

4-104. Best Management Practices Program

A. Application for Regulation under the Best Management Practices Program

An owner of an IGFR or any person using groundwater pursuant to that IGFR may apply to be regulated under the Best Management Practices (“BMP”) Program at any time prior to the first compliance date for the agricultural conservation requirements established in the Fourth Management Plan. One application may be filed for multiple IGFRs if the IGFRs are contiguous or in close proximity to each other and are within the same farm unit. An application for regulation under the BMP Program shall be on a form prescribed and furnished by the director and shall include the following information:

- 1. The name, address, and phone number of the applicant.*
- 2. The certificate number(s) of Irrigation Grandfathered right for which the application is filed.*
- 3. The name of the farm or farm unit (if applicable).*
- 4. The current balance in the flexibility account for the farm.*
- 5. If the applicant is not the owner of an IGFR for which the application is filed, a signed affidavit from the owner of that IGFR stating that the owner agrees to regulation under the BMP Program until the effective date of any substitute conservation requirements established in the Fourth Management Plan, except as provided in subsection I, paragraph 2 of this section.*
- 6. A current farm plan map showing all existing improvements to the farm unit’s water conveyance system and farm irrigation systems.*
- 7. An identification of those BMPs described in Appendix 4B that the applicant selects to implement on the farm while regulated under the BMP Program. In selecting BMPs:
 - a. The applicant shall select at least one BMP in each of the four BMP Categories described in Appendix 4B: Category 1 (water conveyance system improvements), Category 2, (farm irrigation systems), Category 3 (irrigation water management practices), and Category 4 (agronomic management practices). The BMP or BMPs selected in a category shall have a maximum of three points using the point value determination described in that category. The BMP or BMPs selected in BMP Categories 1, 3, and 4 shall have a minimum of one point, and the BMP or BMPs selected in BMP Category 2 shall have a minimum of two points. The total number of points for all BMPs selected by the applicant shall be at least ten points.*
 - b. A BMP may be selected in BMP Category 1 or BMP Category 2 only if the BMP has already been installed and is being used on the farm at the time the application is filed. A BMP may be selected in BMP Category 3 or BMP Category 4 only if the BMP will be implemented on the farm annually**

while water use on the farm is regulated under the BMP Program.

- c. If the applicant selects a substitute practice in BMP Category 3 or BMP Category 4 as described in Appendix 4B, the applicant shall describe the substitute practice in detail and demonstrate that the practice will likely achieve water savings on the farm at least equivalent to the water savings that would result from implementation of an approved BMP in that category.*

B. Criteria for Approval of Application

The director shall approve an application for regulation under the BMP program if all of the following requirements are satisfied:

- 1. The application is found to be complete and correct, and the BMPs selected by the applicant under subsection A, paragraph 7 of this section meet the requirements of that paragraph.*
- 2. The applicant is not currently out of compliance with any agricultural conservation requirement in this Chapter. This paragraph does not apply to a violation of a conservation requirement if the violation has been resolved by the Department through a stipulation and consent order or other mechanism and the applicant is not in violation of that stipulation and consent order or other mechanism.*
- 3. If the BMPs selected by the applicant under subsection A, paragraph 7 of this section include a substitute practice in BMP Category 3 or BMP Category 4 as described in Appendix 4B, the applicant has demonstrated to the satisfaction of the director that the substitute practice will likely achieve water savings on the farm at least equivalent to the water savings that would result from implementation of an approved BMP in that category.*

C. Exemption from Maximum Annual Groundwater Allotment Conservation Requirements

After the director approves an application for regulation under the BMP Program, the owner of an IGFR included in the application, and any person using groundwater pursuant to that IGFR, are exempt from the maximum annual groundwater allotment conservation requirements set forth in section 4-102 beginning on January 1 of the first calendar year after the application for enrollment into the BMP Program is approved, unless the director approves an earlier date.

D. BMP Program Requirements

After the director approves an application for regulation under the BMP Program, the owner of an IGFR included in the application, and any person using groundwater pursuant to that IGFR, shall comply with all of the following:

- 1. The IGFR owner and any person entitled to use groundwater under that IGFR*

shall implement all selected BMPs in the application approved by the director under this section, beginning on January 1 of the first calendar year after the application for enrollment into the BMP Program is approved, unless the director approves an earlier date, and continuing thereafter until the first compliance date for any substitute conservation requirement established in the Fourth Management Plan. If a selected BMP has been replaced with a new BMP pursuant to subsection E of this section, the IGFR owner and any person entitled to use groundwater pursuant to that IGFR shall implement the new BMP in lieu of the selected BMP.

2. *The IGFR owner, and any person entitled to use groundwater under that IGFR, may use groundwater to irrigate only the irrigation acres to which the IGFR is appurtenant.*

E. Replacement of an Existing BMP with a New BMP after Acceptance into BMP Program

After the director approves an application for regulation under the BMP Program, the owner of an IGFR included in the application, or any person using groundwater pursuant to that IGFR, may:

1. *Replace a BMP selected in BMP Category 3 or BMP Category 4 in the application approved by the director with an approved BMP in the same category as described in Appendix 4B if the applicant notifies the director in writing of the replacement within thirty days after the replacement occurs.*
2. *Apply to the director to replace a BMP selected in BMP Category 3 or BMP Category 4 in the application approved by the director with a substitute practice in the same category as described in Appendix 4B. The director shall approve the application if the director determines that implementation of the substitute practice will likely result in water savings on the farm at least equivalent to the water savings that would result from implementation of the BMP selected in the application approved by the director.*

F. Requirement of New Lessee to Apply for Participation in BMP Program

1. *After the director approves an application for regulation under the BMP Program under subsection B of this section, any person who subsequently acquires a leasehold interest in the land enrolled in the program shall file with the director an application to participate in the BMP Program prior to using water on the land. The application shall be on a form prescribed and furnished by the director and shall contain the following information:*
 - a. *The applicant's name, address and telephone number.*
 - b. *The certificate number(s) of Irrigation Grandfathered right for which the application is filed.*
 - c. *A certification that the applicant agrees to be regulated under the BMP Program while leasing the land and an identification of all BMPs the*

applicant agrees to implement while leasing the land. The BMPs shall meet the requirements set forth in subsection A, paragraph 7 of this section.

d. Any other information required by the director.

- 3. The director shall approve an application to participate in the BMP Program filed under paragraph 1 of this subsection if the application meets all of the requirements set forth in subsection B of this section. If the director denies the application, the applicant shall file a new application to participate in the BMP Program within thirty days after receiving notice of the director's decision or, if the applicant files a timely notice of appeal of the decision and the appeal is denied, within thirty days after receiving notice of the denial of the appeal. In the new application, the applicant shall make a good faith effort to correct the deficiencies that the director identifies with the first application. If the director denies the new application, both the owner of the IGFR and the applicant shall be regulated under the Base Agricultural Conservation Program in section 4-102.*

G. Flexibility Account Provisions

Under the BMP Program, the flexibility account provisions of A.R.S. § 45-467 shall not apply to the IGFR owner and any person entitled to use groundwater under that IGFR. Upon acceptance into the BMP Program, the balance in the farm's flexibility account at the time of acceptance into the BMP Program shall remain unchanged until water use on the farm is no longer regulated under the BMP program.

H. Reporting Requirements

In addition to the information required to be submitted in the annual report required by A.R.S. § 45-632, the IGFR owner or any person entitled to use groundwater pursuant to that IGFR shall submit the following information on a form prescribed by the director by the date the annual report is due, regardless of whether an irrigation district files the annual report on behalf of the IGFR owner:

- 1. The name, address, and phone number of any person entitled to use groundwater on the farm unit.*
- 2. Certification that all required BMPs have been implemented during the previous calendar year. Pursuant to A.A.C. R12-15-1013, the person submitting the form shall keep and maintain, for at least three calendar years following the filing of the form, current and accurate records verifying that the BMPs were implemented.*

I. Duration of Regulation under BMP Program

- 1. Except as provided in paragraph 2 of this subsection, after the director approves an application for regulation under the BMP Program, the IGFR owner and any person entitled to use groundwater pursuant to that right shall be regulated under the BMP Program until the first compliance date for any substitute agricultural conservation requirement established in the Fourth Management Plan.*

2. *After the director approves an application for regulation under the BMP Program:*
 - a. *The owner of an IGFR included in the application may file with the director a written request to withdraw from the BMP Program. The director shall grant the request if the owner demonstrates to the satisfaction of the director that both of the following apply:*
 - 1) *The owner of the IGFR desires to lease the land to which the IGFR is appurtenant to a lessee for a term of at least one year, but the owner has been unable to find a lessee willing to be regulated under the BMP Program, after making a good faith effort to find such a lessee.*
 - 2) *The owner of the IGFR has found a person that will lease the land for a term of at least one year if the owner is allowed to withdraw from the BMP Program, and that person did not previously lease the land while the owner was regulated under the BMP Program.*
 - b. *A subsequent owner of the IGFR may file with the director a written request to withdraw from the BMP Program within 90 days after acquiring an ownership interest in the IGFR. The director shall grant the request unless the director determines that the transfer of ownership was made solely for the purpose of circumventing the provisions of paragraph 1 of this subsection, in which case the request shall be denied.*