

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and the agency decides to make substantial changes to the rule after it is proposed, the agency must prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, and the Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.). Publication of the Notice of Supplemental Proposed Rulemaking shall appear in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 13. PUBLIC SAFETY

CHAPTER 7. DEPARTMENT OF PUBLIC SAFETY REPORTING BY SCRAP-METAL AND USED-AUTOMOTIVE-COMPONENT DEALERS

Editor's Note: The following Notice of Supplemental Proposed Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 526.) The Governor's Office authorized the notice to proceed through the rulemaking process on March 22, 2012, and November 28, 2012.

R13-31]

PREAMBLE

1. Citations to the agency's Notice of Rulemaking Docket Opening, the Notice of Proposed Rulemaking, and any other Notices of Supplemental Proposed Rulemaking (if applicable) as published in the *Register* as specified in R1-1-409(A). A list of any other related notices published in the *Register* as specified in R1-1-409(A):

Notice of Rulemaking Docket Opening: 18 A.A.R. 772, March 30, 2012

Notice of Rulemaking Docket Opening: 18 A.A.R. 3325, December 21, 2012

Notice of Proposed Rulemaking: 19 A.A.R. 172, February 8, 2013

2. Article, Part, or Section Affected (as applicable) Rulemaking Action

Article 1	New Article
R13-7-101	New Section
R13-7-102	New Section
R13-7-103	New Section

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

Authorizing statute: A.R.S. § 17-1713(A)(4)

Implementing statute: A.R.S. §§ 44-1327(B), 44-1644(B), and 44-1647

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

Name: Gregory Zatcoff, Sergeant
Address: Arizona Department of Public Safety
PO Box 6638 Mail Drop 1000
Phoenix, AZ 85005-6638
Telephone: (602) 223-2264
Fax: (602) 223-2917
E-mail: gzatcoff@azdps.gov
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or

Name: Paul Swietek, Police Planner
Address: Arizona Department of Public Safety
PO Box 6638 Mail Drop 1205
Phoenix, AZ 85005-6638
Telephone: (602) 223-2049

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Fax: (602) 223-2740
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5. An agency's justification and reason why the rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

In an effort to protect the environment from improperly disposed lead-acid batteries, the legislature established reporting requirements for lead-acid battery disposal and recycling under A.R.S. § 44-1322. As part of this effort and to thwart unlawful recycling due to theft, a used-automotive-components dealer is required to submit an electronic record regarding receipt of most lead-acid batteries to the Department of Public Safety within 24 hours of receipt. The Department is required to establish standards for the electronic submission. This rulemaking establishes those standards.

Similarly, in an effort to combat the problem of metal theft, A.R.S. § 44-1644(B) requires a scrap-metal dealer to submit an electronic record regarding receipt of most scrap metal to the Department of Public Safety within 24 hours of receipt. The Department is required to establish standards for the electronic submission. This rulemaking establishes those standards.

The Department was granted exceptions to the rulemaking moratorium contained in Executive Order 2012-03 in e-mails from Mr. Steven Killian dated March 22, 2012, and November 28, 2012.

6. A reference to any study relevant to the rule that the agency reviewed and proposes to either rely on or 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 a study relevant to the rules. This rulemaking does not rely on scientific principles or methods.

7. An explanation of the substantial change which resulted in the supplemental notice:

As the result of public comment and additional advice from the Attorney General's Office, the Department reexamined the proposed rulemaking. The Department determined that A.R.S. §§ 44-1327(B) and 44-1644(B) clearly specify that the rulemaking intent was to only establish rules for electronic submission standards. While the Department had developed the proposed rules under its general rulemaking authority and its statutory authority under A.R.S. § 41-1713(B)(4) to utilize the advice and cooperation with sheriff's and local police for the prevention and discovery of crimes, the apprehension of criminals and the promotion of public safety, the Department has decided to limit its rulemaking in keeping with the original legislative intent for only electronic submission standards.

8. 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:

The rulemaking does not diminish a previous grant of authority to a political subdivision. However, A.R.S. § 44-1645 indicates that the state has preemption with regard to regulation of scrap-metal dealers.

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

The primary economic impact on used-automotive components dealers and scrap-metal dealers results from the legislature's decision to require recordkeeping and electronic submission of the records. The legislature specified the information that is required to be obtained of the lead-acid batteries or scrap metal received and the seller of the lead-acid batteries or scrap metal. The Department is providing a web site database and online registration process at no cost to the dealers. The dealer's economic impact will be to maintain a personal computer operating with commonly recognized web-browser software and Internet connectivity. Therefore the Department believes that there will be minimal economic impact from the standards established in this rulemaking. In 2011, statewide damages of metal theft exceeded \$120 million where City of Phoenix residents and businesses alone received damages of approximately \$30 million. The Department believes that there will be a marginal impact to consumers not having to replace property stolen or damaged due to metal and lead-acid battery theft and that the benefits of reduced theft outweigh the costs of the rules.

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

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Telephone: (602) 223-2264
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or

Name: Paul Swietek, Police Planner
Address: Arizona Department of Public Safety
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Phoenix, AZ 85005-6638
Telephone: (602) 223-2049
Fax: (602) 223-2740
E-mail: gzatcoff@azdps.gov
Web site: www.azdps.gov

11. 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: Monday, April 22, 2013
Time: 10:00 a.m.
Location: Arizona Peace Officer Standards and Training Board
2643 E. University Drive
Phoenix, AZ 85034
Close of record: Friday, April 26, 2013 at 5:00 p.m.

12. 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:

None

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

The rules do not require a permit

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:

Federal law is not applicable to the subject of the rules.

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:

No analysis was submitted.

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

None

14. The full text of the rules follows:

TITLE 13. PUBLIC SAFETY

**CHAPTER 7. DEPARTMENT OF PUBLIC SAFETY REPORTING BY SCRAP-METAL AND
USED-AUTOMOTIVE-COMPONENT DEALERS**

ARTICLE 1. REPORTING BY SCRAP-METAL AND USED-AUTOMOTIVE-COMPONENTS DEALERS

Section

R13-7-101. Definitions
R13-7-102. Standards for Electronic Reporting Receipt of Scrap Metal
R13-7-103. Standards for Electronic Reporting Receipt of Lead-acid Batteries

ARTICLE 1. REPORTING BY SCRAP-METAL AND USED-AUTOMOTIVE-COMPONENTS DEALERS

R13-7-101. Definitions

- A.** In addition to the definitions provided under A.R.S. §§ 44-132 and 44-1641, and for the purposes of this Article, the following definitions apply.
- B.** "Department" means the Arizona Department of Public Safety.
- C.** "Scrap Metal and Lead Acid Database" means the software program supported by the Arizona Department of Public Safety for the collection of data regarding the sale and purchase of scrap metal and lead-acid batteries.

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R13-7-102. Standards for Electronic Reporting Receipt of Scrap Metal

- A.** A scrap-metal dealer required to submit an electronic record under A.R.S. § 44-1644(A) shall submit the record into the web-browser based Scrap Metal and Lead Acid Battery Database made available by the Department. In order to submit the record, the scrap metal dealer shall create an electronic account through the software program. The scrap-metal dealer may:
1. Manually submit each record directly into the Scrap Metal and Lead Acid Battery Database, or
 2. Upload the individual or batch records from a point-of-sale software program or other software program into the Scrap Metal and Lead Acid Battery Database.
- B.** A scrap-metal dealer choosing to upload records shall conform to the following electronic upload submission standards:
1. Have available and utilize Internet connectivity for submission to the Scrap Metal and Lead Acid Battery Database;
 2. Ensure when choosing to upload an individual or batch record from another software program that:
 - a. The record is not any of the following electronic formats:
 - i. Joint Photographic Experts Group (JPEG), Tagged Image File Format (TIFF), Graphics Interchange Format (GIF), Portable Network Graphics (PNG), or any other picture format;
 - ii. Portable Document Format (PDF);
 - iii. Word processing program format; and
 - b. The data submitted to the Scrap Metal and Lead Acid Battery Database is in a format that allows for computer data parsing and configuration of the Scrap Metal and Lead Acid Battery Database to accept the data into the database.
 3. Provide the Department any new specifications for the electronic record to allow for reconfiguration of the Scrap Metal and Lead Acid Battery Database if the scrap-metal dealer makes any changes to the format submission after the initial submission.

R13-7-103. Standards for Electronic Reporting Receipts of Lead-acid Batteries

- A.** A used-automotive components dealer required to submit an electronic record under A.R.S. § 44-1327(A) shall submit the record into the web-browser based Scrap Metal and Lead Acid Battery Database made available by the Department. In order to submit the record, the used-automotive components dealer shall create an electronic account through the software program. The used-automotive components dealer may:
1. Manually submit each record directly into the Scrap Metal and Lead Acid Battery Database, or
 2. Upload the individual or batch records from a point-of-sale software program or other software program into the Scrap Metal and Lead Acid Battery Database.
- B.** A used-automotive components dealer choosing to upload records shall conform to the following electronic upload submission standards:
1. Have available and utilize Internet connectivity for submission to the Scrap Metal and Lead Acid Battery Database;
 2. Ensure when choosing to upload an individual or batch record from another software program that:
 - a. The record is not any of the following electronic formats:
 - i. Joint Photographic Experts Group (JPEG), Tagged Image File Format (TIFF), Graphics Interchange Format (GIF), Portable Network Graphics (PNG), or any other picture format;
 - ii. Portable Document Format (PDF);
 - iii. Word processing program format; and
 - b. The record shall indicate the type description as lead-acid battery;
 - c. The data submitted to the Scrap Metal and Lead Acid Battery Database is in a format that allows for computer data parsing and configuration of the Scrap Metal and Lead Acid Battery Database to accept the data into the database.
 3. Provide the Department any new specifications for the electronic record to allow for reconfiguration of the Scrap Metal and Lead Acid Battery Database if the used-automotive components dealer makes any changes to the format submission after the initial submission.