

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1995, each agency shall begin the rulemaking process by 1st filing a Notice of Proposed Rulemaking, containing the preamble and the full text of the rules, with the Secretary of State's Office. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the Arizona Administrative Register.

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 adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

PREAMBLE

1. **Sections Affected**

	Rulemaking Action
Article 7	New Article
R7-2-701	New Section
R7-2-702	New Section
R7-2-703	New Section
R7-2-704	New Section
R7-2-705	New Section
R7-2-706	New Section
R7-2-707	New Section
R7-2-708	New Section
R7-2-709	New Section
R7-2-710	New Section
R7-2-711	New Section
R7-2-712	New Section
R7-2-713	New Section
R7-2-714	New Section
R7-2-715	New Section
R7-2-716	New Section
R7-2-717	New Section
R7-2-718	New Section
R7-2-719	New Section
R7-2-720	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. § 15-203(A).

Implementing statute: A.R.S. §§ 15-184(R), 15-203(B)(4), and 15-272.

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

Name: Corinne L. Velasquez, Administrator

Address: State Board of Education
1535 West Jefferson, Room 418
Phoenix, Arizona 85007

Telephone: (602) 542-5057

Fax: (602) 542-3046

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

R7-2-701 through R7-2-720 will set forth the procedures for conducting hearings before the State Board of Education or advisory committees to the Board who have been appointed by the Board to conduct hearings, such as the Professional Practices Advisory Committee. Hearings are held for such matters as noncompliance with the Uniform System of Financial Records, charter school matters and certification matters. These rules will establish a uniform and consistent hearing process for all hearings before the Board or its advisory committees and will supersede portions of R7-2-205 and R7-2-802.

Arizona Administrative Register
Notices of Proposed Rulemaking

5. 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

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

It is not anticipated that the adoption of these rules will have any impact on the economy, small business, or consumer. This is a process used by the Board and its advisory committees for the conduct of hearings and there are no new requirements being placed on any party that would have a financial impact on the party. These rules will clarify the process for hearings and will allow a party to a hearing a clearer, more concise understanding of the process. Research of hearing requirements and procedures will also be simplified with the adoption of these rules.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business and consumer impact statement:

Name: Corinne L. Velasquez
Address: State Board of Education
1535 West Jefferson, Room 418
Phoenix, Arizona 85007
Telephone: (602) 542-5057
Fax: (602) 542-3046

8. The time, place and nature of the proceedings for the adoption, amendment, or repeal of the rules, if no proceeding is scheduled, when, where, and how persons may request an oral proceeding on the proposed rules:

An oral proceeding on the proposed rulemaking is scheduled as follows:

Date: January 27, 1997
Time: 10:30 a.m.
Location: State Board of Education
1535 West Jefferson, Room 417
Phoenix, Arizona 85007

Written comments may be submitted on or before 5 p.m. on January 14, 1997, to the contact person listed above.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

10. Incorporations by reference and their location in the rules:

None.

11. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 7. ADJUDICATIONS

<u>R7-2-701.</u>	<u>Definitions</u>
<u>R7-2-702.</u>	<u>Contested Cases; Notice; Hearing Records</u>
<u>R7-2-703.</u>	<u>Decisions and Orders</u>
<u>R7-2-704.</u>	<u>Hearings and Evidence</u>
<u>R7-2-705.</u>	<u>Request for Hearing</u>
<u>R7-2-706.</u>	<u>Denial of Request for Hearing</u>
<u>R7-2-707.</u>	<u>Failure to Appear; Default</u>
<u>R7-2-708.</u>	<u>Rehearing of Decisions</u>
<u>R7-2-709.</u>	<u>Representation</u>
<u>R7-2-710.</u>	<u>Intervention</u>
<u>R7-2-711.</u>	<u>Consolidation and Severance</u>
<u>R7-2-712.</u>	<u>Filing; Computation of Time; Extension of Time</u>
<u>R7-2-713.</u>	<u>Service; Proof of Service</u>
<u>R7-2-714.</u>	<u>Subpoenas</u>
<u>R7-2-715.</u>	<u>Conduct of Hearing</u>
<u>R7-2-716.</u>	<u>Testimony of Pupils</u>
<u>R7-2-717.</u>	<u>Evidence</u>
<u>R7-2-718.</u>	<u>Stipulations</u>
<u>R7-2-719.</u>	<u>Recommended Decision</u>
<u>R7-2-720.</u>	<u>Decision</u>

ARTICLE 7. ADJUDICATIONS

<u>R7-2-701.</u>	<u>Definitions</u>
<u>In this Article, unless the context otherwise specifies:</u>	
1.	<u>"Board" means the State Board of Education.</u>
2.	<u>"Chairman" means the chairperson of the Professional Practices Advisory Committee, established pursuant to R7-2-205.</u>
3.	<u>"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 State Board of Education after an opportunity for hearing.</u>
4.	<u>"Department" means the Department of Education.</u>
5.	<u>"Hearing body" means the Board, the Professional Practices Advisory Committee, or a hearing officer.</u>
6.	<u>"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.</u>
7.	<u>"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.</u>

Arizona Administrative Register
Notices of Proposed Rulemaking

8. "PPAC" means the Professional Practices Advisory Committee, established pursuant to R7-2-205 to conduct hearings related to certification or recertification matters regarding immoral conduct, unprofessional conduct, unfitness to teach and revocation, suspension, or surrender of certificates.
9. "Pupil" means any student enrolled in an Arizona public or private school.

R7-2-702. 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. At any time before the hearing commences, a notice may be amended to add additional issues or make additional assertions.
- 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 which the hearing is to be held;
 3. A reference to the particular Sections of the statutes and rules involved;
 4. 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.
- C. Opportunity shall be afforded all parties to respond and present evidence and argument on the issues involved. Informal disposition may be made of any contested case by stipulation, agreed settlement, consent agreement, or default.
- D. A hearing before a hearing body 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 Board.
- E. The hearing body may reschedule the hearing, maintaining due regard for the interests of justice and the orderly and prompt conduct of the proceedings
- F. 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 body in connection with its consideration of the case.
- G. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

R7-2-703. 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.

R7-2-704. 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 hearing body.
- 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 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.

R7-2-705. Request for Hearing

When a request for a hearing is filed with the Board, the request shall be in writing and shall state the specific grounds which are the basis of the hearing request and the statute, rule, or other legal basis entitling the person to a hearing.

R7-2-706. Denial of Request for Hearing

If the Board denies the request for a hearing, the denial shall be in writing and shall state the reasons therefor. A denial of a request for hearing is final and not subject to further administrative review.

R7-2-707. Failure to Appear; Default

- A. If, after being served with a notice of hearing, a party fails to appear at the time and place of hearing, rehearing conference, or other proceeding of a contested case, a proposed default order that includes a statement of the reasons to default the nonparticipating party may be served upon all parties.
- B. Within 7 days after service of a proposed default order, the party against whom it was issued may file a written request to deny the proposed default order, including a statement of the reasons it should be deny.
- C. The hearing body shall either enter or deny the default order after expiration of the time specified in subsection (B) or upon filing of the request to deny.
- D. After entering a default order, the hearing body may conduct any further proceedings necessary to complete the contested case without the defaulted party and shall determine all issues in the hearing, including those affecting that party.

R7-2-708. Rehearing of Decisions

- A. A party in a contested case who is aggrieved by a decision rendered by the Board may file with the Board, 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 Board. A response may be filed within 10 days after service of such motion by any other party. The Board 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:

Arizona Administrative Register
Notices of Proposed Rulemaking

1. Irregularity in the administrative proceedings of the hearing body, or abuse of discretion, whereby the moving party was deprived of a fair hearing.
 2. Misconduct of the hearing body 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 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 Board may affirm or modify the decision or grant a rehearing or review to all or any of the parties, 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. 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 or review for a reason not stated in the motion. The order granting such a rehearing or review shall specify the grounds therefor.
- E. Not later than 20 days after a decision is rendered, the Board 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. The order granting such a rehearing or review shall specify the grounds therefor.
- F. 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 Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.

R7-2-709. Representation

Parties may participate in the hearing in person or through an attorney. A partnership may appear through any partner, an association through a key administrator or other executive officer, and an agency or a governmental subdivision or unit of a governmental subdivision may appear through an employee.

R7-2-710. Intervention

Any person seeking to intervene in any contested case shall file a written request to intervene. Intervention shall be granted only if the hearing body determines that:

1. The legal interests of the person requesting to intervene may be substantially affected by the outcome of the contested case;
 2. Intervention will not unduly delay or bias the hearing;
 3. The interest of the person requesting to intervene is not adequately represented by another party to the contested case; and
 4. The proposed intervention is in the interests of justice.
- B. The request shall state the claims or defenses for which intervention is sought, briefly describing the interests that may be affected by the outcome of the case and including such facts as demonstrate those interests.
- C. The request shall be filed and served upon all parties at least 15 days prior to hearing.
- D. Any party may file a response to the request to intervene within 5 days of service of the request upon the party.

- E. The hearing body shall decide on the request to intervene at least 5 days prior to the hearing date and shall promptly notify the persons requesting to intervene and all parties of the decision. The hearing body may reschedule a hearing or prehearing conference to provide sufficient time for the parties to respond to a request to intervene or to prepare for the hearing or prehearing conference.
- F. The hearing body may limit the intervener's participation to issues in which the intervener has a particular interest.

R7-2-711. Consolidation and Severance

- A. When proceedings involving a common question of law or fact or common parties are pending before the hearing body, it may, upon its own volition or upon request of any party, order a joint hearing on any or all the matters at issue.
- B. In furtherance of convenience, to avoid prejudice, or when separate hearings will be conducive to expedition and economy, the hearing body may, upon its own volition or upon request of any party, order any proceeding severed with respect to some or all issues or parties.

R7-2-712. Filing; Computation of Time; Extension of Time

- A. All papers concerning a contested case shall be filed within the time limit, if any, for such filing.
- B. All papers filed in any contested case shall be typewritten or legibly written on paper 8 1/2 by 11 inches in size, shall contain the name and address of the party or other correspondent, shall be properly captioned and designate the title and case number, shall state the name and address of each party served with a copy, and shall be signed by the party or, if represented, by the party's attorney. The signature certifies that the signer has read the paper, that to the best of the signer's knowledge, information, and belief there is good ground to support its contents, and that it is not interposed for delay.
- C. In computing any period of time prescribed or allowed by this Article, or any notice or order concerning a contested case, the day of the act, event, or default from which the designated period of time begins to run shall not be included. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall not be included in the computation. When that period of time is 11 days or more, intermediate Saturdays, Sundays, and legal holidays shall be included in the computation. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday.
- D. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party by another party, and the notice or other paper is served by mail, 5 days shall be added to the prescribed period. This subsection has no application to notices, orders, or other papers issued by the hearing body.
- E. For good cause shown, the presiding officer may grant continuances and extensions of time for filing notices or other papers.

R7-2-713. Service; Proof of Service

- A. After a notice of hearing has initiated a contested case, a copy of every paper filed by a party, or individual seeking to intervene, shall be served on all parties to the contested case, or their lawyers if represented, at the same time the paper is filed. Service shall be complete at the time of personal service or on the date placed in the mail if served by certified or regular mail addressed to the last address of record in the contested case file.
- B. The following evidences completed service:

Notices of Proposed Rulemaking

1. If personally served, an affidavit of personal service, sworn to by the individual serving the paper and stating the name of the individual upon whom it was served, where service was made, and the date of such service; or
 2. If served by certified mail, the return receipt signed by the party served or someone authorized to act on behalf of the party served; or
 3. If served by regular or certified mail, either a statement subscribed on the paper filed, or an affidavit indicating the date mailed and listing those to whom it was mailed.
- C. The Department shall serve notices of hearing, findings, conclusions, and recommendations of the hearing body, and decisions and final orders of the Board, either by personal service or by certified mail. All other papers required to be served may be served by regular or certified mail or may be personally served.
- D. When a party is represented by an attorney, service shall be made on the attorney. If a notice of hearing shows service on the Attorney General, all papers served thereafter shall be served on the Assistant Attorney General named on the notice of hearing or who later appears on behalf of the Attorney General, or if no Assistant Attorney General is named, then on the Attorney General, Civil Division, Education Section.

R7-2-714. Subpoenas

- A. The hearing body 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.
- B. A request for a hearing subpoena shall be in writing and served on each party at least 7 days prior to the date set for hearing and shall state:
1. The name of the contested case, the case number, and the time and place where the witness is expected to appear and testify;
 2. The name and address of the witness subpoenaed; and
 3. The documents, if any, sought to be provided.
- C. On application of a party or the agency and for use as evidence, the hearing body may permit a deposition to be taken, 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.
- D. The individual to whom a subpoena is directed shall comply with its provisions unless, prior to the date set for hearing, 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.
- E. 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 Department.

R7-2-715. Conduct of Hearing

- A. 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.
- B. All hearings are open to public observation, except where closed pursuant to an express provision of law. A hearing conducted by telephone, television, or other electronic means shall be made available to members of the public by the opportunity to view or listen to the tape of the hearing, and to inspect any transcript of the hearing that has been prepared and filed with the Department.

- C. Conduct at any hearing that is disruptive or shows contempt for the proceedings shall be grounds for exclusion from further participation or observation.

R7-2-716. Testimony of Pupils

- A. All individuals present at a hearing regarding an action against a certificate shall:
1. Keep confidential the name of any pupil involved in the hearing, unless disclosure is with the consent of the pupil's parent or guardian or by order of the superior court. This action does not prevent disclosure of the pupil's name to any party to the hearing.
 2. Keep confidential the testimony of any pupil, all of which shall be taken in executive session, except that the Board office shall be furnished a confidential copy of the pupil's testimony as part of the complete transcript of the hearing. The individuals present during the executive session shall be determined by the presiding officer in consultation with the Attorney General's office except that the respondent and counsel shall always be permitted to be present. The transcripts of testimony taken during executive session shall be maintained by the Department.
- B. The Director of the Certification Unit shall:
1. Make available a consent form which requires the signature of the pupil's parent or guardian prior to disclosure of the pupil's name;
 2. Assign a fictitious name to all witnesses identified as pupils on the witness lists provided by the complainant and respondent if not in receipt of written parental or guardian consent for disclosure;
 3. Notify hearing participants, prior to and during the hearing, of any fictitious names to be used.
- C. The presiding officer shall instruct all individuals present at the hearing of the confidentiality requirements of A.R.S. § 15-551 and this rule.

R7-2-717. Evidence

- A. All witnesses shall testify under oath or affirmation. 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 true disclosure of the facts. 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.
- B. Unless otherwise ordered by the hearing body, documentary evidence shall be limited in size when folded to 8½ 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 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 in such volume 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.

R7-2-718. Stipulations

Parties to any contested case 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

Arizona Administrative Register
Notices of Proposed Rulemaking

the parties shall be binding upon the Department unless incorporated into the decision of the Board.

R7-2-719. Recommended Decision

- A. A recommended decision shall be prepared for the Board by the PPAC or hearing officer.
- B. A recommended decision shall be delivered to the Board within 30 days after the close of the hearing or the date ordered for submission of proposed findings or legal memoranda, whichever comes last, unless the Board extends the period for good cause.

R7-2-720. Decision

- A. A decision shall include separately stated findings of fact, conclusions of law. The experience, technical competence, or specialized knowledge of the Board and that of the Department staff may be utilized in evaluating the evidence.

- B. When the Board is the hearing body, the decision shall be rendered within 60 days following the final day of the hearing or the date ordered for submission of proposed findings or legal memoranda, whichever comes last.
- C. Within 30 days after receipt of any recommended decision from the PPAC or a hearing officer, the Board shall render a decision to affirm, reverse, adopt, modify, supplement, amend or reject the recommendation and findings of fact in whole or in part, may remand the matter to the hearing body with instructions, or may convene itself as the hearing body.
- D. If no request for rehearing or review has been timely filed by a party, a decision in a contested case is effective 10 days from the date served on that party and is not subject to judicial review pursuant to A.R.S. Title 12, Chapter 7, Article 6 (§12-901 et seq.).

NOTICE OF PROPOSED RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 2. ARIZONA RACING COMMISSION

PREAMBLE

1. **Sections Affected**

Sections Affected	Rulemaking Action
R19-2-109	Amend
R19-2-123	Amend
R19-2-322	Amend
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. § 5-104(A)(2)
Implementing statutes: A.R.S. §§ 5-104(B) and 5-108.05(A)
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Paul Ryneveld
Address: Department of Racing
3877 North 7th Street
Phoenix, Arizona 85014
Telephone: (602) 277-1704
Fax: (602) 277-1165
4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The changes will clarify the appeals process by outlining procedures concerning a stay of appeal, will clean up an error concerning the duration of an apprentice jockey's weight allowance, and further define the circumstance in which jockeys may have wagers placed for them. The changes were initiated by the Department to bring these sections into compliance with national standards.
5. **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:**

None.
6. **The preliminary summary of the economic, small business, and consumer impact:**

None.
7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Paul Ryneveld
Address: Department of Racing
3877 North 7th Street, Suite 201
Phoenix, Arizona 85014
Telephone: (602) 277-1704

Arizona Administrative Register
Notices of Proposed Rulemaking

Fax: (602) 277-1165

8. **The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**
No oral proceedings are scheduled. Contact Paul Ryneveld in writing to request 1. At least 5 requests need to be submitted within the 30 days following publication of the proposed rulemaking in order to schedule an oral proceeding.
9. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
None.
10. **Incorporations by reference and their location in the rules:**
None.
11. **The full text of the rules follows:**

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 2. ARIZONA RACING COMMISSION

ARTICLE 1. HORSE RACING

Section

- R19-2-109. Jockeys
R19-2-123. Procedure before the Department

ARTICLE 1. HORSE RACING

R19-2-109. Jockeys

A. Generally:

1. All jockeys shall pass a physical examination by a physician designated by the permittee. Such examination is valid for a 12-month period. The stewards may require that any jockey be reexamined and may refuse to allow any jockey to ride until the jockey successfully passes such an examination. The stewards or their designee may require that any jockey provide blood or urine samples for analysis upon request.
2. A jockey who is to ride in a race shall report to the jockey room at the time appointed as posted in the jockey room and shall remain in this room between races until all engagements for the day have been fulfilled.
3. Only standard jockey attire shall be allowed in official races.
4. Only jockeys, their attendants, and racing officials are permitted in the jockey room.
5. A jockey is entitled to a mount fee upon the command by the paddock judge to mount.
6. If a trainer engages 2 or more jockeys for the same race, the owner shall pay the losing fee for each jockey so engaged who does not ride in that race.

B. Equipment

1. A bridle used in races shall not exceed 2 pounds in weight.
2. A whip used in races shall be at least 1/4 inch in diameter and shall not exceed 1 pound in weight or 29 inches in length including the popper.
3. A helmet, properly fastened, shall be worn by all jockeys, apprentice jockeys, and any other rider while exercising or ponying a horse.

C. Weight; weighing

1. A jockey shall weigh out and weigh in without a whip or a bridle.
2. A jockey may be weighed out for a race only if a fee for a losing mount in that race has been deposited with the permittee. Failure to comply with this subsection may result in the horse which the jockey is to ride being declared out of the race.

3. A jockey shall declare the amount of overweight at the time of weighing out.
 - a. No jockey shall pass the scale more than 2 pounds overweight without the consent of the owner or trainer of the horse the jockey is to ride.
 - b. No jockey shall pass the scale more than 7 pounds overweight without the consent of the stewards.
 - c. A horse shall not be disqualified because of any overweight it may have carried.
 - d. Any overweight or change of weight different from that published in the official program shall be publicly posted or announced.

4. A jockey shall ride such jockey's horse to the place of weighing in immediately after pulling up, dismount after obtaining permission from the official in charge, and present himself to be weighed by the clerk of the scales.
 - a. A jockey shall unsaddle such jockey's own horse unless the jockey has obtained permission from the official in charge.
 - b. An attendant may touch the horse only by its bridle unless such attendant has obtained permission from the official in charge.
 - c. No one shall touch the equipment of a jockey who has returned to the winner's circle to dismount until the jockey has been weighed in unless permission has been obtained from the official in charge.
5. A jockey who is prevented from riding to the place of weighing because of accident or illness which disables either such jockey or such horse shall walk or be assisted to the scales.
6. No jockey shall be more than 1 pound short of such jockey's weight.
7. No jockey shall dismount before reaching the scales.
8. No jockey shall dismount without permission.
9. No jockey shall touch intentionally any person or thing other than such jockey's own equipment before weighing in.

D. Apprentice jockeys

1. Licenses; certificates
 - a. An application for an Apprentice Jockey License shall be accompanied by a certified copy of the birth certificate or other satisfactory evidence of the date of birth of the applicant.
 - b. An Apprentice Jockey Certificate shall be issued by the stewards if the applicant:
 - i. Is over the age of 16 and, if under 18, has a parent or guardian sign such apprentice jockey's license application assuming full

Arizona Administrative Register
Notices of Proposed Rulemaking

- ii. financial responsibility for the applicant.
 - ii. Is approved working a horse out of the gate by the starter.
 - iii. Has experience in galloping or exercising a horse acceptable to the stewards.
 - iv. Has such apprentice jockey's own tack and other required wearing apparel.
 - c. An apprentice jockey license expires when the allowances set forth below have been claimed and shall be surrendered to the Department. If the license expires during the term of the licensing period a jockey license will be issued at no additional cost.
2. Allowances
- a. An apprentice jockey who has not been licensed previously in any country may claim the following allowances in all overnight races except handicaps:
 - i. Five pounds, to be continued for 1 year from the date of such apprentice jockey's fifth winner.
 - ii. If the apprentice jockey has not ridden 40 winners within a period of 1 year from the date of such apprentice jockey's fifth winner, 5 pounds, to be continued for 3 years from the date of such apprentice jockey's first 5th winner and or until such apprentice jockey has ridden 40 winners, which ever comes 1st.
 - b. ~~The calculation of the time for which an apprentice allowance may be claimed shall not include:~~
 - i. ~~Time spent in the armed forces.~~
 - ii. ~~Time during which the apprentice jockey is physically incapacitated.~~
 - b. If an apprentice jockey is unable to ride for a period of 14 consecutive days or more after the date of such jockey's 5th winner, the stewards may extend the time the weight allowance may be claimed for a period not to exceed the time such apprentice jockey was unable to ride, if the absence was caused by:
 - i. Active duty in the armed forces.
 - ii. Enrollment in an institution of secondary or higher education.
 - iii. Physical disablement.
3. An apprentice jockey may ride in a race in which quarter horses are eligible to start, provided that:
- a. An apprentice allowance shall not be claimed in such a race.
 - b. Riding a winner in such a race shall not be considered in computing the expiration of the right to claim apprentice allowances in races restricted to thoroughbreds and included in the Monthly Chart Book of the Daily Racing Form.
- E. Prohibited acts
- 1. No jockey shall ride in a race against a starter of such jockey's contract employer unless both such jockey's mount and the starter of such jockey's contract employer are trained by the same trainer.
 - 2. No individual jockey shall fail or refuse to fulfill an engagement for a certain race or for a specified time unless the races are canceled or unless the jockey is excused by the stewards.
 - 3. No jockey or such jockey's spouse shall own, either in whole or in part, a horse registered for racing at the track where such jockey is riding.
 - 4. ~~No jockey shall engage in any betting transaction except through the owner of and on the horse which such jockey rides. A jockey shall only be allowed to wager on a race~~

in which he is riding. A jockey shall only be allowed to wager if:

- a. The owner or trainer of the horse which the jockey is riding makes the wager for the jockey.
 - b. The jockey only wagers on his own mount to win or finish 1st in combination with other horses in multiple type wagers.
 - c. Records of such wagers are kept and available for presentation upon request by the stewards.
5. No jockey attendants or jockey valets shall place a bet for themselves or for another person during the time that they are acting under the authority of their license.
6. No jockey shall ride against a horse trained by such jockey's spouse except as part of an entry.

R19-2-123. Procedure before the Department

A. Appeal of stewards' rulings and referrals

- 1. Any person or persons aggrieved by a ruling of the stewards may appeal to the Director. Such an appeal shall be filed in writing in the office of the Director within 3 days of the receipt of the steward's ruling.
- 2. The failure of the stewards to convene a hearing within 10 days after an objection is made shall be deemed a denial by the stewards and may be appealed by filing a written appeal in the office of the Director within 10 days from the date the objection was denied.
- 3. The appeal shall be signed by the person making said request or by such person's attorney and shall set forth such person's grounds for appeal and reasons for believing such person is entitled to a hearing.
- 4. A person filing an appeal of a ruling may be required by the Director or the Commission to furnish a bond in the amount equal to an assessed fine and an additional \$200 to cover the costs, which may be forfeited should the appeal be denied.
- 5. The stewards may refer any ruling made by them to the Director, recommending further action, including the revocation of a license suspended by the stewards. Upon receipt of such referrals, the Director shall review the record and may affirm, reverse, or modify the stewards' ruling or conduct such other proceedings as the Director may deem appropriate.
- 6. Upon the filing of a referral in the manner set forth above, the Director may fix a time and place for a hearing and shall give written notice of the hearing at least 20 days prior to the date set for the hearing, unless waived by the appellant.
- 7. Nothing contained in this Section shall affect the distribution of the pari-mutuel pools.
- 8. In case of an appeal or protest, the purse money affected shall be retained by the permittee subject to order of the Director.

B. Stays

- 1. A person who has been disciplined by a ruling of the stewards may apply to the Director for a stay of the ruling.
- 2. An application for a stay must be filed with the Director not later than the deadline for filing an appeal.
- 3. An application for a stay must be in writing and include:
 - a. The name, address and telephone number and signature of the person requesting the stay.
 - b. A statement of the justification for the stay.
- 4. The Director may grant a stay for cause. The Director shall notify the person in writing of the decision. The Director may rescind a stay granted under this subsection for reasonable cause.

Notices of Proposed Rulemaking

5. The fact that a stay is granted is not a presumption that the ruling by the stewards is invalid.

B.C. License denial, suspension, or revocation

1. The Director may deny a license application without prior notice to the applicant. However, if the applicant files an appeal with the Director within 20 days of the receipt of the denial, the Director may fix a time and place for a hearing on the matter and shall give written notice of the hearing at least 20 days prior to the date set for the hearing, unless waived by the applicant.
2. The Director may revoke or, independently of the stewards, suspend a license only after notice and opportunity for hearing. Notice of the hearing shall be given in writing at least 20 days prior to the date set for hearing, unless waived by the applicant.

C.D. Contested cases

1. All parties appearing before the Director or the Director's designee shall be afforded an opportunity to a hearing and the opportunity to respond and present evidence and argument on all issues.
2. Any party appearing before the Director or the Director's designee shall have the right to appear in person, or by counsel, except that a corporation may appear only through counsel. Any party may submit such party's case in writing. Failure of a party to appear for a hearing shall leave the Director free to act upon the evidence at hand without further notice to the parties. Proceedings may be reopened by the Director upon written petition of any party to the proceedings.

D.E. Hearing officer. If the Director assigns a matter to a hearing officer, the hearing officer shall submit to the Director within 15 days after the conclusion of the hearing a written decision which shall include proposed findings of fact, conclusions of law and order. The decision of the hearing officer may be approved or modified by the Director. The decision of the hearing officer becomes the decision of the Director unless modified by the Director within 45 days.

E.E. Depositions

1. When any party desires to take the oral deposition of any witness residing outside the state or otherwise unavailable as a witness, such party shall file with the Director a petition for permission to take the deposition of such witness, showing the name and address of such witness and setting forth specifically and in detail the nature and substance of the testimony expected to be given by such witness. The application shall be granted if it appears from such petition that the witness resides outside the state or is otherwise unavailable and that the testimony of such witness is relevant and material. If such statement is not made specifically and in detail, so that the Director may determine therefrom the relevancy and materiality of the testimony of such witness, such petition may be denied.
2. The Director may, at the Director's discretion, designate the time and place and office at which such a deposition may be taken. The expense of any deposition shall be borne by the party applying to the Director for permission to take same.
3. Any deposition taken under this subsection shall be returned and filed with the Director within 30 days after permission for taking same is granted.

F.G. Service

1. Service of any decision, order, or other process may be made in person or by mail. Service by mail shall be made by enclosing the same or a copy thereof in a sealed envelope and depositing the same in the United States mail,

postage prepaid, addressed to the party served, at the address as shown by the records of the Department.

2. The time periods prescribed or allowed by these rules, by order of the Department or by an applicable statute, shall be computed as provided in the Arizona Rules of Civil Procedure.
3. Service upon an attorney who has appeared on behalf of a party shall constitute service upon such party, except that papers required to be served upon the Director or Commission shall in all cases be filed in the office of the Department with a copy served on the Attorney General.
4. Proof of service may be made by the affidavit or oral testimony of the person making such service.

G.H. Rehearing, review, or appeal

1. Except as provided in subsection (H)(7), any party in a contested case before the Director who is aggrieved by a decision rendered in such case may file with the Director, not later than 10 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed to the party at such party's last known residence or place of business.
2. The motion for rehearing may be amended at any time before it is ruled upon by the Director. A response may be filed within 10 days after service of such motion or amended motion by any other party. The Director may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
3. A rehearing or review of the decision 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 officer or Director or the prevailing party; or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing.
 - b. Misconduct of the hearing officer, Director, or the prevailing party.
 - c. Accident or surprise which could not have been prevented by ordinary prudence.
 - d. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original 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. The decision is not justified by the evidence or is contrary to law.
4. The Director may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (H)(3) of this subsection. 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.
5. Not later than 10 days after a decision is rendered, the Director may, on the Director's own initiative, order a rehearing or review of the Director's decision for any reason for which the Director might have granted a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Director may grant a motion for rehearing for a reason not stated in the motion. In either case, the order granting such a rehearing shall specify the grounds therefor.

Notices of Proposed Rulemaking

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 such service, serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days by the Director for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
7. If in a particular decision it is necessary for the immediate preservation of the public peace, health, and safety and if a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review.
8. For purposes of this subsection the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.
9. To the extent that the provisions of this rule are in conflict with the provisions of any statute providing for rehearing of decisions of the Director, such statutory provisions shall govern.

ARTICLE 3. GREYHOUND RACING

R19-2-322. Procedure Before the Department

A. Appeal of stewards' rulings and referrals

1. Any person or persons aggrieved by a ruling of the stewards may appeal to the Director. Such an appeal must be filed in writing in the office of the Director within 3 days of the receipt of the steward's ruling.
2. The failure of the stewards to convene a hearing within 10 days after the objection is made shall be deemed a denial by the stewards and may be appealed by filing a written appeal in the office of the Director within 10 days from the date the objection was denied.
3. The appeal shall be signed by the person making said request or by his or her attorney and shall set forth the grounds for appeal and reasons for believing he or she is entitled to a hearing.
4. A person filing an appeal of a ruling may be required by the Director or the Commission to furnish a bond in the amount equal to an assessed fine and an additional \$200 to cover the cost, which may be forfeited should the appeal be denied.
5. The stewards may refer any ruling made by them to the Director recommending further action including the revocation of a license suspended by the stewards. Upon receipt of such referrals, the Director shall review the record and may affirm, reverse, or modify the stewards' ruling or conduct such other proceedings the Director deems appropriate.
6. Upon the filing of an appeal in the manner set forth above, the Director shall fix a time and place for said hearing and shall give written notice of the hearing at least 20 days prior to the date set for the hearing, unless waived by the appellant.
7. Nothing contained in this Section shall affect the distribution of the pari-mutuel pools.
8. In case of an appeal or protest, the purse money affected will be retained by the permittee subject to order of the Director.

B. Stays

1. A person who has been disciplined by a ruling of the stewards may apply to the Director for a stay of the ruling.
2. An application for a stay must be filed with the Director not later than the deadline for filing an appeal.

3. An application for a stay must be in writing and include:
 - a. The name, address and telephone number and signature of the person requesting the stay.
 - b. A statement of the justification for the stay.
4. The Director may grant a stay for cause. The Director shall notify the person in writing of the decision. The Director may rescind a stay granted under this subsection for reasonable cause.
5. The fact that a stay is granted is not a presumption that the ruling by the stewards is invalid.

B.C. License denial, suspension, or revocation

1. The Director may deny a license application without prior notice to the applicant. However, if the applicant files an appeal with the Director within 20 days of the receipt of the denial, the Director shall fix a time and place for a hearing on the matter and shall give written notice of the hearing at least 20 days prior to the date set for the hearing, unless waived by the applicant.
2. The Director may revoke or, independently of the stewards, suspend a license only after notice and opportunity for hearing. Notice of the hearing shall be given in writing at least 20 days prior to the date set for hearing, unless waived by the applicant.

C.D. Contested cases

1. All parties appearing before the Director or his or her designee shall be afforded an opportunity for a hearing and the opportunity to respond and present evidence and argument on all issues.
2. Any party appearing before the Director or his or her designee shall have the right to appear in person or by counsel, except that a corporation may appear only through counsel. Any party may submit his or her case in writing. Failure of a party to appear for a hearing shall leave the Director free to act upon the evidence at hand without further notice to the parties. Proceedings may be reopened by the Director upon written petition of any party to the proceedings.

D.E. Hearing officer. If the Director assigns a matter to a hearing officer, the hearing officer shall submit to the Director within 15 days after the conclusion of the hearing a written decision which shall include proposed findings of fact, conclusions of law and order. The decision of the hearing officer may be approved or modified by the Director. The decision of the hearing officer becomes the decision of the Director unless modified by the Director within 45 days.

E.E. Depositions

1. When any party desires to take the oral deposition of any witness residing outside the state or otherwise unavailable as a witness, such party shall file with the Director a petition for permission to take the deposition of such witness, showing the name and address of such witness and setting forth specifically and in detail the nature and substance of the testimony expected to be given by such witness. The application shall be granted if it appears from such petition that the witness resides outside the state or is otherwise unavailable and that the testimony of such witness is relevant and material. If such statement is not made specifically and in detail, so that the Director may determine therefrom the relevancy and materiality of the testimony of such witness, such petition may be denied.
2. The Director may, at his or her discretion, designate the time and place and office before which such a deposition may be taken. The expense of any deposition will be borne by the party applying to the Director for permission to take same.

Notices of Proposed Rulemaking

2. The Director may, at his or her own discretion, designate the time and place and office before which such a deposition may be taken. The expense of any deposition will be borne by the party applying to the Director for permission to take same.
3. Any deposition taken under this rule shall be returned and filed with the Director within 30 days after permission for taking same is granted.

F.G. Service

1. Service of any decision, order, or other process may be made in person or by mail. Service by mail shall be made by enclosing the same or a copy thereof in a sealed envelope and depositing the same in the United States mail, postage prepaid, addressed to the party served at the address shown by the records of the Department.
2. The time periods prescribed or allowed by these rules, by order of the Department, or by an applicable statute, shall be computed as provided in the Rules of Civil Procedure.
3. Services upon an attorney who has appeared on behalf of a party will constitute service upon which such party, except that papers required to be served upon the Director or Commission shall in all cases be filed in the office of the Department, with a copy served on the Attorney General.
4. Proof of service may be made by the affidavit or oral testimony of the person making such service.

G.H. Rehearing, review, or appeal

1. Except as provided in subsection (H)(7), any party in a contested case before the Director who is aggrieved by a decision rendered in such case may file with the Director, not later than 10 days after service of the decision, a written motion for rehearing or review of the decision, specifying the particular grounds thereof. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed to the party at his or her last known residence or place of business.
2. The motion for rehearing may be amended at any time before it is ruled upon by the Director. A response may be filed within 10 days after service of such motion or amended motion by any other party. The Director, may require the filing of written briefs upon the issues raised in the motion and may provide for oral arguments.
3. A rehearing or review of the decision 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 officer or Director or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;

- b. Misconduct of the hearing officer, Director, or the prevailing party;
 - c. Accident or surprise which could not have been prevented by ordinary prudence;
 - d. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original 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 law.
4. The Director may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (H)(3). 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.
 5. Not later than 10 days after a decision is rendered, the Director may, on his or her own initiative, order a rehearing or review of his or her decision for any reason for which he or she might have granted a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Director may grant a motion for rehearing for a reason not stated in the motion. In either case, the order granting such a rehearing shall specify the grounds thereof.
 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 such service serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days by the Director for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
 7. If in a particular decision it is necessary for the immediate preservation of the public peace, health, and safety, and if a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review.
 8. For purposes of this subsection, the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.
 9. To the extent that the provisions of this rule are in conflict with the provisions of any statute providing for rehearing of decisions of the Director, such statutory provisions shall govern.