

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION PERSONNEL ADMINISTRATION

PREAMBLE

1. Sections Affected

R2-5-301
R2-5-302
R2-5-303
R2-5-304
R2-5-305
R2-5-306
R2-5-307

Rulemaking Action

Amend
Amend
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Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 41-763 and 38-611(B)

Implementing statutes: A.R.S. §§ 41-783(25), 41-783(26), and 41-783(27)

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 7 A.A.R. 841, February 9, 2001

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

Name: Thomas Michael
Human Resources Generalist

Address: 1831 West Jefferson, Rm. 104
Phoenix, AZ 85007

Telephone: (602) 542-4897

Fax: (602) 542-2796

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

R2-5-302 establishes the authority to pay a signing bonus when needed for recruitment and the authority to make a counteroffer pay adjustment to retain an employee. R2-5-303 authorizes making a special detail salary permanent after 24 months in the detail; establishes higher promotional salary increase percentages; establishes greater salary decrease percentages for voluntary grade decreases; allows the salary to be retained when an employee takes a voluntary grade decrease for specified personal reasons; and removes the 2-year limitation for an employee affected by a reduction in force to retain the pre-RIF salary. R2-5-307 establishes guidelines for what constitutes on-call duty; clarifies on-call pay administration for FLSA exempt and non-exempt status; clarifies on-call procedures; and establishes agency review of on-call practices. Clarification and housekeeping revisions are being made to all sections along with the specific changes. The changes are consistent with the work of the Personnel Rules Review Committee (PRRC).

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

None

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

Not applicable

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

There will be no small business impact. There is expected be some impact on certain employees and on the expenditure of state funds, because the changes to R2-5-302 and R2-5-303 include authorizing the payment of unbudgeted salary increases in certain circumstances. However, it would be difficult to project the extent to which agencies might use the new provisions regarding the numbers of employees and the funds involved.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Claudia Smith
Communications Unit Manager

Address: 1831 West Jefferson, Rm. 128
Phoenix, AZ 85007

Telephone: (602) 542-4894

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10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

A public proceeding for oral comments on the rules has been scheduled for Wednesday, March 14, 2001, in the Grand Canyon Room in the basement of the Capitol, 1700 W. Washington, Phoenix, AZ 85007 at 3:30 p.m. and 5:30 p.m. Anyone wishing to provide comments prior to the meeting may submit written comments between 8:00 a.m. and 5:00 p.m., Monday through Friday, up until 5:00 p.m. March 12, 2001, at the location in paragraph 4.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

Fair Labor Standards Act (FLSA) in R2-5-305

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

**CHAPTER 5. DEPARTMENT OF ADMINISTRATION
PERSONNEL ADMINISTRATION**

ARTICLE 3. CLASSIFICATION AND COMPENSATION

R2-5-301. Classification
R2-5-302. Salary Plans
R2-5-303. Salary Administration
R2-5-304. Performance Based Salary Adjustments
R2-5-305. Overtime Pay and Compensatory Leave
R2-5-306. Standby Duty Pay
R2-5-307. On-call Duty

ARTICLE 3. CLASSIFICATION AND COMPENSATION

R2-5-301. Classification

- A. General. Classification is a grouping of positions into classes based on similarities of duties and responsibilities. All state service positions are assigned a class specification with a specific title. An agency head may not appoint, transfer, promote or demote an employee, or make any change in ~~compensation~~ salary for any position until the position has been allocated to a class.
- B. Class title. ~~An agency shall use The the~~ class title of a position ~~shall be used~~ to designate the position in all budget estimates, payrolls, vouchers, and communications in connection with personnel processes.
- C. Class specifications. A class specification indicates the kinds of positions to be allocated to the class, as determined by the duties and responsibilities described in that class. Each class specification ~~will shall~~ contain a statement of the ~~minimum~~ education, experience, knowledge, skills, ability and other qualifications required to perform the work. Postsecondary educational requirements ~~must shall~~ be attained in an institution ~~which that~~ meets the standards established by a recognized accrediting body.
- D. Changes in plan. The Director may establish new classes and divide, combine, alter, or abolish existing classes, after consultation with affected agency heads.
- E. Allocation. The Director shall place every position in a class based on its duties and responsibilities. ~~The Director may delegate to An an~~ agency head ~~the authority to may~~ underfill a position ~~with the prior approval of the Director.~~
- F. Changes in job duties. If a material and permanent change has taken place in the duties and responsibilities of a position, ~~the an~~ agency head shall report this change to the Director who may order a reclassification of the position. The employee in the position at the time of reclassification shall be entitled to continue to serve in that position.
- G. Review. An incumbent in a position or an agency head may file a written request with the Director for review of the classification of the position. ~~If the request is approved, the review will be conducted by an analyst other than the one who made the current classification decision.~~

R2-5-302. Salary plans

- A. Classes. ~~The Director shall allocate Each each~~ class ~~shall be allocated~~ to a specific pay grade or rate.
- B. Salary. ~~Every state service employee will be paid in The~~ base salary of an employee shall not be less than the minimum nor more than the maximum of the pay grade to which the employee's class is allocated, except for an underfill, or as otherwise specified by these rules.
- C. Alternative salary plans. The Director may approve special salary plans and pay practices for certain classes or groups of employees. In approving special salary plans, the Director shall consider such factors as occupational patterns, economic conditions, and incentive plans common to government, business, and industry.
- D. Counteroffer pay adjustment. ~~Subject to available funding, the Director may approve a pay adjustment as a counteroffer to a verifiable job offer to retain a current employee in the same position. A counteroffer shall not exceed the maximum of the pay grade.~~
- E. Hiring bonus. The Director may establish guidelines for the payment of a hiring bonus to attract a new employee into a state service position when there is:
 - 1. A shortage in the labor market;
 - 2. Recruitment or retention difficulty; or
 - 3. A requirement for a unique, critical skill.

R2-5-303. Salary Administration

- A. Administration.
 - 1. Salary. The salary used to compute ~~any an adjustments adjustment~~ covered in this Section shall be the employee's base rate not including overtime pay, shift differential, special performance award previously granted, or pay for other special situations. Following an adjustment to the base ~~rate salary, a special performance award and an agency shall add back~~ any ~~other~~ special pay situation still valid ~~shall be added back~~ to the new rate of pay.
 - 2. Salary ~~range.~~ The salary of ~~each state service employee shall fall within the salary range~~ an employee shall be not less than the minimum nor more than the maximum of the grade to which the employee's class is allocated except for:
 - a. The salary of an employee ~~which that~~ exceeds the maximum salary of the pay grade of a class due to a downward reclassification;
 - b. The salary of an employee ~~which that~~ exceeds the maximum salary of the pay grade of a class due to a change of the class to a lower grade;
 - c. The salary of an employee upon ~~detail to special duty detail~~ to a lower grade;
 - d. The salary of an employee upon placement on a mobility assignment in a class with a lower grade than the employee's permanent status grade;
 - e. The salary of an employee ~~which that~~ exceeds the maximum salary of the pay grade of a class, due to an authorized shift ~~salary~~ differential;

Arizona Administrative Register
Notices of Proposed Rulemaking

- f. The salary of an employee ~~which that~~ exceeds the maximum salary of the pay grade of a class due to receipt of a special performance award;
 - g. The salary of an employee ~~which that~~ exceeds the maximum salary of the pay grade of a class due to the receipt of any other special payments, such as hazardous duty pay; and
 - h. The salary of an employee ~~which that~~ exceeds the maximum salary of the pay grade of a class due to a reduction in force as provided in ~~subsection (I) below~~.
3. ~~Except as provided otherwise in subsections (A)(2)(a) through (h), if a salary action results in a new salary level which would be lower than the entrance salary or higher than the maximum salary of the grade, the employee shall receive the entrance salary or the maximum salary, respectively.~~
- 4.3. Administrative adjustments. Subject to available funding, the Director may authorize an adjustment to:
- a. ~~Resolve a manifest error or;~~
 - b. Resolve a problem when the base pay of a current employee whose current performance meets expectations is below the salary of an employee in the same classification;
 - c. Increase the base pay of a supervisor that is below the salary of a subordinate;
 - d. Correct an clear inequity by approving an adjustment; or
 - e. Increase a transferred employee's base salary based upon documentation of recruitment difficulties to fill the position, specific needs identified by the agency, or the employee's experience, education or ability.
- B. Classification or grade changes.**
1. The salary of an employee in a position ~~which that~~ is reclassified to a higher grade, or in a class ~~which that~~ is changed to a higher grade, shall ~~be increased increase~~ by 2.5%; ~~provided the employee is paid within the salary range of the grade. If establishing increasing the salary of an employee whose position is reclassified would result results in a salary level that would be is lower than the entrance salary or would exceed exceeds the maximum salary of the grade, the employee's salary shall be established at the entrance salary or at the maximum salary of the grade, respectively.~~
 2. The base salary of an employee ~~in a shall remain the same if the employee's position which is reclassified to a lower class; or is in a class which that is changed to a lower grade; and which is:~~
 - a. ~~within Within the salary range of the new pay grade, will remain the same; or~~
 3. ~~The salary of an employee in a position which is reclassified to a lower class, or in a class which is changed to a lower grade, and which is~~
 - b. ~~higher Higher than the maximum salary of the new pay grade, shall remain the same for a maximum of 2 years from the date of reclassification or regrading.~~
 3. ~~During this period If (2b) occurs, the employee shall not be eligible for a general salary adjustments adjustment or performance increases based salary adjustment except for a special performance award. If the pay range encompasses the employee's salary at a later date, the employee shall be eligible for a general salary adjustments adjustment and a performance increases increase. After 2 years, the salary of the employee shall not exceed the maximum salary of the new pay grade.~~
 4. The Director shall establish guidelines that ~~shall~~ supersede the provisions of ~~subsections (B)(1), (2), and (3) when setting the salary of an employee in a classification affected by a Classification Maintenance Review or a Special Market Adjustment.~~
- C. Demotion.** The salary of an employee who is demoted 1 grade or more shall ~~be decreased decrease~~ by ~~5%~~ 7.0% of mid-point of the current grade ~~provided that a 5% decrease results in the employee's salary falling within the salary range of the grade to which the employee's class is allocated. If a 5% the decrease would result results in an employee's salary falling below the entrance salary or above the maximum salary of the grade to which demoted, the employee shall receive the entrance salary or the maximum salary of the grade, respectively.~~
- D. ~~Detail to special duty~~ Special detail.**
1. The salary of an employee ~~on a detailed to special duty detail~~ at a grade higher than the permanent grade shall be set in accordance with ~~subsection (H) below~~.
 2. The salary of an employee ~~on a detailed to special duty detail~~ at a grade lower than the permanent grade shall be the same salary as that received prior to the special detail, which may exceed the maximum salary of the grade of the class to which detailed.
 3. ~~Any A~~ general salary adjustment ~~which that~~ becomes effective during an employee's ~~detail to special duty detail~~ shall ~~be applied apply~~ to the salary the employee is receiving while on special detail, unless the employee's salary is at the maximum of the salary for the grade.
 4. The salary of an employee who returns to a permanent position after a ~~detail to special duty detail of 24 months or less~~ shall be the same as that paid prior to the special detail, plus the percentage or ~~flat~~ dollar increase of any intervening general adjustment for which the employee was eligible, and the dollar amount of any performance increase which the employee was awarded during the special detail.
 5. An employee who returns to the prior position or class after a special detail of longer than 24 months and who received satisfactory or better performance evaluations while in the special detail shall retain the special detail salary provided the salary does not exceed the maximum of the salary range of the class to which the employee returns.

Arizona Administrative Register
Notices of Proposed Rulemaking

E. Mobility assignment.

1. The salary of an employee on a mobility assignment in a covered position at a grade higher than the permanent grade shall be set in accordance with ~~subsection (H) below.~~
2. The salary of an employee in a mobility assignment in a covered position at a grade lower than the permanent grade shall be the same salary as that received prior to the mobility assignment, which may exceed the maximum salary of the grade of the class to which assigned.
3. ~~Any~~ A general salary adjustment ~~which that~~ becomes effective during an employee's mobility assignment to a covered position shall ~~be applied~~ apply to the salary the employee is receiving while on mobility assignment.
4. The salary of an employee who returns to a permanent position after a mobility assignment shall be the same as that paid prior to the mobility assignment, plus the percentage or ~~flat~~ dollar increase of any intervening general adjustment for which the employee was eligible, and the dollar amount of any performance increase which the employee was awarded during the mobility assignment.

F. Normal entrance Basic hiring rates rate. ~~The salary of all~~ A new employees employee shall be the entrant receive a salary up to the midpoint of the salary range established for the pay grade of the employee's class to which appointed. The hiring rate for the appointment of a qualified applicant may be at a higher salary than the midpoint based on such factors as the applicant's experience, education, or ability, the availability of qualified applicants, the applicant's earning history, or the geographical location of the position.

G. Other entrance Special recruitment rates rate.

1. The Director may establish a special recruitment rate for a class ~~at a salary higher than the entrant~~ up to the midpoint of the salary range when:
 1. ~~it~~ It is not possible to recruit a qualified employees employee at the established entrance salary; ~~or provided the special recruitment rate is not higher than the maximum salary of the grade. When such an appointment is made, all other employees with lower salaries, who are in the same class, agency, and geographical location, shall be raised to the same level.~~
 2. Competitive starting salaries for the class exceed the established hiring salary.
2. ~~The Director may authorize a special entrance rate for the appointment of a qualified applicant at a higher salary than the entrant salary based on such factors as the unusual and outstanding character of the applicant's experience, education, and ability, the availability of qualified applicants, the applicant's earning history, or the geographical location of the position, provided the special entrance rate is not higher than the maximum salary of the grade.~~

H. Promotion.

1. ~~An employee who is promoted 1 grade or more shall receive an increase in salary that is 7% of the midpoint of the salary range of the new grade or 2 grades shall receive a 5 increase in salary; and an employee who is promoted 3 or more grades shall receive a 10 increase in salary, provided increasing the salary by 5% or 10% does not result in a new salary that is lower than the entrant salary or higher than the maximum salary of the grade. If establishing the promotional salary would result results in a salary level that would be is lower than the entrant minimum salary or higher than the maximum salary of the grade, the employee's salary shall be within the established at the entrant salary or at the maximum salary of range for the grade, respectively.~~
2. ~~The Director~~ An agency head may authorize the promotion of a qualified employee with a salary increase greater than the percentage listed in ~~subsection (1), based on such factors as the unusual and outstanding character of the employee's experience, education, and ability, or the geographical location of the position, provided the promotional salary level does not exceed the maximum salary of the grade.~~
3. A promoted employee may accept a lower salary in the new pay grade than is otherwise authorized, if fiscal constraints prohibit the granting of the normal promotional increase and the new salary level is not lower than the entrance salary of the grade. ~~An agency shall not offer a salary which is less than the entrant salary of the new pay grade.~~
4. The salary of an employee who is promoted to the position to which detailed shall be at a minimum the salary received while on special detail.
5. The salary of an employee on special detail who is promoted to ~~any~~ a position other than the position to which detailed shall be calculated as follows:
 - a. The salary shall ~~first~~ 1st be adjusted for a return from special detail as specified in ~~subsection (D)(4) or (D)(5), as applicable.~~
 - b. The salary shall then be adjusted for the promotion as specified in ~~this subsection (1).~~
6. The salary of an employee on promotional probation who is promoted to another position shall be calculated from the employee's current base rate salary.

Arizona Administrative Register
Notices of Proposed Rulemaking

- I. Reduction in force. ~~If The~~ the salary of an employee who is reduced in pay grade due to a reduction in force, ~~which is higher than the maximum salary of the new pay grade, the salary shall remain the same for a maximum of 2 years from the date of the reduction in grade. During this period the employee shall not be eligible for general salary adjustments or performance increases. If~~ Unless the pay range encompasses the employee's salary at a later date, the employee shall not be eligible for a general salary ~~adjustments~~ adjustment and or performance ~~increases~~ increase. After 2 years, the salary of the employee shall not exceed the maximum salary of the new pay grade.
- J. Repromotion.
1. The salary of an employee who is repromoted to the class held prior to the reduction in force shall be the salary held by the employee at the time of the reduction in force, plus the percentage or ~~flat~~ dollar amount of increase of ~~any~~ an intervening general adjustment for which the employee is eligible, and the dollar amount of ~~any~~ a performance increase ~~which that~~ the employee was awarded at the lower grade.
 2. The salary of an employee who is repromoted to a class higher in grade than the current class but lower in grade than the class held prior to the reduction in force, shall be set in accordance with ~~subsection (H)(1)~~.
 3. A repromoted employee may accept a lower salary in the new pay grade than is otherwise authorized if fiscal constraints prohibit the granting of the normal promotional increase and provided the new salary level is not lower than the entrance salary of the grade. ~~An agency shall not offer a salary which is less than the entrance salary of the new pay grade.~~
- K. Return to state service.
1. The salary of a former state service employee who ~~returns to is reinstated or reemployed in~~ state service ~~from a reinstatement or reemployment register shall~~ may:
 - a. be Be the same salary held by the employee when separated; ~~provided the salary held by the former employee when separated is not lower than~~
 - b. Not exceed the maximum of the salary range if the new salary grade is lower than the prior salary grade;
 - c. Not jeopardize reinstatement rights if the salary is lower; or
 - d. Not be less than the entrance salary minimum of the a higher salary grade, in effect upon the former employee's return to state service. An agency shall not offer a salary which is lower than the entrance salary of the pay grade.
 2. If fiscal constraints prohibit the granting of the former salary, the former employee may accept a lower salary in the pay grade, provided the salary is not lower than the entrance salary of the pay grade. ~~An agency shall not offer a salary which is lower than the entrance salary of the pay grade.~~
- L. Reversion. An employee who does not complete ~~the a~~ promotional probationary period and returns to the former position or to another position in a lower grade ~~will return to~~ shall receive the salary held ~~in the grade~~ at the time of promotion, plus the percentage or ~~flat~~ dollar increase of any intervening general adjustment for which the employee was eligible, and the dollar amount of any performance increase ~~which that~~ the employee was awarded at the higher grade.
- M. Shift differential. The Director may authorize a salary shift differential to be paid to an employees employee on other than a day ~~shifts~~ shift. ~~The shift differential shall not exceed 10% of the employee's current salary. The Director shall establish a competitive shift differential rate periodically based on an annual survey of the market place.~~ Employees in the same class in the same agency who work on the same shift shall receive the same ~~percentage~~ shift differential rate.
- N. Transfer. The salary of an employee who is transferred to a position in the same class or to another class in the same salary grade shall be the same salary as that received prior to the transfer.
- O. Voluntary Grade Decrease.
1. The salary of a permanent status employee who is granted a grade decrease due to a career path change, relocation, or personal reasons shall remain the salary received prior to the grade decrease provided the salary is within the pay grade. Such a voluntary decrease shall be limited to once in a 5-year period.
 2. The salary of a permanent status employee who volunteers for a grade decrease for reasons other than those outlined in (1) shall be decreased by ~~2.5~~ 7.0% for a 1-grade decrease, 5% for a 2-grade decrease, and 10% for a decrease of 3 grades or more, provided that the decreased salary does not exceed the maximum salary or fall below the minimum salary of the lower grade of midpoint of the current grade. If the decreased salary exceeds the maximum salary of the range, the employee's salary shall be the maximum salary of the lower grade.
 23. An employee promoted within 1 year to the immediately prior class shall receive the salary held at the time of the grade decrease in that class plus any general and merit adjustments made to the lower salary.
 34. An employee promoted to a class other than the employee's immediately prior class shall receive a salary set in accordance with ~~subsection (H)~~.
 45. An original probationary employee who volunteers for a grade decrease shall ~~be paid~~ receive the entrance salary of the new pay grade.

R2-5-304. Performance Based Salary Adjustments

- A. Performance based salary adjustment limits. Subject to legislative appropriation, the Director shall determine employee eligibility for and the minimum and maximum performance based salary adjustment percentage for a performance based salary adjustment.

Arizona Administrative Register
Notices of Proposed Rulemaking

- B.** Performance based salary adjustments.
1. All employees who are in the state service on the date listed in the performance based salary adjustment guidelines issued by the Director and who meet the criteria listed in the guidelines are eligible for a performance based salary adjustment up to the percentage limit set in the guidelines, effective on the date set in the guidelines.
 2. A performance based salary adjustment may not raise the base salary of an employee beyond the maximum salary of the pay grade.
 3. An employee may not receive a performance based salary adjustment greater than the percentage increase limit set by the Director.
- C.** Special performance ~~awards~~ adjustment. An employee at the maximum salary of the employee's pay grade, or who is eligible for a performance based salary adjustment that places the employee at the maximum salary of the pay grade, is eligible for a special performance ~~award~~ adjustment. The special performance ~~award~~ adjustment shall be a
- ~~1. May be a lump sum or other payment method established by the Director in the performance based salary adjustment guidelines.~~
 - ~~2. Shall not exceed the percentage limit outlined in the performance based salary adjustment guidelines issued by the Director; and~~
 - ~~3. Shall be paid over the term established by the Director in the performance based salary adjustment guidelines.~~
- D.** Combination of increases. An employee shall not receive a combination of a performance ~~increase~~ based salary adjustment and a special performance award exceeding the limit set in the performance based salary adjustment guidelines issued by the Director.

R2-5-305. Overtime Pay and Compensatory Leave

- A.** Approval of overtime work. An agency head may require that an employee work overtime and:
- ~~1. Shall approve in advance all work in excess of 40 hours per work week or in excess of ~~an established~~ a work period as defined by the FLSA; must be approved by the agency head. and~~
 - ~~2. May assign an employee who volunteers for overtime before mandatory overtime is required.~~
- B.** Exemptions. The Director shall determine exemptions in accordance with the Fair Labor Standards Act, 29 U.S.C. Section 201, incorporated by reference herein and on file in the Office of the Secretary of State.
- C.** Non-exempt employees.
1. An agency shall compensate an employee in a non-exempt position who works in excess of 40 hours per work week or in excess of ~~an established~~ a work period as determined by the FLSA ~~shall be compensated~~ by either:
 - a. Additional pay at the rate of 1 1/2 times the employee's regular rate for each excess hour worked; or,
 - b. Compensatory leave at the rate of 1 1/2 hours for each excess hour worked. 2. An employee shall select either overtime pay or compensatory leave for overtime compensation. If the employee selects both overtime pay and compensatory leave, The the agency head shall determine ~~if the excess hours are to be compensated by overtime pay or compensatory leave, unless which shall apply.~~ If the an employee's compensatory leave balance has reached the maximum allowed in subsection (F) below, in which case the agency shall compensate the employee ~~must be compensated~~ by overtime pay.
- D.** Exempt employees.
1. An employee in ~~an exempt~~ a position that is exempt from the FLSA, except for those excluded in ~~subsection (E) below,~~ who works in excess of 40 hours per week or in excess of an established work period shall ~~receive one~~ accrue 1 hour of compensatory leave for each hour of overtime worked, until the employee's compensatory leave balance reaches the maximum allowed in ~~subsection (F) below.~~ When the maximum balance is reached, an agency shall not require or allow an exempt employee ~~shall not be required or allowed~~ to work overtime.
 2. The Director may approve overtime pay at the regular rate for positions exempt from the ~~Fair Labor Standards Act, (29 U.S.C. Section 201, incorporated by reference herein and on file in the Office of the Secretary of State),~~ FLSA ~~which that~~ are eligible for compensatory leave because the primary duty is management; when ~~either~~ any of the following criteria is met:
 - a. ~~The Director determines that the practice is determined by the Director to be~~ a prevailing condition in the Arizona labor market;
 - b. ~~and when pay Overtime pay to subordinates reduces pay~~ differentials between subordinates and supervisors ~~are reduced by overtime pay received by non-exempt subordinates~~ to the extent that it is no longer an incentive to remain in the supervisory position; ~~or~~
 - ~~b.c. When temporary~~ Temporary emergency conditions arise that make it more practical to pay overtime than to grant compensatory leave.
- E.** Excluded employees. Employees in the following positions are excluded from receiving either overtime pay or compensatory leave:
1. All elected positions; ;
 2. All positions ~~which that~~ are appointed pursuant to A.R.S. § 38-211; ;

Arizona Administrative Register
Notices of Proposed Rulemaking

3. All professional positions. ~~Professional positions, which~~ are all physician and attorney positions that are compensated in accordance with a special salary plan; and
 4. Persons whose primary duty is to manage ~~the~~ a state agency or state agency subdivisions, which include divisions, bureaus, or equivalent units, and:
 - a. Who use discretionary powers; ~~;~~
 - b. Who direct the work of at least ~~two~~ 2 other employees; ~~;~~ and
 - c. Who have the authority to hire and fire.
- F. Maximum accumulation. The maximum number of hours of accumulated compensatory leave is:
1. ~~Four hundred and eighty~~ 480 hours for an employee who works in a public safety activity or an emergency response activity; or,
 2. ~~Two hundred and forty~~ 240 hours for an employee who works in any other activity.
- G. Payment upon separation.
1. An agency head may pay an employee at any time for all or any portion of the employee's accrued compensatory leave balance at the employee's current base salary subject to funding availability.
 2. An agency shall pay an employee who has unused compensatory leave at the time of separation from the state service shall receive compensation for each hour of such compensatory leave at:
 - 1a. ~~The employee's average rate received by the employee~~ base salary during the last 3 years of ~~the employee's~~ employment; or,
 - 2b. ~~The employee's final rate received by the employee~~ base salary, whichever is higher.
- H. Inter-Agency Transfer. An agency head may pay an employee who is transferred transfers to another state service agency shall transfer for all accumulated and unused compensatory leave at the time of the transfer to the employee's compensatory leave account in the new agency. An agency may transfer part or all of the compensatory leave accumulated by an employee who transfers to another agency with the gaining agency's concurrence. If the gaining agency does not concur, the losing agency shall pay all of the accumulated compensatory leave that the gaining agency will not accept.

R2-5-306. Standby duty pay

- A. Definition. "Standby duty" means the requirement imposed upon an employee by an agency to remain at the employee's duty location or other designated location at any time when the employee is not scheduled to work.
- B. Authority. An agency head may place an employee on standby duty when the agency head considers such action to be in the best interests of the state service.
- C. Payment. Standby duty is considered to be work under the ~~Fair Labor Standards Act, 29 U.S.C. Section 201, incorporated by reference herein and on file in the Office of the Secretary of State~~ FLSA. ~~The~~ An agency shall pay an employee on standby duty ~~will receive~~ the employee's regular rate of pay; and shall count all periods of standby duty ~~will be counted~~ in determining eligibility for overtime compensation.

R2-5-307. On-call Duty

- A. ~~Authority. General.~~ An agency head may assign an employee who is serving in an on-call designated position to on-call duty ~~when~~ if the agency head considers such action to be in the best interests of the state.
 1. ~~The agency head may request that a classification be approved by the Director as eligible for~~ shall determine a position assigned to on-call duty ~~pay subject to the availability of funds.~~
 2. ~~The agency head shall certify~~ determine that the functions or services performed by the ~~positions~~ position ~~within the class assigned to on-call duty require~~ requires an employee to be available to report to work and answer calls ~~and/or report to work to protect the public health, safety or welfare or in emergency situations~~ via telephone, beeper, or other notification method at a time when the employee is not scheduled to work.
 3. Carrying a pager or other notification method does not automatically qualify an employee for on-call duty.
 4. The agency head shall determine and establish in writing an on-call assignment schedule for each position and shall establish the days and hours of on-call duty for each employee assigned.
 5. The agency head shall determine the assignment of an employee to on-call duty during or immediately following an approved sick leave.
 6. An employee assigned to on-call duty shall respond to the assignment as directed by the agency head.
- B. ~~Rate of Pay. FLSA non-exempt employees.~~
 1. An agency shall pay an employee in a position that is non-exempt under the FLSA who is assigned to on-call duty.
 2. The Director shall establish the rate of pay for on-call duty shall be determined by the Director.
- C. Exempt employees. An agency shall not pay an hourly rate to an employee exempt from the FLSA for on-call duty. The agency head may compensate an employee exempt from the FLSA for on-call duty by paying an on-call shift differential in a lump sum.

Arizona Administrative Register
Notices of Proposed Rulemaking

CD. Pay Administration administration for FLSA non-exempt employees.

1. ~~Once a class an agency head has been approved selects and schedules a position as eligible for on-call duty pay, the on-call payment period begins when the agency head requires a person is required the employee to be available to report to work or to be available to answer calls and/or report to work. On-call duty pay is terminated terminates in accordance with the standards set forth in subsections (C)(2)(a) and (2)(b) below and shall resume resumes upon completion of the a work assignment if returning to the agency head re-schedules the employee for on-call status duty.~~
1. Once a class an agency head has been approved selects and schedules a position as eligible for on-call duty pay, the on-call payment period begins when the agency head requires a person is required the employee to be available to report to work or to be available to answer calls and/or report to work. On-call duty pay is terminated terminates in accordance with the standards set forth in subsections (C)(2)(a) and (2)(b) below and shall resume resumes upon completion of the a work assignment if returning to the agency head re-schedules the employee for on-call status duty.
2. ~~Upon reporting to work as a result of a call to duty, An agency shall pay an employee who reports to work while in on-call status shall be paid at the employee's regular rate of pay if the employee has worked fewer than 40 hours during the normal employee's regular work week. If the employee has worked 40 hours during the normal regular work week, the employee agency shall pay the employee receive, as appropriate, cash payment or award compensatory leave in accordance with under R2-5-305 if the employee's position is eligible for such overtime compensation.~~
 - a. ~~Regular An employee's regular rate of pay will begin at the time resumes when the employee reports to the regular work site and will continue continues through completion of the work assignment.~~
Regular An employee's regular rate of pay will begin at the time resumes when the employee reports to the regular work site and will continue continues through completion of the work assignment.
 - b. ~~If an agency head orders the employee is ordered to report to a location other than the regular work site, regular rate of pay will shall begin at the time the employee is ordered to report to work and will shall continue through completion of the work assignment and a reasonable return transit time.~~
If an agency head orders the employee is ordered to report to a location other than the regular work site, regular rate of pay will shall begin at the time the employee is ordered to report to work and will shall continue through completion of the work assignment and a reasonable return transit time.
 - c. ~~If the an employee conducts business via telephone, etc., or other communication method without reporting to a work site, the employee's regular rate of pay will begin begins at the time the employee begins the work assignment and will continue continues through completion of the work assignment.~~
If the an employee conducts business via telephone, etc., or other communication method without reporting to a work site, the employee's regular rate of pay will begin begins at the time the employee begins the work assignment and will continue continues through completion of the work assignment.
3. ~~Time on call An agency shall not be used use on-call time to determine eligibility for overtime compensation.~~
Time on call An agency shall not be used use on-call time to determine eligibility for overtime compensation.

E. Pay Administration for FLSA Exempt Employees. An employee shall record all time worked and all hours assigned to on-call duty during the workweek. An agency shall pay on-call duty shift differential in a lump sum.

DE. Agency procedures. An agency that places employees an employee on-call shall adopt an on-call duty procedure pursuant to this rule under this Section. Each agency will submit its proposed on-call duty procedure and any subsequent changes to the Director for approval. The procedure shall include as a minimum the:

1. ~~Methods Method of scheduling employees an employee for an on-call assignments assignment;~~
Method Method of scheduling employees an employee for an on-call assignments assignment;
2. ~~Notification On-call notification procedures procedure, including use of pagers or other notification method;~~
Notification On-call notification procedures procedure, including use of pagers or other notification method;
3. ~~Overtime compensation criteria; and~~
Overtime compensation criteria; and
4. ~~Requirement that any an agency shall report and pay on-call duty pay shall be reported and paid together with other earnings in the pay period for which it is earned.~~
Requirement that any an agency shall report and pay on-call duty pay shall be reported and paid together with other earnings in the pay period for which it is earned.

G. Agency Review. An agency head shall conduct an annual review of on-call practice in the agency and report the results to the Director on or before August 15. An agency head who fails to submit the agency's on-call practice report by the designated date shall discontinue assigning agency employees to on-call duty until the agency head submits the report to the Director.

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 12. OFFICE OF THE SECRETARY OF STATE

PREAMBLE

1. Sections Affected

Article 6
R2-12-601
R2-12-602
R2-12-603
R2-12-604
R2-12-605
R2-12-606
R2-12-607
R2-12-608
R2-12-609
R2-12-610
R2-12-611
R2-12-612
R2-12-613

Rulemaking Action

New Article
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section
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New Section
New Section

Arizona Administrative Register
Notices of Proposed Rulemaking

R2-12-614	New Section
R2-12-615	New Section
R2-12-616	New Section
R2-12-617	New Section
R2-12-618	New Section

2. The specific authority for the rulemaking, including both the authorizing statutes (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 47-9410

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 7 A.A.R. 842, February 9, 2001

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

Name: Russ Savage
Electronic Transactions Liaison

Address: Office of the Secretary of State
1700 West Washington, 7th Floor
Phoenix, AZ 85007

Telephone: (602) 542-2022

Fax: (602) 542-1575

5. An explanation of the rule, including the agency's reason for initiating the rule:

In accordance with A.R.S. § 41-369, the Secretary of State may establish policies, procedures, fees and any other duties or services required to permit the commission of electronic notary public.

6. A reference to any study that the agency proposes to rely on its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, and analysis of the study and other supporting material:

None

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

Not applicable

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

The establishment of electronic notarial services for electronic transactions, by which the role of the electronic notary public will be to maintain public trust in electronic transactions for those requiring levels of authenticity equivalent to notarized paper documents.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Russ Savage
Electronic Transactions Liaison

Address: Office of the Secretary of State
1700 West Washington, 7th Floor
Phoenix, AZ 85007

Telephone: (602) 542-2022

Fax: (602) 542-1575

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceedings is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

A public hearing will be held March 9, 2001, at 9:00 a.m. in the conference room of the Secretary of State, 1700 West Washington, 7th floor, Phoenix, AZ 85007.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporation by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 12. OFFICE OF THE SECRETARY OF STATE

ARTICLE 6. ELECTRONIC NOTARY

<u>R2-12-601.</u>	<u>Definitions</u>
<u>R2-12-602.</u>	<u>Identification of acceptable technologies for electronic signatures</u>
<u>R2-12-603.</u>	<u>Policy authority</u>
<u>R2-12-604.</u>	<u>Electronic notary approval application, suspension, revocation</u>
<u>R2-12-605.</u>	<u>Approval of Time Stamp Provider</u>
<u>R2-12-606.</u>	<u>Electronic Notary Education</u>
<u>R2-12-607.</u>	<u>Notary Service Electronic Certificate Applicant Education</u>
<u>R2-12-608.</u>	<u>Applicant materials provided by State to an Electronic Notary applicant</u>
<u>R2-12-609.</u>	<u>Applicant application and renewal of Electronic Notary Token</u>
<u>R2-12-610.</u>	<u>Care and Maintenance of Electronic Notary Token</u>
<u>R2-12-611.</u>	<u>Requirements for notarial acts in the presence of an Electronic Notary</u>
<u>R2-12-612.</u>	<u>Applicant application and renewal of Notary Service Electronic Certificate</u>
<u>R2-12-613.</u>	<u>Care and Maintenance of Notary Service Electronic Certificate</u>
<u>R2-12-614.</u>	<u>Requirements for notarial acts not in the presence of an Electronic Notary</u>
<u>R2-12-615.</u>	<u>Notarial Journal</u>
<u>R2-12-616.</u>	<u>Penalty fee for lack of notice as required by statute</u>
<u>R2-12-617.</u>	<u>Fees to electronic notary</u>
<u>R2-12-618.</u>	<u>Termination of commission of an electronic notary</u>

ARTICLE 6. ELECTRONIC NOTARY

R2-12-601. Definitions

A. Note that the following terms are defined by A.R.S. § 41-351:

1. "Approved Time Stamp Provider"
2. "Electronic"
3. "Electronic acknowledgment"
4. "Electronic commission"
5. "Electronic document"
6. "Electronic jurat"
7. "Electronic notary public" or "electronic notary"
8. "Electronic notary token"
9. "Electronic signature"
10. "Notary service electronic certificate"
11. "Notary service electronic signature"
12. "Oath" or "affirmation"
13. "Personal knowledge of identity"
14. "Satisfactory evidence of identity"
15. "Time stamp token"

B. "Approved Notary Service Electronic Certificate Provider" means a person or organization recognized by the Secretary of State as capable of reliably providing the materials and processes required to sign Electronic Notary Service documents.

C. "Approved Electronic Notary Token Provider" means a person or organization recognized by the Secretary of State as capable of reliably providing the materials and processes required to create an Electronic Notary Token.

D. "Certificate" means an electronic document attached to a public key (or Policy Authority defined equivalent) which provides proof that the public key belongs to a legitimate signer employing either an *Electronic Notary Token* or a Notary service electronic certificate and has not been compromised.

E. "Certification Policy" means a document issued by the Policy Authority that describes the Certificate, the rights and responsibilities of the parties involved in its creation, use and retirement from use.

F. "Person" means a human being or any organization capable of signing a document, either legally or as a matter of fact.

Arizona Administrative Register
Notices of Proposed Rulemaking

G. “Policy Authority” means, as defined by R2-12-503, the authoritative party that formulates the guidelines defining the process of electronic signature use by and with state agencies.

R2-12-602. Establishment of electronic signature and other technical standards

It should be noted that the performance, in accordance with Arizona statute, of notarial acts, whether they be electronic or non-electronic, is to provide objective standards of authentication as opposed to a subjective witness process. The physical presence of the person before a notary provides for objective standards of identifying the individual and directly linking them to a document and the unique process by which it was signed by them, whether signed before the notary or signed at a later time. As a consequence, an objective record of the individual’s acknowledgment of signing and the time of signing are incorporated into the document, whether signed before the notary or signed at a later time.

A. The Secretary of State shall establish standards for electronic notary services that accommodate electronic signatures and electronic records retention and accessibility consistent with Title 44 Chapter 26, as well as A.R.S. § 41-132, A.R.S. § 41-121 and other applicable law.

B. The Secretary of State shall establish the methods and processes that are to be known as an Electronic Notary Token.

1. The Policy Authority shall define the Certificate Policy governing the materials and processes necessary to issue, manage and revoke Electronic Notary Tokens and related Certificates.

2. The Secretary of State shall create guidelines for the electronic notary to follow outlining the responsibilities in A.R.S. 41-1092, applicable electronic notary token and its associated Certificate Policy, as well as these rules and other applicable statute.

C. The Secretary of State shall establish the methods and processes that are to be known as a Notary Service Electronic Certificate.

1. The Policy Authority shall define the Certificate Policy governing the materials and processes necessary to issue, manage and revoke Notary Service Electronic Certificates.

2. The Policy Authority shall assist the Secretary of State in establishing the necessary materials and processes to assure the proper use of Notary service electronic certificates to perform notarial acts.

D. The Secretary of State shall establish the methods and processes that are to be known as a Time Stamp Token.

E. Rules herein and under A.R.S. §§ R2-12-501, R2-12-502 and R2-12-504 may be appealed pursuant to the administrative procedure act, A.R.S. § 41-1092.08(h).

R2-12-603. Approval of Notary Service Providers

A. The Secretary of State shall determine the appropriate standard of service required of an Electronic Notary Token Provider and contract with parties that can meet such a standard of service. These parties will be made known as Approved Electronic Notary Token Providers.

B. The Electronic Notary Token issued shall include methods and processes that incorporate into the token the type and source of education that the notary received when the Electronic Notary Token was issued.

C. The Secretary of State, through contract with the Electronic Notary Token Provider, shall determine the educational requirements and course contents for said notary tokens.

R2-12-604. Approval of Notary Service Electronic Certificate Providers

A. The Secretary of State shall determine the appropriate standard of service required of a Notary Service Electronic Certificate Provider and contract with parties that can meet such a standard of service. These parties will be made known as Approved Notary Service Electronic Certificate Providers.

B. The Notary Service Electronic Certificate issued shall include methods and processes that incorporate into it the type and source of education that the prospective signer received when the Notary Service Electronic Certificate was issued. The Secretary of State shall determine the appropriate form of this record of education received.

R2-12-605. Approval of Time Stamp Provider

A. The Secretary of State shall determine the appropriate standard of service required of a Time Stamp Provider and contract with parties that can meet such a standard of service. These parties will be made known as Approved Time Stamp Providers.

R2-12-606. Electronic Notary Education

A. Electronic Notaries Public applicants shall receive education in the use and applicability of electronic notarial acts prior to being commissioned to act as an Electronic Notary Public. The Secretary of State shall determine the appropriate form of this education and shall provide a list of approved programs providing this education.

B. This education will include:

1. The discussion of the responsibilities of the electronic notary and other parties to an electronic notarial act.

2. The policies and procedures as spelled out in the Policy Authority’s Certificate Policy defining the electronic notary token.

3. The policies and procedures as set forth in statute, rule and standards regarding electronic signatures used for notarial acts.

Arizona Administrative Register
Notices of Proposed Rulemaking

- C. Education shall be at least four hours in person training and at least 8 hours total instruction with a tested response to material.
- D. Educational requirements shall be met by the applicant prior to receiving an electronic notary token and committing an electronic notary act. Education must be met within one month prior or three months after applying for an electronic notary commission.
- E. Failing to meet educational requirements shall result in immediate revocation of the electronic notary.
- F. An education affidavit shall be filed with the Secretary of State in a format approved by the Secretary of State.
 - 1. The Secretary of State shall maintain a list of approved programs providing electronic notary education.
 - 2. The approved education program shall report in an electronic affidavit to the secretary of state of completion by an electronic notary applicant.
 - a. The electronic notary education affidavit is located at <http://www.sosaz.com>.
 - b. The electronic notary education affidavit shall contain the name of the applicant, the date of the education, and the referenced education.

R2-12-607. Notary Service Electronic Certificate Applicant Education

- A. Notary Service Electronic Certificate applicants shall receive education in the use and applicability of electronic notarial acts prior to being accepted. The Secretary of State shall determine the appropriate form of this education and shall provide a list of approved programs providing this education.
- B. This education will include:
 - 1. The discussion of the responsibilities of the electronic notary and other parties to an electronic notarial act.
 - 2. The policies and procedures as spelled out in the Policy Authority's Certificate Policy defining the electronic notary token.
 - 3. The policies and procedures as set forth in statute, rule and standards regarding electronic signatures used for notarial acts.
- C. Education shall be at least one hour in person training and at least 4 hours total instruction with a tested response to material.
- D. Educational requirements shall be met by the applicant prior to receiving a notary service electronic certificate and committing a notary service electronic certificate act. Education must be met within one month prior or three months after requesting a notary service electronic certificate.
- E. Failing to meet educational requirements shall result in immediate revocation of the notary service electronic certificate.
- F. At the time of receiving the Notary Service Electronic Certificate from the electronic notary, the electronic notary may assist the applicant in completing their first Notary Service Electronic Certificate act. This assistance shall count for no more than thirty minutes of in person training as required in Subsection C.
- G. An education affidavit shall be filed with the Secretary of State in a format approved by the Secretary of State.
 - 1. The Secretary of State shall maintain a list of approved programs providing Notary Service Electronic Certificate education.
 - 2. The approved education program shall report in an electronic affidavit to the secretary of state of completion by an Notary Service Electronic Certificate applicant.
 - a. The electronic notary education affidavit is located at <http://www.sosaz.com>.
 - b. The electronic notary education affidavit shall contain the name of the applicant, the date of the education, and the referenced education.

R2-12-608. Applicant materials provided by State to an Electronic Notary applicant

- A. The Secretary of State shall provide for use by Electronic Notary applicants:
 - 1. An application form.
 - 2. A list of Approved Electronic Notary Token Providers.
 - 3. A list of Approved Notary Service Electronic Certificate Providers.
 - 4. A list of Approved Time Stamp Providers.
 - 5. A list of approved educational programs for Electronic Notary applicants.
 - 6. A list of approved educational programs for Notary Service Electronic Certificate applicants, and
 - 7. A list of the associated fees for conducting electronic notarization using the contracted services of each approved electronic notary token provider.

R2-12-609. Applicant application and renewal of Electronic Notary Token

- A. Application and renewal fee shall be \$ 25. The application and renewal fee does not include, but requires, payment of fees for:
 - 1. An electronic notary token.
 - 2. Educational training.
 - 3. Related notary service token provider materials, and
 - 4. Notary service token provider process charges.

Arizona Administrative Register
Notices of Proposed Rulemaking

- B.** Bond shall be twenty five thousand dollars. The original of the bond shall be filed with the Secretary of State. The bond shall contain, on its face, the oath of office for the electronic notary public as specified in A.R.S. § 38-233(B). This oath shall be as specified in A.R.S. § 38-231. The electronic notary shall endorse the oath on the face of the bond, immediately below the oath, by signing the electronic notary's name under which the person has applied to be commissioned as an electronic notary and exactly as the name appears on the electronic notary application filed with the Secretary of State's Office.
- C.** In the event that an electronic notary token is compromised, expired, technologically out dated or the electronic notary's statutorily required information (such as name or contact information) is changed within the commission of an electronic notary, the fee for issuing a replacement electronic notary token shall be zero to the state. This does not reflect the direct cost of the token, as the Approved Electronic Notary Token Provider shall set their own fee for issuing the electronic notary token and related materials and process charges. The Approved Electronic Notary Token Provider fee may be collected by the Secretary of State and remitted to the provider as provided by contract between provider and the Secretary of State.

The Approved Electronic Notary Token Provider, as provided by contract between provider and the Secretary of State, may charge fees for each use of the token or for other uses that occur in the course of notarizing, maintaining and validating a notarized electronic document. The state of Arizona shall not be responsible for collection of any such fees or held liable for them unless such responsibilities are assumed within the contract. These charges are referred to as electronic notary token provider processes charges.

Note that the Secretary of State reserves the right to:

1. Act as an Approved Electronic Notary Token Provider, and
2. Have multiple Approved Electronic Notary Token Provides who may provide different services and may charge differently for their services.

R2-12-610. Care and Maintenance of Electronic Notary Token

Given the current state of technologies, the electronic notary token useable life shall not be more than twenty-four months from the issuance of the token.

- A.** The electronic notary token issued shall include methods and processes that incorporate into the electronic notary token the type and source of education that the notary received when the electronic notary token was issued.

R2-12-611. Requirements for notarial acts in the presence of an Electronic Notary

- A.** An electronic notary shall either directly incorporate the time and date of notarization or shall employ an Approved Time Stamp Provider to incorporate the time and date.

An Approved Time Stamp Provider shall set their own fee schedule. Such a fee schedule will be defined by contract between the provider and the Secretary of State for a specific period of time and establishing a specific service level agreement covering the services provided. Time stamping services may be charged for each event (creation of a valid electronic notary service document) or a one time fee may be charged when the electronic notary service certificate is issued (and such fee only good for the period of time the electronic notary service certificate is good. The state of Arizona shall not be responsible for collection of any such fees or held liable for them unless such responsibilities are assumed within the contract.

R2-12-612. Applicant application and renewal of Notary Service Electronic Certificate

- A.** Fee for issuing Notary Service Electronic Certificates and related materials and processes while commission is in affect shall be \$150 (of which \$ 50 is to be used to educate and assist Notary Service Electronic Certificate applicants) plus the direct cost of the Notary Service Electronic Certificates. The Approved Notary Service Electronic Certificates Provider shall set their own fee for issuing the Notary Service Electronic Certificates and related materials and processes. This may be because the Notary Service Electronic Certificates has expired, been compromised or the applicant has changed their name or other information that statutorily require a re-issuance. The Approved Notary Service Electronic Certificates Provider fee will be collected by the notary and remitted as provided by contract between provider and the Secretary of State either to the Secretary of State who will remit it to the provider or directly to the provider.

An Approved Electronic Notary Service Certificate Provider shall set their own fee schedule. Such a fee schedule will be defined by contract between the provider and the Secretary of State for a specific period of time and establishing a specific service level agreement covering the services provided.

Arizona Administrative Register
Notices of Proposed Rulemaking

The Approved Electronic Notary Service Certificate Provider, as provided by contract between provider and the Secretary of State, may charge fees for each use of the issued certificate or for other uses that occur in the course of notarizing, maintaining and validating a notarized electronic document. The state of Arizona shall not be responsible for collection of any such fees or held liable for them unless such responsibilities are assumed within the contract.

Note that the Secretary of State reserves the right to:

1. Act as an Approved Notary Service Electronic Certificates Provider, and
2. Have multiple Approved Notary Service Electronic Certificates Provides who may provide different services and may charge differently for their services.

Fee for issuing time stamp token and related materials and processes while commission is in affect shall be included in the Notary Service Electronic Certificate application fee. The direct cost of the time stamp token will be added to that fee. The Approved time stamp Token Provider shall set their own fee for issuing the time stamp token and related materials and processes. The Approved time stamp Token Provider fee will be remitted as provided by contract between the provider and the Secretary of State either to the Secretary of State who will remit it to the provider or directly to the provider.

Time stamping services may be charged for each event (creation of a valid electronic notary service document) or a one time fee may be charged when the electronic notary service certificate is issued (and such fee only good for the period of time the electronic notary service certificate is good. The state of Arizona shall not be responsible for collection of any such fees or held liable for them unless such responsibilities are assumed within the contract.

Note that the Secretary of State reserves the right to:

1. Act as an Approved time stamp Token Provider, and
2. Have multiple Approved time stamp Token Provides who may provide different services and may charge differently for their services.

R2-12-613. Care and Maintenance of Notary Service Electronic Certificate

Given the current state of technologies, notary service electronic certificate useable life shall not be more than six months from the first use of the Notary Service Electronic Certificate.

In addition to the required oath or acknowledgment when the electronic notary service certificate is issued, the notary service electronic certificate issued shall include methods and processes that require the user to complete a separate and explicit re-affirmation that this is a notarial act at the time of signing. This second collection of confirmation of intent shall be included within the Notary Service Electronic Certificate attached to the document to secure the complete electronic notarized document.

- A.** The notary service electronic certificate issued shall include methods and processes that incorporate into the notary service electronic signature the type and source of education that the signer received when the notary service electronic certificate was issued.

R2-12-614. Requirements for notarial acts not in the presence of an Electronic Notary

- A.** An Approved Time Stamp Provider shall set their own fee schedule. Such a fee schedule will be defined by contract between the provider and the Secretary of State for a specific period of time and establishing a specific service level agreement covering the services provided. Time stamping services may be charged for each event (creation of a valid electronic notary service document) or a one time fee may be charged when the electronic notary service certificate is issued (and such fee only good for the period of time the electronic notary service certificate is good. The state of Arizona shall not be responsible for collection of any such fees or held liable for them unless such responsibilities are assumed within the contract.

R2-12-615. Notarial Journal

- A.** Any records and documents filed with the Secretary of State by an electronic notary applicant, commissioned notary or agent of either shall be in a format approved by the Secretary of State.
- B.** An Electronic Notary Public shall keep an electronic journal of all electronic notarial acts. This journal shall be in a form and format approved by the Secretary of State.
- C.** The electronic journal shall be under the control of the electronic notary, but may be part of the service rendered by the approved electronic notary token provider.

Arizona Administrative Register
Notices of Proposed Rulemaking

- D.** An Electronic Notary Public shall keep a paper journal of all “in the presence of” electronic notarial acts where the signer uses an electronic signature that uses a technology not approved in the standards set forth by the secretary of state in a form and format approved by the secretary of state. The journal logged entry shall be uniquely identified and also inserted into the electronic journal for consistency in cross reference of the electronic notary acts. Electronic notarial acts in which the signer uses an electronic signature that is approved by the secretary of state may also make an entry in the paper journal and indicate the electronic journal's unique entry information for cross reference.
- E.** If an electronic notary also holds commission as a traditional notary, and the commission dates are identical between the two commissions, then the electronic notary may use the traditional notary paper journal as the electronic notary paper journal. If the dates are not identical, then the electronic notary must maintain two journals.
- F.** If an electronic notary act is conducted with an electronic signature that uses a technology not in the standards set forth by the Secretary of State, the electronic notary shall have the signer sign the paper journal in the process outlined for a traditional notary act.
- G.** If an notary services electronic certificate is used in a manner to create an electronic signature in a notarial act, the statistics for the document name, title, brief description of contents and the time stamp as received by the approved time stamp authority shall be entered into the issuing electronic notary's electronic journal as a Notary Service Electronic Certificate entry.
- H.** At the conclusion of a commission of an electronic notary, the paper and electronic journals shall be transferred to the secretary of state within six months for review. Journals are not deemed received until the secretary of state accepts the journals as complete. Failure of an approved electronic notary service provider to transfer the journal to the secretary of state with the permission of the individual shall not be a penalty to the individual.

R2-12-616. **Penalty fee for lack of notice as required by statute**

- A.** Penalty fee for failure to provide proper notice of loss, theft or compromise of certificate or of loss, theft or compromise of any materials or processes used in creating an Electronic Notary Token or registering a Notary Service Electronic Certificate shall be \$500.
- B.** Penalty fee for failure to provide proper notice of loss, theft or compromise of official journal shall be \$500.
- C.** Penalty fee for failure to provide proper notice of change of address or other required notice not otherwise prescribed by statute or rule shall be \$250.

R2-12-617. **Fees to electronic notary**

- A.** Fee for an acknowledgment shall be not be more than \$5.
- B.** Fee for an oath or affirmation shall be not be more than \$5.
- C.** Fee for a jurat shall be not be more than \$5.
- D.** Fee for registering and issuing a Notary Service Electronic Certificate shall be not be more than \$50. (this does not include any Approved Electronic Notary Service Certificate Provider fees or charges to the electronic notary or the Electronic Notary Service Certificate applicant).
- E.** Fee for any other notarial act shall be not be more than \$5.

R2-12-618. **Termination of commission of an electronic notary**

- A.** Termination of an electronic notary commission shall be in a form and format prescribed by the Secretary of State.
- B.** Fee to early terminate a commission shall be zero. (this does not include any Approved Electronic Notary Service Certificate Provider fees or charges to the electronic notary or the Electronic Notary Service Certificate applicant).