

## 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 7. EDUCATION

#### CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION

#### PREAMBLE

1. **Section Affected**

R7-3-101	<b><u>Rulemaking Action</u></b>
R7-3-102	New Section
R7-3-103	New Section
R7-3-104	New Section
R7-3-105	New Section
R7-3-106	New Section
R7-3-107	New Section
R7-3-108	New Section
R7-3-201	New Section
R7-3-202	New Section
R7-3-203	New Section
R7-3-204	New Section
R7-3-205	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. § 15-1852(A)(2)  
Implementing statute: A.R.S. § 15-1852(A)(2)
3. **The effective date of the rules:**

August 22, 1996
4. **A list of all previous notices appearing in the Register addressing the exempt rule:**

Notice of Public Information:  
1 A.A.R. 193, July 1994
5. **The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name: Edward A. Johnson, Executive Director  
Address: Commission for Postsecondary Education  
2020 North Central Avenue Suite 275  
Phoenix, Arizona 85004  
Telephone: (602) 229-2591  
Fax: (602) 229-2599
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

A.R.S. § 15-1852(A)(2) requires that the Commission adopt rules to carry out its statutory obligations, additionally, A.R.S. § 15-1852(C) holds that the Commission is exempt from the rulemaking provisions of the Administrative Procedures Act, or "APA" (Arizona Revised Statutes, Title 41, Chapter 6), "but shall adopt rules in a manner substantially similar" to that prescribed in APA.
7. **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.
8. **The preliminary summary of the economic, small business, and consumer impact:**

It is the judgment of staff that the impact of this proposed rule is minimal. The rule is designed to provide Arizona postsecondary institutions with an efficient, inexpensive process to propose and adopt rules that impact all educational sectors. Rulemaking pro-

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cedures are designed to minimize any paperwork burdens on the three constituencies. Yet each is provided an opportunity to comment upon rules in a public setting prior to their adoptions.

Because the proposed Commission rulemaking process parallels that of other state agencies, there are no unusual or unanticipated impacts that would be unique to the Commission process nor do there appear to be any effects on state revenues.

Any negative impacts are not likely to arise in the rulemaking process itself, but rather with individual rules approved under the process that could have negative impacts.

There are no apparent alternative methods of rulemaking that are less intrusive or less costly.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):  
There were no changes and no written comments by the public.
10. A summary of the principal comments and the agency response to them:  
There were no changes and no written comments by the public.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:  
Not applicable.
12. Incorporations by reference and their location in the rules:  
None
13. Was this rule previously adopted as an emergency rule?  
No
14. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION

ARTICLE 1. RULEMAKING

<u>R7-3-101.</u>	<u>General Provisions</u>
<u>R7-3-102.</u>	<u>Incorporation by Reference</u>
<u>R7-3-103.</u>	<u>Commission Rulemaking Reference</u>
<u>R7-3-104.</u>	<u>Notice of Oral Proceedings</u>
<u>R7-3-105.</u>	<u>Economic, Small Business, and Consumer Impact Summary</u>
<u>R7-3-106.</u>	<u>Effective Date of Rules</u>
<u>R7-3-107.</u>	<u>Variance Between Adopted Rule and Published Notice of Proposed Rule Adoption</u>
<u>R7-3-108.</u>	<u>Oral Proceedings</u>

ARTICLE 2. ADJUDICATIONS

<u>R7-3-201.</u>	<u>Definitions</u>
<u>R7-3-202.</u>	<u>Contested Cases, Notice, Hearing, Records</u>
<u>R7-3-203.</u>	<u>Decisions and Orders</u>
<u>R7-3-204.</u>	<u>Hearings and Evidence</u>
<u>R7-3-205.</u>	<u>Rehearing and Decisions</u>

ARTICLE 1. RULEMAKING

R7-3-101. General Provisions

A. Definitions. In this Article, unless the context otherwise requires:

1. "Agenda item" means a specified matter listed on an agenda included as part of the public notice of a Commission meeting pursuant to A.R.S. § 38-431.02.
2. "Commission" means the Commission for Postsecondary Education.
3. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency.

4. "Public meeting" means a meeting held under and subject to the Open Meeting Act, A.R.S. §§ 38-431 through 38-431.09.
  5. "Rule" means a statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the Commission. Rule includes the amendment or repeal of a prior rule, but does not include intra-agency memoranda.
  6. "Rulemaking" means the process for formulation and adoption of a rule.
- B. The Commission shall follow the uniform system for numbering, form and style as prescribed by the Secretary of State in the Arizona Administrative Code.

R7-3-102. Incorporation by Reference

The Commission may incorporate by reference in its rules and without publishing the incorporated matter in full all or any part of a code, standard, rule, or regulation that is adopted by an agency of the United States or this state, or a nationally recognized organization or association, if incorporation of its text in Commission rules would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the Commission rules shall fully identify the incorporated matter by location, date, and shall state that the rule does not include any later amendments or editions of the incorporated matter. The Commission shall file 3 copies of the incorporated matter with the Secretary of State at the time the adopted rule is filed.

R7-3-103. Commission Rulemaking Record

The Commission shall maintain an official rulemaking record for each rule proposed. The record and matter incorporated by reference shall be available for public inspection. The Commission rulemaking record shall contain all of the following:

1. Reference to the specific authority under which the rule is proposed to be adopted, amended, or repealed;
2. The name and address of Commission personnel with whom persons may communicate regarding the rule;
3. An informative summary of the proposed rule;

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4. The time during which written submissions may be made and the time and place where oral comments may be made;
5. The current status of the proposed rule;
6. Any known timetable for Commission decisions or other action for the rulemaking;
7. A copy of all publications in the *Arizona Administrative Register* or a newspaper of general circulation with respect to the proposed action;
8. All written petitions, requests, submissions, and comments received by the Commission and all other written materials considered or prepared by the Commission in connection with the proposed action;
9. The official minutes of all oral proceedings regarding the rule;
10. A copy of the economic, small business, and consumer impact summary and the minutes of any public meeting at which the rule was considered by the Commission;
11. A statement of the time, place and nature of the proceedings for the adoption, amendment or repeal of the rule;
12. A copy of the final rule, including the date of its adoption and the date of its filing and publication.

**R7-3-104. Notice of Oral Proceedings**

The Commission or its staff shall request that the Secretary of State publish in the *Arizona Administrative Register* notice of an oral proceeding concerning proposed action by the Commission regarding a rule. The notice shall include a statement of the date, time, place, and nature of the proceedings, and the name and address of Commission personnel with whom persons may communicate regarding the rule. If the Secretary of State declines to publish such information, the Commission or its staff shall cause the information to be published in a newspaper of general circulation. If an oral proceeding regarding a rule is scheduled, the Commission shall allow at least 30 days to elapse after the publication date of the notice before adopting, amending or repealing the rule.

**R7-3-105. Economic, Small Business, and Consumer Impact Summary**

The Commission shall cause to be prepared an economic, small business, and consumer impact summary. The economic, small business, and consumer impact summary shall be a brief summary of the following information:

1. An identification of the proposed rulemaking;
2. An identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking;
3. An analysis of the probable costs and benefits from the implementation and enforcement of the proposed rule making on the Commission, and on any political subdivision or business directly affected by the proposed rule making;
4. The probable impact of the proposed rulemaking on employment in business, agencies, and political subdivisions of this state affected by the proposed rulemaking;
5. A statement of the probable impact of the proposed rule making on small business;
6. A statement of the probable effect on state revenues;
7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making.

**R7-3-106. Effective Date of Rules**

A rule adopted by the Commission becomes effective when a certified original and 2 copies of the rule are delivered to the Office of the Secretary of State unless a later date is required by the constitution of Arizona, statute, or court order or as specified in the rule.

**R7-3-107. Variance Between Adopted Rule and Published Notice of Proposed Rule Adoption**

- A. If, as a result of public comment or internal review, the Commission determines that a proposed rule requires substantial change pursuant to subsection (B), the Commission shall issue a supplemental notice containing the changes in the proposed rule, in accordance with R7-3-104. The Commission shall provide for additional public comment pursuant to R7-3-108.
- B. In determining whether a rule which the Commission intends to adopt is substantially different from the rule as originally proposed by the Commission, the following shall be considered:
  1. The extent to which the subject matter of the proposed rule or the issues determined by that rule are different from the subject matter or issues involved in the rule which the Commission intends to adopt.
  2. The extent to which the effects of the proposed rule differ from the effects of the rule which the Commission intends to adopt.
  3. The extent to which all persons affected by the rule which the Commission intends to adopt should have understood that the proposed rule would affect their interests.

**R7-3-108. Oral Proceedings**

- A. When the Commission proposes a rule, such proposed action shall be presented as a specifically identified agenda item for review at a public meeting of the Commission, and such public meeting shall take place no less than 30 days prior to the public meeting at which the Commission intends to adopt, amend, or repeal the rule. At the time it proposes a rule, the Commission may schedule an oral proceeding on the proposed action. Any person may submit written statements, arguments, and supporting data on the Commission's proposed action to the Executive Director of the Commission within 30 days following the date the Commission proposes the rule.
- B. The Commission shall schedule an oral proceeding on a proposed rule if, within 30 days after proposing the rule, a written request for an oral proceeding is submitted to the Commission by no fewer than 5 persons. An oral proceeding may not be held earlier than 30 days after notice of its date, location, and time is published. If an oral proceeding is scheduled, the Commission shall post, in a location as required for notice of a public meeting, a written notice of the place and date of the proceeding no less than 20 days in advance thereof. The Commission, a member of the Commission, or an official of the Commission's staff designated by the Commission shall preside at the oral proceeding. At the oral proceeding, minutes of the meeting shall be taken and persons may present oral argument, views, and supporting data on the proposed rule. The person presiding at the hearing shall exclude unduly repetitious argument.
- C. Prior to its meeting at which it intends to adopt, amend, or repeal a rule, the Commission shall be provided with a copy of the proposed action; an informative summary of such action; a memorandum summarizing the written public comment received; the economic, small business, and consumer impact summary; and the minutes of any oral proceeding regarding the proposed action. The Commission shall consider all such information prior to adopting, amending, or repealing the rule.

**ARTICLE 2. ADJUDICATIONS**

**R7-3-201. Definitions**

In this Article, unless the context otherwise requires:

1. "Commission" means the Commission for Postsecondary Education, including the state postsecondary review

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entity, acting in accordance with responsibilities as prescribed by A.R.S. § 15-1851(A).

2. "Contested case" means any proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by the Commission after an opportunity for hearing.

**R7-3-202. Contested Cases, Notice, Hearing, Records**

- A. In a contested case, the parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall be given at least 20 days prior to the date set for the hearing.
- B. The notice shall include:
1. A statement of the time, place, and nature of the hearing;
  2. A statement of the legal authority and jurisdiction under
- C. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. Informal disposition may be made of any contested case by stipulation, agreed settlement, consent agreement, or default.
- D. The record in a contested case shall include:
1. All pleadings, motions, and interlocutory rulings;
  2. Evidence received or considered;
  3. A statement of matters officially noticed;
  4. Objections and offers of proof and rulings thereon;
  5. Proposed findings and exceptions;
  6. Any decision, opinion, or report by the officer presiding at the hearing;
  7. All staff memoranda, other than privileged communications, or data submitted to the hearing officer or members of the Commission in connection with their consideration of the case.
- E. A hearing before a hearing officer or the Commission in a contested case 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 Commission.
- F. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

**R7-3-203. Decisions and Orders**

Any final decision or order adverse to a party in a contested case shall be in writing or stated in the record. Any final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by mail to their last known address of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to the party's attorney of record.

**R7-3-204. Hearings and Evidence**

- A. A hearing in a contested case shall be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. 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. Hearings may be held in any place determined by the Commission or its hearing officer.
- B. 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.

- C. 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 Commission. 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 Commission's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

**R7-3-205. Rehearing of Decisions**

- A. A party in a contested case before the Commission who is aggrieved by a decision rendered in such case may file with the Commission not later than 20 days after receipt of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor. A motion for rehearing or review under this Section may be amended at any time before it is ruled upon by the Commission. A response may be filed within 10 days after service of such motion by any other party. The Commission may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- B. A rehearing or review of a decision may be granted for any of the following causes materially affecting the moving party's rights:
1. Irregularity in the administrative proceedings of the Commission or its hearing officer, or abuse of discretion, whereby the moving party was deprived of a fair hearing;
  2. Misconduct of the Commission or its hearing officer or the prevailing party;
  3. Accident or surprise which could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
  5. Excessive or insufficient penalties;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;
  7. That the decision is not justified by the evidence or is contrary to the law.
- C. The Commission may affirm or modify the decision or grant a rehearing or review to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (B). An order granting a rehearing or review shall specify with particularity the ground or grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters so specified.
- D. Not later than 20 days after a decision is rendered, the Commission may on its own initiative order a rehearing or review of its decision for any reasons for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Commission may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting such a rehearing or review shall specify the grounds therefor.
- E. When a motion for rehearing or review 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 Commission for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.