

## NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

### NOTICE OF EXEMPT RULEMAKING

#### TITLE 2. ADMINISTRATION

#### CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

*Editor's Note: The following Notice of Exempt Rulemaking is exempt from Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 on page 163.)*

[R10-10]

#### PREAMBLE

- 1. Sections Affected**  
R2-20-109
- 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. § 16-940, *et seq.*  
Implementing statute: A.R.S. § 16-956(C)
- 3. The effective date of the rules:**  
January 29, 2010
- 4. A list of all previous notices appearing in the Register addressing the exempt rule:**  
Not applicable
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Todd Lang, Executive Director  
Address: Citizens Clean Elections Commission  
1616 W. Adams St., Suite 110  
Phoenix, AZ 85007  
Telephone: (602) 364-3477  
Fax: (602) 364-3487  
E-mail: todd.lang@azcleelections.gov  
or  
Name: Colleen McGee, Deputy Director  
Address: Citizens Clean Elections Commission  
1616 W. Adams St., Suite 110  
Phoenix, AZ 85007  
Telephone: (602) 364-3477  
Fax: (602) 364-3487  
E-mail: colleen.mcgee@azcleelections.gov
- 6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:**  
R2-20-109 prescribes the requirements for reporting contributions and expenditures. The change to R2-20-109(G)(3) is intended to account for candidate travel for campaign-purposes using a state-owned airplane. It provides that the portion of the trip allocable to the campaign be accounted for and, if appropriate, reimbursed to the state.

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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:**  
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:**  
Not applicable
9. **The summary of the economic, small business, and consumer impact:**  
Not applicable
10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**  
Changes between rules as initially proposed and as finally adopted by the Commission were primarily grammatical and stylistic. Additional changes were incorporated at the suggestion of members of the public and Commissioners to clarify terms and provisions of the rules.
11. **A summary of the comments made regarding the rule and the agency response to them:**  
The Commissioners solicited public comment throughout the rulemaking process. Comments were generally supportive of the revised rules. Requests for clarifications and revisions and statements in support or opposition to specific provisions were duly considered by the Commission at open meetings and were acted upon as deemed appropriate.
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 made as an emergency rule? If so, please indicate the Register citation:**  
Not applicable
15. **The full text of the rules follows:**

TITLE 2. ADMINISTRATION

CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION

ARTICLE 1. GENERAL PROVISIONS

Section

R2-20-109. Reporting Requirements

ARTICLE 1. GENERAL PROVISIONS

**R2-20-109. Reporting Requirements**

- A. Reporting of transactions; software provided or approved by the Secretary of State. All campaign finance reports shall be filed in electronic format in accordance with A.R.S. § 16-958(E). The Commission shall coordinate with the Secretary of State to make electronic-filing computer software available to candidates. Campaign finance reports shall be available on the Secretary of State's web site. All candidates shall file campaign finance reports that include all receipts and disbursements for their current campaign account using the campaign finance computer software provided or approved by the Secretary of State as follows:
  1. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service, including an allocation of services to a particular election. The Commission may treat such expenditures as though made during the general election period, and equalizing funds pursuant to A.R.S. § 16-952 shall be paid at the start of the general election period.
  2. Original and supplemental campaign finance reports filed pursuant to A.R.S. §§ 16-941 and 16-958 shall include the same information regarding receipts and disbursements as required by A.R.S. § 16-915.
  3. A candidate may authorize an agent to purchase goods or services on behalf of such candidate, provided that:
    - a. The candidate shall report an expenditure as of the date that the agent promises, agrees, contracts or otherwise incurs an obligation to pay for the goods or services;
    - b. The candidate shall have sufficient funds in the candidate's campaign account to pay for the amount of such expenditure and all other outstanding obligations of the candidate's campaign committee; and

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- c. Within seven calendar days of the date upon which the amount of the expenditure is known, the candidate shall pay such amount from the candidate's campaign account to the agent who purchases the goods or services.
- d. A joint expenditure is made when two or more candidates agree to share the cost of goods or services. Candidates may make a joint expenditure on behalf of one or more other campaigns, but must be authorized in advance by the other candidates involved in the expenditure, and must be reimbursed within seven days.
4. In the event that a candidate purchases goods or services from a subcontractor or other vendor through an agent pursuant to subsection (A)(3), the candidate's campaign finance report shall include the same detail as required in A.R.S. § 16-948(C) for each such subcontractor or other vendor. Such detail is also required when petty cash funds are used for such expenditures.
5. For the purposes of the Act and Commission rules, a candidate or campaign shall be deemed to have made an expenditure as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services.
- B. Participating candidate reporting requirements.** In addition to the campaign finance reports filed pursuant to A.R.S. § 16-913, participating candidates shall file the following campaign finance reports and dispose of excess monies as follows:
  1. Prior to filing the application for funding pursuant to A.R.S. § 16-950, participating candidates shall file a campaign finance report with the names of persons who have made qualifying contributions to the candidate.
  2. End of qualifying period. At the end of the qualifying period, a participating candidate shall file a recap campaign finance report consisting of a recap of all early contributions received, including personal monies and the expenditures of such monies.
    - a. The recap campaign finance report for the qualifying period shall be filed with the Secretary of State no later than five days after the last day of the qualifying period and shall include all campaign activity through the last day of the qualifying period.
    - b. If the recap campaign finance report shows any amount unspent by a participating candidate, the candidate, within five days after filing the recap campaign finance report, shall send the Commission a check from the candidate's campaign account that will remit all unspent early contributions to the fund, pursuant to A.R.S. § 16-945(B). Any unspent personal monies shall be returned to the candidate or the candidate's family member within five days.
  3. Primary election and general election recap campaign finance reports. Each participating candidate shall file a campaign finance report consisting of a recap of all expenditures made in connection with an election, all contributions received in the election cycle in which such election occurs, and all payments made from such candidate's campaign fund to the Clean Elections Fund. If the recap campaign finance report shows any amount unspent by a participating candidate, the candidate, within five days after filing the recap campaign finance report, shall send the Commission a check from the candidate's campaign account that will return all unspent monies to the Fund.
    - a. The recap campaign finance report for the primary election shall be filed within five days after the primary election day and shall reflect all activity through the primary election day.
    - b. The recap campaign finance report for the general election shall be considered filed upon the filing of the post-general campaign finance report filed in accordance with A.R.S. § 16-913(B)(3).
- C. Amending Reports.** If a candidate determines that a previously filed campaign finance report contains inaccurate information, then the candidate shall amend the campaign finance report to provide accurate information.
  1. Except when a new election period has started, a participating candidate who received Clean Elections funding based upon an inaccurate campaign finance report shall remit to the Commission the excess funds as determined by the amended campaign finance report within five days after filing the amended campaign finance report.
  2. If the participating candidate does not have sufficient funds in his or her account to return the required monies, the balance owed shall be withheld from future equalizing funds due to the participating candidate in the election period during which the excess funds were awarded.
- D. Independent expenditures.**
  1. Any individual, group of individuals, corporation, political party or membership organization that makes independent expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle that expressly advocate the election or defeat of a specific candidate, as defined in R2-20-101(11), shall file campaign finance reports with the Secretary of State in accordance with A.R.S. § 16-958.
  2. Any individual, group of individuals, corporation, political party or membership organization that makes independent expenditures for literature or an advertisement relating to any one candidate or office within 10 days before the day of any election to which the expenditures relate shall send to the Commission, by overnight delivery; and by facsimile or e-mail, no later than one day after it is mailed, broadcast or published, as applicable, a copy of the campaign literature or advertisement together with a statement declaring the cost of producing and distributing such campaign literature or advertisement. The copy of the literature or advertisement sent to the Commission pursuant to this Section shall be a reproduction that is clearly readable, viewable or audible, as applicable.

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3. Any individual, group of individuals, corporation, political party or membership organization that fails to file a campaign finance report pursuant to this subsection (D) shall be subject to a civil penalty as described in A.R.S. § 16-942(B), as applicable.
- E. The following will be considered to be a “contribution during the election cycle to date” or “expenditures ... made through the end of the primary election period” for purposes of reporting under A.R.S. §§ 16-941(B)(2) and 16-958(A):
  1. A contribution to a candidate to retire debt from a prior election cycle if deposited into the current campaign account;
  2. Any contributions received and placed in a future, current, or prior, campaign account during the current election cycle;
  3. Surplus funds transferred into the current campaign account;
  4. Contributions received or expenditures made beginning 21 days after the date of the prior general election.
- F. Timing of reporting expenditures.
  1. Except as set forth in subsection (F)(2) below, a candidate shall report a contract, promise or agreement to make an expenditure resulting in an extension of credit as an expenditure, in an amount equal to the full future payment obligation, as of the date the contract, promise or agreement is made.
  2. In the alternative to reporting in accordance with subsection (F)(1) above, a candidate may report a contract, promise or agreement to make an expenditure resulting in an extension of credit as follows:
    - a. For a month-to-month or other such periodic contract or agreement that is terminable by a candidate at will and without any termination penalty or payment, the candidate may report an expenditure, in an amount equal to each future periodic payment, as of the date upon which the candidate’s right to terminate the contract or agreement and avoid such future periodic payment elapses.
    - b. For a contract, promise or agreement to provide goods or services during the general election period that is contingent upon a candidate advancing to the general election period, the candidate may report an expenditure, in an amount equal to the general election period payment obligation, as of the date upon which such contingency is satisfied.
    - c. For a contract, promise or agreement to pay rent, utility charges or salaries payable to individuals employed by a candidate’s campaign committee as staff, the candidate may report an expenditure, in an amount equal to each periodic payment, as of the date that is the sooner of:
      - i. The date upon which payment is made; or
      - ii. The date upon which payment is due.
- G. Transportation expenses.
  1. Except as otherwise provided in this subsection (G), the costs of transportation relating to the election of a statewide or legislative office candidate shall not be considered a direct campaign expense and shall not be reported by the candidate as expenditures or as in-kind contributions.
  2. If a candidate travels for campaign purposes in a privately owned automobile, the candidate may use campaign funds to reimburse the owner of the automobile at a rate not to exceed the state mileage reimbursement rate (which is 44.5¢ per mile in 2007), in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the candidate chooses to use campaign funds for reimbursement, the candidate shall keep an itinerary of the trip, including name ~~and~~ and/or type of event(s) attended, miles traveled and the rate at which the reimbursement was made.
  3. Use of airplanes.
    - a. If a candidate travels for campaign purposes in a privately owned airplane, the candidate shall use campaign funds to reimburse the owner of the airplane at a rate of \$150 per hour of flying time, in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the owner of the airplane is unwilling or unable to accept reimbursement, the candidate shall remit to the fund an amount equal to \$150 per hour of flying time.
    - b. If a candidate travels for campaign purposes in a state-owned airplane, the candidate shall use campaign funds to reimburse the state for the portion allocable to the campaign in accordance with subsection (G)(3)(a). The portion of the trip attributable to state business shall not be reimbursed. If payment to the state is not possible, the payment shall be remitted to the Clean Elections Fund.
  4. If a candidate rents a vehicle or purchases a ticket or fare on a commercial carrier for campaign purposes, the actual costs of such rental (including fuel costs), ticket or fare shall be considered a direct campaign expense and shall be reported as an expenditure.
- H. Use of Campaign Consultants and Contractors. Participating candidates may hire consultants to provide services to their campaigns. The campaign finance report shall reflect payments made to the consultant for services provided directly by the consultant. If, however, the consultant pays for goods and services to be provided by a sub-contractor or different vendor the campaign finance report shall include the same details set forth in A.R.S. § 16-948(C) for each subcontractor or sub-vendor.

**NOTICE OF EXEMPT RULEMAKING**

**TITLE 7. EDUCATION**

**CHAPTER 2. STATE BOARD OF EDUCATION**

*Editor's Note: The following Notice of Exempt Rulemaking is exempt from Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 on page 163.)*

[R09-154]

**PREAMBLE**

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|--|--|
| <b>1. <u>Sections Affected</u></b><br>R7-2-206 | <b><u>Rulemaking Action</u></b><br>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. § 15-203(A)(1)  
Implementing statute: A.R.S. § 15-534.01(E)
- 3. The effective date of the rules:**  
December 7, 2009
- 4. A list of all previous notices appearing in the Register addressing the exempt rules:**  
Not applicable
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- |            |   |
|------------|---|
| Name:      | Vince Yanez, Executive Director<br>State Board of Education |
| Address:   | 1535 W. Jefferson St.<br>Phoenix, AZ 85007                  |
| Telephone: | (602) 542-5057  |
| Fax:       | (602) 542-3046  |
| E-mail:    | vince.yanez@azed.gov  |
- 6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:**  
A.R.S. § 15-534.01 requires the State Board of Education to hold hearings for those applicants who wish to appeal their certification applications that were substantively denied. The proposed rule establishes the process for those hearings.  
Pursuant to A.R.S. § 41-1005(F) the State Board of Education is exempt from standard rulemaking procedures.
- 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:**  
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:**  
Not applicable
- 9. The summary of the economic, small business and consumer impact:**  
The rules are not expected to have any economic impact on small businesses nor have any impact upon school districts and charter schools.
- 10. A description of the changes between the proposed rules, including supplemental notices and final rules (if applicable):**  
Not applicable
- 11. A summary of the comments made regarding the rule and the agency response to them:**  
A public hearing was held regarding these proposed rules on November 24, 2009. No comments were received.

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**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 made as an emergency rule? If so, please indicate the Register citation:**

Not applicable

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

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 2. STATE BOARD OF EDUCATION COMMITTEES

Section

R7-2-206. ~~Repealed~~ Certification Denial Appeals Process for Applications for Certification that Do Not Involve Allegations of Immoral or Unprofessional Conduct

ARTICLE 2. STATE BOARD OF EDUCATION COMMITTEES

R7-2-206. ~~Repealed~~ Certification Denial Appeals Process for Applications for Certification that Do Not Involve Allegations of Immoral or Unprofessional Conduct

- A.** The Certification Appeals Advisory Committee ("Committee" or "CAAC") shall act in an advisory capacity to the State Board of Education ("Board") and shall serve as the hearing body for the Board in regard to appeals of certification denials pursuant to A.R.S. § 15-534.01 that do not involve allegations of immoral or unprofessional conduct. Applications for certification that involve allegations of immoral or unprofessional conduct shall be reviewed by the Professional Practices Advisory Committee as established by R7-2-205.
- B.** The Committee shall be appointed by the Board and shall consist of five members comprised of the following:
1. One certificated elementary classroom teacher.
  2. One certificated secondary classroom teacher.
  3. One certificated administrator.
  4. One lay member, and
  5. One local Governing Board member.
- C.** Terms of the members
1. All regular terms shall be for two years except as set forth in subsection (D).
  2. A member may be reappointed with Board approval.
- D.** The Board may remove any member from the Committee. All vacancies shall be filled in a timely fashion and those persons appointed to fill vacancies shall serve to complete the term of the person replaced.
- E.** The Committee shall:
1. Select from its members a Chairman and Vice-Chairman.
  2. A quorum shall be a majority of members of the Committee. A quorum is necessary to conduct business. An affirmative vote of the majority of the members present is needed to take action.
  3. Hold meetings once a month or as often as necessary to conduct hearings or other Committee business.
  4. Recommend the removal of any member who is absent from three consecutive meetings.
  5. Conduct appeals pursuant to A.R.S. Title 41, Chapter 6, Article 6 and this Section.
- F.** Request for Hearing. A person who has had an application for certification denied by the Board or the Department of Education pursuant to A.R.S. § 15-534.01(B) may file a written request for a hearing with the Board within 15 days after receiving the notice of denial. Intermediate Saturdays, Sundays and legal holidays shall be included in the computation of the 15 days. If the final day of the 15 day deadline falls on a Saturday, Sunday or legal holiday, the next business day is the final day of the deadline.
- G.** Notice of Hearing
1. If an applicant requests a hearing to appeal the denial of an application for certification, a notice of hearing shall be given at least 20 days prior to the date set for the hearing.
  2. The notice shall include:
    - a. A statement of the time, place and nature of the hearing.
    - b. A statement of the legal authority and jurisdiction under which the hearing is to be held.
    - c. A reference to the particular sections of the statutes and rules involved.

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- d. A short and plain statement of the matters asserted. If a party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.
  3. Opportunity shall be afforded all parties to respond and present evidence and argument on the issues involved.
  4. The Board may dispose of any certification appeal by decision or approved stipulation, agreed settlement, consent agreement or by default.
  5. A hearing before the hearing body or any part thereof shall be recorded manually or by a recording device and shall be transcribed on request of any party, unless otherwise provided by law. The cost of such transcript shall be paid by the party making the request, unless otherwise provided by law or unless assessment of the cost is waived by the Board.
  6. The hearing body may reschedule the hearing, maintaining due regard for the interests of justice and the orderly and prompt conduct of the proceedings.
  7. The record in an appeal of a certification denial shall include:
    - a. All pleadings, motions and interlocutory rulings.
    - b. Evidence received or considered.
    - c. A statement of matters officially noticed.
    - d. Objections and offers of proof and rulings thereon.
    - e. Proposed findings of fact and conclusions of law and exceptions thereto.
    - f. Any decision, opinion, recommendation or report of the hearing body.
    - g. All staff memoranda, other than privileged communications, or data submitted to the hearing body in connection with its consideration of the case.
  8. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.
- H.** Service of documents; change of address notice requirement
1. Every notice or decision issued by the Board pertaining to the denial of an application for initial certification or renewal of a certificate shall be served by personal delivery or certified mail, return receipt requested, to the applicant or certificated person's last address of record with the Department of Education or by any other method that is reasonably calculated to give actual notice to the applicant or the certificated person.
  2. Each applicant or certificated person shall inform the Department of Education of any change of address within 30 days of the change of address.
- I.** Hearing process
1. Parties may participate in the hearing in person or through an attorney.
  2. Upon request of either party, the presiding officer may schedule a prehearing conference. The purpose of a prehearing conference shall be to narrow issues, attempt settlement, address evidentiary issues or for any other purpose deemed necessary by the presiding officer.
  3. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings shall be grounds for reversing any administrative decision or order providing the evidence supporting such decision or order is substantial, reliable, and probative. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Every person who is a party to such proceedings shall have the right to be represented by counsel, to submit evidence in open hearing and shall have the right of cross-examination. Unless otherwise provided by law, hearings may be held at any place determined by the Committee. At such hearing such applicant shall be the moving party and have the burden of proof.
  4. Copies of documentary evidence may be received in the discretion of the presiding officer. Upon request, the parties shall be given an opportunity to compare the copy with the original.
  5. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the hearing body. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The hearing body's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.
- J.** Subpoenas
1. The Department of Education may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence on its own volition or at the request of a party.
  2. A request for a hearing subpoena shall be in writing and served on each party at least seven days prior to the date set for hearing and shall state:
    - a. The name of the contested case, the case number, and the time and place where the witness is expected to appear and testify;
    - b. The name and address of the witness subpoenaed; and
    - c. The documents, if any, sought to be provided.
  3. On application of a party or the agency and for use as evidence, the hearing body may permit a deposition to be taken,

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in the manner and upon the terms designated by the hearing body, of a witness who cannot be subpoenaed or is unable to attend the hearing.

4. The individual to whom a subpoena is directed shall comply with its provisions unless, prior to the date set for appearance, the hearing body grants a written request to quash or modify the subpoena. The request shall state the reasons why it should be granted. The hearing body shall grant or deny such request by order.
5. The party requesting the subpoena shall prepare it and cause it to be served upon the individual to whom it is directed in the same manner as provided for service of subpoenas in civil matters before the superior court. The return of service shall be filed with the hearing body.

**K.** Conduct of hearing

1. The presiding officer may conduct all or part of the hearing by telephone, television, or other electronic means, as long as each party has an opportunity to participate in the entire proceeding as it takes place.
2. Except for those hearings which may involve presentation of evidence protected by law as confidential, or which are otherwise closed pursuant to an express provision of law, all hearings are open to public observation.
3. Conduct at any hearing that is disruptive or shows contempt for the proceedings shall be grounds for exclusion from further participation or observation.

**L.** Evidence

1. All witnesses shall testify under oath or affirmation.
2. The hearing body shall have the power to administer oaths and affirmations.
3. All parties shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and fair disclosure of the facts.
4. The hearing body shall receive evidence, rule upon offers of proof, and exclude evidence the hearing body has determined to be irrelevant, immaterial, or unduly repetitious.
5. Unless otherwise ordered by the hearing body, documentary evidence shall be limited in size when folded to 8 1/2 by 11 inches. The submitting party shall identify documentary exhibits by number or letter and party and furnish a copy of each exhibit to each party present. One additional copy shall be furnished to the hearing body unless the hearing body otherwise directs. When evidence offered by any party appears in a larger work, containing other information, the party shall plainly designate the portion offered. If the evidence offered is so voluminous as would unnecessarily encumber the record, the book, paper, or document shall not be received in evidence but may be marked for identification and, if properly authenticated, the designated portion may be read into or photocopied for the record. All documentary evidence offered shall be subject to appropriate and timely objection.

**M.** Stipulations.: Parties to an appeal of a certification denial may stipulate, in writing, agreement upon any matter involved in the proceeding. If approved by the presiding officer, agreement on matters of procedure shall be binding upon the parties to the stipulation. The hearing body may require presentation of evidence for proof of stipulated facts for the hearing body's consideration. No substantive matter agreed to by the parties shall be binding upon the Board unless incorporated into the decision of the Board.

**N.** Recommendations

1. A recommended decision shall be prepared for the Board by the CAAC.
2. A recommended decision shall be delivered to the Board within 30 days after the close of the hearing unless the Board extends the period for good cause.

**O.** Decisions and orders

1. Any final decision or order adverse to a party shall be in writing or stated in the record.
2. When the Board is the hearing body, the decision shall be rendered within 60 days following the final day of the hearing.
3. Within 30 days after receipt of any recommended decision from the CAAC, the Board shall render a decision to affirm, reverse, adopt, modify, supplement, amend or reject the recommendation and may remand the matter to the hearing body with instructions, or may convene itself as the hearing body.

**P.** Rehearing and review of decisions

1. After a hearing is held, a party in an appeal of a certification denial who is aggrieved by a decision rendered by the Board may file with the Board, not later than 30 days after such decision has been made, a written motion for rehearing specifying the particular grounds therefor. A motion for rehearing under this Section may be amended at any time before it is ruled upon by the Board. A response may be filed within 15 days after service of such motion by any other party. The Board may require the filing of written briefs on the issues raised in the motion or response and may provide for oral argument.
2. A rehearing of a decision by the Board may be granted for any of the following causes materially affecting the moving party's rights:
  - a. Irregularity in the administrative proceedings of the hearing body, or abuse of discretion, whereby the moving party was deprived of a fair hearing.
  - b. Misconduct of the hearing body or the prevailing party.
  - c. Accident or surprise which could not have been prevented by ordinary prudence.



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- d. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the hearing.
- e. Excessive or insufficient penalties.
- f. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing.
- g. That the decision is not justified by the evidence or is contrary to the law.
- 3. The Board may affirm or modify the decision or grant a rehearing to all or any of the parties, on all or part of the issues, for any of the reasons set forth in subsection (B) herein. An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
- 4. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. The order granting such a rehearing shall specify the grounds therefor.
- 5. Not later than 20 days after a decision is rendered, the Board may, on its own initiative, order a rehearing of its decision for any reasons for which it might have granted a rehearing on motion of a party. The order granting such a rehearing shall specify the grounds therefor.
- 6. When a motion for rehearing is based upon affidavits they shall be served with the motion. An opposing party may, within 10 days after service of such motion, serve opposing affidavits and this period may be extended for an additional period not exceeding 20 days, by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
- 7. After a hearing has been held and a final administrative decision has been entered, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.
- 8. Any party in an appeal of a certification denial who is aggrieved by a decision rendered by the Board may file with the Board, not later than 20 days after such decision has been made, a written request for review of the decision. If a review of the decision is granted, the Board may affirm or modify the previous decision.

**NOTICE OF EXEMPT RULEMAKING**

**TITLE 7. EDUCATION**

**CHAPTER 2. STATE BOARD OF EDUCATION**

*Editor's Note: The following Notice of Exempt Rulemaking is exempt from Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 on page 163.)*

[R09-153]

**PREAMBLE**

- 1. **Sections Affected** **Rulemaking Action**  
R7-2-607 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. § 15-203 (A) (1) and A.R.S. § 15-701.02  
Implementing statute: A.R.S. § 15-701.02
- 3. **The effective date of the rules:**  
October 26, 2009
- 4. **A list of all previous notices appearing in the Register addressing the exempt rules:**  
Not applicable
- 5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Vince Yanez, Executive Director  
State Board of Education  
Address: 1535 W. Jefferson St.  
Phoenix, AZ 85007  
Telephone: (602) 542-5057  
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Notices of Exempt Rulemaking

**6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from the regular rulemaking procedures:**

At the September 21, 2009 meeting, the State Board voted to open rulemaking on proposed amendments to R7-2-607. These amendments will allow a teacher to use a passing score on a nationally accredited test of a foreign language approved by the State Board of Education to demonstrate proficiency in that foreign language in lieu of the 24 semester hours of courses in that subject if an AEPA exam is not available for that foreign language. In addition, a teacher's language proficiency in a Native American language is to be verified by a person, persons, or entity designated by the appropriate tribe in lieu of the 24 semester hours of courses in that subject.

Pursuant to A.R.S. § 41-1005(F) the State Board of Education is exempt from standard rulemaking procedures.

**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:**

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:**

Not applicable

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

The rules are not expected to have any economic impact on small businesses nor have any impact upon school districts and charter schools.

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

Not applicable

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

A public hearing was held on Thursday, October 15, 2008. No comment was received. The Arizona Inter-Tribal Council reviewed this proposed rule change on September 25th and voted in support of the measure.

**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 made as an emergency rule? If so, please indicate the Register citation:**

Not applicable

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

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 6. CERTIFICATION

Section

R7-2-607. General Certification Provisions

ARTICLE 6. CERTIFICATION

**R7-2-607. General Certification Provisions**

- A. The evaluation to determine qualification for certification shall not begin until an institutional recommendation or application for certification and official transcripts, and the appropriate fees have been received by the Department. Course descriptions, verification of employment, and other documents may also be required for the evaluation.
- B. The effective date of a new certificate shall be the date the evaluation is completed by the Department. The effective date of a renewed certificate shall be the date the evaluation for renewal is completed by the Department.
- C. All one-year certificates shall expire one year from the date of issuance. All certificates issued for more than one year shall expire on the holder's birth date in the year of expiration.
- D. If an applicant has not met all the requirements for the certificate or endorsement at the time of evaluation, the applicant shall have a maximum of two years to complete those requirements and request re-evaluation. One re-evaluation shall be provided at no additional fee within two years of the original evaluation.
- E. Only those degrees awarded by an accredited institution shall be considered to satisfy the requirements for certification.

**Notices of Exempt Rulemaking**

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- F. Professional preparation programs, courses, practica, and examinations required for certification shall be taken at an accredited institution or a Board-approved teacher preparation program.
- G. Only those courses in which the applicant received a passing grade or credit shall be considered to satisfy the requirements for certification.
- H. All certificates issued by the Board before the effective date of this Article are considered to have been issued in conformance with these rules.
- I. The Board shall issue a comparable Arizona certificate, if one has been established by R7-2-608, R7-2-609, R7-2-610, R7-2-611, R7-2-612, or R7-2-613, and shall waive the requirements for passing the professional knowledge and performance portions of the Arizona Teacher-Proficiency Assessment, to an applicant who holds current certification from the National Board for Professional Teaching Standards.
- J. Teachers in grades ~~7~~ seven through 12 whose primary assignment is in an academic subject required pursuant to R7-2-302 shall demonstrate proficiency by passing the appropriate subject area portion of the Arizona Teacher Proficiency Assessment. The subject areas of demonstrated proficiency shall be specified on the certificate. If a proficiency assessment is not offered in a subject area, an approved area shall consist of a minimum of 24 semester hours of courses in the subject.
- K. ~~If a language assessment is not offered through the Arizona Teacher Proficiency Assessment, a passing score on a nationally accredited test of a foreign language approved by the State Board of Education may demonstrate proficiency of that foreign language in lieu of the 24 semester hours of courses in that subject.~~
- L. ~~A teacher's language proficiency in a Native American language shall be verified by a person, persons, or entity designated by the appropriate tribe in lieu of the 24 semester hours of courses in that subject.~~
- ~~K.M.~~ Teachers of homebound students shall hold the same certificate that is required of a classroom teacher.
- ~~L.N.~~ ~~Class 1 and Class 2 fingerprint~~ Fingerprint clearance cards shall be issued by the Arizona Department of Public Safety.