

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 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

[R08-415]

PREAMBLE

1. Sections Affected

R4-6-305
R4-6-801

Rulemaking Action

Amend
Amend

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. § 32-3253(A)(1)

Implementing statute: A.R.S. §§ 32-3253(A)(1), 32-3253(A)(11), and 32-3273

3. The effective date of the rules:

December 2, 2008

The Board is requesting an immediate effective date under the exception available in A.R.S. § 41-1032(A)(5), which allows an immediate effective date when a rule is less stringent than the rule that is currently in effect and does not have an impact on the public health, safety, welfare or environment, or that does not affect the public involvement and public participation process.

The Board is implementing a reduction in the number of continuing education clock hours required for biennial licensure renewal from 40 to 30. It is also removing the requirement that a professional's signature on a renewal application be notarized. Neither of these changes impacts the public health, safety, or welfare.

Over time, the Board has enhanced its renewal process and required licensees to take specific coursework in ethics, cultural competency, and supervision. Substance abuse counselors are required to complete 20 clock hours of continuing education in the area of substance abuse during each renewal period.

Requiring licensees to take specific continuing education coursework has provided the Board with the opportunity to reduce the total number of continuing education hours required while ensuring the quality of the overall continuing education program of each professional and the safety of the public.

The Board has deleted the requirement for a professional, renewing a license, to provide a notarized signature on the renewal application. A notary confirmed the licensee's signature on the original application. It is sufficient to allow current licensees to affirm the truthfulness of the information contained in the renewal application without the additional requirement of a notarized signature during each biennial renewal period.

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

Notice of Rulemaking Docket Opening: 14 A.A.R. 2718, June 27, 2008

Notice of Proposed Rulemaking: 14 A.A.R. 3264, August 22, 2008

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

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

The Arizona Board of Behavioral Health Examiners ("Board") has initiated this rulemaking to reduce from 40 to 30 the number of continuing education clock hours that a professional renewing a license biennially must complete.

Over time, the Board has enhanced its renewal process and required licensees to take specific coursework in ethics, cultural competency, and supervision. Substance abuse counselors are required to complete 20 clock hours of continuing education in the area of substance abuse during each renewal period.

Requiring licensees to take specific continuing education coursework has provided the Board with the opportunity to reduce the total number of continuing education hours required while ensuring the quality of the overall continuing education program of each professional and the safety of the public.

The Board has deleted the requirement for professionals to provide fingerprint cards at the time of renewal. The Board implemented this one-time requirement on July 1, 2004, the date mandatory licensure became effective. At this time, each professional has either provided fingerprint card information at the time of initial licensure or at the first renewal after July 1, 2004.

The Board has deleted the requirement for a professional, renewing a license, to provide a notarized signature on the renewal application. A notary confirmed the licensee's signature on the original application. It is sufficient to allow current licensees to affirm the truthfulness of the information contained in the renewal application without the additional requirement of a notarized signature during each biennial renewal period.

The rulemaking also includes language changes to provide consistency regarding the renewal application process for inactive and active licensees and to conform to the publication requirements of the Office of the Secretary of State.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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:

This rulemaking will affect professionals renewing current licenses by reducing the number of continuing education credits that are required in the biennial renewal period from 40 clock hours to 30 clock hours.

Licensees may experience a cost savings depending upon the source from which they receive their continuing education.

Consumers remain protected by the Board's increased requirements over the past few years for licensees to obtain specific continuing education coursework depending upon their license.

Licensees will benefit from the elimination of the requirement that a renewal license application contain a notarized signature. While the cost saving will be minimal, licensees will save time during the renewal process.

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

None

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

The Board did not received any comments regarding the 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:

None

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

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 6. BOARD OF BEHAVIORAL HEALTH EXAMINERS

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ARTICLE 3. LICENSURE

Section
R4-6-305. Inactive Status

ARTICLE 8. LICENSE RENEWAL AND CONTINUING EDUCATION

Section
R4-6-801. Renewal of Licensure

ARTICLE 3. LICENSURE

R4-6-305. Inactive Status

- A. A licensee seeking inactive status shall submit:
 - 1. A written request to the credentialing committee before expiration of the current license, and
 - 2. The inactive status fee.
- B. A licensee seeking inactive status after the expiration date of a license but no longer than three months after the expiration date of a license shall submit:
 - 1. A written request for inactive status to the credentialing committee,
 - 2. The inactive status fee, and
 - 3. The late inactive status fee.
- C. The credentialing committee shall grant a request for inactive status upon receiving a written request for inactive status from a licensee.
- D. The credentialing committee shall not grant a request to be placed on inactive status received more than three months after expiration of the current license.
- E. Placement on inactive status for any time period shall not change a licensee's licensure expiration date.
- F. To return to active status, a licensee on inactive status shall meet all renewal requirements, ~~including the following: prescribed under R4-6-801(B).~~
 - ~~1. Submitting the renewal fee,~~
 - ~~2. Completion of 40 clock hours of continuing education activities during the 24 months before renewal of licensure; and~~
 - ~~3. Submitting a completed renewal application.~~
- G. Upon a showing of good cause, the credentialing committee shall grant a written request for modification or reduction of the continuing education requirement received from a licensee on inactive status.
- H. The credentialing committee may, upon a written request filed before the expiration of the original 24 months of inactive status and for good cause, permit an already inactive license to remain on inactive status for one additional period not to exceed 24 months. To return to active status after being placed on a 24-month extension of inactive status, a licensee shall, in addition to the continuing education hours required under subsection (F)(2), complete ~~40~~ 30 clock hours of continuing education during the additional 24-month extension.
- I. A licensee on inactive status shall not engage in the practice of behavioral health.
- J. To return to active practice, the licensee must establish the licensee's competence to practice safely and competently. When reviewing a licensee's request to return to active practice, the Board may order any type of mental or physical evaluation, at the licensee's expense, it deems necessary to determine the licensee's competence to practice safely and competently.
- K. The Board may start or continue an investigation against a licensee regardless of whether the licensee seeks to obtain inactive status or is on inactive status.

ARTICLE 8. LICENSE RENEWAL AND CONTINUING EDUCATION

R4-6-801. Renewal of Licensure

- A. A licensee holding an active license to practice behavioral health in this state shall complete ~~40~~ 30 clock hours of continuing education as prescribed under R4-6-802 and R4-6-804 between the date the Board receives the licensee's last renewal application and the next license expiration date. A licensee may not carry excess hours over to another renewal cycle. One hour of credit is allowed for each clock hour of participation in continuing education activities.
- B. To renew licensure, a licensee shall submit the following to the agency:
 - 1. A completed renewal application form that includes a ~~notarized verification of 40 list of 30~~ list of 30 hours of continuing education activities signed by the licensee and attesting that all information submitted in support of the renewal application is true and correct;
 - 2. ~~Certified~~ A certified check, cashier's check, or money order for the renewal fee; and
 - 3. ~~A completed and legible fingerprint card for a state and federal criminal history records check along with a certified check, cashier's check or money order in the amount prescribed under R4-6-213(A)(4) as authorized at A.R.S. § 32-3280(B), if the licensee has not previously submitted a full set of fingerprints to the Board, or verification that the applicant holds a current fingerprint card issued by the Department of Public Safety;~~

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- 4.3. Other documents requested by the credentialing committee to determine the licensee's continued eligibility.
- C. A license shall expire unless the licensee submits to the agency the items listed in subsection (B) on or before the license expiration date.
- D. The Board shall mail to each licensee a license renewal application. ~~The licensee shall submit a signed and notarized statement with each renewal application that the continuing education requirements under subsection (A) are satisfied.~~ Failure to receive the license renewal application shall not relieve the licensee of the requirements of subsection (A).
- E. The Board may audit a licensee to verify compliance with the continuing education requirements under subsection (A). Documentation verifying compliance shall be retained as prescribed under R4-6-803.
- E.F. A licensee whose license expires may renew licensure by submitting a complete renewal application, other documents requested by the credentialing committee, and a late fee within 90 days of the license expiration date. A license that is renewed under this subsection shall be considered effective on the first of the month following the expiration date with no lapse in licensure.

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TITLE 8. EMERGENCY AND MILITARY AFFAIRS

CHAPTER 2. DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS
DIVISION OF EMERGENCY MANAGEMENT

[R08-426]

PREAMBLE

- 1. **Section Affected**

Article 7	<u>Rulemaking Action</u>
R8-2-701	New Article
R8-2-702	New Section
R8-2-703	New Section
R8-2-704	New Section
- 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. § 26-314
 - Implementing statute: A.R.S. § 26-314
- 3. **The effective date of the rules:**
 - January 31, 2009
- 4. **A list of all previous notices appearing in the Register addressing the final rules:**
 - Notice of Rulemaking Docket Opening: 8 A.A.R. 752, March 7, 2008
 - Notice of Rulemaking Docket Opening: 8 A.A.R. 2242, June 6, 2008
 - Notice of Proposed Rulemaking: 8 A.A.R. 3163, August 8, 2008
- 5. **The name and address of agency personnel with whom person may communicate regarding the rulemaking:**

Name:	David Ervine, Information Technology Specialist III
Address:	Department of Emergency and Military Affairs Division of Emergency Management 5636 E. McDowell Road, Building 103 Phoenix, AZ 85008
Telephone:	(602) 231-6334
Fax:	(602) 231-6271
E-mail:	david.ervine@azdema.gov
or	
Name:	Louis B. Trammell, Director
Address:	Department of Emergency and Military Affairs Division of Emergency Management

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5636 E. McDowell Road, Building 101
Phoenix, AZ 85008

Telephone: (602) 231-6245
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E-mail: Lou.trammell@azdema.gov

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

These rules are being established to prescribe the procedures for registration of emergency workers in accordance with A.R.S. § 26-314 (E) and creates new Sections R8-2-701, R8-2-702, R8-2-703, R8-2-704.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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 the state:

Not applicable

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

These rules are being established for the Department's operational procedures for registering of volunteer emergency workers with the state and political subdivision. The proposed rulemaking is to create new Sections R8-2-701, R8-2-702, R8-2-703, R8-2-704. The proposed operational practices will allow those who may be engaged in authorized emergency management activities or performing emergency functions to be register in accordance A.R.S. § 26-314. The proposed rulemaking addresses registration procedures; it is expected these rules will have minimal or no economic impact to small business, consumer or volunteers and state agencies or political subdivisions.

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

The Division of Emergency Management made minor grammatical changes to the rules as a result of G.R.R.C. comments and the following changes:

- Added subsection R8-2-702(3)(c) to provide clarity in the rules for temporary registration expiration timeline.
- In R8-2-703(15), deleted "Job related" and added "Professional."
- In R8-2-703(16), added the word "Court" to specify which type of records.
- In R8-2-703(18), deleted "or health issues" and "might affect" added "conditions."
- In R8-2-704, added "or Revocation; Denied Compensation" to be consist with the language within the Section.
- In R8-2-704(A), deleted the word "damage" and added "arising under A.R.S § 23-1028(a).
- In R8-2-704(B)(1), added new line of text to provide more clarity to the reasons of denial.

The Division does not believe that any of the changes made by the Division make the rules substantially different from the published proposed rules. The changes are technical in nature and were made for consistency purposes. All person affected by the rules should have understood that the published proposed rules affected their interests, the subject matter of the rules remains the same, and when viewed in their totality, the effects of the rules do not differ from the published proposed rules.

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

An oral proceeding was held. No comments were made regarding the rules.

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. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 8. EMERGENCY AND MILITARY AFFAIRS

Notices of Final Rulemaking

CHAPTER 2. DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS
DIVISION OF EMERGENCY MANAGEMENT

ARTICLE 7. REGISTRATION OF EMERGENCY WORKERS

Section

<u>R8-2-701.</u>	<u>Scope</u>
<u>R8-2-702.</u>	<u>Registration</u>
<u>R8-2-703.</u>	<u>Required Registration Information</u>
<u>R8-2-704.</u>	<u>Registration Denial</u>

ARTICLE 7. REGISTRATION OF EMERGENCY WORKERS

R8-2-701. Scope

This Article is applicable for the registering of emergency workers in accordance with A.R.S. § 26-314.

R8-2-702. Registration

Except what is provided in A.R.S. § 26-353, registration is a prerequisite for eligibility of emergency workers for benefits and legal protections under A.R.S. § 26-314.

1. Emergency workers shall register with a department or agency of the state or a political subdivision of the state.
2. The information provided during registration may be used to conduct criminal history and driving record background checks.
3. Temporary registration.
 - a. Temporary registration may be used in emergency situations requiring immediate or on-scene recruitment of emergency workers.
 - b. Persons shall be temporarily registered if they have provided the required registration information in accordance with R8-2-703, but have not provided supporting documentation.
 - c. Period of temporary registration ends when registering participant has been cleared pursuant to R8-2-702(1) and (2) or when the registering agency determines that the emergency for which registering participant receive temporary registration is closed whichever occur first.
4. Registration information shall be reviewed and updated annually.

R8-2-703. Required Registration Information

The following information is the minimum information required to register as an emergency worker:

1. Full name;
2. Birth date;
3. Gender;
4. Social Security Number;
5. Citizenship, to include a document verifying citizenship;
6. Provide verification of eligibility to work in the United States;
7. Address;
8. Contact phone number and e-mail address;
9. Driver's license number, issuing state and expiration date;
10. Registering jurisdiction;
11. Registering agency/organization;
12. Employer name, address and phone number;
13. Personal reference name, address and phone number;
14. Emergency contact name, address and phone number;
15. Professional licenses, certificates and registrations, to include numbers and expiration dates (copies will be provided);
16. Court record of felony convictions;
17. Record of misdemeanor convictions involving moral turpitude; and
18. Medical conditions which may limit ability to perform as an emergency worker.

R8-2-704. Registration Denial or Revocation: Denied Compensation

A. Failure to truthfully respond to statements set forth on the registration form may result in the denial of registration, revocation of registration as an emergency worker, or denial of compensation for claims arising under A.R.S. § 23-1028(a).

B. Registration may be denied or revoked in the event of the following:

1. Failure to satisfactorily provide the information required in Section R8-2-703;
2. Health conditions that could limit the applicant's performance as an emergency worker; or
3. Felony convictions.

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TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS

[R08-416]

PREAMBLE

- | | |
|--|--|
| 1. <u>Sections Affected</u>
R9-6-102 | <u>Rulemaking Action</u>
Amend |
|--|--|
- 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. § 36-136(A)(7) and (F)
Implementing statutes: A.R.S. §§ 36-132(A)(1) and 36-136(H)(1)
- 3. The effective date of the rules:**
December 2, 2008

The Department requests an immediate effective date for this rule under A.R.S. § 41-1032(A)(1) and (4) because the rule helps preserve public health and safety and provides a benefit to the public, and a penalty is not associated with violation of the rule. The current R9-6-102 requires the release of protected health information to the Department or a local health agency if the information is requested for the purpose of detecting, preventing, or controlling disease, injury, or disability. However, information other than protected health information is often required to enable the Department or a local health agency to investigate many types of communicable diseases. Since the current rule only addresses one type of information that may be necessary when investigating a communicable disease outbreak or conducting an epidemiologic investigation of a communicable disease case, the rule is confusing and often hinders the Department and local health agencies when conducting epidemiologic investigations for communicable diseases. At times, the Department or a local health agency must talk with numerous individuals and submit a multitude of explanations before information is released. This may lead to a delay in treatment for an infected individual and the potential of further spread of the disease.

The new rule clarifies that the information that is required to be released to the Department or a local health agency when the Department or local health agency is investigating a communicable disease includes protected health information, as defined in 45 CFR 160.103, but is not limited to this type of information. The new rule will enable the Department and local health agencies to obtain information in a more timely manner, and thus contribute to the ability of the Department and local health agencies to detect, prevent, and control communicable diseases and the injury and disability that may result from communicable diseases.

- 4. A list of all previous notices appearing in the Register addressing the final rules:**
Notice of Rulemaking Docket Opening: 14 A.A.R. 35, January 4, 2008
Notice of Proposed Rulemaking: 14 A.A.R. 3538, September 12, 2008
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|---|
| Name: | Ken Komatsu, State Epidemiologist |
| Address: | Department of Health Services
Bureau of Epidemiology and Disease Control
150 N. 18th Ave., Suite 150
Phoenix, AZ 85007 |
| Telephone: | (602) 364-3587 |
| Fax: | (602) 542-2722 |
| E-mail: | komatsk@azdhs.gov |
| or | |
| Name: | Kathleen Phillips, Esq.
Administrative Counsel and Rules Administrator |
| Address: | Department of Health Services
Office of Administrative Counsel and Rules
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Phoenix, AZ 85007

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

A.R.S. § 36-136(H)(1) states that the Arizona Department of Health Services (Department) shall "define and prescribe reasonably necessary measures for detecting, reporting, preventing, and controlling communicable and preventable diseases." The current R9-6-102 was established in a 2004 rulemaking due to a concern about potential noncompliance with the Health Insurance Portability and Accountability Act (HIPAA) and addresses the release of protected health information to the Department or a local health agency if the information is requested for the purpose of detecting, preventing, or controlling disease, injury, or disability. However, information other than protected health information is often required to enable the Department or a local health agency to investigate many types of communicable diseases. For instance, in investigating a food-borne disease, the Department or a local health agency may require information from food suppliers or retail stores. For investigating a case of Legionnaire disease in a hotel, the Department or a local health agency may require information about other individuals who were guests of the hotel. For a measles case who was a passenger on an airliner, the Department or a local health agency may require passenger lists. In all these instances, the ability of the Department or a local health agency to obtain the required information quickly is critical to enabling the Department or local health agency to detect, prevent, and control communicable diseases. Since the current rule only addresses one type of information that may be necessary when investigating a communicable disease outbreak or conducting an epidemiologic investigation of a communicable disease case, the rule is confusing and often leads to a delay in obtaining required information. The new rule will make clear that the information that is required to be released to the Department or a local health agency when the Department or local health agency is investigating a communicable disease includes protected health information, as defined in 45 CFR 160.103, but is not limited to this type of information. The new rule will enable the Department and local health agencies to obtain information in a more timely manner, and thus contribute to the ability of the Department and local health agencies to detect, prevent, and control communicable diseases and the injury and disability that may result from communicable diseases. This rulemaking conforms to rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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 Department did not review or rely on any study related to this rulemaking package.

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:

As used in this summary, annual costs/revenues are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000. Costs are listed as significant when meaningful or important, but not readily subject to quantification.

The Department believes that the new rule will result in a minimal cost to the Department and to a local health agency associated with providing education to stakeholders about the rule. Local health agencies, with the assistance of the Department, are responsible for carrying out most of the control measures for cases or suspect cases of a communicable disease within their jurisdictions. The Department anticipates that the requirement for persons to provide information needed by the Department or a local health agency when conducting an investigation of a communicable disease will provide a significant benefit to the Department, local health agencies, and the citizens of Arizona by reducing the incidence or severity of communicable diseases. By reducing the number of individuals who seek diagnosis and treatment for a communicable disease and thereby expose patients and staff of the health care institution or health care provider to the disease, the new rule may provide a minimal-to-substantial benefit to a health care institution or health care provider by reducing the cost of staff time for investigating exposures and the costs associated with excluding staff from work, providing extra vaccinations, and isolating cases from the general patient population.

The Department anticipates that the owner or operator of a business may experience a minimal-to-moderate cost for providing information requested by the Department or local health agency when conducting an epidemiologic investigation of an infected individual associated with the business. The owner or operator of a business may receive a minimal-to-substantial benefit from the new rule by having the source of exposure identified early and fewer patrons of the business being exposed to the disease. Not only may the business experience less unfavorable publicity and avoid possible legal action initiated by those infected while patronizing the business, but the business may also generate good will from patrons and the public by helping to reduce the spread of the disease. Infected individuals and their contacts may experience a minimal-to-substantial benefit by being identified through an epidemiologic investigation, being evaluated for the disease, and, if appropriate, receiving prophylaxis or treatment earlier. If an infected individ-

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ual identified solely on the basis of information obtained as a result of this rulemaking were excluded from working under 9 A.A.C. 6, Article 3, the new rule may cause a minimal-to-moderate cost to the infected individual.

The Department has determined that the benefits related to public health outweigh any potential costs associated with this rulemaking.

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

No changes were made to the rule between the proposed rule and the final rule.

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

There were no oral comments at the Oral Proceeding, and the Department received no written comments.

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 the rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS

ARTICLE 1. GENERAL

Section

R9-6-102. Release of ~~Protected Health~~ Information

ARTICLE 1. GENERAL

R9-6-102. Release of ~~Protected Health~~ Information

~~A person in possession of protected health information, as defined in 45 C.F.R. 160.103, shall release the protected health information to the Department or a local health agency upon request if the protected health information is requested for the purpose of detecting, preventing, or controlling disease, injury, or disability.~~

A person shall release information, including protected health information as defined in 45 CFR 160.103, to the Department or a local health agency upon request if the information is:

1. Requested by the Department or the local health agency for the purpose of:
 - a. Detecting, preventing, or controlling a communicable disease; or
 - b. Preventing injury or disability that may result from a communicable disease; and
2. In the possession of the person.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

[R08-422]

PREAMBLE

1. Sections Affected

R12-5-408

Rulemaking Action

Amend

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. § 37-132(A)(1)

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Implementing statute: A.R.S. § 37-251

3. The effect date of the rules:

January 31, 2009

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

Notice of Rulemaking Docket Opening: 14 A.A.R. 236, January 25, 2008

Notice of Proposed Rulemaking: 14 A.A.R. 2236, June 6, 2008

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

Name: Richard B. Oxford, Director
Land Information, Title & Transfer Division

Address: State Land Department
1616 W. Adams St.
Phoenix, AZ 85007

Telephone: (602) 542-4602

Fax: (602) 542-5223

E-mail: Roxford@land.az.gov

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

Rule R12-5-408 was originally adopted in 1976 and was amended in 1990. The current rule is antiquated, misleading and is not in compliance with the law.

The rule explains how a holder of a Certificate of Purchase of State Trust land may apply to the State Land Department to partially patent a parcel of land within the Certificate of Purchase. The rule also explains the documents that are required from the County Treasurer as well as data regarding development plans of the lands within and adjacent to the Certificate of Purchase land and parcel to be patented. In addition, the rule requires an appraisal or economic analysis of the parcel to be patented as well as the remaining land under the Certificate of Purchase to assist the Department in determining the value of the remaining lands in the event a partial patent is issued.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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 review any study relevant to the rule.

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

Not applicable

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

The Arizona State Land Department manages 9.2 million acres of state-owned "Trust" lands. These lands were granted to the state of Arizona under the provisions of the 1910 federal Enabling Act that provided for Arizona's statehood in 1912. The lands are held in Trust for various beneficiaries including the common schools (K-12) and 13 other public institutions. The Trust's beneficiaries receive revenue from leasing, selling, or using State Trust land and its resources.

Trust land management activities to earn revenue can be divided into three categories: (1) surface uses (grazing, agricultural, commercial, and rights-of-way); (2) subsurface uses (mineral and precious metal extraction); and (3) land and natural products sales (i.e. timber, rock, sand, and gravel).

In FY2007, gross revenues from land sales totaled \$453.7 million. Of that total, \$14.8 million was cash and \$431.1 million is paid over time through State Certificates of Purchase. Currently, the state has 8,931 acres that are being paid for under 33 Certificates of Purchase (C.P.). The value of the unpaid principal on these C.P.s is in excess of \$900 million. Periodically, a C.P. holder applies to partially patent a tract of land from the entire parcel of land sold. When a partial patent is paid off, it results in several million dollars becoming available for the Treasurer's investment in the Trust's permanent fund. During the three-year time-frame from FY2005-FY2007, the Department issued 13 partial patents and collected \$136.5 million for the Trust's permanent fund. The interest earned benefits the Trust's beneficiaries. While there are some minimal costs to the applicant, the rule benefits the state (taxes collected on private and developed land), the Department (revenue to the Trust's permanent fund), the Trust's beneficiaries (revenues earned from Treasurer's investments), private industry and small businesses (planning, engineering, suppliers of goods, services, materials, and labor), and local government and other state agencies that collect taxes, issue permits, and charge fees.

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

The final rules include minor, technical and grammatical changes to improve the clarity of the rule. R12-5-408(D)(1) was rewritten to include the need for an appraisal in accordance with Uniform Standards of Professional Appraisal

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Practice (USPAP). As an alternative, the Department may perform an economic analysis of either of the parcel to be patented or the remaining C.P. lands, or both, utilizing either in-house or contracted appraisal services. The Department also defined the term “partial patent” to add clarity to the rule. R12-5-408(E) was rewritten to include a cross reference to R12-5-102 which authorizes an applicant for a partial patent to request an extension of time from the Commissioner to correct a noted deficiency in an application.

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

No comments were received by the agency.

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 made as an emergency rule?

No

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

ARTICLE 4. SALES

Section
R12-5-408. Partial Patent

ARTICLE 4. SALES

R12-5-408. Partial Patent

A. As used in this Section, a “partial patent” means a patent for less than the entire tract covered under a Certificate of Purchase. The owner holder of a Certificate of Purchase applying to the Department for a partial patent of lands under shall use a Department form when filing an Application for Patent on Part of a Certificate of Purchase, which must shall be accompanied by provide to the Department the following at the time of application:

1. Appropriate \$5.00 filing fee as required under A.R.S. § 37-108(A)(9)(c).
2. A deposit of \$350.00, to be applied to the cost of appraisal of the land and improvements, if any.
2. A copy of a receipt from the County Treasurer for the county where the land under application for partial patent is located, showing that the taxes are currently paid on both the parcel of land under application for partial patent and any lands remaining under the Certificate of Purchase.
3. A written land legal description and a plat of survey plat (drawing size 17” x 26”) issued by a Registered Civil Engineer, a land surveyor, registered in Arizona, showing of the lands covered by the Certificate of Purchase, and including the lands described in this the application for partial patent. The written land legal description and the survey plat shall be provided in paper format and a digital format specified in the application.
4. A proposed development plan showing the lands, including lands under the proposed partial patent, covered by the Certificate of Purchase and information as to how the proposed development plan will be implemented in compliance with City or County ordinances and regulations. The development plan shall contain proposed densities, unit break-down, and approved or proposed zoning district classifications.
4. Original copy of Certificate of Purchase from which this partial release to patent is requested.
5. A document showing Satisfaction or Release of Mortgage or other encumbrances covering land to be patented.
6. A notarized or other duly authenticated document setting forth the name of the person authorized to sign for a individual, partnership, group, company, corporation, etc.

B. If the Commissioner deems it necessary, the Department shall require a tentative plat with a proposed development overlay, including the topography, infrastructure improvements, and existing structures of the lands under the Certificate of Purchase, including the lands under application for partial patent, as well as of those lands contiguous to all boundaries of the lands covered by the Certificate of Purchase.

B.C. No The Department shall not accept an application that relates to a consideration will be given applications to patent a part of a Certificate of Purchase for which the purchaser has failed to pay applicable fees or is in default as to payment of principal or interest, or in arrears on taxes, or any other default.

D. Before issuing a partial patent, the Department shall determine that the remaining lands are of greater value than the unpaid balance of the Certificate of Purchase and that the remaining lands have development potential independent of the

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acreage that is sought to be patented. If the Commissioner determines that it is necessary to establish the value of the remaining lands, or the parcel sought to be patented, or both, the applicant shall provide, at the applicant's expense, the following:

- 1. An appraisal conducted in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) as referenced in A.A.C. R4-46-401 or an economic analysis by the Department's appraisal staff or by a state-approved appraiser of the parcel sought to be patented or the lands remaining under the Certificate of Purchase, or both.
- 2. An infrastructure assessment detailing service, capacity, and cost information for the remaining lands; and
- 3. Any additional information the Department considers necessary to determine the adequacy of value of the remaining lands as security for the balance of all remaining payments required to be made under the Certificate of Purchase after the partial patent is issued.

- ~~E. If the application or any of its attachments does not contain the information required by this Section, the Commissioner shall immediately provide written notice of the deficiency to the applicant. The Department shall allow 20 days, from the date on the written notice from the Commissioner, for the applicant to cure the deficiency. If additional time is needed to cure the deficiency, the applicant may request an extension of the time pursuant to R12-5-102. If the deficiency is not remedied in the time allowed, the application shall be deemed withdrawn.~~
- ~~C. If the application or any of its attachments is deficient, the Commissioner shall immediately notify the applicant of the deficiency and the applicant shall within 20 days, or such further time as the Commissioner may allow, remedy such deficiency, otherwise the application shall be deemed withdrawn.~~
- ~~D. Upon the filing of a proper application, the Commissioner shall appraise the parcel to be patented and improvements, if any, and upon completion of the appraisal, if the Commissioner finds that it is for the best interest of the state to patent said parcel, the Commissioner shall make an order authorizing the patenting of the land and setting forth the appraised value of the land and improvements. If the Commissioner finds that it is not in the best interest of the state to allow patenting of said parcel, the application shall be rejected by order of the Commissioner.~~
- ~~E. Orders whether authorizing the patenting of the land or rejecting the application shall be issued by the Commissioner within 60 days after the completion of the appraisal.~~
- ~~F. If the purchaser fails to complete any of the required payments within 60 days or such further time as may be granted in writing by the Commissioner, the application shall be deemed to have been withdrawn by the applicant.~~

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY
ENVIRONMENTAL REVIEWS AND CERTIFICATION

[R08-418]

PREAMBLE

- 1. Sections Affected

R18-5-105	<u>Rulemaking Action</u>
R18-5-109	Amend
	Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
 - Authorizing statutes: A.R.S. §§ 49-104, 49-202, 49-351, 49-352, 49-353, 49-361
 - Implementing statutes: A.R.S. §§ 49-352, 49-361
- 3. The effective date of the rules:
 - January 31, 2009
- 4. A list of all previous notices appearing in the Register addressing the rule:
 - Notice of Rulemaking Docket Opening: 14 A.A.R. 3296, August 22, 2008
 - Notice of Proposed Rulemaking: 14 A.A.R. 3289, August 22, 2008
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
 - Name: Sean P. McCabe
 - Address: Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007

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Telephone: (602) 771-4600
Fax: (602) 771-4834
E-mail: mccabe.sean@azdeq.gov

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

This rulemaking will improve the operator certification program administered by the Arizona Department of Environmental Quality for operators of both public water systems and sewage collection and treatment systems in Arizona. Currently, after revocation, an applicant can be recertified after one year of suspension or revocation, provided the applicant meets specified minimum criteria and passes the examination. Due to the potential public health and environmental risks of recertifying an operator whose prior behavior justified revocation of their certification, the Department is removing the opportunity for an operator whose license is revoked to be readmitted simply by passing an examination.

The statutory authority for this rulemaking is provided by ADEQ's general rulemaking authority (A.R.S. § 49-104), the agency's designation of responsibility for the Clean Water Act and Safe Drinking Water Act in Arizona (A.R.S. § 49-202, which includes authorization to enter into contracts and agreements), ADEQ's designation as the agency responsible for ensuring the quality of potable water in public water systems in Arizona (A.R.S. §§ 49-351, 49-353), and ADEQ's responsibility for certifying operating personnel for potable water systems (A.R.S. § 49-352) and for sewage collection systems and treatment plants (A.R.S. § 49-361).

Certified operators are an important element in achieving the public health protection goals of the Safe Drinking Water Act and the Arizona Environmental Quality Act. Once a water system or sewage collection system and treatment plant have been designed and constructed, it is imperative that the system(s) be operated correctly as improper operation can result in public health threats and environmental degradation.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on 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 the state:

Not applicable

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

The rule will primarily impact certified operators who have a certification(s) to operate water and/or wastewater system in Arizona revoked. It may have some impact on water or wastewater systems, especially in rural areas where the number of available, qualified operators is more limited. The rulemaking is needed to ensure that Arizona's operator certification program maintains high standards that certify skilled, knowledgeable operators who will protect public health and the environment.

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

R18-5-105(A)(3): replaced "license" with "certificate" for consistency with other rules.

R18-5-109(D): in second sentence, replace phrase "The terms of probation, or readmission if suspended, may include..." with "The terms of probation or suspension may include..."

The language of the preamble was also amended to clarify the intent of the rule amendments contained in this rulemaking.

In addition, minor technical, grammatical, and formatting changes were made in response to comments by staff of the Governor's Regulatory Review Council in order to make the text more clear, concise, and understandable.

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

No comments were received on this rulemaking.

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 adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

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CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY
ENVIRONMENTAL REVIEWS AND CERTIFICATION

ARTICLE 1. CLASSIFICATION OF WATER AND WASTEWATER FACILITIES
AND CERTIFICATION OF OPERATORS

Section

R18-5-105. Certification

R18-5-109. Denial, Suspension, Probation, and Revocation

ARTICLE 1. CLASSIFICATION OF WATER AND WASTEWATER FACILITIES
AND CERTIFICATION OF OPERATORS

R18-5-105. Certification

- A. The Department shall issue an operator certificate to an applicant if the applicant:
1. Meets the experience and education requirements in R18-5-112 for the applicable class and grade, ~~and~~
 2. Passes a written examination for the applicable class and grade, ~~and~~
 3. Has not had an operator's certificate revoked in Arizona or permanently revoked in another jurisdiction.
- B. To apply for operator certification, an applicant shall submit or arrange to have submitted to the Department the following information, as applicable, in a format acceptable to the Department:
1. The applicant's full name, ~~social security~~ Social Security number, and operator number;
 2. The applicant's current mailing address, home and work telephone numbers, fax number, and e-mail address;
 3. The applicant's place of employment, including the facility identification number;
 4. The class and grade of the facility where the applicant is employed;
 5. Proof of successful completion of the examination for the applicable class and grade; and
 6. Documentation of the applicant's experience and education required under R18-5-112.

R18-5-109. Denial, Suspension, Probation, and Revocation

- A. If the Department decides to deny, suspend, or revoke a certificate, or to place an operator on probation, the Department shall act in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2.
- B. The Department may revoke or suspend a certificate, or place an operator on probation, if the Department finds that the operator:
1. Operates a facility in a manner that violates federal or state law;
 2. Negligently operates a facility or negligently supervises the operation of a facility;
 3. Fails to comply with a Department order or order of a court;
 4. Obtains, or attempts to obtain, a certificate by fraud, deceit, or misrepresentation;
 5. Engages in fraud, deceit, or misrepresentation in the operation or supervision of a facility;
 6. Knowingly or negligently prepares a false or fraudulent report or record regarding the operation or supervision of a facility;
 7. Endangers the public health, safety, or welfare;
 8. Fails to comply with the terms or conditions of probation or suspension; or
 9. Fails to cooperate with an investigation by the Department including failing or refusing to provide information required by this Article.
- C. The Department shall deny certification to an applicant who does not meet the requirements of R18-5-105 or R18-5-110, or who is ineligible for certification pursuant to a Department order or order of a court.
- ~~D. In order to be recertified, an individual whose certificate is revoked shall reapply and be reexamined as a new applicant. An individual whose certificate is revoked is not eligible for admission to a certification examination for 12 months from the effective date of the revocation.~~
- ~~E.D.~~ The Department may place an operator on probation or suspend an operator's certificate to address deficiencies in operator performance. The terms of probation or suspension may include completion of additional PDHs, increased reporting of operator activity, limitations on activities the operator may perform, or other terms to address deficiencies in operator performance.
- ~~F.E.~~ During the period of suspension ~~or revocation~~, an individual whose certificate is suspended ~~or revoked~~ shall not operate a facility of ~~any the class or grade of the suspended certificate.~~
- ~~G.F.~~ An operator whose certificate is suspended or revoked, or who has been placed on probation, shall immediately notify the owner of a facility where the operator is employed of the suspension, ~~or revocation, or probation.~~

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As hearings under A.R.S. §§ 23-907(H), (I), and (J) have historically been held using the procedures in Title 20, Chapter 5, Article 1, and this amendment merely codifies procedures already in place this amendment will not have any additional economic impact.

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

None

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

No comments were received regarding the rule.

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. Incorporation by reference and their location in the rules:

None

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

No

15. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 1. WORKERS' COMPENSATION PRACTICE AND PROCEDURE

Section

R20-5-101. Application of the Article; Notice of Rules; Part of Record; Effective Date

ARTICLE 1. WORKERS' COMPENSATION PRACTICE AND PROCEDURE

R20-5-101. Application of the Article; Notice of Rules; Part of Record; Effective Date

- A.** This Article applies to all actions and proceedings before the Commission resulting from:
1. Injuries that occurred on or after January 1, 1969; ~~and~~
 2. Petitions to Reopen or Petitions for Readjustment or Rearrangement of Compensation filed on or after that date; ~~and~~ and
 3. Requests for hearing under A.R.S. §§ 23-907(H), (I), and (J).
- B.** This Article is part of the record in each action or proceeding without ~~formal introduction of or~~ reference to the Article.
- C.** The Commission deems all parties to have knowledge of this Article.
- D.** The Commission shall provide a copy of this Article upon request to any person free of charge.
- E.** ~~This Article is effective as provided in A.R.S. § 41-1031.~~