the requirements of the Act and this Chapter; or
  2. The State Mine Inspector releases the owner or operator's financial assurance under the Act and this Chapter.
- I.** An owner or operator may meet the requirements of this Section by obtaining a written guarantee. The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a group of legal entities which are controlled through stock ownership by a common parent corporation, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a substantial business relationship with the owner or operator. The guarantor shall meet the requirements for owners or operators in subsections (A) through (I) and shall comply with the terms of the guarantee. The certified copy of the guarantee shall accompany the items sent to the State Mine Inspector as specified in subsection (C). One of these items shall be the letter from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a substantial business relation-

ship with the owner or operator, this letter shall describe this substantial business relationship and the value received in consideration of the guarantee. The terms of the guarantee shall provide that:

1. If the owner or operator fails to perform the reclamation covered by the guarantee under the approved reclamation plan, the guarantor will do so or establish a trust fund as specified in the Act and this Chapter in the name of the owner or operator.
2. The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the State Mine Inspector. Cancellation may not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the State Mine Inspector, as evidenced by the return receipts.
3. If the owner or operator fails to provide alternate financial assurance that meets the requirements of the Act and this Chapter within 120 days after the owner or operator and the State Mine Inspector receive notice of cancellation of the corporate guarantee from the guarantor, the guarantor shall provide the alternate financial assurance in the name of the owner or operator.

#### Historical Note

Adopted effective January 6, 1997 (Supp. 97-1).

#### **R11-2-812. Annuities**

- A.** An owner or operator may provide the State Mine Inspector an annuity as financial assurance for reclamation. The annuity shall name the state of Arizona as the beneficiary. The financial institution, if any, shall be licensed to do business in the state of Arizona. Any incremental or annual payment shall be in an amount adequate to pay all costs of reclamation for land disturbed in that incremental or annual period.
- B.** The owner or operator may cancel the annuity only if alternate financial assurance that meets the requirements of the Act and this Chapter is provided.

#### Historical Note

Adopted effective January 6, 1997 (Supp. 97-1).

#### **R11-2-813. Final Action on Financial Assurance Mechanisms**

The State Mine Inspector shall take final action on the financial assurance mechanism within 30 days after its receipt.

#### Historical Note

Adopted effective January 6, 1997 (Supp. 97-1).

#### **R11-2-814. Incremental Financial Assurance**

If financial assurance is provided on an incremental basis as permitted under A.R.S. § 27-995, the amount shall be equal to or greater than the estimated cost of reclamation for surface disturbances created during that increment.

#### Historical Note

Adopted effective January 6, 1997 (Supp. 97-1).

#### **R11-2-815. Financial Assurance Funding**

Except where limited by statute or this Article, financial assurance provided by the owner or operator may be funded by the owner, the operator, by any 3rd party, or by any combination of persons or entities.

#### Historical Note

Adopted effective January 6, 1997 (Supp. 97-1).

#### **R11-2-816. Limited Individual Financial Assurance for Single Unit**

Whenever 2 or more persons or entities are named as owners or operators in a single exploration operation or mining unit, the own-



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ers or operators may limit the scope of their individual financial assurances so long as their financial assurances, in total, assure performance of all conditions and requirements of the Act, this Chapter, and the approved reclamation plan.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-817. Application for Release of Financial Assurance**

- A. The financial assurance shall not be released until all conditions and requirements of the Act and this Chapter have been satisfied.
- B. Within 60 days after receiving a request for release of a financial assurance, the State Mine Inspector, or a designated agent, shall inspect the exploration operation or mining unit to determine whether the owner or operator has fulfilled the requirements of the approved reclamation plan and either:
  1. Approve the release of the financial assurance or portion thereof; or
  2. Notify the owner and operator in writing that the financial assurance or portion thereof will not be released, the reasons why, and the measures necessary to satisfy the requirements of the approved reclamation plan.
- C. If a request to release is denied, the owner or operator may appeal the decision as provided by 12 A.A.C. 7, Article 6.
- D. The 60 days within which the State Mine Inspector, or a designated agent, shall respond to a request to release a financial assurance may be extended by mutual agreement if conditions prevent an inspection of the reclaimed land.
- E. The State Mine Inspector shall release the transferor's financial assurance mechanism upon receipt of alternate financial assurance that meets the requirements of the Act and this Chapter from the transferee.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-818. Forfeiture Criteria/Forfeiture of Financial Assurance**

- A. A financial assurance mechanism filed with the State Mine Inspector or state agency is subject to forfeiture if any of the following exist:
  1. An exploration operation or mining unit has been completed, abandoned, or temporarily closed for a period greater than allowed by the Act or this Chapter without initiating reclamation;
  2. An exploration operation or mining unit has been completed, abandoned, or temporarily closed for a period greater than allowed by the Act or this Chapter and the owner or operator stops or suspends any ongoing reclamation as determined by the State Mine Inspector;
  3. The operator stops conducting business in the state of Arizona and does not transfer the approved reclamation plan and financial assurance to a new operator under A.R.S. § 27-928.
  4. The operator stops conducting business due to insolvency, bankruptcy, receivership, or misconduct, under A.R.S. § 27-905;

5. The operator fails to comply with the conditions of the financial assurance mechanism; or
6. The owner or operator fails to reclaim the surface disturbances under the approved reclamation plan, the Act, or this Chapter.

- B. Where the financial assurance has been filed with an agency of the federal government, the State Mine Inspector shall notify that agency and request forfeiture action to be taken.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-819. Notification of Forfeiture Action**

At least 30 days before exercising forfeiture, the State Mine Inspector shall notify both the owner and operator and all principals and sureties by certified mail (return receipt requested), express mail (with a receipt), and hand delivery the financial assurance is subject to forfeiture and advise the owner and operator of the right to a hearing under A.R.S. Title 41, Chapter 6.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-820. Avoidance of Forfeiture**

The State Mine Inspector shall advise both the owner and operator and all principals and sureties subject to R11-2-818 of the conditions under which forfeiture may be avoided. The conditions may include:

1. An agreement by the owner and operator or another party to perform reclamation operations under a compliance schedule, determined by the State Mine Inspector, which meets the conditions of the Act, this Chapter, and the approved reclamation plan.
2. A surety bond to complete the reclamation or a portion of the reclamation applicable to the financial assurance increment if the surety can show an ability to complete the reclamation under the Act, this Chapter, and the approved reclamation plan.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-821. Notice of Exercise of Forfeiture**

The State Mine Inspector shall provide written notice by certified mail (return receipt requested) of any exercise of forfeiture of financial assurance to both the owner and operator and all principals and sureties.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).

**R11-2-822. Full Release of Financial Assurance**

The full release of financial assurance pursuant to A.R.S. § 27-996(B), or as otherwise provided by the Act and this Chapter, shall be evidence the owner or operator has reclaimed as required by the Act, this Chapter, and the approved reclamation plan.

**Historical Note**

Adopted effective January 6, 1997 (Supp. 97-1).