

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 12. OFFICE OF THE SECRETARY OF STATE

Editor's Note: The following Notice of Proposed Rulemaking was exempt from review of Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 2126.)

[R11-167]

PREAMBLE

1. Sections Affected

R2-12-1102
R2-12-1103
R2-12-1201

Rulemaking Action

Amend
Amend
Amend

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 41-353(B)

Implementing statute: A.R.S. §§ 41-315, 41-316(A), 41-353(B), (F)(1) through (6), and (G)

3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: 17 A.A.R. 269, February 18, 2011

4. The agency's contact person who can answer questions about the rulemaking:

Name: Joann Cota, Director
Address: Secretary of State, Business Services
1700 W. Washington St., 7th Floor
Phoenix, AZ 85007
Telephone: (602) 542-4285
Fax: (602) 542-4366
E-mail: jcota@azsos.gov

5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

Fees have not been increased since the year 2001. Due to the importance of notary public's function, the fee a notary is able to charge should be adjusted to properly compensate their time, effort, and assumed liability.

Notary bonds have not been filed with the Clerk of the Superior Court since 2008, therefore, rule is being amended to properly reflect the statute A.R.S. § 41-315(A), effective July 2008.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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

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

Not applicable

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

Notaries Public may redeem more compensation for their time, effort, and assumed liability.

Consumers may pay less than the fees previously allowed, due to the rewording of the rule, allowing a fee “up to” the amount referenced and the change to “per notarial signature.”

9. The agency’s contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Joann Cota, Director
Address: Secretary of State, Business Services
1700 W. Washington St., 7th Floor
Phoenix, AZ 85007
Telephone: (602) 542-4285
Fax: (602) 542-4366
E-mail: jcota@azsos.gov

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

Date: Wednesday, December 7, 2011
Time: 9:00 a.m.
Location: Secretary of State’s Office
Conference Room
State Capitol Executive Tower, 7th Floor
Phoenix, AZ
Nature: Oral proceeding
Close of Record: 5:00 p.m., Wednesday, January 4, 2012

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

Not applicable

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule’s impact of the competitiveness of business in this state to the impact on business in other states:

Not applicable

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 12. OFFICE OF THE SECRETARY OF STATE

ARTICLE 11. NOTARY PUBLIC BONDS AND FEES

Section

R2-12-1102. Notary Public Fees

R2-12-1103. Notary Public Bonds

ARTICLE 12. ELECTRONIC NOTARY

Section

R2-12-1201. Application and Renewal

ARTICLE 11. NOTARY PUBLIC BONDS AND FEES

R2-12-1102. Notary Public Fees

Notaries public may charge the following fees:

1. For acknowledgments, ~~\$2~~ up to \$10 per notary public signature;
2. For jurats, ~~\$2~~ up to \$10 per notary public signature;
3. For copy certifications, ~~\$2~~ up to \$10 per page certified;
4. For oaths or affirmations without a signature, ~~\$2~~ up to \$10.

R2-12-1103. Notary Public Bonds

- A. Notaries public shall purchase a bond in the amount of \$5,000 before being commissioned as a notary public. The original bond shall be filed with the ~~clerk of the superior court in the applicant's county of residence~~ Secretary of State. ~~A copy of the bond shall be filed with the applicant's application form submitted to the Secretary of State's Office.~~
- B. The bond shall contain, on its face, the oath of office for the notary public as specified in A.R.S. § 38-233(B). This oath shall be as specified in A.R.S. § 38-231. The notary shall endorse the oath on the face of the bond immediately below the oath, by signing the notary's name under which the person has applied to be commissioned as a notary and exactly as the name appears on the notary application form filed with the ~~Secretary of State's Office~~ State.

ARTICLE 12. ELECTRONIC NOTARY

R2-12-1201. Application and Renewal

Each applicant for an electronic notary commission or a renewal of an electronic notary commission shall:

1. Submit to the Secretary of State a verified application on a form furnished by the Secretary of State that provides the following information about the applicant:
 - a. Full name and any former names used by the applicant;
 - b. Physical address and telephone number;
 - c. Mailing address and telephone number;
 - d. Business address, telephone number, fax number and ~~email~~ e-mail address, if applicable;
 - e. County of residence;
 - f. Gender;
 - g. Date of birth;
 - h. The previous commission number of the applicant if previously an electronic notary or notary public appointed under A.R.S. § 41-312 in Arizona, if applicable;
 - i. Social Security number, at least the last four digits;
 - j. Copy of documentation of citizenship or alien status as described in A.R.S. § 41-1080;
 - ~~i-k.~~ Responses to questions regarding the applicant's background on the following subjects:
 - i. Whether the applicant has been convicted of a felony or an undesignated offense in this or any other jurisdiction and whether the applicant has been restored to civil rights.
 - ii. Whether the applicant has been convicted of a lesser offense involving moral turpitude or of a nature that is incompatible with the duties of a notary public in this or any other jurisdiction such as a finding that the applicant engaged in conduct that would violate A.R.S. § 41-313 if adjudicated in Arizona, or that the applicant engaged in conduct that constituted misconduct in public office or demonstrated dishonesty or a lack of veracity.
 - iii. Whether the applicant has ever had a professional license revoked, suspended, restricted, or denied for misconduct, dishonesty, or any cause that relates to the duties or responsibilities of a notary public such as a finding that the applicant engaged in conduct that would violate A.R.S. § 41-313 if adjudicated in Arizona, or that the applicant engaged in conduct that demonstrated dishonesty or a lack of veracity.
 - iv. Whether the applicant has had a notary commission revoked, suspended, restricted, or denied in this state or any other jurisdiction.
 - v. Statement that applicant is 18 years of age or older.
 - vi. Statement that applicant is an Arizona resident.
 - vii. Statement that applicant is a citizen or legal permanent resident of the United States.
 - viii. Whether the applicant can read and write English.
 - ~~vii-ix.~~ Whether the applicant holds or has held a notary commission in another state or jurisdiction and the commission number and jurisdiction, if applicable.
 - x. Whether the applicant will be performing notarizations in languages other than English, and a list of those

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- languages, if applicable.
2. The Secretary of State may require that the applicant provide a detailed explanation and supporting documentation for each response on the application regarding the applicant's background.
 3. Each applicant shall register with the Secretary of State the applicant's possession of an approved electronic notary token within 90 days of submitting the application.