

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION ADMINISTRATIVE SERVICES DIVISION

PREAMBLE

1. Sections Affected

R17-1-501
R17-1-502
R17-1-503
R17-1-504
R17-1-505
R17-1-506
R17-1-507
R17-1-508
R17-1-509
R17-1-510
R17-1-511
R17-1-512
R17-1-513

Rulemaking Action

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

Authorizing statute: A.R.S. § 28-366

Implementing statutes: A.R.S. §§ 28-645, 28-647, and 28-672 as amended by Laws 2001, Ch. 190, §§ 1 through 3, effective August 9, 2001; 28-673, 28-1321, and 28-1385, as amended by Laws 2001, Ch. 95, §§ 2, 4, and 6, effective September 1, 2001; 28-1463, as amended by Laws 2001, Ch. 253, § 7, effective August 9, 2001; 28-2054 and 28-2059, as amended by Laws 2001, Ch. 325, §§ 5 and 8, effective January 1, 2003; 28-3310, as amended by Laws 2001, Ch. 145, § 3, effective April 18, 2001; 28-3514, as added by Laws 2001, Ch. 377, § 7, effective August 9, 2001; 28-4498, 28-4499, 28-4500, 28-4538, 28-4554, and 28-5105, as amended by Laws 2001, Ch. 107, §§ 5 through 9, and 12, effective August 9, 2001; 28-5612, 28-5614, 28-5628, 28-5631, 28-5725, 28-5726, 28-5738, 28-5749; 28-5865, 28-5866, 28-5924, and 28-5928 as added, amended, repealed, or transferred and renumbered by Laws 2001, Ch. 287, §§ 20, 23 through 25, 37, 57, 59, 70 through 73, and 78, effective August 9, 2001; 28-951, 28-1147, 28-3306, 28-4007, 28-4143, 28-4144, 28-4153, 28-4366, 28-4494, 28-4495, 28-4496, 28-4627, 28-4665, 28-5004, 28-5011, 28-5013, 28-5107, 28-5108, 28-5109, 28-5232, 28-5237, 28-5638, 28-5745, 28-7906, 28-8244, 28-8328, 32-2373, 32-2391, and 41-1061 to 41-1066.

3. The effective date of the rules:

September 13, 2001

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 7 A.A.R. 1387, March 30, 2001

Notice of Proposed Rulemaking: 7 A.A.R. 1810, May 4, 2001

Notice of Recodification: 7 A.A.R. 3477, August 10, 2001

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

Name: Lynn S. Golder, Hearing Officer II

Address: Department of Transportation
Motor Vehicle Division, Mail Drop 507M

3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5017

Telephone: (602) 712-7941
Fax: (602) 241-1624
E-mail: lgolder@dot.state.az.us

To track the progress of an ADOT rulemaking matter, visit the agency web site at www.dot.state.az.us/about/rules.

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

In accordance with the five-year review report approved by the Governor's Regulatory Review Council on April 4, 2000, the Arizona Department of Transportation, Motor Vehicle Division revised its rules dealing with the administrative hearing process provided by the agency's Executive Hearing Office. These revisions make the administrative hearing and related rules more clear, concise, and understandable and update statutory citations.

The Division moved the substance of the Administrative Decisions rule to the Administrative Hearing Procedure rule, amending the decisions rule to a Maintaining Administrative Hearing Decorum rule. The Division also:

- Deleted the definition of "in absentia" from the Definitions rule,
- Added six definitions to the Definitions rule,
- Deleted subsections from several rules, and
- Added subsections to several rules.

When the Division filed its Notice of Proposed Rulemaking, the hearing-related rules were located at 17 A.A.C. 4, Article 9. Recodification of Title 17 became effective July 20, 2001. These rules are now located at 17 A.A.C. 1, Article 5. All Title 17 references in the final rule text reflect numbering consistent with the recodification. For conciseness and clarity this rulemaking changes:

- The Chapter 1 heading to "Department of Transportation - Administration" from "Department of Transportation - Administrative Services Division,"
- The heading of the hearing rules Article to "Administrative Hearings" from "Administrative Hearings, Rehearings and Appeal."

7. A reference to any studies that the agency relied on in its evaluation of or justification for the 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

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

Not applicable

9. The summary of economic, small business, and consumer impact:

The Division determined that the administrative hearing, rules result in costs to:

- State agencies, including the Department of Transportation, the Department of Public Safety, and the Attorney General's Office;
- Arizona courts providing judicial review of Executive Hearing Office decisions;
- Law enforcement agencies of political subdivisions;
- Members of the public who participate in Executive Hearing Office proceedings;
- Attorneys and law firms; and
- Employers of people participating in Executive Hearing Office proceedings.

The Division determined that the benefits of providing due process, as required by statute, outweigh the costs.

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

The final rules make the following technical changes to the proposed rules to make them more clear, concise, and understandable:

- Change Title 17 *Arizona Administrative Code* references to reflect the recodification effective July 20, 2001;
- Change the heading of 17 A.A.C. 1 to "Department of Transportation - Administration"
- Change the heading of 17A.A.C. 1, Article 5 to "Administrative Hearings;"

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- Instead of repealing R17-1-513, change the administrative decisions rule to a rule on maintaining administrative hearing decorum;
- Change “corrective action” to “agency action” throughout the rules;
- Improve some definitions, delete the definitions of “good cause” and “irregularity,” add the definition of “participant of record,” and renumber the definitions accordingly;
- Change the heading of R17-1-502 to “Request for Hearing” and make minor changes to the rule text;
- Make minor changes to R17-4-503;
- Restructure and improve R17-1-504; delete “avoid delay,” “maintain order,” “regulate the conduct of participants,” and “regulate the course of an administrative hearing” from subsection (A); include “may issue a subpoena...” and “may question a witness” in subsection (B); delete subsection (E) and re-letter accordingly; and reference A.R.S. § 41-1063 in the re-lettered subsection (E);
- Change the heading of R17-1-505 to “Administrative Hearing Evidence,” reference A.R.S. § 41-1062 in subsection (A), delete subsections (B) and (C) and re-letter accordingly, and improve the re-lettered subsection (D);
- Change “less than 11 days” to “10 days or less” in R17-1-506(C) and improve R17-1-506(D);
- Make minor changes to R17-1-507 through R17-1-509, including addition of the phrase “or the Arizona Department of Transportation” to R17-1-508(F);
- Restructure and improve R17-1-510 and re-letter accordingly;
- Improve R17-1-511 throughout; restructure subsections (C), (D), and (G); add new subsection (H) on good cause to extend time limits and re-letter accordingly; and change “may” to “shall” in the re-lettered R17-1-511(I) and delete subsection R17-1-511(I)(3); and
- Change “administrative per se suspension order” to “administrative suspension order under A.R.S. § 28-1385” in the R17-1-512 heading and throughout the rule text and make minor changes.

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

The record in this rulemaking action closed at 5:00 p.m., on June 29, 2001. The Division did not receive any oral comments, and no member of the public appeared at the oral proceeding on June 26, 2001.

On May 17, 2001, the Division received the following e-mail comment from the Executive Hearing Office:

Proposed R17-4-901(A)(10), R17-1-501(A)(10) as recodified:

I suspect you want to leave “good cause” somewhat vague, but defining it as a “substantial reason” is circular. Do you at least want to say what good cause is not: personal convenience, pursuing settlement, etc.

Proposed R17-4-908(F), R17-1-508(F) as recodified:

Did you really intend to strip the agency of the power to enforce subpoenas? I understand granting the requesting party the power, but why strip the power of the agency from enforcing in an egregious case?

On the first issue, the Division finds that the comment is correct and has removed the definition of “good cause” from R17-1-501. An Executive Hearing Office Administrative Law Judge has discretion to determine “good cause” and makes this determination on a case-by-case basis.

On the second issue, the Division responded that agency enforcement of an Executive Hearing Office subpoena was omitted during the drafting of the proposed rules. (The rule in effect since 1988 provided for agency enforcement.) The final text of R17-1-508(F) is: “Unless otherwise provided by statute or administrative rule, a party or a party’s attorney requesting a subpoena or the Arizona Department of Transportation shall enforce the subpoena in the Superior Court of Arizona, in the county where the administrative hearing is held.”

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

Not applicable

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

None

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

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION
~~ADMINISTRATIVE SERVICES DIVISION~~ ADMINISTRATION

ARTICLE 5. ADMINISTRATIVE HEARINGS, ~~REHEARINGS AND APPEAL~~

Section

- R17-1-501. Definitions
- R17-1-502. ~~Requests~~ Request for ~~hearing~~ Hearing
- R17-1-503. Notice of ~~hearing~~ Hearing
- R17-1-504. Administrative ~~hearings~~ Hearing Procedure
- R17-1-505. ~~Rules of evidence~~ Administrative Hearing Evidence
- R17-1-506. Time ~~computations~~ Computation
- R17-1-507. ~~Motions~~ Motion Practice
- R17-1-508. ~~Subpoenas~~ Subpoena Issuance
- R17-1-509. ~~Forms~~ Document Filing
- R17-1-510. ~~Continuances~~ Continuing an Administrative Hearing
- R17-1-511. Rehearing and ~~appeal~~ Judicial Review
- R17-1-512. Summary ~~review~~ Review of 0-10 suspension an Administrative Suspension Order under A.R.S. § 28- 1385
- R17-1-513. Maintaining Administrative decisions ~~hearing~~ Decorum

ARTICLE 5. ADMINISTRATIVE HEARINGS, ~~REHEARINGS AND APPEAL~~

R17-1-501. Definitions

- A. The following definitions are applicable to In this Article 9, unless otherwise stated in a statute or a specific rule otherwise requires:
1. "Administrative hearing" means a ~~scheduled proceeding, conducted by the executive hearing office of the Motor Vehicle Division, proceeding to decide for deciding~~ a dispute based on facts the evidence presented to an administrative ~~hearing officer law judge. An administrative hearing includes:~~
 - a. Advance notice to participants of record.
 - b. An opportunity for witnesses to testify under oath, and
 - c. Presentation of documentary evidence.
 2. "Administrative ~~hearing officer law judge~~" means a person who conducts a summary review or presides at an administrative hearing, with the power to administer oaths, take testimony, rule on questions of evidence and make determinations of fact powers listed in R17-1-504(A) and R17-1-504(B).
 3. "Affidavit" means a ~~written or printed~~ declaration or statement of facts ~~under oath made:~~
 - a. In writing, and
 - b. Under oath or affirmation.
 4. "Agency action" means an action affecting a license, permit, certificate, approval, registration, or other permission issued by the Arizona Department of Transportation or the Division.
 5. "Business day" means a day other than a Saturday, Sunday, or state holiday.
 - 4-6. "Deposition" means ~~the a witness' testimony of a witness;~~
 - a. Given under oath or affirmation,
 - b. taken by another through Brought out by another person's oral or written questions, and
 - c. reduced Reduced to writing for presentation in a proceeding.
 - 5-7. "Director" means the ~~Division director of the Motor Vehicle Division of the Arizona Department of Transportation,~~ Motor Vehicle Division Director.
 - 6-8. "Division" means the ~~Motor Vehicle Division of the Arizona Department of Transportation,~~ Motor Vehicle Division.
 - 7-9. "Executive hearing office" means ~~that the branch of the Division Director's office that is designated to conduct con-~~ ducts an administrative hearings through the statutory power granted to the Division director and the director of the Arizona Department of Transportation hearing or a summary review.
 8. "In absentia" means without the petitioner being present.
 10. "In writing" means:
 - a. An original document.
 - b. A photocopy.
 - c. A facsimile, or
 - d. An electronic mail message.
 - 9-11. "Motion" means a written or oral proposal for consideration and action, ~~with or without notice~~ filed by a person with the executive hearing office.

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12. "Participant of record" means:
 - a. A petitioner or a respondent;
 - b. An attorney representing a petitioner, a respondent, or a person or entity under Subsection (12)(c); and
 - c. A person or entity with an interest in the subject matter of an administrative hearing as determined from Division records or from Arizona Department of Transportation records.
- ~~10-13~~ "Petitioner" means the a person or entity who that requests relief an administrative hearing or a summary review from the Department executive hearing office.
- ~~11-14~~ "Respondent" means the a person who makes an answer to an action against whom relief is sought in an executive hearing office proceeding.
15. "Summary review" means an executive hearing office proceeding, other than an administrative hearing, conducted under A.R.S. § 28-1385(L).
16. "Under oath or affirmation" means a witness' sworn statement made to a person with the power to administer an oath or affirmation.

R17-1-502. ~~Requests~~ Request for hearings ~~Hearing~~ Hearing

- A. ~~All requests for hearings~~ A petitioner or petitioner's attorney shall be submitted file a request for a hearing to and received by the:
 1. By mail or hand delivery to the executive hearing office's street address:
Executive Hearing Office, Arizona Department of Transportation, Motor Vehicle Division, 1801 West Jefferson, Phoenix, Arizona 85007 3737 N. 7th Street, Suite 160, Phoenix, AZ 85014-5017;
 2. By fax to (602) 241-1624; or
 3. By e-mail to the executive hearing office's electronic mail address: HEARINGOFFICE@dot.state.az.us.
 4. Timeliness of filing is determined as of the date the executive hearing office receives a hearing request.
- B. ~~If a time period to request a hearing is not specified by statute a statute does not provide a period to request a hearing, the period lasts for the request for hearing shall be received by the executive hearing office not later than 15 days from after the date the Division served notice, pursuant to applicable law of an agency action notice.~~
- C. ~~All requests~~ A request for a hearing shall be legible and shall include the petitioner's name and mailing address for receipt of mail.

R17-1-503. Notice of ~~hearing~~ Hearing

- ~~A.~~ The executive hearing office shall be the only entity to issue notice setting administrative hearings.
- ~~B.A.~~ When If a petitioner timely files a request for a hearing is filed with the executive hearing office under R17-1-502, the executive hearing office shall send a notice of hearing to the petitioner at the petitioner's mailing address set forth in the request for hearing and to any other participant of record.
- B. The notice of hearing shall contain state the:
 1. Time, date, and place of the administrative hearing;
 2. Type of administrative hearing; and
 3. Legal Statutory authority under which for the proceedings are to be held administrative hearing.

R17-1-504. Administrative ~~hearings~~ Hearing Procedure

- A. ~~All hearings shall be presided over by the An administrative hearing officer law judge shall preside at an administrative hearing and shall:~~
 1. Administer oaths or affirmations;
 2. Conduct fair and impartial hearings;
 3. Have the parties state orally at the hearing their positions on the issues;
 4. Rule on motions filed according to R17-1-507;
 5. Maintain an administrative hearing record; and
 6. Issue a written decision, including findings of fact and conclusions of law, based on the record.
- B. ~~The In addition to the requirements of subsection (A), an administrative hearing officer shall law judge may:~~
 1. Conduct fair and impartial hearings.
 2. Take all necessary action to avoid delay.
 3. Maintain order.
 4. Require parties to state their position with respect to the various issues in the proceedings.
 5. Regulate the course of the hearing.
 6. Regulate the conduct of counsel, parties and other participants.
 7. Examine witnesses and direct witnesses to testify.
 8. Maintain record of proceedings.
 9. Rule on motions.
 10. Cause to be issued subpoenas for the attendance of witnesses and for the production of other evidence as deemed necessary to the proceedings.
 11. Administer oaths.

12. ~~Make a decision on the basis of the record before him which shall include findings of fact and conclusions of law.~~
1. ~~Issue a subpoena for the attendance of witnesses or for the production of documents or things, or~~
 2. ~~Question a witness.~~
- C. ~~If the hearing officer finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in his order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined. An administrative law judge may order summary suspension of a license according to A.R.S. § 41-1064(C).~~
- D. ~~A petitioner may appear in person or through counsel in any hearing held pursuant to these rules, unless otherwise specified by law. In a case involving the Uniform Motor Vehicle Safety Responsibility Act, a petitioner may request, in writing prior to the hearing, that the hearing be held in absentia. An administrative law judge shall sustain an agency action supported by the record and the law.~~
- E. A.R.S. § 41-1063 applies to the contents and service of an administrative hearing decision.

R17-1-505. ~~Rules of evidence~~ Administrative Hearing Evidence

- A. ~~Formal rules of evidence shall not apply to the proceedings held at the executive hearing office A.R.S. §§ 41-1062(A)(1) through 41-1062(A)(3) apply to evidence offered in an administrative hearing.~~
- B. ~~The administrative hearing officer shall decide what evidence shall be admissible.~~
- C. ~~Hearsay evidence shall be admissible in an administrative hearing and given such weight as the administrative hearing officer determines.~~
- ~~D.~~B. ~~A deposition of If a witness who cannot be subpoenaed, or is unable to attend shall be admissible and given such weight as the administrative hearing officer determines an administrative hearing, the administrative law judge may admit the witness' deposition or affidavit and determine its evidentiary weight. All expenses shall be borne by the The party taking the a witness' deposition or affidavit shall bear all deposition-related or affidavit-related costs.~~

R17-1-506. Time computations Computation

In computing a time period under this Article, the executive hearing office shall:

- ~~A.~~1. ~~In computing any period of time prescribed or allowed by these rules, Exclude the day of the act from which the designated period of time begins to run shall not be included. triggering the period;~~
- ~~B.~~2. ~~The last day of the period so computed shall be included, unless it If the last day is a Saturday, a Sunday, or a legal holiday, in which event the period runs until extend the period to the end of the next business day which is not a Saturday, a Sunday, or a legal holiday.;~~
- ~~C.~~3. ~~When If the period of time prescribed or allowed is less than 11 days 10 days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation count only the business days.;~~ and
4. If service is by mail, extend the period by five days.

R17-1-507. Motions Motion Practice

- A. ~~Motions A party or a party's attorney making a motion shall state in the motion the relief sought, the factual basis for relief, and the legal authority relied upon for the requested relief.~~
1. ~~If made prior to the hearing, such motions For a pre-hearing motion, a party or a party's attorney shall be:~~
 - a. Make the motion in writing, and
 - b. File the motion with the executive hearing office at least 5 days before the administrative hearing.
 2. ~~If made at the For a motion made at an administrative hearing.;~~
 - a. ~~they may be stated A party or a party's attorney may make the motion orally but, and~~
 - b. ~~the The administrative hearing officer law judge may require that they be reduced to writing and filed with him the party or the party's attorney to file the motion in writing.~~
- B. ~~A ruling on any motion may be incorporated into the administrative hearing officer's ultimate findings of fact, conclusions of law, and decision or order. An administrative law judge may include a ruling on a motion in an administrative hearing decision.~~

R17-1-508. Subpoenas Subpoena Issuance

- A. ~~The In connection with an administrative hearing, an administrative hearing officer law judge shall have may issue a subpoena to compel the attendance of witnesses by subpoena a witness or the production of documents or things.~~
1. A party or a party's attorney requesting a subpoena shall file a written subpoena request, briefly stating the substance of the evidence sought.
 2. An administrative law judge has discretion to issue or deny a subpoena based on the:
 - a. Relevance of the evidence sought, or
 - b. Reasonable need for the evidence sought.
- B. ~~Upon request of the petitioner or his legal counsel to issue a subpoena compelling the attendance of witnesses or evidence, it shall be the obligation of those parties to: A party or a party's attorney requesting a subpoena shall:~~
1. ~~Draft the subpoena in proper the correct form. format, including:~~
 - a. The caption and docket number of the matter;

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- b. A list of documents or things to be produced;
- c. The full name and address of:
 - i. The custodian of the documents or things listed, or
 - ii. The person ordered to appear;
- d. The time, date, and place to appear or to produce documents or things; and
- e. The name, address, and telephone number of the party or the party's attorney requesting the subpoena;
- 2. ~~Secure the necessary~~ Obtain an administrative law judge's signature from the executive hearing office on the subpoena;
- 3. ~~Ensure that such subpoenas are served upon the parties~~ service of the subpoena on the person named in the subpoena, and
- 4. ~~Incur all expenses, including witness fees if any;~~ Bear all subpoena-related costs.
- C.** Unless otherwise provided by statute or administrative rule, a party or a party's attorney requesting a subpoena shall have the subpoena served by a person who:
 - 1. Is at least age 18 and is not a party to the administrative hearing;
 - 2. Delivers, within Arizona, a copy of the subpoena to the person named in the subpoena;
 - 3. If the subpoena requires the named person's attendance at an administrative hearing, hands the named person the amount prescribed in A.R.S. § 12-303 as the witness fee for one day's attendance and allowed mileage; and
 - 4. Files with the executive hearing office a proof of service, signed by the person who served the subpoena, certifying:
 - a. The date of service,
 - b. The manner of service, and
 - c. The name of the person served.
- D.** A party or a person served with a subpoena or a portion of the subpoena, may file an objection in writing with the executive hearing office. The party or person served with the subpoena shall:
 - 1. State in the objection the reasons for objecting; and
 - 2. File the objection:
 - a. Within five days after service of the subpoena; or
 - b. If the subpoena is served less than five days before an administrative hearing, at the start of the hearing.
- E.** An administrative law judge may quash or modify a subpoena if:
 - 1. The subpoena is unreasonable or imposes an undue burden, or
 - 2. The evidence sought may be obtained by another method.
- ~~**F.** Subpoenas issued shall be served, and upon application to the court by a party or the agency, enforced in the same manner provided by law for the service and enforcement of subpoenas in a civil action, unless~~ Unless otherwise provided by law or agency statute or administrative rule, a party or a party's attorney requesting a subpoena or the Arizona Department of Transportation shall enforce the subpoena in the Superior Court of Arizona, in the county where the administrative hearing is held.

R17-1-509. Forms Document Filing

- A.** ~~Documents~~ A document filed pursuant to a in an executive hearing office proceeding shall show state:
 - 1. The description and title of the proceeding;
 - 2. The name of the party filing the document;
 - 3. The date signed the document is signed;
 - 4. ~~Title~~ The title and address of the signatory the document's signer, and
 - 5. Name of the party involved in the action;
 - 6. If represented by legal counsel applicable, the attorney's name, law firm, address, and phone telephone number.
- B.** ~~Every paper~~ A party or a party's attorney shall sign a document filed with the executive hearing office shall be signed by the party filing it or by legal counsel. The signature constitutes a certificate by the signer that he has By signing, the signer certifies that:
 - 1. The signer read the paper document;
 - 2. ~~that to the best of his knowledge, information and belief there is good ground to support it,~~ The document is supported by the facts and the law or by a good faith argument to extend, modify, or reverse the law; and
 - 3. ~~that it~~ The document is not interposed filed to harass, for delay, or needlessly increase the cost of the executive hearing office proceeding.
- C.** A document is filed as of the date the executive hearing office receives the document.

R17-1-510. Continuances Continuing an Administrative Hearing

- ~~**A.** A decision by the administrative hearing officer may be taken under advisement unless otherwise prescribed by law.~~
- ~~**B.** Hearings may be continued for good cause by the administrative hearing officer.~~ An administrative hearing participant of record requesting a continuance shall file the request at least seven business days before the hearing. The continuance request shall state a reason for continuing the administrative hearing.

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- B.** An administrative law judge shall not grant a continuance unless the participant of record establishes good cause for the continuance. For an untimely request, the administrative law judge shall not grant the request unless the participant of record establishes good cause for the delay in filing the request.
- C.** Any continuances granted shall be justified. An administrative law judge shall include in the record the reason for denying a continuance.

R17-1-511. Rehearing and ~~appeal~~ Judicial Review

- A.** Any ~~A~~ party in a contested case before the executive hearing office who is aggrieved by a decision rendered in such case may file a written motion for rehearing with the executive hearing office, not later than 15 days after service of the original decision, unless otherwise prescribed by law, a written motion for rehearing of the original decision, specifying, stating in detail the particular reasons for a rehearing should be granted. Unless otherwise provided by statute, a motion for rehearing is timely if received by the executive hearing office within:
 - 1. Fifteen days after the date of in-person service of the administrative hearing decision, or
 - 2. Fifteen days after the mailing date of the administrative hearing decision.
- B.** A timely motion for rehearing stays an agency action, other than:
 - 1. A summary suspension under A.R.S. § 41-1064(C), or
 - 2. An agency action sustained under subsection (I).
- ~~B.C.~~A** An administrative law judge may grant a rehearing of the original decision shall be granted for any of the following causes for any of the following reasons materially affecting a party's rights:
 - 1. Irregularity in the administrative proceedings of the agency Arizona Department of Transportation or the Division or its administrative hearing officer or the prevailing party, or any order or abuse of discretion, whereby the party was that deprived the moving party of a fair hearing;
 - 2. Misconduct of the Arizona Department of Transportation or the Division, executive hearing office, its staff, an administrative hearing officer law judge, or the prevailing party;
 - 3. Accident or surprise which that could not have been prevented by ordinary prudence;
 - 4. Newly discovered material evidence which that could not, with reasonable diligence, have been discovered and produced at the original hearing;
 - 5. Excessive or insufficient penalties- penalty;
 - 6. Error in the admission or rejection of evidence or other errors of law occurring at the original hearing; or during the progress of the proceedings;
 - 7. That the administrative hearing decision is a result of passion or prejudice; or
 - 6:8. The original That the findings of fact or decision is not justified by the evidence or is contrary to law.
- ~~D.~~** An order granting a rehearing shall specify with particularity the reason on which the rehearing is granted.
- ~~C.~~ D.** The executive hearing office An administrative law judge may affirm or modify the an administrative hearing decision or grant a rehearing to all or any of the parties and on all or part of the issue issues for any of the reasons set forth in subsection (B) (C). An order modifying an administrative hearing decision or granting a rehearing shall specify with particularity the grounds for the order.
- E.** The executive hearing office In spite of any motion for rehearing, an administrative law judge may on its own initiative, order a rehearing of its original decision for any a reason for which it might have granted a rehearing on motion of a party listed in subsection (C).
- F.** The executive hearing office An administrative law judge may require the filing of written briefs upon on the issues raised in the a motion for rehearing.
- G.** When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after such service, serve opposing affidavits, which period, An administrative law judge may be extended extend this period for a maximum of 20 days by the executive hearing office for good cause shown as described in subsection (H) or by written stipulation of the parties. Reply affidavits may be permitted at the discretion of the administrative hearing officer law judge.
- H.** An administrative law judge may extend the time limits in subsections (A) and (G) upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action could not have known in time, using reasonable diligence, and a ruling on the motion will:
 - 1. Further administrative convenience, expedition, or economy; or
 - 2. Avoid undue prejudice to any party.
- I.** To the extent that provisions of these rules conflict with the provisions of any statute providing for rehearing of decisions of the Division, such statutory provisions shall govern.
- ~~H.I.~~** An administrative law judge shall issue an administrative hearing decision as a final decision without an opportunity for a rehearing. If in a particular decision the executive hearing office if the administrative law judge makes specific findings that:
 - 1. the The public health, safety, and welfare require immediate effectiveness of such the administrative hearing decision is necessary for the immediate preservation of the public peace, health and safety; and

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~~2. that a rehearing of the decision is impractical, unnecessary, or contrary to the public interest; the decision may be issued as a final decision without an opportunity for a rehearing. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review shall be made within the statutory time limits.~~

J. A party may appeal or request judicial review of a final administrative hearing decision of the executive hearing office to in the Superior Court of Arizona as provided by law statute.

R17-1-512. Summary ~~review~~ Review of 0.10 suspension an Administrative Suspension Order under A.R.S. § 28-1385

A. Definitions: “Summary review” is an alternative to a hearing, conducted by the executive hearing office of the Motor Vehicle Division, when a person has been issued a license/permit suspension A petitioner issued a driving privilege suspension order under the provisions of A.R.S. § 28-694 28-1385. (License suspension if blood or breath alcohol test results indicate a concentration of 0.10 or more) may request summary review instead of a hearing.

1. The requirements of R17-1-502 apply to a summary review request.

2. The petitioner or the petitioner’s attorney may include with the summary review request a written statement of:

a. The reasons why the Division should not suspend the petitioner’s driving privilege, and

b. Evidence that at least 1 issue in subsections (C)(1) through (C)(3) is not met.

B. ~~Scope of~~ An administrative law judge conducting summary review of a suspension order under A.R.S. § 28-1385 shall:

~~2.1. The Conduct the summary review is conducted without the person being present and the decision is final petitioner’s presence.~~

~~1.2. The summary review is an examination of all written documents only, submitted to the Motor Vehicle Division. Examine the documents in the executive hearing office case file, and~~

~~3. The Issue a written summary review decision rendered shall uphold or cancel sustaining or voiding the suspension order issued.~~

C. ~~The factors examined during a summary review shall be limited to the following~~ An administrative law judge conducting summary review of a suspension order under A.R.S. § 28-1385 shall consider the following factors:

1. Whether the law enforcement officer’s certification certified report reflects ~~that~~ the officer had reasonable grounds to believe the applicant petitioner was driving or ~~was~~ in actual physical control of a motor vehicle while under the influence of intoxicating liquor;

2. Whether the law enforcement officer’s certification certified report reflects ~~that~~ the applicant was officer placed the petitioner under arrest for a violation of A.R.S. § ~~28-692 §§ 4-244(33), 28-1381, 28-1382, or 28-1383, and the petitioner~~ complied with A.R.S. § ~~28-691 28-1321~~;

3. Whether the law enforcement officer’s certification certified report reflects ~~that a~~ petitioner’s test was taken, the results of which indicated a indicating at least the applicable alcohol concentration of 0.10 or more stated in A.R.S. § 28-1385; and

4. Whether the petitioner’s written statement of explanation of the applicant as to the reasons why the Division should not suspend the applicant’s petitioner’s driving privilege provides convincing evidence that at least one or more issues issue in subsections (C)(1); ~~(2) and (3) were~~ through (C)(3) was not met.

D. ~~No summary review shall be conducted unless the applicant has done 1 of the following:~~

1. ~~Has surrendered his Arizona driver’s license/permit.~~

2. ~~Certified that his Arizona driver’s license/permit was lost or destroyed.~~

3. ~~Certified that he does not have a valid Arizona driver’s license.~~

4. ~~Certified that he is a nonresident with a valid out-of-state driver’s license.~~

E. ~~Application for a summary review is made available to all persons arrested for a violation of A.R.S. § 28-692 and who have complied with A.R.S. § 28-691 and have a alcohol concentration exceeding the legal limit.~~

R17-1-513. Maintaining Administrative decisions Hearing Decorum

A copy of the administrative hearing officer’s written findings of fact and conclusions of law along with the final order shall be served upon the petitioner or his legal counsel either in person or by mail as prescribed by law. A person shall not interfere with access to or from a hearing room, or interfere, or threaten interference with a hearing. If a person interferes, threatens interference, or disrupts a hearing, the administrative law judge may order the disruptive person to leave or be removed.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

PREAMBLE

- 1. Sections Affected** **Rulemaking Action**
R20-4-214 Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general), and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 6-123(2)
Implementing statute: A.R.S. § 6-242
- 3. The effective date of the rules:**
September 12, 2001
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 5 A.A.R. 2268, July 16, 1999
Notice of Rulemaking Docket Opening: 6 A.A.R. 3775, September 29, 2000
Notice of Proposed Rulemaking: 7 A.A.R. 2492, June 15, 2001
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: John P. Hudock
Address: Banking Department
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018
Telephone Number: (602) 255-4421 ext. 167
Fax Number: (602) 381-1225
E-mail: jhudock@azbanking.com
- 6. An explanation of the rule, including the agency's reason for initiating the rule:**
This rulemaking will amend the existing provisions of R20-4-214 governing the retention and preservation of records by state-chartered banks. The Section, as amended, will more accurately reflect modern practice as it has evolved since the Section first took legal effect.

The current version of this Section, originally Rule 14, has been in continuous effect since August 1973. When the Administrative Code was first given its modern numbering system, the Banking Department's rules were in Title 4 and this Section became R4-4-214. In approximately 1990 a committee of the Arizona Bankers Association, in cooperation with the Banking Department, began work on an unsuccessful attempt to revise this Section. That effort did not result in a rulemaking.

In the first quarter of 1995, all Banking Department rules were moved to Title 20 of the Administrative Code and the Department recodified the Section as R20-4-214, without amendment or other revision.

On November 3, 1998 the Council approved the Department's five-year rule review report that promised to amend and modernize this Section.
- 7. A reference to any study that the agency relied on in its evaluation of or justification for the 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:**
The Department did not rely on any study as an evaluator or justification for the rule.
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
- 9. The summary of the economic, small business, and consumer impact:**
A. The Banking Department
The Department's ongoing income and expenses after approval of this Section will be negligible. However, the Department has spent considerable time and resources in the development of this amended Section over a period of

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several years. The Department will benefit from the use of a modern, clearly written Section that reflects modern banking practices.

B. Other Public Agencies

The State will incur normal publishing costs incident to rulemaking, including G.R.R.C. review and approval of the rule and publication of its text in the *Register* and the *Code*.

C. Private Persons and Businesses Directly Affected

Costs of services will not increase to any measurable degree.

D. Consumers

No measurable effect on consumers is expected.

E. Private and Public Employment

There is no measurable effect on private and public employment

F. State Revenues

This rulemaking will not change state revenues.

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

Council staff made several suggestions to streamline the writing of the revised rule and clarify its meaning. The Department has used those suggestions to change the text of the proposed rule, transforming it into the text contained in this Notice of Final Rulemaking. None of the changes between the proposed rules and the final rules have any substantive effect on the compliance requirements imposed by the rule. Rather, they have the effect of clarifying the rule and making it easier to understand the steps required for compliance.

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

The Department received no comment from stakeholders during the period between publication of the Notice of Proposed Rulemaking and the close of the record in this rulemaking. The Department exchanged extensive correspondence with members of the regulated community before publishing the Notice of Proposed Rulemaking, and their comments have been incorporated into the present version of the Section's text.

In general, the regulated community made three requests. First, it asked that the Section be revised to parallel the requirements imposed by federal regulators to the extent possible. Second, it also asked that the Section be written so that the descriptions of categories of records would be clear and unambiguous. Finally, the banks that commented on the Section asked that the record retention periods be as short as might be consistent with regulatory necessity.

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

Not applicable

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

There is no material incorporated by reference in these final rules.

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

No

15. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 4. BANKING DEPARTMENT

ARTICLE 2. BANK ORGANIZATION AND REGULATION

R20-4-214. Preservation of Records — A.R.S. § 6-242

A. Every bank shall ~~keep retain~~ its corporate and business records as originals or as ~~by~~ copies of the ~~such~~ originals made by ~~reproduction methods of reproduction that which~~ accurately and permanently preserve ~~the these~~ records. Copies ~~complying with this subsection so made~~, when satisfactorily identified, shall have the same ~~evidentiary status as evidence~~ as an original. A bank may use an electronic record keeping system. The department shall not require a bank to keep a written copy of its records if the bank can generate all information and copies required by this Section in a timely manner for examination or other purposes.

B. ~~A bank~~ Banks shall ~~keep retain its their~~ corporate and business records for ~~the such period~~ minimum periods required as prescribed by this Section rule. These periods are measured from ~~The retention period for each record starts the date of from~~ the last entry or final action date, ~~not from the inception of the record.~~ A bank shall have and comply with its own record retention schedule that is consistent with this Section. A bank may comply with this Section by complying with a preemptive federal regulation, even if the federal regulation requires a shorter retention period than is listed in this Section. This Section rule does not prohibit record ~~the retention of records for longer periods greater than these state-required~~

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~~the minimums for any reason, including a retention period established by preemptive federal law or regulation, herein prescribed. Likewise, this Section does not prohibit a bank from keeping any type of record not required in subsection (D).~~

C. ~~Beginning on with the effective date of this Section rule, corporate and business records of a bank banks operating in the state of Arizona are classified, and their retention periods are prescribed, according to in accordance with the schedule in subsection(D) hereinafter detailed. Retention periods are listed in subsection (D) using the notations, acronyms, and abbreviations listed in this Section. (Retention period designations:~~

- ~~1. A numerical designation refers to a period of years unless a shorter period of time is specified in the schedule.~~
- ~~2. "AC" means after closure.~~
- ~~3. "ACH" means automated clearing house.~~
- ~~4. "AE" means after expiration.~~
- ~~5. "ALC" means after last contact.~~
- ~~6. "AP" means after paid.~~
- ~~7. "ATD" means after termination date.~~
- ~~8. "CTR" means a cash transaction report required by the Federal Bank Secrecy Act.~~
- ~~9. "FDIC" means the Federal Deposit Insurance Corporation.~~
- ~~10. "FHA" means the Federal Housing Administration.~~
- ~~11. "FHLMC" means the Federal Home Loan Mortgage Corporation.~~
- ~~12. "FNMA" means the Federal National Mortgage Association.~~
- ~~13. "GNMA" means the Government National Mortgage Association.~~
- ~~14. "IRS" means the United States Department of the Treasury's Internal Revenue Service.~~
- ~~15. "M" means months.~~
- ~~16. "P" means the bank shall keep the record permanently.~~
- ~~17. "PMI" means private mortgage insurance.~~
- ~~18. "SAR" means a suspicious activity report required by the federal Bank Secrecy Act.~~
- ~~19. "TTL" means a treasury, tax, and loan account maintained by a bank.~~
- ~~20. "UCC" means the Uniform Commercial Code as it is in effect in Arizona.~~

~~Numerical -- In years~~

~~Opt. -- Optional. Any period may be selected depending on the purpose of the record and alternate sources of the same information.~~

~~P -- Permanent)~~

TYPE OF RECORD	RETENTION PERIOD
1. ADMINISTRATIVE	
a. Accounting	
(1) Accrual Records	1
(2) Branch Daily Statements	2
(3) Consolidated Daily Statement of Condition	3
(4) Depreciation Records	3
(5) Earnings Report	3
(6) Expense Ledger	3
(7) FDIC Assessment	3
(8) General Ledger Subsidiary Controls	3
(9) General Ledger Tickets -- Debits and Credits	3
(10) Inter-Office Reconciliation	1
(11) Inter-Office Transactions	OPT
(12) Miscellaneous Operating Loss Records	3
(13) Paid Bills, Statements and Invoices	3
(14) Service Contracts	2
(15) Treasury Tax and Loan Account	2
b. Administration	
(1) Bonds	5
(2) Charter	P
(3) Directors Minutes	15
(4) Executive Committees Minutes	50
(5) FDIC Certificates	P
(6) Income Tax Records	3
(7) Insurance Policies	1
(8) Minute Books of Meetings Not Listed Herein	1
(9) Permits	1
(10) Stockholders' Meetings Minutes	25

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e- Audit	
(1) Bank Call Reports	2
(2) Bank Examiner's Reports After Approval Has Been Obtained from the Appropriate Federal Supervisory Authority	3
(3) Reports to Directors	3
(4) Audit Reports	3
(5) Audit Workpapers	3
(6) Abandoned Property Reports	3
d: Capital	
(1) Capital Stock Certificates, Records or Stubs	10
(2) Capital Stock Ledger	25
(3) Capital Stock Transfer Register	25
(4) Income and Dividends Report	10
e- Cash	
(1) Armored Car Receipts	OPT
(2) Cash Difference Record	2
(3) Departmental or Teller's Proof, Batch Sheet, Blotter or Recap	2
(4) Money Shipment Receipts	OPT
(5) Night Depository Contracts	+
(6) Night Depository Daily Record	+
(7) Night Depository Signature Card	+
(8) Return Items Advice	OPT
(9) Return Items Record Book	OPT
(10) Vaults -- Opening and Closing Reports	+
f: Data Processing	
(1) Application -- Master Files	OPT
(2) Captured Items	OPT
(3) Operating System	OPT
(4) Program Source Statements	OPT
g: Proof -- Transit	
(1) Cash Letters -- Incoming Copies	2
(2) Cash Letters -- Outgoing Copies	2
(3) Microfilm of Checks in Cash Letters	2
(4) Proof Machine Master or Control Tapes	2
(5) Reconciliation Records -- Missing Items	2
2. DEPOSITS	
a: Bank Deposits (Due To and Due From)	
(1) Ledgers	5
(2) Ledger Journal	5
(3) Reconcilements	3
(4) Resolutions	5
(5) Signature Cards	5
b: Checking Accounts	
(1) Account Analysis	+
(2) Accounts Opened and Closed Report	OPT
(3) Bookkeeping	
(a) Daily Transaction Journal	OPT
(b) Daily Trial Balance	OPT
(c) Final Recap	+
(d) Overdraft Report	+
(e) Rejected Items Report	+
(f) Stop and Hold Report	OPT
(4) Credit -- Advice of	+
(5) Deposit -- Advice of	+
(6) Deposit Slips	5
(7) Ledgers (Statements)	5
(8) Ledgers (Statements) and Checks (Undelivered)	3
(9) List of Inactive Accounts	+
(10) Resolutions and Authorizations	2

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(11) Signature Cards	5
e. Certificates of Deposit	
(1) Certificates	5
(2) Ledger	2
(3) Register	2
d. Club Accounts	
(1) Ledgers	2
(2) Coupons	1
e. Savings Deposits	
(1) Deposit Tickets	5
(2) Ledgers or Journals	5
(3) Signature Cards	5
(4) Withdrawal Receipts	5
(5) 1099 Recap	1
3. INVESTMENT—BANK PORTFOLIO	
a. Brokers' Confirmations	1
b. Brokers' Invoices	1
c. Brokers' Statements	1
d. Buy and Sell Orders	1
e. Safekeeping Receipts	OPT
f. Ledgers	5
4. TRUSTS	
a. General Department Accounting Records (Personal and Corporate Accts)	
(1) Cancelled Checks, Trust Department	5
(2) Certification	2
(3) Check Registers, Trust Department	5
(4) Correspondence—General Office	OPT
(5) Ledgers—General, Statement of Condition	3
(6) Minutes of Committee Meeting	5
(7) Posting Media	
(a) General Ledger Tickets	3
(b) Individual Account Asset Ledger Tickets	3
(c) Individual Account Cash Ledger Tickets	3
(d) Stock and Bond Transfer Tickets	1
(8) Proving Media—Daily (Cash, Asset, Stock and Bond Journal)	OPT
(9) Supporting Records of Examination and Call Reports	3
(10) Vault Withdrawal and Deposit Tickets (Vault Copy)	2
b. Specific Account Records	
(1) Authorizations, Directions, Approvals	7
(2) Cash and Asset Statement, Customer	7
(3) Court Accounting and Petitions, Copies of	7
(4) Correspondence	6
(5) Duties Ticklers	OPT
(6) Federal and State Returns, Copies of	7
(7) Fee Records and Supporting Data	6
(8) Investment Orders, Advices, and Confirmations	7
(9) Ledgers, Cash and Asset	7
(10) Miscellaneous Bills and Statements	6
(11) Original Instruments	7
(12) Real Estate Records	
(a) Specific Insurance Policies	OPT
(b) Individual Parcel Files	6
(13) Receipts for Assets Received or Delivered	7
(14) Reviews and Recommendations, Trust Investment	7
(15) Security Tax Costs, Records	7
(16) Vault Withdrawal and Deposit Tickets (Account Copy)	2
(17) Work Papers Supporting Tax Returns	7
5. LOANS AND DISCOUNTS	
a. General	

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(1) Applications	2
(2) Application for Credit Card (from close of account)	2
(3) Assigned Accounts Receivable Invoices	1
(4) Borrowers' Statements of Financial Condition	OPT
(5) Charged-off Loan Files	6
(6) Charged-off Loans Ledger	6
(7) Collateral Records	2
(8) Collection Work Sheet	OPT
(9) Correspondence (Customer, Dealer, General)	OPT
(10) Credit Files — Closed or Paid	2
(11) Credit Investigation Report	OPT
(12) Delinquency Reports	OPT
(13) Disclosure Statement	2
(14) Dun and Bradstreet Reports	OPT
(15) Journals	5
(16) Liability Ledgers	5
(17) Loan Committee Minutes	2
(18) Loan Ledger Cards	5
(19) Loan Payment Tickets — Coupons	2
(20) Merchant Activity Report	OPT
(21) Monthly Cycle Status Register	OPT
(22) Monthly Report of Balances, Accruals, Commercial, Agricultural and Real Estate	1
(23) New Loan Register	OPT
(24) Pledge Agreement (After Disposal of Collateral)	5
(25) Pledge, Consent to (After Disposal of Collateral)	5
(26) Posting Work Sheets	OPT
(27) Power of Attorney (After Closing)	1
(28) Purpose Statement (Regulation U)	3
(29) Record — Lost or Stolen Card	OPT
(30) Reissue Registers	OPT
(31) Rejected Loan Applications	2
(32) Remittance Control Card	1
(33) Remittance — Service Mortgages	OPT
(34) Statements of Dealers Reserve Accounts	2
(35) Stock Margin Records	2
(36) Warehouse Receipts, Records	2
6: OTHER BANK RECORDS	
a: Collections	
(1) Escrow Collection Ledger — Record of Payments	5
(2) Escrow Envelope	OPT
(3) Incoming Collection Records	OPT
(4) Notice of Protest	1
(5) Outgoing Collection Records	OPT
b: General	
(1) Affidavits	OPT
(2) Attachments, Garnishments	6
(3) Attachment Releases	6
(4) Correspondence, General	2
(5) Registered Mail — Incoming	1
(6) Registered Mail — Outgoing	1
(7) Return Receipt Cards	OPT
(8) Court Order Memorandum Record	6
c: International Transactions	
(1) Collection Register	2
(2) Collections Paid	2
(3) Correspondence	2
(4) Drafts	5
(5) Foreign Drafts	5

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(6) Foreign Outstanding Cash	2
(7) Foreign Payments Incoming	5
(8) Foreign Transfers	5
(9) Letters of Credit	5
(10) Record of Advice of Transfer of \$10M and Over Outside of U.S.A.	5
d. Personnel	
(1) Attendance Record	4
(2) Authorization for Payroll Deductions	2
(3) Business Expenses of Employees Reimbursed by Employer	3
(4) Disability Records	OPT
(5) Employee History Records	5
(6) Insurance Records	OPT
(7) Payroll Checks	2
(8) Payroll Journals and Records	4
(9) Pension Fund Records	10
(10) Profit Sharing Fund Records	10
(11) Rejected Employee Applications	2
(12) Time Cards or Sheets	2
(13) Unemployment Claims Records	OPT
(14) W-2 Withholding Tax Form	3
(15) W-3 Reconciliation of Income Tax Withheld from Wages	3
(16) W-4 Withholding Exemption Certificates	3
e. Safe Deposit/Storage	
(1) Daily Receipts, Journal or Cash Book	1
(2) Entrance Tickets	5
(3) Forced Entry Records	5
(4) Leases and/or Rental Agreement	2
(5) Storage Receipts	OPT
f. Other Services	
(1) Applications for Travelers Cheques	2
(2) Official Checks and Drafts	
(a) Bank Drafts	3
(b) Cashiers Checks	5
(c) Certified Checks	5
(d) Dividend Checks	3
(e) Expense Vouchers	3
(f) Interest Checks	5
(g) Personal Money Orders	5
(3) Series "E" Bonds	
(a) Stubs	2
(b) Applications	2
(c) Transmittal Letters	2
(4) Lock Box Records	1
(5) Wire Transfers	OPT
D. Retention Schedule	
1. <u>Accounting and Auditing</u>	
a. <u>Accrual and bond amortization</u>	3
b. <u>Audit report</u>	6
c. <u>Audit work papers</u>	3
d. <u>Bank call, income and dividend report</u>	5
e. <u>Bill, statement, or invoice - paid</u>	7
f. <u>Budget work papers</u>	2
g. <u>Collateral vault "in-and-out" ticket</u>	1
h. <u>Daily reserve computation</u>	1
i. <u>Earnings report</u>	7
j. <u>Expense voucher or invoice</u>	
k. <u>Financial statement</u>	7
l. <u>Interoffice reconciliation</u>	1
m. <u>Interoffice transaction</u>	1

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n.	<u>Periodic statement for account owned by the bank</u>	<u>2</u>
o.	<u>Reconcilement of deposits-due to bank</u>	<u>2</u>
p.	<u>Reconcilement register-due from bank</u>	<u>2</u>
q.	<u>Return and cash item register</u>	<u>1</u>
r.	<u>Service contract</u>	<u>2</u>
s.	<u>Treasury tax and loan account</u>	<u>2</u>
t.	<u>Unclaimed property record</u>	<u>7</u>
2.	<u>Administration</u>	
a.	<u>Articles of incorporation or association, bylaws, or other record of organization</u>	<u>P</u>
b.	<u>Bankers blanket bond-record showing compliance</u>	<u>5 AE</u>
c.	<u>Bank examiner's report</u>	<u>7</u>
d.	<u>Capital note issuance and transfer record</u>	<u>P</u>
e.	<u>Depreciation record-office equipment</u>	<u>3</u>
f.	<u>Dividend check and register</u>	<u>7</u>
g.	<u>Dividend check-outstanding</u>	<u>P</u>
h.	<u>Expired policy insuring the bank</u>	<u>3 AE</u>
i.	<u>FDIC assessment base, record</u>	<u>5</u>
j.	<u>FDIC certificate</u>	<u>P</u>
k.	<u>Insurance policy number, record of premium paid and amount recovered</u>	<u>3 AE</u>
l.	<u>Legal proceedings when completed</u>	<u>5</u>
m.	<u>Minute book of:</u>	
i.	<u>Meetings of the board of directors</u>	<u>P</u>
ii.	<u>Meetings of committees of the board of directors</u>	<u>P</u>
iii.	<u>Shareholders' meetings</u>	<u>P</u>
n.	<u>Postage meter record book (from date of final entry)</u>	<u>1</u>
o.	<u>Real estate documentation</u>	<u>5 ATD</u>
p.	<u>Report to directors</u>	<u>3</u>
q.	<u>Stock issuance and transfer record</u>	<u>P</u>
r.	<u>Required report to supervisory agency</u>	<u>3</u>
s.	<u>Tax controversy or proceeding when completed</u>	<u>7</u>
t.	<u>Tax record not material to any controversy</u>	<u>7</u>
u.	<u>Voting list and proxies</u>	<u>3</u>
3.	<u>Collections</u>	
a.	<u>Collection payment record</u>	<u>1</u>
b.	<u>Collection receipt-carbon</u>	<u>1</u>
c.	<u>Collection register</u>	<u>1</u>
d.	<u>Coupon cash letter-outgoing</u>	<u>1</u>
e.	<u>Coupon envelope</u>	<u>1</u>
f.	<u>Customer file copy</u>	<u>1</u>
g.	<u>Incoming collection letter</u>	<u>1</u>
h.	<u>Incoming contract or note letter</u>	<u>1</u>
4.	<u>Customer service</u>	
a.	<u>Broker account holder-identification</u>	<u>5</u>
b.	<u>Broker's confirmation</u>	<u>3</u>
c.	<u>Broker's invoice</u>	<u>3</u>
d.	<u>Broker's statement</u>	<u>3</u>
e.	<u>E-Bond application</u>	<u>2</u>
f.	<u>E-Bond sold or redeemed-record</u>	<u>2</u>
g.	<u>E-Bond transmittal letter</u>	<u>2</u>
h.	<u>Lock box daily receipts</u>	<u>1</u>
i.	<u>Night depository agreement</u>	<u>1 AC</u>
j.	<u>Night depository daily record</u>	<u>1</u>
k.	<u>Safekeeping record and receipt</u>	<u>5</u>
l.	<u>Securities buy order and sell order</u>	<u>3</u>
5.	<u>Data processing (management information systems)</u>	
a.	<u>Back-up data (for reconstruction) daily, end of month, quarter, or year</u>	<u>1</u>
b.	<u>Disaster recovery program</u>	<u>P</u>

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c.	<u>Film copy of every IRS financial reporting form</u>	6
d.	<u>Program change</u>	P
e.	<u>System, program and procedure manual</u>	P
6.	<u>Deposits</u>	
a.	<u>Account opened and account closed report</u>	1
b.	<u>Certificate of deposit purchase record</u>	7
c.	<u>Check paid, withdrawal slip, and other debits to account</u>	7
d.	<u>Club account check register</u>	1
e.	<u>Club account coupon</u>	1
f.	<u>SAR - for suspicious transaction under \$10,000</u>	5
g.	<u>CTR - for transaction exceeding \$10,000</u>	5
h.	<u>Customer authorization, resolution, and signature card</u>	6 AC
i.	<u>Deposit account record needed to reconstruct</u>	7
j.	<u>Deposit and other credits</u>	7
k.	<u>Dormant account – after closed or escheated</u>	7 ALC
l.	<u>Form 1096, and 1099 reports to IRS</u>	7
m.	<u>Individual retirement account record</u>	7
n.	<u>Interest check or other record of interest payment and reports</u>	7
o.	<u>Internal management reports:</u>	
i.	<u>Large balance</u>	1
ii.	<u>Overdraft</u>	1
iii.	<u>Public funds</u>	1
iv.	<u>Service charges</u>	1
v.	<u>Stop payment</u>	1
vi.	<u>Uncollected funds</u>	1
vii.	<u>Unposted item</u>	1
viii.	<u>Zero balance</u>	1
p.	<u>Ledger card</u>	5 AC
q.	<u>Power of attorney document</u>	7 ATD
r.	<u>Receipt for statement held at customer's request</u>	1
s.	<u>Record showing compliance with the following federal regulations. The stated retention period applies unless, and until, it is preempted by federal law:</u>	
i.	<u>Regulation CC, Expedited Funds Availability Act</u>	2
ii.	<u>Regulation DD, Truth in Savings Act</u>	2
iii.	<u>Regulation E, Electronic Funds Transfer Act</u>	2
t.	<u>Returned statement and cancelled checks</u>	6
u.	<u>Statement</u>	6
v.	<u>Stop payment order</u>	6 AE
w.	<u>Document used to request and receive Tax Identification Number</u>	6
x.	<u>Transaction journal</u>	6
y.	<u>Trial balance</u>	6
7.	<u>Due from banks</u>	
a.	<u>Advice from correspondent bank</u>	1
b.	<u>Bank statement</u>	1
c.	<u>Draft-original</u>	7
d.	<u>Draft register or copy</u>	1 AP
e.	<u>Duplicate check-information and documentation pertaining to issuance</u>	7
f.	<u>Reconcilement register</u>	1
8.	<u>Due to banks</u>	
a.	<u>Account opened and account closed-reports</u>	1
b.	<u>Advice-copy</u>	1
c.	<u>Incoming cash letter memo for credit</u>	1
d.	<u>Incoming cash letter for remittance</u>	1
e.	<u>Reconcilement register (TTL)</u>	2
f.	<u>Reconcilement verification</u>	1
g.	<u>Resolution</u>	2 AC
h.	<u>Signature card</u>	6 AC
i.	<u>Trial balance (fiche)</u>	7

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j. <u>Undelivered statement, reconstruction available from bank records</u>	1
k. <u>Undelivered statement, reconstruction not possible</u>	7
9. <u>General</u>	
a. <u>Address change order</u>	1
b. <u>Affidavit from customer including affidavit of loss, forgery, or non-use of cashier's check</u>	1
c. <u>Writ of attachment or garnishment</u>	5
d. <u>Attachment, release</u>	5
e. <u>Armored car receipt</u>	1
f. <u>Check book order</u>	1
g. <u>Check book-receipt</u>	1
h. <u>Court order memorandum record</u>	5
i. <u>Notice of Protest</u>	1
j. <u>Travelers check-application</u>	2
k. <u>Vault record-opening and closing</u>	1
l. <u>Wire transfer debit entry and credit entry</u>	7
10. <u>General ledger</u>	
a. <u>Daily statement of condition</u>	3
b. <u>General journal-if byproduct of posting the general ledger</u>	3
c. <u>General journal-if used as book of original entry with description</u>	3
d. <u>General ledger</u>	5
e. <u>General ledger ticket-debit and credit</u>	2
11. <u>International department</u>	
a. <u>Broker account holder-identification</u>	5
b. <u>Cable copy</u>	7
c. <u>Cable requisition</u>	7
d. <u>Collection paid</u>	1
e. <u>Correspondence</u>	2
f. <u>Draft</u>	7
g. <u>Foreign collection register</u>	6
h. <u>Foreign draft application</u>	6
i. <u>Foreign draft-carbon</u>	2 ATD
j. <u>Foreign exchange remittance sheet or book</u>	6
k. <u>Foreign financial account-record</u>	7
l. <u>Foreign mail transfer application</u>	6
m. <u>Foreign mail transfer-carbon</u>	2 ATD
n. <u>Foreign outstanding cash</u>	2
o. <u>Foreign payment-incoming</u>	2
p. <u>Letter of credit application</u>	2
q. <u>Letter of credit ledger sheet</u>	7
r. <u>Transfer outside of the United States in excess of \$10,000 – record</u>	5
12. <u>Investments</u>	
a. <u>Bonds</u>	
i. <u>Amortization record</u>	6
ii. <u>Confirmation</u>	3
iii. <u>Safekeeping receipt</u>	2
b. <u>Broker's securities</u>	
i. <u>Broker's invoice</u>	3
ii. <u>Broker's statement</u>	3
iii. <u>Report of lost or stolen securities</u>	3
iv. <u>Safekeeping advice</u>	2
v. <u>Taxpayer identification number</u>	5
c. <u>Commercial paper</u>	
i. <u>Broker's advice</u>	2
ii. <u>Purchase order</u>	2
iii. <u>Remittance advice</u>	2
d. <u>Mortgage-backed securities</u>	
i. <u>Buy-and-sell agreement</u>	3
ii. <u>Commitment letter</u>	7

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iii.	<u>FHLMC and FNMA loan file</u>	7
iv.	<u>GNMA certificate</u>	7
v.	<u>Interest accrual record</u>	7
vi.	<u>Monthly remittance report</u>	7
13.	<u>Loans. A bank shall keep each loan record listed for the period required by this subsection. These periods are measured from the date of final activity. A bank shall have and comply with its own record retention schedule that is consistent with this subsection. A bank may comply with this subsection by complying with a preemptive federal regulation, even if the federal regulation requires a shorter retention period than is listed in this subsection. This subsection does not prohibit record retention for longer periods than these state-required minimums for any reason, including a retention period established by preemptive federal law or regulation. Likewise, this section does not prohibit a bank from keeping any type of record not required by this subsection.</u>	
a.	<u>All Loans - general</u>	
i.	<u>Application for loan approved</u>	6
ii.	<u>Appraisal</u>	6
iii.	<u>Borrower's financial statement</u>	6
iv.	<u>Charge-off record</u>	10
v.	<u>Charged off note</u>	10
vi.	<u>Collateral file</u>	6
vii.	<u>Correspondence</u>	6
viii.	<u>Credit file – all documentation</u>	6
ix.	<u>Credit report</u>	6
x.	<u>Daily proof and record</u>	6
xi.	<u>Loan committee minutes</u>	P
xii.	<u>Miscellaneous loan reports including new loan journal, paid loan journal, past due report, and transaction journal as original entry</u>	6
xiii.	<u>Other documentation for reconstruction of loan</u>	2
b.	<u>Commercial loans</u>	
i.	<u>Application for loan denied</u>	12 M
ii.	<u>Bill of sale</u>	6
iii.	<u>Borrowing resolution</u>	3
iv.	<u>Business annual report (fiscal or year end) - after date of report</u>	3
v.	<u>Business cash-flow analysis report - after date of report</u>	3
vi.	<u>Business tax return - after date of return</u>	6
vii.	<u>Commitment letter</u>	6
viii.	<u>Copy of mortgage note or deed of trust</u>	6
ix.	<u>Evidence of insurance</u>	6
x.	<u>Guaranty</u>	6
xi.	<u>Letter of credit</u>	6
xii.	<u>Participation agreement</u>	6
xiii.	<u>Promissory note</u>	6
xiv.	<u>Purchase and sale agreement</u>	6
xv.	<u>Security agreement</u>	6
xvi.	<u>Title documentation</u>	6
xvii.	<u>UCC filing</u>	6
c.	<u>Consumer loans</u>	
i.	<u>Application for loan denied, including adverse action notice</u>	25 M
ii.	<u>Collateral record</u>	6
iii.	<u>Hazard insurance record</u>	6
iv.	<u>Invoice</u>	6
v.	<u>Life and disability insurance record</u>	6
vi.	<u>Overdraft loan agreement</u>	6
vii.	<u>Promissory note and modification agreement - copy</u>	6
viii.	<u>Title documentation</u>	6
ix.	<u>UCC filing - copy</u>	6
d.	<u>Real estate loans</u>	
i.	<u>Assignment of escrow</u>	6
ii.	<u>Assumption</u>	6
iii.	<u>Commitment letter</u>	6

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iv.	<u>Copy of deed of trust or mortgage note, as it may have been modified</u>	6
v.	<u>Escrow analysis and record</u>	6
vi.	<u>Evidence of any FHA or PMI insurance required</u>	6
vii.	<u>Hazard insurance</u>	<u>life of loan</u>
viii.	<u>Proof of insurance excluding hazard</u>	6
ix.	<u>Sales contract</u>	6
x.	<u>Settlement sheet</u>	6
xi.	<u>Survey</u>	6
xii.	<u>Title documentation</u>	6
e.	<u>Construction loans. In addition to the documents specified in subsection (d), a bank shall keep a record for a construction loan as specified in this subsection:</u>	
i.	<u>Certificate of occupancy</u>	6
ii.	<u>Construction progress report</u>	6
iii.	<u>Contractor's cost breakdown</u>	6
iv.	<u>Disbursement documentation</u>	6
v.	<u>Inspection report</u>	6
vi.	<u>Residential construction specifications and material list</u>	6
14.	<u>Official checks and drafts</u>	
a.	<u>Affidavit, bond, indemnity agreement, other documentation supporting the issuance of a duplicate check or draft</u>	7
b.	<u>Bank draft</u>	3
c.	<u>Cashier's check-cancelled</u>	7
d.	<u>Cashier's check register-copy</u>	7
e.	<u>Expense check-cancelled</u>	7
f.	<u>Expense check register-copy</u>	7
g.	<u>Expense voucher or invoice</u>	7
h.	<u>Money order-bank or personal</u>	7
i.	<u>Money order register-copy</u>	7
j.	<u>Official check outstanding</u>	P
15.	<u>Personnel Records</u>	
a.	<u>Attendance record, and time card</u>	3
b.	<u>Authorization for payroll deduction</u>	2
c.	<u>Department of labor report</u>	5
d.	<u>Disability record</u>	5
e.	<u>Employee record and personnel folder</u>	5
f.	<u>Employment application</u>	3 AT
g.	<u>Insurance record</u>	2
h.	<u>Payroll check</u>	2
i.	<u>Pension fund record</u>	10
j.	<u>Profit sharing fund record</u>	10
k.	<u>Rejected employee application</u>	2
l.	<u>Salary ledger or electronic data processing printout</u>	4
m.	<u>Salary receipt</u>	2
n.	<u>W-3 reconciliation of income tax withheld from wages</u>	3
o.	<u>W-4 withholding exemption certificate</u>	3
p.	<u>Wage and tax statement record (W-2)</u>	7
q.	<u>Wage differential documentation (Fair Labor Standards Act)</u>	3
16.	<u>Registered mail</u>	
a.	<u>Marine insurance book</u>	3
b.	<u>Record of incoming and outgoing registered mail</u>	1
c.	<u>Return receipt card</u>	3
17.	<u>Safe deposit vault</u>	
a.	<u>Access ticket or card</u>	6
b.	<u>Court order and correspondence</u>	6
c.	<u>Delivery of will, burial plot deed, insurance policy-receipt</u>	6
d.	<u>Forced entry record</u>	6
e.	<u>Lease or contract-closed account</u>	2 AC

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f. <u>Ledger record of account</u>	1
g. <u>Opened box contents-record and report</u>	7
h. <u>Rent receipt-copy</u>	1
i. <u>Sale to satisfy lien-record</u>	7
j. <u>Signature card, authorization, and resolution</u>	6 AC
18. <u>Tellers</u>	
a. <u>Mail teller envelope</u>	3 M
b. <u>Teller's balancing recap or recap book</u>	1
c. <u>Teller's cash ticket-original and carbons</u>	1
d. <u>Teller's cash shipment record</u>	1
e. <u>Teller's exchange ticket</u>	1
f. <u>Teller's machine tape</u>	1
19. <u>Transit, proof, and clearing</u>	
a. <u>ACH entry</u>	6
b. <u>Advice of correction to deposit</u>	2
c. <u>Clearinghouse settlement sheet - recapitulation of checks delivered to the clearinghouse or federal reserve</u>	2
d. <u>Record of items processed</u>	6
e. <u>Proof machine tape or other record</u>	2
f. <u>Receipt for transit letter</u>	1
g. <u>Return item letter</u>	5
20. <u>Trust department administration</u>	
a. <u>Appraisal of real or personal property held as a trust asset</u>	3 AC
b. <u>Correspondence</u>	3 AC
c. <u>Decree or receipt and release</u>	3 AC
d. <u>Fee record and supporting data</u>	3 AC
e. <u>Intermediate and final account</u>	3 AC
f. <u>Legal documentation including judgment, court order, and legal opinion</u>	3 AC
g. <u>Paid bill</u>	3 AP
h. <u>Real estate insurance policy</u>	1 AE
i. <u>Real estate and mortgage document</u>	3 AC
j. <u>Receipt for asset received or delivered</u>	3 AC
k. <u>Record of asset tax cost</u>	3 AC
l. <u>Summary card, original instrument, agreement and amendment, and letters of appointment</u>	3 AC
m. <u>Synopsis sheet</u>	3 AC
21. <u>Corporate trust</u>	
a. <u>Bond registration journal</u>	3 AC
b. <u>Bond-cancelled</u>	7
c. <u>Indemnity bond</u>	P
d. <u>Certification</u>	2
e. <u>Coupon envelope</u>	6 M
f. <u>Coupon-cancelled</u>	6 M
g. <u>Customer receipt</u>	7
h. <u>Dividend and coupon record</u>	3 AC
i. <u>Dividend and interest disbursement check and list</u>	3 AC
j. <u>General ledger ticket</u>	2
k. <u>Legal paper</u>	P
l. <u>Copy of cancelled stock certificate, original returned to customer</u>	1
m. <u>Stock registration journal</u>	3 AC
n. <u>Stock transfer memo</u>	1
o. <u>Stock transfer receipt</u>	1
p. <u>Tax return</u>	3 AC
q. <u>Transfer-supporting papers</u>	3 AC
r. <u>Transfer journal</u>	3 AC
s. <u>Transfer tax waiver</u>	3 AC
t. <u>Trust ledger-corporate</u>	7
22. <u>Personal trust</u>	
a. <u>Record of previously discharged fiduciary</u>	

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i. <u>Accounting</u>	<u>3 AC</u>
ii. <u>Decree</u>	<u>3 AC</u>
iii. <u>Receipt and release</u>	<u>3 AC</u>
b. <u>Accounting - recorded</u>	<u>3 AC</u>
c. <u>Advice of payment - securities department regarding bond and coupon collection</u>	<u>3 AC</u>
d. <u>Appraisal</u>	
i. <u>Real property</u>	<u>3 AC</u>
ii. <u>Personal property</u>	<u>3 AC</u>
e. <u>Asset delivery receipt</u>	<u>3 AC</u>
f. <u>Authorization</u>	
i. <u>By co-fiduciary</u>	<u>P</u>
ii. <u>By consultant</u>	<u>P</u>
g. <u>Approval</u>	
i. <u>By co-fiduciary</u>	<u>P</u>
ii. <u>By consultant</u>	<u>P</u>
h. <u>Broker's statement</u>	<u>7</u>
i. <u>Buy and sell order</u>	<u>7</u>
j. <u>Cash documentation</u>	
i. <u>Customer cash and asset statement</u>	<u>7</u>
ii. <u>Cash and security journal</u>	<u>7</u>
iii. <u>Cash trial balance</u>	<u>1</u>
k. <u>Common trust fund annual report</u>	<u>10</u>
l. <u>Correspondence</u>	
i. <u>Transfer letter</u>	<u>3 AC</u>
ii. <u>Claim letter</u>	<u>3 AC</u>
m. <u>Coupon collection record</u>	<u>7</u>
n. <u>Court accounting and petition</u>	<u>7</u>
o. <u>Daily transaction journal</u>	<u>6 M</u>
p. <u>Debits and credits-daily</u>	<u>1</u>
q. <u>Documentation necessary to support account decision</u>	<u>3 AC</u>
r. <u>Tax Documentation</u>	
i. <u>Federal estate tax return</u>	<u>10</u>
ii. <u>State estate tax return</u>	<u>10</u>
iii. <u>Tax-related work papers</u>	<u>10</u>
iv. <u>Federal gift tax return</u>	<u>10</u>
s. <u>Fee calculations and supporting data</u>	<u>1</u>
t. <u>Income tax return</u>	
i. <u>Federal</u>	<u>3 AC</u>
ii. <u>State</u>	<u>3 AC</u>
u. <u>Inventory</u>	<u>3 AC</u>
v. <u>Investment review and related material</u>	<u>3 AC</u>
w. <u>Minutes</u>	
i. <u>Investment committee</u>	<u>P</u>
ii. <u>Trust committee</u>	<u>P</u>
23. <u>Other personal trust records</u>	
a. <u>Legal opinion</u>	<u>3 AC</u>
b. <u>Correspondence related to legal opinion</u>	<u>3 AC</u>
c. <u>Paid bill</u>	<u>7</u>
d. <u>Review and recommendation</u>	<u>3 AC</u>
e. <u>Safekeeping record and receipt</u>	<u>3 AC</u>
f. <u>Security ledger sheet</u>	<u>P</u>
g. <u>Trust check</u>	<u>10</u>
h. <u>Trust entry-original</u>	<u>3 AC</u>
i. <u>Trust or agency agreement-original</u>	<u>3 AC</u>
j. <u>Vault withdrawal and deposit ticket</u>	<u>7</u>
k. <u>Will-certified copy</u>	<u>P</u>
l. <u>Work papers supporting tax return</u>	<u>7</u>
24. <u>Trust Investments</u>	

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a.	<u>Annual report</u>	
	i. <u>Common trust fund</u>	<u>10</u>
	ii. <u>Pooled fund</u>	<u>10</u>
b.	<u>Valuation</u>	
	i. <u>Common trust fund</u>	<u>10</u>
	ii. <u>Pooled fund</u>	<u>10</u>
c.	<u>Minutes</u>	
	i. <u>Investment committee</u>	<u>P</u>
	ii. <u>Administrative committee</u>	<u>P</u>
d.	<u>Investment order and broker's confirmation</u>	<u>3 AC</u>
e.	<u>investment review and related material</u>	<u>3 AC</u>
f.	<u>Correspondence</u>	<u>3 AC</u>
g.	<u>Summary of annual account activity</u>	<u>3 AC</u>
25.	<u>Wire transfer</u>	
	a. <u>Incoming wire log</u>	<u>1</u>
	b. <u>Outgoing wire log</u>	<u>1</u>
	c. <u>Transmission record</u>	<u>7</u>
	d. <u>Wire transfer request</u>	<u>7</u>