

# 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 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 38. BOARD OF HOMEOPATHIC MEDICAL EXAMINERS

##### PREAMBLE

- | <b><u>1. Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
|------------------------------------|---------------------------------|
| Article 2                          | Amend                           |
| R4-38-201                          | Amend                           |
| R4-38-202                          | Amend                           |
| R4-38-203                          | Repeal                          |
| R4-38-204                          | Repeal                          |
| R4-38-205                          | Repeal                          |
| R4-38-206                          | 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. § 32-2904(B)(1)  
Implementing statute: A.R.S. § 32-2951
- 3. The effective date of the rules:**  
July 5, 2003
- 4. A list of all previous notices appearing in the Register addressing the proposed rules:**  
Notice of Rulemaking Docket Opening: 8 A.A.R. 1734, April 15, 2002  
Notice of Proposed Rulemaking: 8 A.A.R. 3006, July 26, 2002  
Notice of Public Information: 9 A.A.R. 480, February 14, 2003
- 5. The name and address of agency personnel with whom persons may communicate regarding the rules:**  
Name: Christine Springer, Executive Director  
Address: 1400 W. Washington, Room 230  
Phoenix, AZ 85007  
Telephone: (602) 542-8154  
Fax: (602) 542-3093  
E-mail: bhme@mindspring.com
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**  
A revision of this Article was undertaken as a result of a five-year review. In A.A.C. R4-38-202, 4-38-203, 4-38-204, and 4-38-205 the agency has eliminated language that was redundant of A.R.S. § 32-2951. R4-38-202 includes additional language relating to the annual renewal of the dispensing permit.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**  
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

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

These rules are being amended as a result of findings recognized at the completion of a five-year rule review in 1999. The bulk of changes to this Article are amendments to eliminate repetitive language already found in A.R.S. § 32-2951. It is anticipated that the rules will not increase costs to the regulated community, businesses, or consumers. The Board anticipates that there will be minimal costs associated with the implementation of the rule. There will be no increased costs to small businesses or consumers. There will be minimal costs to the Board relating to mailing the final rules to licensees. The Board incurred minimal costs when notice was sent to all licensees to notify them of the public hearing and to request comments on the proposed changes. The Office of the Secretary of State and the Governor's Regulatory Review Council will each incur minimal costs ordinarily associated with a rulemaking. There is no monetary burden imposed on small businesses by this rulemaking. The regulated community is already conforming to federal regulations related to maintaining a DEA permit to dispense controlled substances and these rules merely serve as an adjunct to clarify state requirements. No practical alternative methods are available to reduce the already minor impact.

**10. A description of the changes between the proposed rules, including supplemental notices, and final rules:**

The Notice of Proposed Rulemaking defines "pharmaceutical drug" in R4-38-202(A)(1) by citing A.R.S. § 32-1902(21). This is an incorrect statutory reference that is deleted in the final rule. The Board made other technical and grammatical changes at the suggestion of G.R.R.C. staff.

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

No comments were received.

**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. Were these rules previously adopted as emergency rules?**

No

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 38. BOARD OF HOMEOPATHIC MEDICAL EXAMINERS**

**ARTICLE 2. ~~LABELING, RECORDKEEPING, STORAGE, AND PACKAGING~~ DISPENSING OF DRUGS  
~~DISPENSED BY HOMEOPATHIC PHYSICIANS~~**

Section

- R4-38-201. Definitions
- R4-38-202. General Provisions
- R4-38-203. ~~Labeling~~ Repealed
- R4-38-204. ~~Recordkeeping~~ Repealed
- R4-38-205. ~~Storage~~ Repealed
- R4-38-206. Packaging

**ARTICLE 2. ~~LABELING, RECORDKEEPING, STORAGE, AND PACKAGING~~ DISPENSING OF DRUGS  
~~DISPENSED BY HOMEOPATHIC PHYSICIANS~~**

**R4-38-201. Definitions**

In addition to the definitions in A.R.S. §§ 32-2901, 32-2933, and 32-2951, the following definitions apply in this Chapter:

- ~~A.1.~~ "Administer" means the direct application of a controlled substance, prescription-only drug, dangerous drug as defined in A.R.S. § 13-3401, or narcotic drug as defined in A.R.S. § 13-3401, homeopathic medication, natural substance, or non-prescription drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by a homeopathic physician, ~~the a~~ homeopathic physician's nurse or assistant, or by the patient or research subject at ~~the a~~ homeopathic physician's direction.
- ~~B.~~ "Controlled Substance" means a drug, substance or immediate precursor identified, defined or listed in Title 36, Chapter 27, Article 2.
- ~~C.~~ "Drug" means:
  - ~~1. Medications or substances recognized, or for which standards or specifications are prescribed, in the official compendium;~~
  - ~~2. Medications or substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in~~

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- human beings; and
3. Medications or substances other than food intended to affect the structure or any function of the body of human beings.
- D.** "Homeopathic medication" means any substance of animal, vegetable or mineral origin which is prepared in homeopathic microdosage.
- E.2.** "Label" means a display of written, printed, or graphic matter on the immediate container of ~~any an~~ article and, ~~unless easily legible through on~~ the outside wrapper or container, ~~such written, printed or graphic matter shall also appear on the outside if the display on the immediate wrapper or container is not easily legible through the outside wrapper of the retail package of such article.~~
- F.3.** "Labeling" means all labels and other written, printed, or graphic matter either:
- 1.a. On ~~any an~~ article or any of its containers or wrappers and
  - 2.b. Accompanying ~~such the~~ article.
- G.4.** "Manufacture" or "manufacturer" "Manufacturer" means ~~every each~~ person who prepares, derives, produces, compounds, processes, packages or repackages, or labels ~~any a~~ drug in a place devoted to manufacturing ~~such the~~ drug, but does not include a pharmacy, pharmacist or physician.
- H.5.** "Natural substances substance" means a herbal phytotherapeutic or oxygen, carbon, or nitrogen-based therapeutic agents ~~agent, vitamins vitamin, minerals mineral, and or food factors food-factor concentrate~~ isolated from animal, vegetable, or mineral sources for nutritional augmentation.
- I.6.** "Official compendium" means the latest revisions of the Pharmacopoeia of the United States and the Homeopathic Pharmacopoeia of the United States, the latest revision of the National Formulary, or any current supplement ~~to any of them.~~
- J.7.** "Packaging" means the act or process of ~~a person~~ placing a drug ~~item~~ in a container ~~for the purpose or intent of to dispensing or distributing dispense or distribute the item drug to another person.~~
8. "Pharmaceutical drug" means a drug intended for use in preventing or curing disease or relieving pain.
- K.** "Prescription medication" means any medication or substance, including label and container according to context which is dispensed pursuant to a prescription order.
- L.** "Prescription-only drug" ~~does not include a controlled substance but does include:~~
1. Any drug which because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner;
  2. Any drug that is limited by an approved new drug application under the applicable federal law or A.R.S. Section 32-1962, for use under the supervision of a medical practitioner;
  3. Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer; and
  4. Any drug, other than a controlled substance, required under applicable federal law to bear on its label the legend "Caution: federal law prohibits dispensing without prescription".

**R4-38-202. General Provisions**

- A.** The homeopathic physician shall document in writing, procedures for direct supervision of the nurse's or attendant's role in the dispensing process.
- B.** The person dispensing any drug not previously dispensed shall read to the patient the name of the medication, directions for its use, any storage requirements, and precautions for use.
- C.A.** A homeopathic physician who intends to dispense pursuant to this section shall complete a form shall not dispense unless the physician obtains from the Board for registration as a dispensing physician, as prescribed by the Board, available at the Board's office, a permit to dispense. The physician may renew the permit and shall be renewed annually at the same time the license is renewed. This registration The physician shall include the following on the permit application or renewal form shall include the following:
1. The classes of drugs the homeopathic physician will dispense, including controlled substances, pharmaceutical drugs, homeopathic medications, prescription-only drugs, natural substances, ~~and~~ non-prescription drugs defined in A.R.S § 32-1901(46), and devices defined in A.R.S. § 32-1901(18);
  2. The location where the homeopathic physician will dispense; and
  3. A copy of the homeopathic physician's current Drug Enforcement Administration (DEA) ~~Registration registration, or an affidavit averring that the physician does not possess a DEA registration and that the physician will not prescribe or dispense controlled substances.~~
- D.B.A** If a homeopathic physician who determines that a shortage exists in a controlled ~~substances substance~~ maintained for dispensing, the physician shall immediately notify by telephone, the Board, the local law enforcement agency, and the Department of Public Safety by telephone. The homeopathic physician shall also provide written notification to the Board within seven days of the date of the discovery of the shortage.
- E.** ~~Schedule II controlled substances may not be dispensed as a refill. Schedule III, IV and V controlled substances may only be refilled five times or within six months, whichever occurs first. These refills shall be properly documented in the~~

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patient's medical records and dispensing log as required by this section with a large printed or stamped letter "R".

- F. A homeopathic physician who dispenses controlled substances shall be subject to enforcement by the Federal Drug Enforcement Administration.

**R4-38-203. Labeling Repealed**

A. The following information shall be included on labels of controlled substances and prescription only pharmaceutical drugs, and on labels or accompanying instruction sheets of homeopathic medications, including prescription only homeopathic medications, natural substances and nonprescription drugs, dispensed by a homeopathic physician:

1. The dispensing physician's name, address, and telephone number;
2. The date the drug, homeopathic medication, natural substance, or non-prescription drug is dispensed;
3. The patient's name;
4. The name and strength or potency of the drug, homeopathic medication, natural substance or non-prescription drug, the quantity dispensed, directions for its use and any cautionary statements necessary for the safe and effective use of the drug; and
5. The number of authorized refills.

**R4-38-204. Recordkeeping Repealed**

A. The dispensing homeopathic physician shall enter into the patient's medical record the name and strength or potency of the drug, homeopathic medication, natural substance or non-prescription drug dispensed, the date it was dispensed, the dosing schedule, the number of refills and the therapeutic reason.

B. The dispensing homeopathic physician shall maintain an ongoing inventory log of all controlled substances dispensed, as well as the prescription only drugs Nubain and Stadol or their generic counterparts, Nalbuphine Hydrochloride and Butorphanol Tartrate. The log shall include a separate inventory sheet for each drug. The heading of the inventory sheets shall include the following information:

1. The name of the drug, its strength, its manufacturer, the date it was received, its expiration date, its lot or serial number and any cautionary statements necessary for the safe storage and handling of the drug;
2. The patient's name;
3. The number of pills or the volume of liquid dispensed;
4. The number of authorized refills;
5. The date the drug is dispensed;
6. The name of the person who receives the drug, if other than the patient, and that person's relationship to the patient;
7. The printed name and signature of the actual person who prepares, counts or measures the drug, labels the container or distributes a prepackaged drug to the patient or the patient's representative; and
8. A running total of drug or prepackaged units dispensed and a running total of drug or prepackaged units remaining.

C. The inventory log of controlled substances dispensed may be maintained by computer. If a computerized log is used the name, signature and date of the person preparing and distributing the drug shall be put on the original prescription form.

D. Prior to dispensing a controlled substance or prescription only pharmaceutical drug the patient shall be given a written prescription on which appears the following statement in bold type: "This prescription may be filled by this prescribing physician or by a pharmacy of your choice"

1. This prescription order shall contain the following information:
  - a. Date of issuance;
  - b. Name and address of patient for which prescription order has been issued;
  - c. Name, strength and quantity of the drug prescribed and dispensed;
  - d. Name and address of the physician dispensing the drug;
  - e. Two signature lines for the prescriber. The right side of the prescription form shall contain, under the signature line, the phrase "substitution permissible". The left side shall contain, under the signature line, the phrase "dispense as written";
  - f. The dispensing homeopathic physician's Drug Enforcement Agency number for controlled substances; and
  - g. The printed name, signature and date of the actual person who prepares, counts or measures the drug, labels the container and distributes a prepackaged drug to the patient or the patient's representative.
2. All original prescription orders for controlled substances and prescription only pharmaceutical drugs dispensed by a homeopathic physician shall be dated and filed in the order originally dispensed. Original prescription orders for schedule II drugs shall be maintained separately from other prescription orders.

E. A homeopathic physician shall maintain controlled substance and prescription only pharmaceutical drug purchase orders, invoices of receipts, dispensing logs, destruction records and original prescription orders for four years.

F. Destruction records for controlled substances shall reflect procedures approved by the Federal Drug Enforcement Administration.

G. Prior to dispensing a homeopathic medication, including prescription only homeopathic medications, a natural substance or a non-prescription drug, the patient shall be given a written statement on which appears the following statement in bold type:

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“Prescriptions may be filled by this prescribing physician or by a pharmacy or natural substance supplier of your choice.”

**R4-38-205. Storage Repealed**

- ~~A. The dispensing homeopathic physician shall keep all controlled substances and prescription-only pharmaceutical drugs in a locked cabinet or room and shall control access to the cabinet or room by a written procedure. This written procedure shall be made available to the Board or its authorized agents or employees on demand for inspection or copying.~~
- ~~B. The dispensing homeopathic physician shall keep all homeopathic medications, including prescription-only homeopathic medications, natural substances, and non-prescription drugs, as well as samples of prescription drugs provided by a manufacturer, in a cabinet or room with supervised limited access.~~
- ~~C. Medications and substances not requiring refrigeration shall be maintained in an area where the temperature does not exceed eighty five degrees Fahrenheit.~~
- ~~D. All medications and substances shall be in current or unexpired dating.~~

**R4-38-206. Packaging**

- ~~A. All controlled substances and prescription-only pharmaceutical drugs shall be dispensed in prepackaged formulas or packaged in a light-resistant container with a consumer safety cap, unless the patient or patient's representative and the physician agree otherwise.~~
  - ~~B. All packages of dispensed drugs shall be labeled following the labeling rules of this section.~~
- In addition to the requirements of A.R.S. § 32-2951, a dispensing homeopathic physician shall dispense a controlled substance or prescription-only pharmaceutical drug in a light-resistant container with a consumer safety cap, unless the patient or patient's representative and the physician agree otherwise.

**NOTICE OF FINAL RULEMAKING**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 46. BOARD OF APPRAISAL**

**PREAMBLE**

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b><u>1. Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R4-46-401                          | Amend                           |
- 2. The specific authority for the rulemaking, including the authorizing statute (general) and the statutes the rule is implementing (specific):**  
Authorizing statute: A.R.S. § 32-3605(A)  
Implementing statutes: A.R.S. §§ 32-3605(B)(1) and 32-3635(A)
- 3. The effective date of the rule:**  
May 6, 2003
- 4. A list of all previous notices appearing in the Register addressing the final rule:**  
Notice of Rulemaking Docket Opening: 8 A.A.R. 5235, December 27, 2002  
Notice of Proposed Rulemaking: 8 A.A.R. 5210, December 27, 2002
- 5. The name and address of agency personnel with whom persons may communicate regarding the rule:**
- |            |  |
|------------|--|
| Name:      | Edward C. Logan  |
| Address:   | Board of Appraisal<br>1400 W. Washington, Suite 360<br>Phoenix, AZ 85007 |
| Telephone: | (602)542-1543  |
| Fax:       | (602)542-1598  |
| E-mail:    | elogan@appraisal.state.az.us   |
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**  
The rule is written to comply with the provisions of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and state statutes applicable to real estate appraisers. The change in the existing rule is to comply with Title XI, which requires state licensing boards to recognize and enforce the Uniform Standards of Professional Appraisal Practice (USPAP) for federally related transactions; and A.R.S. § 32-3605(B)(1), which requires the Board to adopt standards for professional appraisal practice that are at least equal to the USPAP. The amended rule incorporates by reference the 2003 edition of the USPAP.

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

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 the economic, small business, and consumer impact:**

R4-46-401 is being changed to adopt the latest standards of practice in the profession, as required by federal and state law. The primary groups that will be affected are the Board of Appraisal, the licensed or certified appraisers, and the public. The Board annually adopts the latest standards for professional appraisal practice and there should be no appreciable change in the economic impact. The key changes in the 2003 USPAP are in the Definitions; Ethics Rule; Standards Rule 1-5; Standards Rule 1-6; STANDARD3; Standards Rule 7-5; Standards Rule 7-6; STATEMENT No. 7 and Advisory Opinion 3 (AO-3); Advisory Opinion 9 (AO-9); USPAP Structure and Usability Enhancements; and, Appraisal Standards Board (ASB) Work In Progress. The cost for the new edition is \$30.00. The cost is a deductible business expense.

**10. A description of the changes between the proposed rule, including supplemental notices, and final rule:**

None, except in the preamble key changes to the 2003 USPAP are set out in more detail in the proposed rule and are summarized in the final rule; and, technical changes suggested by the Governor's Regulatory Review Council staff.

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

No written response was received. However, verbal support was given by the Governmental Affairs representatives of both the Phoenix and Tucson chapters of the Appraisal Institute. On February 20, 2003, the Board of Appraisal, at its regular monthly meeting, voted to adopt these rule changes and to proceed with a Notice of Final Rulemaking.

**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:**

Uniform Standards of Professional Appraisal Practice, 2003 Edition, published by the Appraisal Foundation, 1029 Vermont Avenue, NW, Suite 900, Washington, DC 20005, toll free (800) 805-7857; (202) 347-7722; fax (202) 347-7727; or web site [www.appraisalfoundation.org](http://www.appraisalfoundation.org). The location in the rules is R4-46-401.

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

No

**15. The full text of the rule follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 46. BOARD OF APPRAISAL**

**ARTICLE 4. STANDARDS OF PRACTICE**

Section

R4-46-401. Standards of Appraisal Practice

**ARTICLE 4. STANDARDS OF PRACTICE**

**R4-46-401. Standards of Appraisal Practice**

Every appraiser, in performing the acts and services of an appraiser, shall comply with the Uniform Standards of Professional Appraisal Practice (USPAP), ~~2002~~ 2003 edition, published by the Appraisal Foundation, which is incorporated by reference and on file with the Board and the Office of the Secretary of State. This incorporation by reference contains no future additions or amendments. A copy of the USPAP 2003 edition may be obtained from the Appraisal Foundation, 1029 Vermont Avenue, NW, Suite 900, Washington, DC 20005; toll free 1-800-805-7857; (202) 347-7722; fax (202) 347-7727; or web site [www.appraisalfoundation.org](http://www.appraisalfoundation.org).

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TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

PREAMBLE

**1. Sections Affected**

R7-2-606  
R7-2-608  
R7-2-609  
R7-2-610  
R7-2-612  
R7-2-614

**Rulemaking Action**

Amend  
Amend  
Amend  
Amend  
Amend  
Amend

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

Authorizing statute: A.R.S. § 15-203(A)

Implementing statute: A.R.S. § 15-203(A)(14)

**3. The effective date of the rules:**

May 5, 2003. The Board is requesting these rules be effective immediately upon filing with the Secretary of State. Pursuant to A.R.S. § 41-1032(A), the Board makes this request to provide a benefit to the public and no penalty is associated with a violation of these rules. These rules will replace the emergency rules regarding teacher and administrator certification that are due to expire. An immediate effective date for these rules would benefit the public, including teachers, administrators, schools, school districts, and students by enabling the Board of Education and the Department of Education to continue issuing, renewing, and converting teacher and administrator certificates under a system established by the emergency rules without interruption.

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

Notice of Rulemaking Docket Opening: 8 A.A.R. 4426, October 18, 2002

Notice of Proposed Rulemaking: 8 A.A.R. 4886, November 29, 2002

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

Name: Christy Farley  
Executive Director  
  
Address: State Board of Education  
1535 W. Jefferson, Room 418  
Phoenix, AZ 85007  
  
Telephone: (602) 542-5057  
Fax: (602) 542-3046  
E-mail: cfarley@ade.az.gov

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

The proposed rules substantially continue the provisions of teacher and administrator certification requirements adopted under emergency rule, but additionally require the State Board of Education to either adopt the performance portion of the Arizona Teacher Proficiency Assessment or make a decision that the performance assessment will no longer be required by June 30, 2005. The proposed rules specifically describe the type of work experience that a teacher needs to extend a Provisional Certificate or to convert it to a Standard Certificate. The proposed rules provide that verification of whether an employment emergency exists, such that an emergency teaching certificate may be issued, and shall be provided by a school district, rather than a County superintendent. These rules also eliminate language in the existing rules referring to a passing score on the "performance portion" of the Arizona Administrator Proficiency Assessment. Finally, the proposed rules provide that a Superintendent Certificate shall not be required for superintendents of school districts with less than 600 students until June 30, 2005. These rules were initiated in order to maintain the certificates of existing teachers and administrators and enable them to move from a provisional to a standard certificate with substantially similar criteria as when they were originally issued a certificate and to clarify and amend the rules concerning performance assessments for teaching and administrative certificates to establish a time-frame by which the Board is required to adopt or eliminate the existing requirement and to enact the requirements that shall exist until such a determination on performance assessments is adopted by the Board.

The State Board of Education recognizes and appreciates the work that was done by numerous individuals, including the Certification Advisory Committee that was established by the Board and conducted several public meetings to

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gather input to develop recommendations to modify the existing Teacher and Administrator Certification Rules. While the Board received several beneficial recommendations from the public to expand the scope of this rules package to include further revisions and modifications to teacher, supervisor, and administrator certificates and endorsements, the Board has not included any of these recommendations in this Notice of Final Rulemaking. The Board rejects these recommendations at this time in order to provide for additional discussion of those items and to maintain the rules in the form they were proposed and published so as not to cause any possible delay in the rulemaking process and risk the expiration of the emergency rules prior to the certification of permanent rules on the titles listed above.

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

Not applicable

**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:**

The proposed rules will not diminish any previous grant of authority of a political subdivision of this state.

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

The State Board of Education has been under emergency rules in the following Sections: R7-2-606 - Proficiency Assessments; R7-2-608 - Elementary Teaching Certificates; R7-2-609 - Secondary Teaching Certificates; R7-2-610 - Special Education Teaching Certificates; R7-2-612 - Other Teaching Certificates; and R7-2-614 - Administrative Certificates since May 23, 2002.

Teachers and administrators seeking initial certification, or extensions to or conversions of existing certifications, will benefit by having rules in place enabling them to do so. Statewide, students, schools, and school districts will benefit by having a continuing stream of qualified teachers available. Neither the State Board of Education, the Department of Education, nor any school districts or other political subdivisions will be subject to additional costs by these rules. There will be no effect on small business or on state revenues, and there is not a less-intrusive method for accomplishing the goals achieved by these rules.

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

The Board adopted technical changes in this notice of final rulemaking to the published proposed rules. These changes include the following: (1) in order to provide consistency in the wording of the rules regarding extension of a provisional certificate, the language was changed from "the provisional certificate shall be extended two years" to read "the provisional certificate shall be extended once for two years" and (2) a modification was made to R7-2-606 (I) to align State Board rule with statute. A.R.S. § 15-533(B) states that "a person is not required to pass the proficiency examination or the equivalent examination more than once, except that a person who passed the examination seven or more years before qualifying to teach in this state is required to repass the examination," so the section of R7-2-606(I) relating to the time-frame of requiring a passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment within the last year is removed.

**11. A summary of the comments made regarding the rule and the agency response to them:**

*(Public comment):* Request to add a standard vocational/career and technical education certificate to the list of possible certificate options required to be eligible for a supervisor certificate.

*(Agency response):* This suggestion merits further discussion by the Board and the parties involved. Due to the emergency nature of the current certification rules and the need to adopt permanent rules in a timely fashion prior to the expiration of the emergency rules, the Board denies including this addition at this time in recognition that a substantive change to the proposed rules would extend the rulemaking process past the expiration date of the emergency rules. The State Board remains committed to working with the stakeholders to further discuss this recommendation.

*(Public comment):* Request to add a standard school psychologist certificate to the list of possible certificate options required to be eligible for a supervisor certificate.

*(Agency response):* This suggestion merits further discussion by the Board and the parties involved. Due to the emergency nature of the current certification rules and the need to adopt permanent rules in a timely fashion prior to the expiration of the emergency rules, the Board denies including this addition at this time in recognition that a substantive change to the proposed rules would extend the rulemaking process past the expiration date of the emergency rules. The State Board remains committed to working with the stakeholders to further discuss this recommendation.

*(Public comment):* Request to add a new certification in State Board of Education rule governing Educational Interpreters for the Hearing Impaired and including specific certification and performance requirements.

*(Agency response):* The Board is currently reviewing whether it has the statutory authority to adopt rules in this area under A.R.S. § 15-203(A)(14). In addition, this would reflect a substantive change to the proposed rules that poses the possibility that the rulemaking process would be extended past the expiration date of the emergency rules. The Board recognizes the importance of this request to the hearing impaired community and supports additional review



and discussion, including a review of the impact on individuals currently performing these responsibilities, hearing impaired students and the education institutions (schools and school districts) in hiring qualified individuals. but does not include this requested change at this time.

*(Public comment):* Request to add a new endorsement to State Board of Education Certification Rules for early childhood education, including requirements for obtaining such an endorsement.

*(Agency response):* This suggestion merits further discussion by the Board and the parties involved. Due to the emergency nature of the current certification rules and the need to adopt permanent rules in a timely fashion prior to the expiration of the emergency rules, the Board denies including this addition at this time in recognition that a substantive change to the proposed rules would extend the rulemaking process past the expiration date of the emergency rules. The State Board remains committed to working with the stakeholders to further discuss this recommendation.

*(Public comment):* Request to add a new teacher certificate for early childhood education, including requirements for obtaining such a certificate.

*(Agency response):* This suggestion merits further discussion by the Board and the parties involved. Due to the emergency nature of the current certification rules and the need to adopt permanent rules in a timely fashion prior to the expiration of the emergency rules, the Board denies including this addition at this time in recognition that a substantive change to the proposed rules would extend the rulemaking process past the expiration date of the emergency rules. The State Board remains committed to working with the stakeholders to further discuss this recommendation.

*(Public comment):* Request to adopt a new endorsement for educational technology in grades pre-K-12, including requirements for obtaining such an endorsement.

*(Agency response):* This suggestion merits further discussion by the Board and the parties involved. Due to the emergency nature of the current certification rules and the need to adopt permanent rules in a timely fashion prior to the expiration of the emergency rules, the Board denies including this addition at this time in recognition that a substantive change to the proposed rules would extend the rulemaking process past the expiration date of the emergency rules. The State Board remains committed to working with the stakeholders to further discuss this recommendation.

*(Public comment):* Request to change the existing “Library Media Specialist” endorsement to be called a “Teacher Librarian” endorsement and modify the existing criteria and requirements for obtaining such an endorsement.

*(Agency response):* This suggestion merits further discussion by the Board and the parties involved, including a review of the impact on existing certificate holders, potential certificate holders and the education institutions (schools and school districts) in hiring qualified individuals. Due to the emergency nature of the current certification rules and the need to adopt permanent rules in a timely fashion prior to the expiration of the emergency rules, the Board denies including this addition at this time in recognition that a substantive change to the proposed rules would extend the rulemaking process past the expiration date of the emergency rules. The State Board remains committed to working with the stakeholders to further discuss this recommendation.

*(Public comment):* Request technical changes to provide consistency in the wording of the rules regarding extension of a provisional certificate. Rather than reading “the provisional certificate shall be extended 2 years,” it is recommended that it be amended to read “the provisional certificate shall be extended once for 2 years.”

*(Agency response):* This does not reflect a substantive change and reflects the current interpretation of the Certification Unit of the Department of Education in administering the current extension of a provisional certificate. The State Board adopts this recommended clarification.

*(Public comment):* Request to modify R7-2-606(I) to align State Board rule with statute. A.R.S. § 15-533(B) states that “a person is not required to pass the proficiency examination or the equivalent examination more than once, except that a person who passed the examination seven or more years before qualifying to teach in this state is required to re-pass the examination.”

*(Agency response):* This recommendation reflects a necessary change to ensure that State Board rules do not conflict with Arizona Revised Statutes § 15-533(B). The Board has adopted this recommended modification by striking the conflicting portion reflected in R7-2-606(I)(2). Upon becoming aware of this statutory conflict, the Certification Unit of the Department of Education appropriately enforced the policy reflected in A.R.S. § 15-533(B) so the adoption of this change in Board rule will not change the current implementation practiced under the statutory requirements.

*(Public comment):* Request that the “education courses” required to obtain a Provisional Elementary Teaching Certificate and a Provisional Secondary Certificate (R7-2-608(B)(2) and R7-2-609(B)(2)) be specified stating that lack of specificity results in confusion, complaints and appeals.

*(Agency response):* This suggestion merits further discussion by the Board and the parties involved, including current certificate holders, potential teachers, teacher preparation programs and school and school district administrators. Due to the emergency nature of the current certification rules and the need to adopt permanent rules in a timely fashion prior to the expiration of the emergency rules, such a discussion is not feasible at this time. The Board denies including this addition at this time in recognition that a substantive change to the proposed rules would extend the rulemaking process past the expiration date of the emergency rules. The State Board remains committed to working with the stakeholders to further discuss this recommendation.

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*(Public comment):* Request to specify the section of the professional knowledge portion of the Arizona Educator Proficiency Assessment that an applicant must pass in order to meet the required criteria for a teaching certificate or an administrator certificate (i.e. to obtain a provisional elementary teaching certificate an individual would have to pass the elementary professional knowledge portion of the AEPA, or to obtain a superintendent certificate an individual would have to pass the superintendent portion of the Arizona Administrator Proficiency Assessment. Current rule simply states that to obtain a provisional certificate you must pass the professional knowledge portion of the AEPA or AAPA without specificity).

*(Agency response):* While this was the intent of the Board when the original rules were adopted, lack of specificity in the actual language has left the relevant rules (R7-2-608, R7-2-609, possibly R7-2-610, and R7-2-614) open to interpretation. Because the Certification Unit of the Department of Education has been administering certificates under this broad rule language to individuals who have passed any portion of the AEPA or AAPA, adoption of clarifying language would have the intent of limiting the rule application and thus represents a substantive change. Due to the emergency nature of the current certification rules and the need to adopt permanent rules in a timely fashion prior to the expiration of the emergency rules, this request is not adopted at this time. The Board denies including this addition at this time in recognition that a substantive change to the proposed rules would extend the rulemaking process past the expiration date of the emergency rules. The State Board remains committed to working with the stakeholders to further discuss this recommendation.

*(Public comment):* Request that the requirement for individuals obtaining a “Provisional Cross Categorical Special Education Certificate - Grades K-12” (R7-2-610(C)) be amended to require that the two years of verified teaching experience, that can currently substitute for the required eight semester hours of practicum, have the additional requirement of being required to be with students representing at least three of the five disability areas in order for the teaching experience requirement to be aligned with the requirements of the practicum.

*(Agency response):* Adoption of this recommendation could have a negative impact on individuals currently working to obtain a Provisional Cross Categorical Special Education Certificate under R7-2-610(C) as well as individuals who may choose to seek such certification in the future and thus represents a substantive change and is an area that requires further discussion with affected stakeholders. Due to the emergency nature of the current certification rules and the need to adopt permanent rules in a timely fashion prior to the expiration of the emergency rules, this request is not adopted at this time. The Board denies including this addition at this time in recognition that a substantive change to the proposed rules would extend the rulemaking process past the expiration date of the emergency rules. The State Board remains committed to working with the stakeholders to further discuss this recommendation.

*(Public comment):* Request to modify the current requirements to obtain a Provisional Visually Impaired Certificate under R7-2-610(K) by changing the special education courses an individual must take to be eligible for such a certificate.

*(Agency response):* While the agency recognizes that this recommendation was made through a coordinated process with the teacher preparation programs (existing prior to 2000), the Board should review this recommendation with the current program offerings in teacher preparation programs and discuss developing language that is broad enough to withstand program offering modifications at institutions of higher education. This suggestion merits further discussion by the Board and the parties involved, including current certificate holders, potential teachers, teacher preparation programs and school and school district administrators. Due to the emergency nature of the current certification rules and the need to adopt permanent rules in a timely fashion prior to the expiration of the emergency rules, such a discussion is not feasible at this time. The Board denies including this addition at this time in recognition that a substantive change to the proposed rules would extend the rulemaking process past the expiration date of the emergency rules. The State Board remains committed to working with the stakeholders to further discuss this recommendation.

*(Public comment):* Request to modify the current requirements to obtain a Provisional Speech and Language Impaired Certificate under R7-2-610(M) by changing the requirements for the preparation program an individual must complete and by modifying all references to speech impaired to read speech-language impaired.

*(Agency response):* While the agency recognizes that this recommendation was made through a coordinated process and this suggestion merits further discussion by the Board and the parties involved, it reflects a substantive change to the proposed rules. Due to the emergency nature of the current certification rules and the need to adopt permanent rules in a timely fashion prior to the expiration of the emergency rules, such additional discussion is not feasible at this time. The Board denies including this addition at this time in recognition that a substantive change to the proposed rules would extend the rulemaking process past the expiration date of the emergency rules. The State Board remains committed to working with the stakeholders to further discuss this recommendation.

*(Public comment):* Request to specify the required endorsements that are allowed to be administered with an emergency teaching certificate.

*(Agency response):* The Board agrees that this issue merits further discussion regarding providing specificity, however, any changes at this time would likely limit the application of emergency teaching certificate endorsements and therefore reflects a substantive change. Due to the emergency nature of the current certification rules and the need to adopt permanent rules in a timely fashion prior to the expiration of the emergency rules, such additional discussion is not feasible at this time. The Board denies including this addition at this time in recognition that a substantive change

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to the proposed rules would extend the rulemaking process past the expiration date of the emergency rules. The State Board remains committed to working with the stakeholders to further discuss this recommendation.

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

None

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

None

**14. Was this rule previously made as an emergency rule?**

Yes

**If so, please indicate the Register citation:**

Notice of Emergency Rulemaking: 8 A.A.R. 2562, June 14, 2002

Notice of Emergency Rulemaking: 8 A.A.R. 5132, December 20, 2002

Notice of Emergency Rulemaking: 8 A.A.R. 3739, August 30, 2002

Notice of Emergency Rulemaking: 9 A.A.R. 522, February 21, 2003

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

**TITLE 7. EDUCATION**

**CHAPTER 2. STATE BOARD OF EDUCATION**

**ARTICLE 6. CERTIFICATION**

Section

- R7-2-606. Proficiency Assessments
- R7-2-608. Elementary Teaching Certificates
- R7-2-609. Secondary Teaching Certificates
- R7-2-610. Special Education Teaching Certificates
- R7-2-612. Other Teaching Certificates
- R7-2-614. Administrative Certificates

**ARTICLE 6. CERTIFICATION**

**R7-2-606. Proficiency Assessments**

- A. No change
- B. No change
- C. No change
- D. The performance assessment portion of the Arizona Teacher Proficiency Assessment shall assess proficiency as described in R7-2-602(B), R7-2-602(C), R7-2-602(D), R7-2-602(E), R7-2-602(F), and R7-2-602(G) as a requirement for certification of elementary, secondary, and special education teachers. In lieu of a passing score on the performance portion of the Arizona Teacher Proficiency Assessment, a teacher who holds a provisional teaching certificate may convert such certificate within two months prior to its expiration to a standard elementary, secondary or special education teaching certificate pursuant to R7-2-606(H) until the Board adopts the performance assessment portion of the Arizona Teacher Proficiency Assessment. The Board shall adopt the performance assessment portion of the Arizona Teacher Proficiency Assessment, or make a decision that a performance assessment will no longer be required as part of the Arizona Teacher Proficiency Assessment no later than June 30, 2005.
- E. The Arizona Administrator Proficiency Assessment shall assess professional knowledge ~~and performance~~ as described in R7-2-603 as a requirement for certification of administrators, supervisors, principals, and superintendents.
- F. No change
- G. No change
- H. The provisional elementary, secondary, or special education certificate allows the beginning teacher up to four semesters or two school years of teaching experience before completing the performance assessment portion of the Arizona Teacher Proficiency Assessment.
  - 1. If the Board has adopted the performance assessment portion of the Arizona Teacher Proficiency Assessment but the teacher has not been employed in a teaching position does not have full-time teaching experience for four semesters or two school years, the certificate shall, upon the written request of the holder, be extended once for the equivalent of the time the teacher was not employed during the provisional certification period.

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2. If the Board has adopted the performance assessment portion of the Arizona Teacher Proficiency Assessment and the teacher has been employed for four semesters or two school years but has not successfully completed and has taken but not passed the performance assessment, the certificate shall be extended once, for one year, upon the written request of the holder.
  3. If the teacher has been employed full-time for four semesters or two school years in a private school, public school, charter school, or parochial school in the United States or any Department of Defense dependent school or in a closely related education field and the Board has not yet adopted the performance portion of the Arizona Teacher Proficiency Assessment, the provisional certificate shall be converted within two months prior to its expiration to a standard teaching certificate upon verification by the teacher to the Department that he or she has had four semesters or two school years of teaching experience or experience in a closely related education field. "Closely related education field" means employment involving the presentation of instruction to K-12 students whether self-employed or employed by a private, parochial, public or charter school.
  4. If the teacher has not been employed full-time for four semesters or two school years in a private school, public school, charter school, or parochial school in the United States or any Department of Defense dependent school or in a closely related education field, and the Board has not yet adopted the performance assessment portion of the Arizona Teacher Proficiency Assessment, the provisional certificate shall be extended once for two years, upon written request of the holder to the Department. "Closely related education field" means employment involving the presentation of instruction to K-12 students whether self-employed or employed by a private, parochial, public or charter school.
  5. If the performance assessment portion of the Arizona Teacher Proficiency Assessment is adopted by the Board prior to the expiration of a teacher's provisional certificate, the provisional certificate shall be extended once for two years, upon written request of the holder to the Department, to allow the teacher additional time in which to take the performance portion of the assessment.
- I. If the provisionally certified teacher has ~~not successfully completed~~ taken but not passed the performance assessment by the expiration date on the extended certificate pursuant to (H)(1) or (H)(2) of this Section, the individual may reapply for a provisional certificate after one year, upon verification of the following:
1. Efforts to remediate deficiencies identified in the performance assessment;
  2. Passing score on the professional knowledge portion of the Arizona Teacher Proficiency Assessment ~~taken in the past year~~; and
  3. Completion of the requirements for the provisional certificate which are in effect at the time of reapplication.

**R7-2-608. Elementary Teaching Certificates**

- A. No change
- B. Provisional Elementary Certificate -- grades K-8
  1. The certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
  2. No change
- C. No change

**R7-2-609. Secondary Teaching Certificates**

- A. No change
- B. Provisional Secondary Certificate -- grades 7-12
  1. The certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
  2. No change
- C. No change

**R7-2-610. Special Education Teaching Certificates**

- A. No change
- B. No change
- C. Provisional Cross-Categorical Special Education Certificate -- grades K-12
  1. The certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
  2. No change
  3. No change
- D. No change
- E. Provisional Specialized Special Education Certificate -- grades K-12
  1. The certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
  2. No change
  3. No change
- F. No change
- G. Provisional Severely and Profoundly Disabled Certificate -- grades K-12
  1. The certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
  2. No change

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- H. No change
- I. Provisional Hearing Impaired Certificate -- grades K-12
  1. The certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
  2. No change
- J. No change
- K. Provisional Visually Impaired Certificate -- grades K-12
  1. The certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
  2. No change
- L. No change
- M. Provisional Speech and Language Impaired Certificate -- grades K-12
  1. This certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
  2. No change
- N. No change
- O. Provisional Early Childhood Special Education Certificate -- Birth to five years
  1. The certificate is valid for two years and is not renewable but may be extended as set forth in R7-2-606(H) or (I).
  2. No change
- P. No change

**R7-2-612. Other Teaching Certificates**

- A. No change
- B. No change
- C. Emergency Substitute Certificate -- grades K-12
  1. No change
  2. The certificate entitles the holder to substitute only in the ~~specified county and in districts the county school superintendent approves.~~ district that verifies that an emergency employment situation exists.
  3. No change
  4. The holder of an emergency substitute certificate shall be limited to 120 days of substitute teaching per school year, ~~and shall not serve in any 1 classroom for more than 20 working days.~~
  5. The requirements for initial issuance are:
    - a. High school diploma;
    - b. Verification from the school district superintendent that an emergency employment situation exists; and
    - e- ~~Concurrence by the county school superintendent that an emergency employment situation exists; and~~
    - ~~d-c.~~ A valid Class 1 or Class 2 fingerprint clearance card.
  6. The requirements for each reissuance are:
    - a. Two semester hours of academic courses completed since the last issuance of the Emergency Substitute Certificate. District in-service programs designed for professional development may substitute for academic courses. Fifteen clock hours of in-service is equivalent to one semester hour. In-service hours shall be verified by the district superintendent or personnel director. Individuals who have earned 30 or more semester hours are exempt from this requirement;
    - b. Verification from the school district superintendent that an emergency employment situation exists; and
    - e- ~~Concurrence by the county school superintendent that an emergency employment situation exists; and~~
    - ~~d-c.~~ A valid Class 1 or Class 2 fingerprint clearance card.
  7. ~~When the requesting school is a Bureau of Indian Affairs school, a Bureau of Indian Affairs grant school, a tribally controlled or contract school, concurrence by the county school superintendent shall not be required.~~
- D. Emergency Teaching Certificate -- grades K-12
  1. No change
  2. No change
  3. No change
  4. The certificate entitles the holder to teach only in the district that verifies that an emergency employment situation exists.
  - 4-5. The requirements for initial issuance are:
    - a. A Bachelor's degree;
    - b. Verification from the school district superintendent that an emergency employment situation exists; and
    - e- ~~Concurrence by the county school superintendent that an emergency employment situation exists; and~~
    - ~~d-c.~~ A valid Class 1 or Class 2 fingerprint clearance card.
  - 5-6. The requirements for reissuance are:
    - a. Verification from the school district superintendent that an emergency employment situation exists;
    - b- ~~Concurrence by the county school superintendent that an emergency employment situation exists;~~
    - e-b. Six semester hours of courses toward meeting the requirements for the specified certificate or endorsement, completed since the last issuance of the emergency teaching certificate; ~~;- If an applicant is enrolled in a Board-~~

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~~approved teacher preparation program, 90-clock hours toward completion of the program may substitute for the 6-semester hours; and~~

~~d-c.~~ A valid Class 1 or Class 2 fingerprint clearance card.

6. ~~When the requesting school is a charter school, a Bureau of Indian Affairs school, a Bureau of Indian Affairs grant school, tribally controlled or contract school, concurrence by the county school superintendent shall not be required.~~

E. No change

F. No change

G. No change

H. No change

**R7-2-614. Administrative Certificates**

A. No change

B. Supervisor Certificate -- grades Prekindergarten-12

1. No change

2. No change

3. The requirements are:

a. A standard elementary, secondary, or special education certificate;

b. A Master's or more advanced degree;

c. Three years of verified teaching experience in grades Prekindergarten-12;

d. Completion of a program in educational administration which shall consist of a minimum of 18 graduate semester hours of educational administration courses which teach the knowledge and skills described in R7-2-603;

e. A practicum in educational administration or two years of verified educational administrative experience in grades Prekindergarten-12;

f. A passing score on the ~~professional knowledge portion of the Arizona Administrator Proficiency Assessment;~~  
and

~~g.~~ A passing score on the performance portion of the Arizona Administrator Proficiency Assessment.

~~h-g.~~ A valid Class 1 or Class 2 fingerprint clearance card.

4. No change

C. Principal Certificate -- grades Prekindergarten-12

1. No change

2. No change

3. The requirements are:

a. A Master's or more advanced degree;

b. Three years of verified teaching experience in grades Prekindergarten-12;

c. Completion of a program in educational administration for principals including at least 30 graduate semester hours of educational administration courses teaching the knowledge and skills described in R7-2-603;

d. A practicum as a principal or two years of verified experience as a principal or assistant principal in grades Prekindergarten-12;

e. A passing score on the ~~professional knowledge portion of the Arizona Administrator Proficiency Assessment;~~ and

~~f.~~ A passing score on the performance portion of the Arizona Administrator Proficiency Assessment; and

~~g-f.~~ A valid Class 1 or Class 2 fingerprint clearance card.

4. No change

D. Superintendent Certificate -- grades Prekindergarten-12

1. The superintendent certificate is required for superintendents, assistant or associate superintendents, district chief executive officers regardless of title, and others with similar district-level administrative duties. In school districts with a student population of fewer than 600, a superintendent certificate shall not be required until June 30, 2005.

2. No change

3. The requirements are:

a. A Master's or more advanced degree including at least 60 graduate semester hours;

b. Completion of a program in educational administration for superintendents, including at least 36 graduate semester hours of educational administrative courses which teach the standards described in R7-2-603;

c. Three years of verified teaching experience in grades Prekindergarten-12;

d. A practicum as a superintendent or two years verified experience as a superintendent, assistant superintendent, or associate superintendent in grades Prekindergarten-12;

e. A passing score on the ~~professional knowledge portion of the Arizona Administrator Proficiency Assessment;~~  
and

~~f.~~ A passing score on the performance portion of the Arizona Administrator Proficiency Assessment; and

~~g-f.~~ A valid Class 1 or Class 2 fingerprint clearance card.

4. No change

5. No change

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NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

PREAMBLE

**1. Sections Affected**

R12-4-504  
R12-4-507  
R12-4-509  
R12-4-527

**Rulemaking Action**

Amend  
Amend  
Amend  
New Section

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

Authorizing statutes: A.R.S. §§ 5-311, 5-321.01(D), 5-399, 5-399.01, 5-399.02, and 5-399.03

Implementing statutes: A.R.S. §§ 5-321(C), 5-324(E)(9), 5-399, 5-399.01, and 5-399.02

**3. The effective date of the rules:**

July 5, 2003

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

Notice of Rulemaking Docket Opening: 8 A.A.R. 4853, November 22, 2002

Notice of Proposed Rulemaking: 9 A.A.R. 13, January 3, 2003

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

Name: Mark Naugle, Rules and Risk Manager

Address: 2221 W. Greenway Road  
Phoenix, AZ 85023-4399

Telephone: (602) 798-3289

Fax: (602) 789-3677

E-mail: mnaugle@gf.state.az.us

**6. An explanation of the rules, including the agency's reason for initiating the rules:**

**R12-4-504. Staggered Watercraft Registration Schedule; Penalty for Late Registration**

The proposed rulemaking makes administrative housekeeping and drafting style changes identified in the 2000 five-year rule review of Article 5, Boating and Water Sports. The proposed rulemaking will also make these rules consistent with statutory changes made during the 2002 legislative session. The proposed rulemaking makes the following changes:

- Amends the rule to delete the last sentence of subsection (B). This sentence states the minimum and maximum renewal period for watercraft registration. This requirement is duplicative of state statute, and it regulates the activities of the Department. Therefore, the requirement should be contained in Department policy rather than rule.
- Amends the rule to make the rule language consistent with the current Administrative Procedure Act requirements for rulemaking language and style.

**R12-4-507. ~~Application for Registration of Abandoned Watercraft~~ Transfer of Ownership of an Abandoned or Unreleased Watercraft**

The proposed rulemaking makes the rule consistent with statutory changes made by the 2002 legislature, and prescribes procedures to allow for the transfer of ownership of a watercraft that has been abandoned or for which there is no legal release of interest from the registered owner. The proposed rulemaking also protects the interest of the legally registered owner by preventing the registration of a stolen watercraft to another person. The proposed rulemaking makes the following amendments to R12-4-507:

- The proposed rulemaking makes an administrative change to revise the heading to "Transfer of Ownership of an Abandoned or Unreleased Watercraft." This provision of the proposed rulemaking is hereafter referred to as an administrative housekeeping change to the rule.
- The proposed rulemaking makes an administrative change to subsection (A)(2) to renumber "Release of Interest" to (A)(3). This provision of the proposed rulemaking is hereafter referred to as an administrative housekeeping change to the rule.

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- The proposed rulemaking makes an administrative change to subsection (A) to define “Unreleased watercraft” to mean there is no release of interest from the registered owner of the watercraft. This provision of the proposed rulemaking is hereafter referred to as an administrative housekeeping change to the rule.
- The proposed rulemaking amends subsection (E)(1) to establish standards for notifying the public of the Department’s intent to transfer ownership of an abandoned or unreleased watercraft as required by A.R.S. § 5-399.01(C).
- The proposed rulemaking deletes subsection (E)(2), because it will no longer be necessary. The Department will assume public notification responsibilities.
- The proposed rulemaking makes technical corrections and drafting style changes to make the rule language consistent with the current Administrative Procedure Act requirements for rulemaking language and style. This provision of the proposed rulemaking is hereafter referred to as an administrative housekeeping change to the rule.

**R12-4-509. Watercraft Agents**

The proposed rulemaking makes administrative housekeeping and drafting style changes identified in the 2000 five-year rule review of Article 5, Boating and Water Sports. The proposed rulemaking will also make these rules consistent with statutory changes made during the 2002 legislative session. The proposed rulemaking makes the following changes:

- Deletes the reference in subsection (H) to R12-4-608 and replaces it with a reference to A.R.S. Title 41, Chapter 6, Article 10.
- Amends the rule to make the rule language consistent with the current Administrative Procedure Act requirements for rulemaking language and style.

**R12-4-527. ~~Reserved~~ Transfer of Ownership of a Towed Watercraft**

The proposed rulemaking permanently establishes and implements rules to comply with recent changes in the Arizona Revised Statutes created by Senate Bill 1250, Ch. 314, watercraft; towing companies. The new rule will require towing companies to report towed watercraft to the Department if they wish to initiate a transfer of ownership only after an attempt has been made to contact the registered owner or lien holder of the watercraft. The proposed rule makes the following changes:

- Establishes a process to transfer ownership of a towed watercraft. The proposed rule defines the term “towed watercraft” and requires towing companies to present towed watercraft to the Department for inspection should there be no discernible hull identification number. The rule also requires towing companies to provide evidence of compliance with notification requirements to the watercraft’s registered owner as prescribed in A.R.S § 5-399.
- Prescribes the forms required by the new A.R.S § 5-399(B)(1) to report towed unreleased watercraft to the Department to initiate a transfer of ownership; the notice of intent to transfer ownership required by A.R.S. § 5-399.01(B) to be mailed to the owner, lienholder or any other party interested in the watercraft; an application for transfer of ownership under A.R.S. § 5-399.02(B); and all other forms that towing companies are required to provide to the Department.
- The proposed rule also establishes a \$25 fee for transfer of registration to be paid by the towing company making the request.

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

None

**8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules 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:**

**R12-4-504. Staggered Watercraft Registration Schedule; Penalty for Late Registration**

**R12-4-509. Watercraft Agents**

The proposed rulemaking makes administrative housekeeping and drafting style changes identified in the 2000 five-year rule review of Article 5, and will result in a benefit to the general public and Department consumers by providing updated rules that are more clear, concise and understandable. The proposed rulemaking will result in no additional costs to the general public or consumers directly or indirectly affected by the proposed rulemaking. The proposed rulemaking will result in no additional costs or reduction in revenues for small businesses.



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**R12-4-507. ~~Application for Registration of Abandoned Watercraft~~ Transfer of Ownership of an Abandoned or Unreleased Watercraft**

The proposed rulemaking will result in changes to make the rule equal and uniform to rule changes conforming to new statutes A.R.S. §§ 5-399 to 5-399.03, and the new R12-4-527. Except for those costs directly associated with the rulemaking itself, the proposed rulemaking will result in no additional costs to the general public, businesses, the Arizona Game and Fish Department, the political subdivisions of the state, or to other agencies.

**R12-4-527. ~~Reserved~~ Transfer of Ownership of a Towed Watercraft**

The proposed rulemaking will result in an impact to the Department, customers that register watercraft, and towing companies located in the state of Arizona.

The proposal to establish a process for transfer of ownership of a towed watercraft will benefit towing companies by revising the current procedure to make it more like the transfer of ownership of motor vehicles. In addition, the proposed rulemaking allows towing companies to remove watercraft from their property that have not been reclaimed by the registered owner by registering and then selling or disposing of the watercraft. The proposed rule also establishes a \$25 fee for an application for transfer of watercraft. The Department will use this fee to meet some of the cost of notifying the registered owner and later publishing a notice of towed watercraft in a publication of general interest, as required by A.R.S. § 5-399.01. The proposed rulemaking will result in no impact on revenues or payroll expenditures of employers, because towing companies will be able to recover any towing storage losses by selling the towed watercraft.

The proposed rulemaking will benefit the general public by requiring towing companies to give proof of notice to the Department as prescribed in A.R.S. § 5-399. The proposed rulemaking will not impose any additional costs to the public.

The proposed rulemaking will result in no impact to other agencies directly affected by the implementation and enforcement of the proposed rulemaking; or private or public employment in this state. Thus, the Department has determined that the benefits of the rulemaking outweigh any costs.

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

No substantive changes were made between the proposed rules and the final rules. Minor grammatical and format changes were made at the request of G.R.R.C. staff.

**11. A summary of the comments made regarding the rules and the agency response to them:**

No comments were received

**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:**

Not applicable

**14. Were these rules previously made as emergency rules?**

R12-4-527, at 9 A.A.R 1241, April 18, 2003. There is no change between adoption as an emergency rule and the adoption of these final rules, except for minor grammatical and format changes made at the request of G.R.R.C. staff.

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

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 4. GAME AND FISH COMMISSION**

**ARTICLE 5. BOATING AND WATER SPORTS**

Section

R12-4-504. Staggered Watercraft Registration Schedule; Penalty for Late Registration

R12-4-507. ~~Application for Registration of Abandoned Watercraft~~ Transfer of Ownership of an Abandoned or Unreleased Watercraft

R12-4-509. Watercraft Agents

R12-4-527. ~~Reserved~~ Transfer of Ownership of a Towed Watercraft

**ARTICLE 5. BOATING AND WATERSPORTS**

**R12-4-504. Staggered Watercraft Registration Schedule; Penalty for Late Registration**

**A.** All new watercraft registrations ~~shall~~ expire 12 months after ~~issue~~; they are issued.

**Notices of Final Rulemaking**

- B. Upon renewal of resident or non-resident pleasure use, ~~and or an~~ Indian or soldier's tax-exempt use, ~~registrations shall expire~~ the registration expires on the last day of the month indicated by the last two numeric digits of the watercraft number, as shown in the following table: ~~The first renewal period shall be no less than 7 months and no longer than 18 months:~~

<i>Last two numeric digits of watercraft number</i>	<i>Expiration month</i>
00 12 24 36 48 60 72 84 96	December
01 13 25 37 49 61 73 85 97	January
02 14 26 38 50 62 74 86 98	February
03 15 27 39 51 63 75 87 99	March
04 16 28 40 52 64 76 88	April
05 17 29 41 53 65 77 89	May
06 18 30 42 54 66 78 90	June
07 19 31 43 55 67 79 91	July
08 20 32 44 56 68 80 92	August
09 21 33 45 57 69 81 93	September
10 22 34 46 58 70 82 94	October
11 23 35 47 59 71 83 95	November

- C. Upon renewal of registrations issued to dealers or manufacturers ~~pursuant to~~ under A.R.S. § 5-322(G), or for governmental use, ~~the registration shall expire~~ expires on October 31.
- D. Upon renewal of registrations issued to liveries or for other commercial use, ~~the registration shall expire~~ expires on November 30.
- E. ~~The Department or its agent shall collect the entire registration fee and license tax shall be collected for a late registration renewal, plus and~~ a penalty fee of \$5, except as exempted by A.R.S. § 5-321(H), or unless the expiration date ~~fell falls~~ on a Saturday, Sunday, or state holiday, and the registration is renewed before the close of business on the next working day. ~~The Department or its agent shall not collect the penalty fee shall not be collected for a renewals renewal mailed prior to before~~ the expiration date, as evidenced by the postmark.

**R12-4-507. ~~Application for Registration of Abandoned Watercraft~~ Transfer of Ownership of an Abandoned or Unreleased Watercraft**

- A. For the purpose of this Section the following definitions apply:
1. "Abandoned watercraft" means a watercraft that is deserted on a highway, a public street, or on public or private property or waters. A watercraft left under a written repair or storage order is not an abandoned watercraft.
  2. "Unreleased watercraft" means a watercraft for which there is no release of interest from the registered owner.
  3. "Release of interest" means a statement giving up, surrendering, or abandoning unconditionally any claim or right of ownership or use in a watercraft.
- B. Unless an abandoned ~~or unreleased~~ watercraft is reported stolen the last registered owner is presumed to be responsible for ~~abandonment~~ of the watercraft.
- C. An applicant seeking ~~registration~~ transfer of ownership of an abandoned ~~or unreleased~~ watercraft shall submit the following information, if available, on a form obtained from the Department:
1. Hull identification number, unless exempted by R12-4-505;
  2. Registration number;
  3. Decal number;
  4. State of registration;
  5. Year of registration;
  6. Name, address, and daytime telephone number of the person who found the watercraft;
  7. ~~Description~~ If the watercraft is abandoned, the description or address of the location where the watercraft was found;
  8. ~~Whether there is any known written agreement for storage or repair;~~
  - 9-8. Condition of the watercraft: whether wrecked, stripped, or intact; and
  - 10-9. State in which the watercraft will be used.
- D. The Department shall attempt to determine the name and address of the registered owner and, if successful, shall send written notice of the attempt to register the watercraft by the applicant to the registered owner by certified mail, return receipt requested.
1. After 30 calendar days from the date the Department mails the notice, if service is successful, or upon receipt of a response from the registered owner, the Department shall advise the applicant in writing according to the following:
    - a. If the registered owner provides a written release of interest in the watercraft, the Department shall provide the applicant with the release and the applicant may then register the watercraft under R12-4-502.

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- b. If the registered owner provides written notice to the Department refusing to release an interest in the watercraft, the Department shall advise the applicant of the refusal, and the Department shall not register the watercraft to the applicant unless the applicant provides proof of ownership and complies with R12-4-502.
  - c. If service is successful and the registered owner does not respond to the notice in writing within 30 days from the date of mailing, when service was successful, the Department shall advise the applicant of the failure to respond, and the Department shall not register the watercraft to the applicant unless the applicant provides proof of ownership and complies with R12-4-502.
2. If the Department cannot determine who the registered owner of the watercraft is, or if the written notice is returned unclaimed or refused, the Department shall advise the applicant in writing within 15 days of the notice being returned that the attempt to identify or contact the registered owner was unsuccessful.
- E. ~~To register the watercraft if~~ If the Department is unsuccessful in its attempt to identify or serve contact the registered owner under subsection (D)(2), the ~~applicant~~ Department shall:
- 1. ~~Advertise twice, ensuring that the second advertisement is published at least two weeks after the first advertisement, in a newspaper of statewide general circulation. If the watercraft is traceable to another state's registration, the applicant shall also advertise in the same manner in a newspaper of statewide general circulation in the state of registration. The applicant shall ensure that the advertised notice includes a complete description of the watercraft, including any identifying numbers, the date and location where the watercraft was found, the present location of the watercraft, the means by which the applicant can be contacted, and a statement that the owner shall contact the Department or risk losing ownership of the watercraft. The applicant shall also ensure that the notice includes the following warning: the Department shall register the watercraft to the applicant if no other person provides proof of ownership.~~
  - 2. ~~Thirty calendar days after the second newspaper advertisement, the applicant shall submit to the Department an affidavit of publication under this Section and shall follow the application procedures prescribed in R12-4-502, unless the Department or the applicant receives notice from the registered owner refusing to release interest in the watercraft.~~

publish a notice of intent of the Director of the Department to transfer ownership of the abandoned or unreleased watercraft in a newspaper or other publication of general circulation in this state within 45 days of the Department's notification to the applicant as provided in subsection (D)(2). The published notice shall include a statement of the intent of the Director to transfer ownership of the watercraft as provided by R12-4-502 10 days after the notice is published, unless the Department receives notice from the registered owner refusing to release interest in the watercraft. The Department shall make available to the public upon request a description of the abandoned or unreleased watercraft subject to transfer of ownership.

**R12-4-509. Watercraft Agents**

- A. The Department ~~may~~ has the authority to authorize an agent to act for the Department for the purpose of issuing temporary certificates of number valid for 30 days for new watercraft only, ~~when all of the following criteria are met if:~~
- 1. The applicant's previous authority to act as a watercraft agent ~~pursuant to~~ under A.R.S. § 5-321(E) has not been cancelled by the Department within the preceding 24 months, ~~and,~~
  - 2. The applicant is a business located and operating within ~~Arizona~~ this state that sells watercraft for an identified manufacturer.
- B. ~~Application~~ An applicant for authorization as a watercraft agent ~~authorization~~ authorization shall be made ~~apply~~ apply on forms provided by the Department. The Department shall issue authorization or deny the ~~license~~ application within 30 calendar days of receiving the application. The applicant shall provide the following information on the application:
- 1. ~~Principal~~ The principal business or corporation name, address, and ~~phone~~ telephone number;
  - 2. If not a corporation, the full name, address, and ~~phone~~ telephone number of all owners or partners;
  - 3. ~~Name;~~ The name, address, and ~~phone~~ telephone number of the owner or manager ~~to be~~ that is responsible for compliance with this ~~rule~~ Section;
  - 4. Whether or not the applicant has previously issued temporary certificates of number ~~pursuant to~~ under A.R.S. § 5-321(E);
  - 5. The storefront name, street address, type of business, name of the manager, ~~phone~~ telephone number, and business hours of the location from which new watercraft are to be sold and temporary certificates of number issued;
  - 6. The manufacturers ~~for which~~ of the watercraft ~~are to be~~ distributed; ~~and~~
  - 7. ~~Signature~~ The signature of the person named ~~pursuant to~~ under subsection (B)(3).
- C. Authorization to act as a watercraft agent is specific to the business location designated on the application and approved by the Department. The only exception ~~shall be when~~ is if the agent is participating in a scheduled, advertised boat show for the purpose of selling watercraft.
- D. The Department shall assign an agent number to a watercraft agent ~~with an agent number~~ upon approval of the application, and shall supply the agent with the forms necessary and a schedule of fees to be collected for the compliance with this rule and with the schedule of fees to be collected in accordance with A.R.S. Title 5, Chapter 3 § 5-321. Prenumbered

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- E.** A watercraft agent shall not destroy prenumbered temporary certificate of number applications provided by the Department ~~shall not be destroyed~~ but shall be marked ~~mark an application~~ "void" when if necessary and ~~returned~~ return the application to the Department with the monthly report required in subsection (F) ~~(I)~~. ~~The~~
- F.** An agent shall verify that watercraft agent supplies were received within seven days of receipt. The Department shall provide new supplies within 30 calendar days ~~of after~~ receipt of ~~the an agent's~~ request form ~~made by an agent on forms provided for this purpose.~~
- ~~E.G.~~** A watercraft agent ~~may~~ shall comply with the following if the agent is issue issuing a temporary certificate of number to the purchaser of a new watercraft, ~~providing that:~~
1. The watercraft ~~has been~~ agent shall obtain an application if the watercraft is purchased from the agent, or the applicant provides applicant's a bill of sale showing that the watercraft is new as distinguished from used ~~and: that shows the following:~~
    - a. The watercraft is new as distinguished from used.
    - ~~a.b.~~ The name names and address addresses of the buyer and seller;
    - ~~b.c.~~ Date The date of purchase;
    - ~~e.d.~~ Amount The amount of sales tax paid. ~~Certificate shall not be issued if sales tax has not been paid;~~
    - ~~d.e.~~ Purchase The purchase price;
    - ~~e.f.~~ Manufacturer's The manufacturer's name;
    - ~~f.g.~~ Length The length of craft; the watercraft.
    - ~~g.h.~~ Year The year of manufacture; and
    - ~~h.i.~~ Hull The hull identification number.
  2. The agent shall accept applications only on prenumbered application forms provided to the agent by the Department, as prescribed in R12-4-502. The agent shall identify to the applicant the state registration fee and the appropriate watercraft license tax separately from any other costs; and
  3. The agent shall collect from each watercraft applicant the state's watercraft registration fee and the appropriate watercraft license tax required. The state registration fee shall be identified to the applicant separately from any other costs.
  - ~~4.3.~~ The agent shall, within 72 hours after issuing a temporary certificate of number, deliver or deposit in the U.S. mail to the Department's Phoenix office or deposit in the U.S. mail the legible original application, a legible original or copy of the bill of sale, and a check or money order for the state's fees collected.
- H.** The Department shall accept applications only on prenumbered temporary certificate of number application forms provided to the agent by the Department, as prescribed in R12-4-502.
- ~~F.I.~~** By the tenth day of each month, a watercraft agent shall submit a report of activity for the previous month to the Department on a form provided by the Department. ~~The watercraft agent shall submit the report shall be submitted~~ whether or not any temporary certificates of number ~~were~~ are issued during the reporting period. The report shall include ~~the following:~~
1. Name The name and address of the watercraft agent, and the agent number assigned by the Department;
  2. For each temporary certificate of number issued, the application number, the name of the purchaser, the hull identification number, and the date of issuance; and
  3. A list of any voided or missing application numbers, with explanation.
- ~~G.J.~~** The Department may cancel authorization to be a watercraft agent and demand return of or collect all supplies issued to the agent ~~for any based on consideration~~ of the following ~~reasons:~~
1. Failure to comply with this ~~rule~~. Section;
  2. ~~Issuance of~~ Issuing more than one check with insufficient funds to the Department within a calendar year;
  3. Predating, postdating, ~~alteration~~ altering, or providing or knowingly allowing false information to be provided on or with an application for a temporary ~~numbering~~ certificate of number;
  4. Knowingly issuing a temporary certificate of number for a used ~~boat~~. watercraft; or
  5. ~~Falsification of~~ Falsifying the application for authorization as a watercraft agent, or falsifying the monthly report required by subsection (F).
- ~~H.K.~~** Denial of an application to become a watercraft agent, or cancellation of watercraft agent status by the Department, may be appealed to the Commission ~~pursuant to R12-4-608: as prescribed in A.R.S. Title 41, Chapter 6, Article 10, Uniform Administrative Appeals Procedures.~~

**R12-4-527. Reserved Transfer of Ownership of a Towed Watercraft**

- A.** For the purpose of this Section, "towed watercraft" means a watercraft that has been impounded by and is in the possession of a towing company located in this state.
- B.** At the time a towing company requests watercraft registration information under A.R.S. § 5-324 for a towed watercraft, the towing company shall present the towed watercraft to the closest Department regional office for identification if there is no discernible hull identification number or state-issued registration number.
- C.** A towing company that wants to transfer the ownership of a towed watercraft shall submit the following to the Director of the Department:
1. Evidence of compliance with notification requirements in A.R.S. § 5-399;

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2. A report on a form available from the Department that includes the following:
  - a. Name of towing company;
  - b. Towing company's business address;
  - c. Towing company's business telephone number;
  - d. Towing company's Arizona Department of Public Safety tow truck permit number;
  - e. Towed watercraft's hull identification number, if known;
  - f. Towed watercraft's state-issued registration number, registration decal, and year of expiration, if known;
  - g. Towed watercraft's trailer license number, if available;
  - h. State and year of trailer registration, if available;
  - i. Towed watercraft's color and manufacturer, if known;
  - j. Towed watercraft's condition, whether intact, stripped, damaged, or burned, along with a description of any damage;
  - k. Date the watercraft was towed;
  - l. Location from which the towed watercraft was removed;
  - m. Entity that ordered the removal of the towed watercraft, and if a law enforcement agency, include officer badge number, jurisdiction, and copy of report or towing invoice;
  - n. Location where the towed watercraft is stored; and
  - o. Name and signature of towing company's authorized representative; and
3. Twenty-five dollar application fee under A.R.S. § 5-399.03(2).
- D. If the Department is unsuccessful in its attempt to identify or contact the registered owner or lienholder of the towed watercraft under A.R.S. § 5-399.01, and if the Department has determined that the towed watercraft is not stolen under A.R.S. § 5-399.02(A), the towing company shall follow the application procedures in A.R.S. § 5-399.02(B) and R12-4-502 to register the towed watercraft.

**NOTICE OF FINAL RULEMAKING**

**TITLE 13. PUBLIC SAFETY**

**CHAPTER 5. LAW ENFORCEMENT MERIT SYSTEM COUNCIL**

**PREAMBLE**

**1. Sections Affected**

R13-5-101  
R13-5-102  
R13-5-201  
R13-5-302  
R13-5-304  
R13-5-308  
R13-5-309  
R13-5-315  
R13-5-316  
R13-5-504  
R13-5-506  
R13-5-703  
R13-5-704

**Rulemaking Action**

Amend  
Amend  
Amend  
Amend  
Amend  
Amend  
Amend  
Amend  
Amend  
Amend  
Amend  
Amend  
Amend  
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. § 41-1830.12(A)

Implementing statutes: A.R.S. §§ 38-842(19), 41-1714, 41-1830.11, 41-1830.12, 41-1830.13, and 41-1830.14

**3. The effective date of the rules:**

July 5, 2003

**4. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 8 A.A.R. 4592, November 1, 2002

Notice of Proposed Rulemaking: 8 A.A.R. 4578, November 1, 2002

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

Name: Commander C. H. Johnston, Business Manager  
Address: Law Enforcement Merit System Council  
P.O. Box 6638  
Phoenix, AZ 85005  
Telephone: (602) 223-2286  
Fax: (602) 223-2096  
E-mail: Cjohnston@dps.state.az.us

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

The Law Enforcement Merit System Council (Council) completed a major rewrite of the rules on May 10, 2000. It was anticipated that some minor revisions would be needed following such a major rewrite. This is another revision intended to clarify the rules.

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

None

**8. A showing of good cause why the rules are necessary to promote a statewide interest if the rules 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:**

Throughout the proposed rulemaking, numbers have been changed to conform with the format established by the Secretary of State and the Governor's Regulatory Review Council. Other changes were made to correct punctuation or misuse of words, in order to clarify the rule. These will not be addressed individually.

**R13-5-102**

The revision of R13-5-102 will not have an economic impact. It changes the term "elect" to "select" in subsection (C) to be consistent with the statute. Subsections (D) and (G) are being modified for clarification only.

**R13-5-201**

The revision of R13-5-201 will have a minor economic impact upon the Department by allowing employees to qualify for higher pay levels sooner. By receiving credit for time in grade upon reclassification to another classification, employees will qualify for the higher pay level sooner than they would have otherwise qualified. However, this will provide a benefit to the employees by crediting them with the time they have actually spent doing the work in that position.

**R13-5-302**

The revision in R13-5-302 should provide a benefit to an agency, an employee, and the Council by clarifying the manner of notification of examination results and the method one uses to request a review of the results. This should have little economic impact on either the agency or the employee.

**R13-5-304**

A minor revision to R13-5-304(A) merely inserts some language taken from subsection (E).

The revision to R13-5-304(E) should provide a benefit to the agency, the employee, and the Council by providing a longer length of time for an employment eligibility list before it expires. This should reduce the number of necessary examinations. It should also give the employee a clear date when the employee can expect to have another opportunity to test for a classification. It will also eliminate extending the duration of a list thereby making it easier for an employee to plan for future testing.

**R13-5-308 and R13-5-309**

The revisions to R13-5-308 and R13-5-309 will be a benefit to the agency in processing the names of eligible candidates for selection as cadet officers. Because of the importance in selecting candidates to be police officers, it is necessary to deviate from the normal selection process. This revision will outline the process for selection of police officers. This will provide a benefit to the agency and the state of Arizona by providing for care in the selection of candidates for filling these critical positions.

A minor change was made to R13-5-308(D) clarifying the purpose for making a second offer to candidates on the list before cancelling the list. This makes it clear to the candidates that the list will be cancelled if all candidates decline the position. The proposed rule change is for clarification only and will not have an economic impact on either the agency or the employee.

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**R13-5-315**

The change in this Section is being made to correct a typographical error. It will have no impact on either the agency or the employee.

**R13-5-316**

The establishment of a new subsection (C) will make it clear to employees what their status is when their position is reallocated and they are reclassified as a result of the reallocation. There has been a great deal of confusion as to whether the employee would be required to serve a new probationary period in the new classification when the employee continues to perform the same job performed prior to the reallocation and reclassification. This revision will clarify this rule and should be beneficial to both the agency and the employee. The revision to subsection (D) is being done for clarification purposes only and will have no economic impact. The revision to subsection (M) is also being done for clarification purposes and will have no economic impact.

**R13-5-504**

The revision to R13-5-504 clarifies the application of Civic Duty Leave by explaining how the monies paid for Civic Duty Leave will be handled. This should provide a benefit to both the agency and the employee by clarifying when the employee is required to forward any payment to the agency and when the employee is entitled to retain the payment for Civic Duty Leave. A statute that was incorrectly referenced was deleted from subsection (A).

**R13-5-506**

The revision to R13-5-506 provides a definition for the term “seriously incapacitating” and clarifies the status of an employee who is using donated leave while waiting for a decision on an application for long-term disability. This will have a slight impact on the costs to the agency but will provide a benefit to the employee that may not otherwise be available when the wait for approval of long-term disability is beyond the employee’s control.

**R13-5-703**

The revision to R13-5-703 will implement the Council’s policy pertaining to hearings for suspensions from duty without pay for 24 hours, or less, or the forfeiture of annual leave for 24 hours, or less. This will have an economic impact on the Council by limiting the length of time spent on these minor disciplinary cases. Other minor changes were made to clarify the language of the rule.

**R13-5-704**

The revision to R13-5-704 will clarify that attorneys must indicate where the factual statement is located in the Council transcript when citing the record. This will save the Council from having to search the record to locate the statement. This will be a cost saving to the Council by reducing the amount of time the Council will have to spend locating statements referenced by the attorneys.

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

Minor technical changes were made.

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

No comments were received.

**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:**

Not applicable

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

No

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

**TITLE 13. PUBLIC SAFETY**

**CHAPTER 5. LAW ENFORCEMENT MERIT SYSTEM COUNCIL**

**ARTICLE 1. GENERAL PROVISIONS**

Section

- R13-5-101. Definitions
- R13-5-102. Law Enforcement Merit System Council
- R13-5-201. Classification
- R13-5-302. Examinations

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- R13-5-304. Employment
- R13-5-308. Hiring Preference
- R13-5-309. Selection
- R13-5-315. Employee Conduct
- R13-5-316. Probation
- R13-5-504. Civic Duty Leave
- R13-5-506. Donated Annual Leave
- R13-5-703. Appeal to the Council
- R13-5-704. Rehearing of Council Decision

ARTICLE 1. GENERAL PROVISIONS

**R13-5-101. Definitions**

In this Chapter, unless otherwise specified, the following terms mean:

- 1. "Abandonment of position" means failure of an employee to report to work for a period of five ~~5~~ consecutive working days without authorization from the employee's supervisor or manager and without good cause.
- 2. No change
- 3. No change
- 4. No change
- 5. No change
- 6. No change
- 7. No change
- 8. No change
- 9. No change
- 10. "Background investigation" means an inquiry to determine the character of a potential employee and may include verification and review of identity, education, employment history, personal references, credit rating, criminal history, and driving record, ~~and civil standing.~~
- 11. No change
- 12. No change
- 13. No change
- 14. No change
- 15. No change
- 16. "Classification" means one ~~+~~ or more positions requiring the same minimum qualifications, knowledge, skills, and abilities, that have the same title and pay range.
- 17. No change
- 18. No change
- 19. No change
- 20. No change
- 21. No change
- 22. No change
- 23. No change
- 24. "Contested case" ~~means a case that falls within the definition~~ has the same meaning as in A.R.S. § 41-1001(4).
- 25. No change
- 26. No change
- 27. No change
- 28. No change
- 29. "Disabled person" means anyone who has a physical or mental impairment that substantially limits one ~~+~~ or more major main life activities, or who has a record of impairment, or is regarded as having an impairment.
- 30. No change
- 31. "Duties" means actions or tasks ~~an action or task~~ required under the circumstances by an employee's position or classification.
- 32. No change
- 33. No change
- 34. No change
- 35. No change
- 36. "Examination plan" means a description of each phase of an ~~the~~ examination, the weight applied to each phase of the examination, the criteria for moving from one phase of the examination to another, and any limitations as to the number of names to appear on the eligibility list. ~~whether the length the eligibility list will be limited to a specific number of names~~
- 37. No change



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38. No change
39. “Fair Labor Standards Act” (FLSA) means those federal statutes at Title 29 U.S.C. USC § 201-219 and § 251-262, which is incorporated by reference and on file with the Department of the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.
40. “Family Medical Leave Act (FMLA) leave” means a medical leave of absence, with or without pay, taken by an eligible employee under a policy adopted by an agency head from options authorized in the federal regulations for the Family and Medical Leave Act 29 U.S.C. § 2611, et seq., which is incorporated by reference and on file with the Department of the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.
41. “For cause” means any improper behavior, unacceptable performance, or violation of Council rules that leads to disciplinary action or dismissal for any reason listed in A.R.S. § 41-1830.15 or this Chapter.
42. No change
43. No change
44. No change
45. No change
46. No change
47. No change
48. No change
49. No change
50. No change
51. No change
52. No change
53. No change
54. No change
55. “Overtime” means time worked by a non-exempt employee in excess of 40 hours in a work week or in excess of 160 hours in a 28-day cycle. ~~Overtime may include time worked when required to return to work from annual leave.~~  
“Part-time appointment” means the appointment of an employee to work a schedule of less than 40 hours per week.  
“Part-time employee” means an employee appointed to work less than 40 scheduled hours per week.
56. No change
57. No change
58. No change
59. “Permanent status” means the employment rights achieved after satisfactorily completing the probationary period for ~~a~~ the classification.
60. No change
61. No change
62. No change
63. “Promotion” means the appointment of an employee to a position in another classification with a higher maximum pay ~~at the maximum~~ level.
64. “Provisional appointment” means ~~the appointment of an employee an~~ an appointment to a position in a classification for which there is no eligibility list. ~~without being on an eligibility list and who serves until an eligibility list can be established for the position.~~
65. No change
66. No change
67. No change
68. No change
69. No change
70. No change
71. No change
72. No change
73. No change
- a. No change
- b. No change
- c. No change
74. No change
75. No change
76. No change
77. “Responsibilities” means actions or tasks for which an employee is accountable ~~the accountability for actions or tasks performed by an employee~~ in a position or classification.

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- 78. "Retirement" means a voluntary separation from ~~an~~ the agency by an employee who is eligible for an immediate disbursement from to participate in a retirement plan.
- 79. No change
- 80. "Skill" "~~Skills~~" means an individual's level of proficiency or competency in performing a specific task.
- 81. No change
- 82. No change
- 83. No change
- 84. No change
- 85. No change
- 86. No change
- 87. No change  
"Time-in-grade" means time spent in a classification.
- 88. No change
- 89. No change
- 90. No change
- 91. "Veteran" means an individual who served in the armed forces of the United States U.S. and was discharged from military service under honorable conditions after more than six 6 month's of active duty and as defined in 37 U.S.C. U.S.C.A. § 101 and A.R.S. § 38-492.
- 92. "Work week" means the a 40-hour time period an employee works is assigned to work between Saturday and Friday, including actual time worked and any leave time taken.

**R13-5-102. Law Enforcement Merit System Council**

- A. No change
- B. No change
- C. Selection Election of officers ~~Officers~~. The Council shall select elect a Chair and Vice-Chair from its members at a regular meeting in November or December of even-numbered years. The Chair and Vice-Chair shall hold office for a period of two 2 years, or until their successors are selected elected.
- D. Meetings. The Chair, or in the Chair's absence the Vice-Chair, shall call a meeting of the Council when a meeting is needed. The Council shall hold meetings at a location convenient ~~locations~~ to the participants whenever possible. Except for the Council's executive sessions, the Council's meetings shall remain open to the public and the Chair shall give interested parties an opportunity to be heard.
- E. No change
- F. No change
- G. Council rules. ~~The Council's rules shall apply to all employees in any agency under the Council's rules. All~~ An agency shall provide employees with ~~shall receive~~ a copy of the Council's rules.

**R13-5-201. Classification**

- A. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
- B. No change
- C. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
- D. No change
- E. No change
- F. No change
- G. No change
- H. No change
  - 1. No change
  - 2. No change
- I. Time in grade. The Council shall credit an employee reclassified as a result of a reallocation with time-in-grade, as follows:
  - 1. The employee is credited with time-in-grade for the time spent in the position if no significant changes is made to the duties and responsibilities of the position to qualify for the higher classification and if the employee continues to perform the duties previously performed in the position.

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2. Time-in-grade status is calculated on the basis of actual hours worked.

~~I.~~**J.** No change

~~J.~~**K.** No change

**R13-5-302. Examinations**

**A.** No change

**B.** No change

**C.** No change

1. No change

2. No change

3. No change

4. No change

**D.** No change

**E.** No change

1. No change

2. No change

3. No change

**F.** No change

1. No change

2. No change

3. No change

4. No change

**G.** No change

1. No change

2. No change

**H.** ~~Reviewing exam results Within 10 business days after receiving a notice of examination results, an applicant may request that the business manager review all examination questions, answers, scoring methods, procedures, and decisions.~~

Examination results notification. Human Resources shall mail notification of examination results to each competitor. Within 10 business days after the examination results are mailed, a competitor may file with the business manager a written request that the business manager review all examination questions, answers, scoring methods, procedures, and decisions. A competitor requesting a business manager's review shall outline the specific areas the competitor believes are in error.

1. If the business manager's review discloses an error, the business manager shall return the examination to Human Resources for correction.

2. If an error affects the scores of other competitors, Human Resources shall revise all incorrect scores.

3. If the business manager determines the error is not correctable and the defective portion of the exam is critical to the examination process, Human Resources shall re-administer that portion of the examination under guidelines provided by the business manager.

**I.** No change

~~**J.** Notifying a competitor. Upon completion of an examination process, Human Resources shall notify a competitor of the competitor's final score.~~

~~**K.**~~**L.** No change

**R13-5-304. Employment**

**A.** Establishing an employment eligibility list. Human Resources shall develop, and the business manager shall establish, employment eligibility lists for various classifications, as needed. For each list, Human Resources shall arrange the names of competitors in descending order of the competitors competitor's final examination scores.

**B.** No change

**C.** No change

**D.** No change

**E.** Duration of an eligibility list. ~~The business manager shall establish each~~ Each new or merged list remains in effect for 1 year 18 months from its effective date. ~~Before a list expires, the Council may extend the duration or cancel a list. The Council may extend a list for no more than 1 6-month period. The maximum duration of a list shall be 18 months., except in the event there is a court order placed on the list preventing promotions from the list by the agency; Before a list expires, the Council may cancel the list.~~

1. No change

2. No change

3. Conducting continuous or periodic testing. If the Council determines that a classification requires continuous or periodic testing, the business manager may authorize Human Resources to conduct examinations regardless of the existence of an employment list in that classification. Human Resources shall merge the names of candidates tested with names on the existing employment list for that classification as described in subsection (E)(2). The names of candi-

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~~dates tested will then be merged with names on the existing employment list for that classification in the manner described in R13-5-304(E)(2).~~

4. No change

F. No change

1. No change

2. No change

3. No change

**R13-5-308. Hiring Preference**

A. No change

1. No change

2. No change

3. No change

4. No change

5. No change

6. No change

B. Referring candidates. Except for the classification of cadet officer, Human Resources shall contact eligible candidates in the ~~above~~ order of preference specified in subsection (A) to be interviewed. Candidates shall advise Human Resources if they wish to be interviewed.

1. If there is one ~~For 1~~ vacant position, Human Resources shall refer the three 3 interested candidates standing highest on each of the lists. Human Resources may refer fewer less than three 3 names ~~if when~~ there are fewer than three 3 candidates on the lists.

2. For multiple vacancies, Human Resources shall refer one 1 more candidate for each additional vacant position from the lists.

3. If a list is not available, the business manager may refer candidates from lists of the same or higher level as the position being filled.

C. Referring candidates for cadet officer. Human Resources shall make a job offer conditional on passing a background investigation to as many of the highest ranking candidates on the list as Human Resources deems necessary to fill existing positions.

~~C.~~D.Canceling a list. If all candidates on the promotional eligibility list advise Human Resources that they are not interested in a position, Human Resources shall make a second offer to all candidates on the list. The second offer shall include a notification to each candidate that if all candidates decline the position, the list will be cancelled. If all candidates on the list decline the second offer, the business manager shall cancel the list. Human Resources shall then initiate a process to create a new list for the classification.

**R13-5-309. Selection**

A. No change

B. Interviewing. If the hiring manager does not select a transferee or the top candidate from the certified list, The the hiring manager shall interview all candidates requesting a transfer, and at least one but no more than three may interview up to 3 candidates from each certified list. The hiring manager may select a transferee or the top candidate from a certified list without conducting an interview.

C. No change

D. Selection of cadet officer. A candidate receiving a job offer, who is not disqualified during the background investigation, shall be appointed to the classification.

~~D.~~E.No change

~~E.~~F.No change

**R13-5-315. Employee Conduct**

A. No change

B. Fitness for duty. If a supervisor has reasonable doubt that an employee is psychologically or physically able ~~unable~~ to perform the essential duties of the position, the supervisor shall request the agency head's permission to have the employee evaluated by a psychologist or physician determined by the agency. Upon approval, Human Resources shall schedule an appointment, and the employee shall submit to an evaluation. The examiner shall provide the agency head with conclusions, recommendations, and other information necessary to decide whether ~~if~~ the employee is fit for duty.

C. No change

D. No change

E. No change

F. No change

G. No change

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**R13-5-316. Probation**

- A. No change
- B. No change
- C. Effects of reclassification on probation. The probationary status of an employee reclassified as a result of a classification and compensation maintenance review under R13-5-201(H) is as follows:
  - 1. A permanent status employee shall not be required to serve a new probationary period if the employee continues to perform the same duties previously performed in the reclassified position.
  - 2. A probationary employee shall continue to serve the probationary period.
- ~~C.D.~~ Effect of military service on probation. A probationer may be called into active military service. If a the probationer is called into active military service and returns to the agency and satisfactorily completes probation, the employee's personnel record shall show that the employee achieved permanent status on the date the employee would have completed probation if military service had not intervened.
- ~~D.E.~~ No change
- ~~E.F.~~ No change
- ~~F.G.~~ No change
- ~~G.H.~~ No change
- ~~H.I.~~ No change
- ~~I.J.~~ No change
- ~~J.K.~~ No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
- ~~K.L.~~ No change
- ~~L.M.~~ No change
- ~~M.N.~~ Probation for a returning employee. If a separated employee is reinstated to a classification previously held with permanent status, the agency head may require the employee to serve probationary period. ~~If~~ ~~When~~ a separated employee is recalled or reinstated into a classification different from any classification previously held with permanent status, the employee shall serve a probationary period. If an employee is separated from an agency while serving an initial probation, the employee ~~shall~~ ~~will~~ be required to serve an initial probation upon being recalled or reinstated.
- ~~N.O.~~ No change
  - 1. No change
  - 2. No change
- ~~O.P.~~ No change

**R13-5-504. Civic Duty Leave**

- A. Voting Leave to vote. Under conditions outlined in A.R.S. § ~~16-401~~ and 16-402, an employee may be absent with pay for the time required to vote.
- B. Jury duty. An employee shall report for jury duty as directed by a summons unless officially excused by the Jury Commissioner for reasons under A.R.S. § 21-202. When summoned, the employee shall notify or provide the immediate supervisor with a copy of the summons.
  - 1. While on jury duty leave, an employee is considered ~~shall~~ be absent with pay.
  - 2. Upon receipt of a summons for jury duty, a commissioned employee shall notify the Jury Commissioner of the employee's peace officer status.
- C. Witness. An employee subpoenaed as a witness is considered ~~shall~~ be absent with pay, unless the subpoena is unrelated to agency business.
- D. Fees. An employee ~~on~~ paid for civic duty leave under this Section shall forward to the agency all jury duty or witness fees to the agency.
- E. Vehicle mileage reimbursement. An employee may retain any mileage reimbursement paid by the court for the use of a privately owned vehicle. An employee shall remit to the agency any mileage reimbursement for use of a state-owned vehicle.

**R13-5-506. Donated Annual Leave**

- A. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. "Extended illness or injury" means ~~an employee is unable to perform the employee's job duties for between a period of at least three 3~~ consecutive weeks ~~an~~ to a maximum of six 6 consecutive months.

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- 5. “Seriously incapacitating” means an illness or injury that renders an employee unable to perform the employee’s duties, or that confines an immediate family member to home or hospital.
- B. No change
- C. Qualifying for donated leave. An employee may request and use donated annual leave if the employee has ~~an~~ a seriously incapacitating or extended illness or injury or a member of the employee’s immediate family has ~~an~~ a seriously incapacitating and extended illness or injury and the employee has exhausted all available leave balances.
  - 1. An employee requesting donated leave shall submit a written request for donated leave under the agency’s policy. An agency shall approve only those requests that qualify for donated leave under this Section.
  - 2. Except as provided in subsection (C)(3), an ~~An~~ employee receiving donated leave shall not use more than six (6) ~~six (6)~~ consecutive months of donated leave per illness or injury. ~~If the employee who is ill or injured applies for long-term disability (LTD) insurance by the end of the 5th month of leave, the employee may continue to use donated leave until an LTD determination is made.~~
  - 3. If an employee who has a seriously incapacitating or extended illness or injury applies for long-term disability (LTD) insurance by the end of the fifth month of leave, the employee may continue to use donated leave until an LTD determination is made.
- D. No change
- E. No change

**R13-5-703. Appeal to the Council**

- A. No change
- B. No change
- C. Time for appeal. An employee shall file an appeal within 30 ~~20~~ days after being served with the notice of disciplinary action.
- D. No change
- E. No change
- F. No change
- G. No change
- H. No change
- I. Conduct of hearings. The Council may sit as a whole at a hearing, or the chair may designate one or more of its members to hold ~~a~~ the hearing. A majority of the Council shall review the record of the hearing before ~~shall be reviewed by a majority of the Council prior to~~ making a decision ~~if in those cases where only one member is has been~~ designated to hear the case. Only a Council member who was present at the hearing, or who reviewed the record may participate in making the decision. The member or members designated to preside at a hearing may administer oaths, subpoena and require attendance of witnesses and the production of books or papers, and cause the depositions of witnesses residing within or outside the state to be taken in the manner prescribed by law for ~~like~~ depositions in civil cases in the Superior Court of this state.
- J. No change
- K. No change
- L. No change
  - 1. Within 20 days after receiving a notice of appeal, the agency shall provide all material relating to the case, including all investigation materials, to the employee. For the purpose of this subsection ~~rule~~, hand-written notes substantially incorporated within a report are not ~~shall not be~~ considered investigation materials.
  - 2. No change
  - 3. No change
  - 4. No change
- M. Motions. All motions shall be in writing and filed no later than 20 days prior to the hearing. A response shall be filed in writing within 10 days after service of the motion. The chair may designate one or more members of the Council to hear and rule on a motion, except with the exception of a motion to dispose of the case requires a vote of a majority of the Council. ~~A motion not filed in accordance with this rule may be precluded by the Council.~~
- N. Pleadings. The Council may strike a pleading not filed in accordance with this Section.
- ~~N.O.~~ No change
  - 1. No change
    - a. No change
    - b. No change
    - c. No change
  - 2. No change
  - 3. No change
- ~~O.P.~~ No change

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**Q.** Minor discipline hearings. When the Council hears appeals of suspension without pay of 24 hours or less or the deduction of 24 hours or less from an employee's annual leave balance, each party shall have no more than three hours to present evidence unless the Council allows more time to assure a fair hearing.

~~P.R.~~ No change

~~Q.S.~~ No change

~~R.T.~~ Settlement of disputes. The parties may agree to settle any matter pending before the Council. The parties shall submit the terms of settlement to the Council. If the Council approves the settlement, the settlement becomes final. If no settlement is reached, or if the proposed settlement is revoked or rejected by the Council, or withdrawn by either party, or if the settlement agreement judgment is later vacated or reversed by a the court, neither the settlement plea discussion nor any resulting agreement or judgment shall be admissible against the employee in any hearing before the Council on this matter.

~~S.U.~~ Decision. The Council shall render a decision in writing within 20 30 days after a hearing. In arriving at a decision, the Council may consider any prior disciplinary action taken within the previous 10 years against the employee, if providing the information is introduced at the hearing. The Council shall state its decision in an open meeting and shall issue the decision in writing within a reasonable time, but not to exceed 45 days, after the hearing. The Council's decision shall contain findings of fact and its order for disposition of the case.

**R13-5-704. Rehearing of Council Decision**

**A.** Motion for rehearing.

1. Except as provided in subsection (C), any party in a contested case or appealable agency action may file a written motion for rehearing within 30 20 days after service of the decision. The requesting party shall specify the grounds for a rehearing, as provided in subsection (B). A respondent may file a response to the motion within 15 40 days after service.

2. A party filing a post-hearing motion shall include references to the record where appropriate.

~~2.3.~~ The Council may require the parties to file written memoranda ~~memorandums~~ upon the issues raised in the motion and may permit oral argument.

~~3.4.~~ The Council may grant a rehearing on all or part of the issues. If a rehearing is granted ~~approved~~, the Council shall specify the grounds for the rehearing, and the rehearing shall cover only those matters.

**B.** No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change

**C.** No change

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NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 7. DEPARTMENT OF TRANSPORTATION  
THIRD-PARTY PROGRAMS

PREAMBLE

**1. Sections Affected**

Chapter 7  
Article 1  
R17-7-101  
Article 2  
R17-7-201  
R17-7-202  
R17-7-203  
R17-7-204  
Article 3  
R17-7-301  
R17-7-302  
Article 4  
R17-7-401

**Rulemaking Action**

Amend  
New Article  
New Section  
New Article  
New Section  
New Section  
New Section  
New Section  
New Article  
New Section  
New Section  
New Article  
New Section

**2. The statutory 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. §§ 28-1145; 28-2058; 28-2160; 28-2207; 28-2269; 28-2356; 28-3164; 28-5101 to 28-5110; 28-5735; 28-5738; 28-5739; 28-5740, 28-5863; and 28-5864

**3. The effective date of the rules:**

July 5, 2003

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

Notice of Rulemaking Docket Opening: 9 A.A.R. 106, January 10, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 78, January 10, 2003

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

Name: Troy A. Walters, Rules Analyst  
Address: Administrative Rules Unit  
Department of Transportation, Mail Drop 507M  
3737 N. 7th Street, Suite 160  
Phoenix, AZ 85014-5079  
Telephone: (602) 712-6722  
Fax: (602) 241-1624  
E-mail: twalters@dot.state.az.us

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at [www.dot.state.az.us/about/rules/index.htm](http://www.dot.state.az.us/about/rules/index.htm).

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

The Arizona Department of Transportation, Motor Vehicle Division (Division) proposes to use Title 17, Chapter 7 of the *Arizona Administrative Code* for third-party program rules. The Division will make new third-party program rules in two or more rulemaking actions. In a separate rulemaking action, the Division will repeal existing rules affecting third parties, R17-5-701 through R17-5-706.

In this rulemaking action, the Division is making general rules regulating authorized third parties. These general rules will provide needed guidance to the business community and the public while Chapter 7 rulemaking continues. In a separate rulemaking action, the Division will propose rules dealing with the specific third-party programs, including:

- Commercial driver licenses and instruction permits;
- Dealer licenses;
- Driver license examinations;



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- Motor carrier permits;
- Motor vehicle record processing;
- Noncommercial driver licenses, instruction permits, and identification licenses;
- Tax report processing;
- Title and registration; and
- Vehicle verification.

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

The agency did not rely on any study in this rulemaking.

**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:**

The Division and authorized third parties incur substantial costs under the proposed third-party program rules. On the other hand, the proposed rules increase the business opportunities of entities and people meeting the authorization or certification requirements.

Additionally, the rules protect consumers of services provided by authorized third parties through Division oversight as required by statute. The public benefits by having specified activities traditionally performed only by the Division at Division offices available at nontraditional times and locations and via nontraditional media.

The creation of business opportunities and the benefits to, and protection of, the public outweigh the costs of regulation of third parties.

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

R17-7-201(A)(9)(a)(ii)—Received comments stating that Board meeting minutes are not filed with the Arizona Corporation Commission. The Division changed the rule to reflect the need to be notified of changes in the corporate name, structure, or its officers. Additionally, sections were removed for further work. Other non-substantial structural changes were made for clarity.

**11. A summary of the comments made regarding the rule and the agency response to them:**

Received comments regarding Board meeting minutes and non-substantial structural changes—Changed final rule to clarify documentation needed when there is a change in the corporate name, structure, or its officers.

**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 7. ~~RESERVED~~ DEPARTMENT OF TRANSPORTATION  
THIRD-PARTY PROGRAMS**

**ARTICLE 1. DEFINITIONS AND APPLICABILITY**

Section

R17-7-101. Definitions

**ARTICLE 2. AUTHORIZATION**

Section

R17-7-201. Authorization Application Requirements

R17-7-202. Authorization Approval or Denial and Hearing

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- R17-7-203. Authorization Agreement
- R17-7-204. Authorized Third Party's Duties

**ARTICLE 3. CERTIFICATION**

Section

- R17-7-301. Certification Application Requirements
- R17-7-302. Certification Approval or Denial and Hearing

**ARTICLE 4. AUDITS**

- R17-7-401. Audits

**ARTICLE 1. DEFINITIONS AND APPLICABILITY**

**R17-7-101. Definitions**

The following definitions apply to this Chapter unless otherwise specified:

1. "Accountable inventory" means an item that is reproduced by the Division in a consecutively numbered series for:
  - a. Recording the number of a completed, issued, or voided item in a log, and
  - b. Reporting the number of a completed, issued, or voided item to the Division.
2. "Activity" means a function or service that is provided by an authorized third party and performed by a certified individual.
3. "Agency head" or "political subdivision head" means the chief officer of an agency or political subdivision or another individual with authority to act for the agency head or political subdivision head.
4. "Audit" means an examination or inspection of the operations of an authorized third party to determine compliance with all applicable statutes, rules, contract terms, and Division policies.
5. "Authorized third party" means an entity that:
  - a. Has written permission from the Division to operate a business under A.R.S. Title 28, Chapter 13; and
  - b. Employs or contracts with at least one certified individual to provide third-party services.
6. "Branch" means an authorized third party's business location that is:
  - a. Division-approved;
  - b. Not used as a residence;
  - c. Authorized to perform contracted activities at the third-parties business location, and
  - d. Located within the same county as the established place of business.
7. "Cancellation" means a Division action that withdraws an authorization or certification issued under A.R.S. Title 28, Chapter 13.
8. "Certified individual" means an individual who the Division certifies under A.R.S. Title 28, Chapter 13 to perform specified activities for an authorized third party. The Division may certify an individual as a:
  - a. Commercial driver license examiner,
  - b. Dealer license processor,
  - c. Driver license processor,
  - d. Noncommercial driver license examiner,
  - e. Tax report processor,
  - f. Title and registration processor,
  - g. Vehicle inspector, or
  - h. Vehicle permit processor.
9. "Classes of driver licenses" is defined in A.R.S. § 28-3101.
10. "Commercial driver license examiner" means an individual certified by the Division to administer class A, B, or C driver license tests.
11. "Contact individual" means an individual, other than the principal of an authorized third party:
  - a. Whose current name and telephone number the authorized third party submits to the Division in writing;
  - b. Who communicates with the Division on behalf of the authorized third party.
12. "Convenience fee" means the amount exceeding the statutorily prescribed fees and taxes that an authorized third party collects and retains for its services.
13. "Department" means the Arizona Department of Transportation.
14. "Division" means the Arizona Department of Transportation, Motor Vehicle Division.
15. "Division headquarters" means 1801 West Jefferson Street, Phoenix, Arizona 85007.
16. "Division-issued business license" means:
  - a. An automotive recycler license,
  - b. A broker license,
  - c. A distributor license,
  - d. A distributor branch license,

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- e. A factory branch license.
  - f. A manufacturer license.
  - g. A new motor vehicle dealer license.
  - h. A professional driver training school license.
  - i. A third-party authorization.
  - j. A title service company license.
  - k. A used motor vehicle dealer license.
  - l. A wholesale motor vehicle dealer license, or
  - m. A wholesale motor vehicle auction dealer license.
17. “Driver license processor” means an individual certified by the Division to:
- a. Review applications for driver licenses, instruction permits, and identification licenses;
  - b. Administer driver license tests;
  - c. Enter information related to the applications in the Division’s database; and
  - d. Issue or deny specified classes of driver licenses, instruction permits, and identification licenses.
18. “Established place of business” means an authorized third party’s business location that is:
- a. Division-approved.
  - b. Not used as a residence, and
  - c. Performs third-party activities on site.
19. “Floor plan” means a Division-approved diagram of a building interior, as seen from above, that shows the interior dimensions and the location of doors, windows, and equipment. A floor plan includes:
- a. A computer-generated graphic.
  - b. A blueprint or other photographic reproduction of an architectural plan or technical drawing, or
  - c. A non-technical drawing made by hand using a straightedge.
20. “Good standing” means an authorized or certified third-party applicant does not have:
- a. Within three years before the application date, a suspension, cancellation, revocation, or denial of a Division-issued authorized third party business license or certification; or
  - b. On the application date, any delinquent fees, taxes, or unpaid balance owed to the Division; and
  - c. While holding a third-party authorization or certification:
    - i. A suspension, cancellation, revocation, or denial of another Division-issued license; or
    - ii. Delinquent fees, taxes, or unpaid balance owed to the Division.
  - d. If the applicant is a former Department employee or authorized third-party owner or employee:
    - i. A dismissal from position due to misconduct;
    - ii. A resignation from position:
      - (1) In lieu of dismissal.
      - (2) By mutual agreement following allegations of misconduct.
      - (3) Under unsatisfactory conditions.
    - iii. A designation “not eligible for rehire.”
21. “Inactive status” means a Division action taken at the request of an authorized third party that deactivates a third-party authorization for no more than six months.
22. “Log” means a complete, chronological record of accountable inventories and activities performed and kept by the authorized third party.
23. “Monthly reconciliation report” means an authorized third-party’s report on accountable inventory other than title and registration accountable inventory. A monthly reconciliation report:
- a. Lists the number of each completed license, permit, or form;
  - b. Lists the number of each voided license, permit, or form;
  - c. Is signed by a principal or contact individual of the authorized third party; and
  - d. Includes all voided licenses, permits, or forms.
24. “Noncommercial driver license examiner” means an individual certified by the Division to administer class D, G, and M driver license tests.
25. “Principal place of business” means an authorized third party’s administrative headquarters.
26. “Skills test” means a set of tests, authorized and approved by the Division and administered by a commercial or non-commercial driver license examiner or driver license processor to determine whether the applicant possesses the required skills for the type of license for which the applicant applies.
27. “Skills test route” means a public road or highway driving course, identified by an authorized third party and approved by the Division, for administering skills tests to driver license applicants.
28. “Suspension” means a Division action that, for a stated period, prohibits:
- a. An authorized third party from:
    - i. Providing at least one type of third-party activity, or
    - ii. Operating as an authorized third party.

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- b. A certified individual from:
  - i. Performing at least one type of third-party activity, or
  - ii. Working for an authorized third party.
- 29. “Tax report processor” means an individual certified by the Division to:
  - a. Process motor fuel tax reports and interstate user fuel tax reports from fuel suppliers, fuel vendors, and motor carriers; and
  - b. File the reports with the Department.
- 30. “Test site” means a location, identified by an authorized third party, for administering skills tests to driver license applicants that is:
  - a. Division-approved.
  - b. Permanently marked, and
  - c. Off the public road or highway.
- 31. “Title and registration processor” means an individual certified by the Division to:
  - a. Review applications for vehicle certificates of title or registrations under A.R.S. Title 28, Chapter 7.
  - b. Enter information related to applications for vehicle certificates of title or registrations in the Division’s database, and
  - c. Issue or deny vehicle certificates of title or registrations.
- 32. “Vehicle dealer license processor” means an individual certified by the Division to:
  - a. Review applications for vehicle dealer licenses under A.R.S. Title 28, Chapter 10;
  - b. Enter information related to the applications in the Division’s database; and
  - c. Issue or deny vehicle dealer licenses.
- 33. “Vehicle inspector” means an individual certified by the Division to perform motor vehicle inspections.
- 34. “Vehicle permit processor” means an individual certified by the Division to:
  - a. Review applications for permits or registrations under A.R.S. Title 28, Chapter 3, Articles 18 and 19, and Chapter 7.
  - b. Enter information related to the applications in the Division’s database; and
  - c. Issue or deny permits or registrations.

**ARTICLE 2. AUTHORIZATION**

**R17-7-201. Authorization Application Requirements**

- A.** An applicant for third-party authorization shall provide to the Division:
  - 1. The applicant’s name, business name, and federal employer identification number;
  - 2. The applicant’s bond status as exempt or nonexempt under A.R.S. §§ 28-5104 and 28-5105. If exempt, the applicant’s name under subsection (A)(1);
  - 3. The name of the applicant’s principal. If the applicant is:
    - a. A sole proprietor, state the sole proprietor’s name;
    - b. A partnership, limited partnership, limited liability partnership, limited liability limited partnership, limited liability company, or corporation, the name of each:
      - i. Partner;
      - ii. Manager;
      - iii. Member;
      - iv. Officer;
      - v. Director;
      - vi. Agent; and
      - vii. If a limited liability company or corporation, each stockholder owning 20 percent or more of the limited liability company or corporation; or
    - c. A political subdivision or government agency, the name of the political subdivision head or agency head;
  - 4. The name and telephone number of the applicant’s contact individual;
  - 5. The activities for which the applicant seeks authorization;
  - 6. The address of the applicant’s principal place of business and the address of each established place of business;
  - 7. A statement that the applicant is in good standing with the Division, if applicable;
  - 8. The signature of:
    - a. The sole proprietor.
    - b. All partners.
    - c. A corporate officer.
    - d. A limited liability company manager, or
    - e. The political subdivision head or agency head;

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9. An applicant shall provide to the Department documents relating to the applicant's business. If the applicant is:
    - a. A corporation:
      - i. A copy of the articles of incorporation, including any amendments, filed with the Arizona Corporation Commission; and
      - ii. Any other official documents, including copies of board meeting minutes and annual reports, that reflect changes to the corporate name, structure, or officers;
    - b. A limited liability company:
      - i. A copy of the articles of organization, including any amendments, filed with the Arizona Corporation Commission, or
      - ii. A copy of the application for registration as a foreign limited liability company filed with the Arizona Corporation Commission and a copy of the certificate of registration issued by the Arizona Corporation Commission to a foreign limited liability company; or
    - c. A limited partnership, limited liability partnership, or a limited liability limited partnership:
      - i. A copy of a valid certificate of existence issued by the Arizona Secretary of State, or
      - ii. A copy, stamped "Filed" by the Arizona Secretary of State, of a Certificate of Limited Partnership, Certificate of Foreign Limited Partnership, Limited Liability Partnership form, Foreign Limited Liability Partnership form, or Statement of Qualification for Conversion of Limited Partnership or Limited Liability Partnership to a Limited Liability Limited Partnership;
  10. A floor plan for each established place of business;
  11. A map, drawing, or narrative description of each skills test route and a photograph or drawing of each test site;
  12. Unless exempt, proof of a surety bond according to A.R.S. § 28-5104;
  13. Unless exempt, a full set of fingerprints for a criminal records check of each principal at least age 18 named under subsection (A)(3)(a) or (A)(3)(b). The applicant is responsible for the cost of finger printing and background check. Each full set of fingerprints shall be impressed on a fingerprint card:
    - a. Supplied by the Division, and
    - b. Completed by a law enforcement agency.
- B.** Unless exempt, an applicant for a third-party authorization shall submit, for the individual named under subsection (A)(3)(a) or (A)(3)(b), a statement on a form provided by the Division with the following information:
1. Name, including other names and birth dates used;
  2. Residence address;
  3. Any Division-issued business suspension, cancellation, revocation, or denial within five years before the application date;
  4. The individual's signature witnessed by a notary public or a Division agent designated under A.R.S. § 28-370(A); and
  5. Any other information requested by the Division Director.

**R17-7-202. Authorization Approval or Denial and Hearing**

- A.** The Division shall send written and dated notification of approval or denial of third-party authorization:
1. By regular mail,
  2. To the address provided on the application, and
  3. According to A.R.S. § 28-5107(A).
- B.** A.R.S. §§ 28-5107(B) through 28-5107(D), A.A.C. R17-1-501 through R17-1-511, and A.A.C. R17-1-513 apply to a hearing on the denial of third-party authorization.

**R17-7-203. Authorization Agreement**

Before the Department issues a third-party authorization, an applicant receiving authorization shall sign a written agreement with the Division as to the terms and conditions of the third-party authorization.

**R17-7-204. Authorized Third Party's Duties**

- A.** Until returned to the Division, an authorized third party shall retain the following records at each established place of business or at the principal place of business:
1. All logs and copies of completed, issued, or voided accountable inventory;
  2. All unused accountable inventory; and
  3. All other paper and electronic records, including all supporting documents, relating to the activities provided by the third party.
- B.** The third party shall provide to the Division the records listed in subsections (A)(1) through (A)(3) upon request of the Department.
- C.** An authorized third party shall maintain a copy of the certificate relating to each type of authorized activity the certified individual performs at the business location where the certified individual works.

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- D.** An authorized third party shall retain a certified individual's personnel file for one year after the certified individual's last day of work. The retained personnel file shall include the certified individual's:

  - 1. Dates of employment.
  - 2. All computer access forms (if applicable), and
  - 3. Computer access termination form (if applicable).
- E.** An authorized third party shall submit by the fifth day of each month, a monthly reconciliation report. If the authorized third party fails to timely submit a monthly reconciliation report, the Division shall:

  - 1. Give an oral or written warning for the first untimely report.
  - 2. Send a letter of concern for the second untimely report in a 12-month period, or
  - 3. Suspend or cancel the authorization for the third untimely report in a 12-month period.
- F.** An authorized third party shall comply with the audit and inspection requirements of R17-7-401.
- G.** An authorized third party shall obtain the Division's written approval before:

  - 1. Changing the location or floor plan of an established place of business.
  - 2. Changing a skills test route or test site, or
  - 3. Performing an additional authorized activity.
- H.** An authorized third party shall notify the Division, within two business days, of any change to the list of certified personnel.
- I.** An authorized third party that is open to the public shall post at each established place of business the sign required by A.R.S. § 28-5101(F) and a sign provided by the Division that is stating:

  - 1. The business is a Division-authorized third-party provider, and
  - 2. The business may charge the customer a convenience fee.
- J.** An authorized third party shall not represent that it is the state of Arizona, the Department, or the Division in any printed or electronic advertising or promotional material.
- K.** An authorized third party shall not employ or contract with a current Department employee to provide training for certification without the Department employee obtaining written approval from the Department.
- L.** An authorized third party shall comply with the requirements of R17-7-201:

  - 1. Before using a name different from the name on its authorization, or
  - 2. Before an ownership change in the entity operating as the authorized third party.
- M.** An authorized third party shall cooperate with an on-site audit by Department personnel or the Department's representative.

**ARTICLE 3. CERTIFICATION**

**R17-7-301. Certification Application Requirements**

- A.** A certification applicant shall provide to the Division the following:

  - 1. The applicant's name, residence address, mailing address, telephone number, and date of birth;
  - 2. The activities for which the applicant seeks certification;
  - 3. The dates of any employment of the applicant by the Division;
  - 4. Whether the Division previously denied any certification of the applicant;
  - 5. For each previous certification issued to the applicant by the Division:
    - a. The effective dates of the certification, and
    - b. The activity the applicant was certified to perform;
  - 6. Whether the Division suspended or canceled any certification listed under subsection (A)(5);
  - 7. Whether the applicant previously worked as a certified individual, the names of no more than three authorized third parties that employed or contracted with the applicant, and the dates of the employment or contract work;
  - 8. The applicant's signature;
  - 9. A full set of fingerprints, on a fingerprint card supplied by the Division and completed by a law enforcement agency, for a criminal records check; and
  - 10. If the applicant requests certification as a driver license processor or a driver license examiner, the applicant's driving record for the 39 months before the application date.
- B.** The applicant is responsible for the cost of finger printing and criminal records check.
- C.** An applicant for a certification shall submit to the Division a statement with the information listed under R17-7-201(B).
- D.** An applicant is eligible for certification if the applicant:

  - 1. Is at least age 18 on the application date;
  - 2. Is in good standing as defined in R17-7-101(20); and
  - 3. Successfully completes all training courses and continuing education courses required by the Division; or
  - 4. Agrees in writing to complete all training courses and continuing education courses required by the Division.

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- E.** An applicant who was previously employed by the Division is eligible for certification if the applicant:
  - 1. Meets the requirements under subsection (D).
  - 2. Was not terminated by the Division for misconduct in performing official duties within three years before the application date, or
  - 3. Did not resign during a Division investigation of misconduct in performing official duties within three years before the application date.

**R17-7-302. Certification Approval or Denial and Hearing**

- A.** The Division shall send written and dated notification of certification approval or denial:
  - 1. By regular mail,
  - 2. To the address provided on the application, and
  - 3. According to A.R.S. § 28-5107(A).
- B.** A.R.S. §§ 28-5107(B) through 28-5107(D), A.A.C. R17-1-501 through R17-1-511, and A.A.C. R17-1-513 apply to a certification denial hearing.

**ARTICLE 4. AUDITS**

**R17-7-401. Audits**

- A.** During an onsite audit or inspection of an authorized third party, Department personnel, a law enforcement agency, or federal personnel may:
  - 1. Review and copy paper and electronic records;
  - 2. Examine the site;
  - 3. Interview the authorized third party's:
    - a. Employees, and
    - b. Customers.
- B.** If Department personnel or the Department's representative conduct an onsite audit of an authorized third party outside Arizona under A.R.S. § 28-5102(B)(3), the Department shall charge, and the authorized third party shall pay, for the audit.
  - 1. The audit charge and payment shall equal the Arizona Department of Administration reimbursement for out-of-state travel authorized by A.R.S. Title 38, Chapter 4, Article 2 and stated in sections II-D-3 and sections II-D-6 of the Arizona Accounting Manual prepared by the Arizona Department of Administration.
  - 2. Sections II-D-3 and II-D-6 of the Arizona Accounting Manual are available on the Arizona General Accounting Office web site at [www.gao.state.az.us](http://www.gao.state.az.us).