

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

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 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION

PERSONNEL ADMINISTRATION

PREAMBLE

- Sections Affected** **Rulemaking Action**
R2-5-902 Repeal
- 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. § 41-763(6)
Implementing statute: None
- A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 5 A.A.R. 2444, July 30, 1999
- The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Gordon Carrigan, Human Resources Generalist
Address: Department of Administration
1831 W. Jefferson, Room 104
Phoenix, AZ 85007
Telephone: (602) 542-4784
Fax: (602) 542-2796
- An explanation of the rule, including the agency's reasons for initiating the rule:**
The subject rule was temporarily repealed effective April 23, 1998, by an exempt rule (R2-5-902) that was adopted pursuant to Laws 1997, Chapter 288. This rulemaking is a formality to permanently repeal the subject rule.
- A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material.**
None.
- 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.
- The preliminary summary of the economic, small business, and consumer impact:**
There will be no economic, small business, or consumer impact from the repeal of this rule. The repeal is a house-

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keeping formality.

9. 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: Claudia R. Smith
Address: Department of Administration
1831 W. Jefferson, Room 128
Phoenix, AZ 85007
Telephone: (602) 542-4894
Fax: (602) 542-2796

10. The time, place, and nature of the proceedings for the making, 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 proceeding will be scheduled.

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

None.

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

None.

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION

PERSONNEL ADMINISTRATION

ARTICLE 9. SEPARATIONS

Section

R2-5-902. Reduction in Force Repealed

ARTICLE 9. SEPARATIONS

R2-5-902. Reduction in force Repealed

A. General:

1. An agency head shall request approval from the Director to conduct a reduction in force for any of the reasons set forth in A.R.S. § 41-783, paragraph (14), indicating the reason for the reduction, and the proposed geographic area and effective date of the reduction. Any personnel action which would have an effect on the reduction in force shall not be approved after the date of the agency head's request.
2. The request shall be submitted not less than 30 working days prior to the proposed effective date of the reduction in force. The Director shall respond within five working days. If circumstances beyond the agency's control do not permit at least 30 working days' notice, the agency shall provide notice as soon as it is aware of the necessity for a reduction in force.
3. If the reduction in force results from the abolition of a filled position, the agency may not re-establish the position for two years, unless the abolition of the position was due to fiscal constraints, legislative action, or court order.
4. When a program is abolished or an institution permanently terminates operation, so that the phasing out of operations occurs over a period of not less than three months, the Director, in consultation with the head of the agency, board, or commission considering reduction in force activity, shall develop and communicate to affected employees appropriate alternative reduction in force procedures to permit staggered phase out and transfer, reduction, or separation of personnel as appropriate.
5. Subject to work requirements, each agency head shall allow employees affected by a reduction in force to be released from work with pay to attend state job interviews.

B. Administration. Except as provided in subsection (A), paragraph (4) above, a reduction in force shall be administered by the Director in the following manner:

1. Employees other than permanent status employees in the class series affected by the reduction in force shall be separated in the order listed below before any reduction in force action is taken affecting permanent status employees,

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providing the separation of these employees will accomplish, or assist in accomplishing, the purpose of the reduction in force:

- a. ~~Emergency employees.~~
 - b. ~~Provisional employees.~~
 - c. ~~Clerical pool employees.~~
 - d. ~~Temporary employees.~~
 - e. ~~Seasonal employees.~~
 - f. ~~Original probationary employees.~~
2. ~~Retention points shall be used to identify permanent status employees for transfer, reduction, or separation based on the employee's relative standing on the retention list. Identification of employees to be considered first for transfer, reduction, or separation shall begin with the employee with the lowest number of retention points.~~
 3. ~~Retention points will be based upon length of state service and performance, calculated in accordance with the instructions in subsections (C), (D) and (E). Service in positions which became covered in accordance with Chapter 4, Title 41, A.R.S. (formerly Chapter 6, Title 38, A.R.S.), shall be considered state service.~~
 4. ~~Limited appointment employees shall compete for retention only against other limited appointment employees.~~
 5. ~~Employees on promotional probation or detail to special duty shall compete for retention only in the class in which permanent status is held.~~
 6. ~~A position which is underfilled shall be considered vacant at the allocated level.~~
 7. ~~Permanent part-time employees shall compete for retention only against other permanent part-time employees.~~
- C.** ~~Calculation of retention points for length of service.~~
1. ~~Each permanent status employee shall be awarded one retention point for each month of state service, provided the employee has been in a pay status for at least one half of the employee's working days in that month.~~
 2. ~~Periods of service as a state service employee prior to a separation shall not be counted except when the separation was of less than two years' duration, and the separation was not the result of disciplinary action.~~
 3. ~~Periods of state service as a provisional, seasonal, temporary, limited, or clerical pool employee which are credited toward satisfying a subsequent original probationary requirement shall be counted.~~
 4. ~~Periods of military leave with or without pay shall be counted.~~
 5. ~~Periods of service on mobility assignment shall be counted.~~
 6. ~~Prior service in a position which is transferred to state service by legislative action or otherwise from a budget unit of the state shall be counted.~~
- D.** ~~Calculation of retention points for performance. The most recent performance evaluation, in the class permanently held by an employee, and concluded prior to the date of request for the reduction in force, shall be used in determining retention points. Any grievance on the most recent performance evaluation shall be resolved by the agency head prior to computing retention points. If an employee has not had a performance evaluation in the past 12 months, the employee shall be awarded 12 retention points. Retention points for performance shall be awarded as follows:~~
1. ~~Each employee having a current overall performance evaluation of "Outstanding" shall be awarded 36 retention points.~~
 2. ~~Each employee having a current overall performance evaluation of "Exceeded Results Expected" shall be awarded 24 retention points.~~
 3. ~~Each employee having a current overall performance evaluation of "Achieved Results Expected" shall be awarded 12 retention points.~~
 4. ~~Each employee having a current overall performance evaluation of "Needs Improvement" shall have twelve retention points subtracted from the total.~~
 5. ~~Each employee having a current overall performance evaluation of "Unsatisfactory" shall not be awarded any retention points, and the employee shall be placed at the bottom of retention lists.~~
- E.** ~~Resolution of ties. Ties in total retention points shall be broken in the following manner and order:~~
1. ~~Employees shall be awarded one point for each full calendar month of state service in a pay status in the class affected by the reduction in force.~~
 2. ~~If a tie continues to exist, the tie shall be broken by the employee with the highest overall performance evaluation in the class permanently held by the employee.~~
 3. ~~If a tie continues to exist, the tie shall be broken by the employee with the earlier state service hire date.~~
 4. ~~If a tie continues to exist, it shall be broken by lot.~~
- F.** ~~Offer of position.~~
1. ~~Provided the employee possesses the required minimum qualifications for the class, an employee who is identified for transfer or reduction shall be made the single best offer, in terms of pay grade, within the agency of:~~
 - a. ~~A position at the same pay grade or lower in the same class series as the employee's present permanent status position; or~~

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- b. A position at the same pay grade or lower in a class series in which the employee has previously held permanent status. If that position is in a class which has been retitled or regraded without a major change in duties, that position may be offered to the employee.
 - c. ~~If an employee can be made equal offers under the provisions of subparagraphs (a) and (b) above, the position covered by subparagraph (a) will be offered.~~
 - 2. In lieu of accepting a permanent position at a lower grade, an employee shall be given the option of accepting:
 - a. A vacant position at the employee's present pay grade for which the employee meets the minimum qualifications in a class series in which the employee has never held permanent status; or
 - b. A limited, seasonal, temporary, clerical pool, or part-time position at the employee's present pay grade for which the employee meets the minimum qualifications.
 - 3. ~~Employees must meet the required minimum qualifications and job-related selective requirements, if any, to be considered for a position. These selective requirements shall normally have been required when the position was last filled.~~
 - 4. ~~The agency shall give written notice at least 15 working days in advance to each employee to be transferred, reduced, or separated. If circumstances beyond the agency's control do not permit at least 15 working days' notice, the agency shall provide notice as soon as it is aware of the necessity to transfer, reduce, or separate the employee.~~
 - 5. ~~The notice shall include, as a minimum, the reason for and effective date of the action, the job offer, if any, to include the salary, location of the position, and supervisor's name, the availability of reduction in force procedures and records for review, the employee's right to request a review of the action, and the employee's reemployment rights, if applicable. Any job offer shall contain a time limitation of not less than five working days in which the employee may accept the offer. Failure of an employee to reply in writing within the stated time limitation, or failure to accept a job offer, shall constitute a resignation.~~
- G. Employee request for review:**
- 1. ~~Within five days of receipt of a reduction in force notice, an employee may submit in writing a request to the agency head for a review of the procedure resulting in the employee's transfer, reduction, or separation due to a reduction in force. The request must contain specific information concerning the error involved and a proposed resolution of the problem. The agency head shall review the request and respond to the employee within five working days after receipt of the request.~~
 - 2. ~~An employee who wishes further review may submit a written request to the Director within five working days after receipt of the agency head's response. The Director shall investigate and respond to the employee and the agency head with the final decision on the review within five working days of receipt of the employee's request.~~
 - 3. ~~The Director may postpone any portion of the reduction in force until the review requested by the employee has been completed.~~

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

PREAMBLE

- 1. **Sections Affected** **Rulemaking Action**
R4-46-202 Amend
- 2. **The specific authority for the rulemaking, including the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 32-3605(B)(3)
Implementing statute: A.R.S. § 32-3613(B)
Appraiser Qualifications Criteria, February 16, 1994
- 3. **A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 5 A.A.R. 1123, April 16, 1999.
- 4. **The name and address of agency personnel with whom persons may communicate regarding the rules:**
Name: Linda L. Schutzenhofer
Address: Board of Appraisal
1400 W. Washington, Suite 360

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Phoenix, Arizona 85007

Telephone: (602) 542-1539

Fax: (602) 542-1598

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

The rule is written to comply with the Appraiser Qualification Criteria, February 16, 1994, published by The Appraisal Foundation to establish minimum criteria for the appraiser classifications as required by the Appraisal Qualifications Board and A.R.S. § 32-3605(B)(3) and A.R.S. § 32-3613(B). The licensed applicant must have at least 2000 hours of experience. The amendment will require that the 2,000 hours of experience be earned in not less than 18 months.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None.

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:

The applicants for an appraiser license must meet the minimum requirements. There will be an economic impact on the appraiser trainee as well as the mentor due to an increase in the experience requirement. The change in the rule should not have an economic impact on small business and the consumer.

9. 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: Linda L. Schutzenhofer

Address: Board of Appraisal
1400 W. Washington, Suite 360
Phoenix, Arizona 85007

Telephone: (602) 542-1539

Fax: (602) 542-1598

10. 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:

Date: September 10, 1999

Time: 9 a.m.

Location: 1400 Washington, 2nd Floor Conference Room

Nature: Open meeting to hear opinions and suggestions, and to adopt, amend, or repeal the rule.

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:

The Qualification Criteria, February 16, 1994, A.R.S. Title 32, Chapter 36, Article 2. The location in the rules is R4-46-202(B).

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

ARTICLE 2. LICENSING AND CERTIFICATION

Section

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R4-46-202. Application for License or Certificate

ARTICLE 2. LICENSING AND CERTIFICATION

R4-46-202. Application for License or Certificate

- A.** An applicant for a state certificate or license shall submit a completed application accompanied by the appropriate application fee. Once the application has been filed, fees are non-refundable.
- B.** To be eligible for a license or certificate, an applicant shall:
1. Meet the qualification criteria, contained in A.R.S. Title 32, Chapter 36, Article 2 and these rules;
 2. Achieve a passing score on the applicable examination required by R4-46-204(D), unless exempted under A.R.S. § 32-3626;
 3. Pay all required application and examination fees;
 4. Pay the biennial federal registry fee; and
 5. Comply with the requirements of A.R.S. § 32-3611.
- C.** In addition to the requirements listed in subsection (B), an applicant for licensure shall demonstrate 2000 hours of experience earned in not less than 18 months.
- ~~C.D.~~** An applicant shall meet all requirements for a license or certificate within 1 year of filing the applicant or the applicant's file will be closed and the applicant shall reapply, meeting the requirements of R4-46-202(B). The Board shall notify an applicant whose application has been closed by certified mail or personal service at the applicant's last known address of record. Notice is complete upon deposit in the U.S. mail or by service as permitted under the Arizona Rules of Civil Procedure.

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

CHAPTER 1. STATE BOARD OF DIRECTORS FOR COMMUNITY COLLEGES OF ARIZONA

PREAMBLE

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| <p>1. <u>Sections Affected</u>
R7-1-212</p> <p>2. <u>The specific authority for the rulemaking, including both the authorizing statute and the statutes the rules are implementing:</u>
Authorizing statute: A.R.S. § 15-1424
Implementing statute: A.R.S. § 15-1424</p> <p>3. <u>A list of all previous notices appearing in the Register addressing the proposed rule:</u>
Notice of Rulemaking Docket Opening: 5 A.A.R. 2263, July 16, 1999.</p> <p>4. <u>The name and address of agency personnel with whom persons may communicate regarding the rulemaking:</u>
Name: Thomas J. Saad
Address: 3225 North Central Ave., Suite 1220
Phoenix, AZ 85012
Telephone: (602) 255-4037
Fax: (602) 279-3464</p> <p>5. <u>An explanation of the rule, including the agency's reasons for initiating the rule:</u>
Establishes a procedure for resolving conflicts between community college districts that may arise from competing interests. Requires that the State Board review the facts and make a final determination that will resolve the dispute.</p> <p>6. <u>A reference to any study that the agency proposes to rely on its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:</u>
None.</p> <p>7. <u>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:</u>
The new section will not diminish the authority of college districts. They have been operating under similar, but less</p> | <p><u>Rulemaking Action</u>
New Section</p> |
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formal, provisions.

8. **The preliminary summary of the economic, small business, and consumer impact:**
The proposed rule will not adversely impact small business or consumers.
9. **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: Thomas J. Saad
Address: 3225 N. Central Ave., Suite 1220
Phoenix, AZ 85012
Telephone: (602) 255-4037
Fax: (602) 279-3464
10. **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:**
Oral Proceeding/public hearing is scheduled as follows:
Date: September 17, 1999
Time: 1 p.m.
Location: 1700 West Washington, Room 200
Phoenix, AZ
11. **Any other matters prescribed by statute that are applicable to the specific agency:**
None.
12. **Incorporations by reference and their location in the rules:**
None.
13. **Full text of the rules follows:**

TITLE 7. EDUCATION

CHAPTER 1. STATE BOARD OF DIRECTORS FOR COMMUNITY COLLEGES OF ARIZONA

ARTICLE 2. ADMINISTRATION

Sections

R7-1-212. Resolution of a Conflict Between Community College Districts

ARTICLE 2. ADMINISTRATION

R7-1-212. **Resolution of a Conflict Between Community College Districts**

- A.** In the event of a conflict between 2 or more community college districts regarding the interpretation or application of a law, State Board rule, or policy the following procedure shall be employed:
1. The community college district raising the concern (petitioning district) shall communicate the nature of the concern in writing to the State Board and to the community college district with which it is in conflict (responding district) by United States Postal Service (USPS) registered or certified letter. In this petition the petitioning district shall set forth the concern and the operative facts, citing the rule or policy that is in question, the manner in which the petitioning district believes a law, State Board rule, or policy has been violated, and the redress that it is seeking.
 2. Within 21 days after the next meeting of the governing board of the responding district occurring at least 30 days after receipt of the petition from the petitioning district, the responding district shall respond to the allegations of the petitioning district by USPS registered or certified letter to the petitioning district and the State Board.
 3. Within 15 days of receipt of the response from the responding district, the petitioning district may reply to the response district by USPS registered or certified letter to the responding district and the State Board.
 4. Within 60 days from receipt of the response from the responding district (subsection (A)(2)), or 45 days of receipt of the reply from the petitioning district (subsection (A)(3)), whichever is sooner, the State Board executive director or designee shall prepare a fact-finding report for the State Board. Upon request of the executive director, all parties to the conflict shall meet with or provide requested information to the executive director. A copy of the report of the executive director, along with a copy of the petition, response, any reply and any correspondence or exhibits, shall be

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forwarded to the State Board. The fact-finding and review period may be extended for not more than an additional 30 days with the written concurrence of both the petitioning and responding districts.

5. After considering the fact-finding report of the Executive Director, at the sole discretion of the State Board, 1 of the following alternative methods may be employed:
 - a. An ad hoc committee of State Board members may be named to consider the facts of the matter and to develop a recommendation for consideration by the State Board. This ad hoc committee may, at its discretion, hold 1 or more hearings under the applicable provisions of A.R.S. § 41-1061 and 41-1062, or
 - b. The State Board may consider the matter on the basis of the record forwarded to it without further referral or hearing.
 6. In the event the State Board elects to refer the matter to an ad hoc committee, the Board will act to accept, reject, or modify the recommended decision at the 1st meeting scheduled 30 days, or longer, after the date upon which the committee's recommendation was communicated to the Board.
- B.** The petitioning and responding districts are free to resolve their conflict through negotiations throughout the proceedings.
- C.** The decision of the State Board is final and binding on all parties.

NOTICE OF PROPOSED RULEMAKING

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

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

PREAMBLE

1. **Sections Affected** **Rulemaking Action**
R19-3-203 Amend
2. **The specific authority for rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. §5-504(B).
3. **A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 5 A.A.R. 2390, July 23, 1999.
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Mr. Geoffrey Gonsher, Executive Director
Address: Arizona State Lottery Commission
4740 E. University
Phoenix, AZ 85034
Telephone: (602) 921-4514
FAX: (602) 921-4488
5. **An explanation of the rule, including the agency's reason for initiating the rule:**
R19-3-201 through R19-3-207 is required by A.R.S. § 5-504 and prescribes the requirements and procedures for Arizona retailer businesses to obtain a license to sell Lottery game products, display promotional materials, requirements for the sale and payment of instant games and on-line games, and retailer conduct. The rules establish procedures for revocation, suspension or renewal of retailer licenses, hearing procedures and Lottery conducted compliance investigations. This amendment prohibits Lottery retailers from selling a Lottery ticket to a person who uses a public assistance voucher or an electronic benefits transfer card to purchase the ticket in accordance with A.R.S. § 5-504(B)(4).
6. **A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material.**
None.
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:**
A. The Arizona State Lottery.

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Costs to the Lottery for this Article are included in the agency's appropriated budget. Retailer related costs include background investigations for licensing, delivery of tickets, supplies and point-of-sale promotional items, installation of telephone lines for the on-line terminal and monthly communication fees for each retailer selling on-line games, and administrative costs collecting sales revenues and providing customer service to retailers. Cost of a licensing investigation, which includes an ADA (Americans with Disabilities Act) on-site inspection, is approximately \$200 per location. Initial telecommunication line installation for an on-line retailer terminal is approximately \$400 and the average monthly line charge is \$50. The Lottery has approximately 2,400 on-line retailers. The Lottery paid \$1.9 million in telecommunication line-charges last fiscal year.

B. Political Subdivisions.

Political subdivisions of this state are not directly affected by the Retailer rule.

C. Businesses Directly Affected by the Rulemaking.

Businesses affected by this rule are Lottery retailers who sell Lottery game products to the public. The rule provides for licensing requirements, retailer conduct in selling and redeeming Lottery tickets, and compensation paid to retailers for Lottery services. The Lottery paid retailers earned over \$16 million in commissions last fiscal year.

D. Private and Public Employment.

Private and public employees are not directly affected by this rule.

E. Consumers and the Public.

There are no costs to the public associated with the amendment of this rule.

F. State Revenues.

License fees and revenue generated by the sale of Lottery game tickets are distributed to those programs funded with Lottery monies. The Lottery collected \$7,200 in retailer license fees in fiscal year 1998. Transfers to State of Arizona funds were in excess of \$78 million.

9. 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: Mr. Geoffrey Gonsler, Executive Director

Address: Arizona State Lottery Commission
4740 E. University
Phoenix, AZ 85034

Telephone: (602) 921-4514

Fax: (602) 921-4488

10. 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:

Date: September 17, 1999

Time: 10 a.m.

Location: Arizona State Lottery Commission
4740 E. University
Phoenix, AZ 85034

Nature: Oral Proceeding (Close of the record is 5 p.m., M.S.T., Thursday, September 16, 1999, for written comments and at the end of the oral proceeding for verbal comments.)

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. Incorporation by reference and their location in the rules:

Not applicable.

13. The full text of the rules follows:

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

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

ARTICLE 2. RETAILERS

Section

R19-3-203. Revocation, Suspension, or Renewal Denial of Retailer's License

ARTICLE 2. RETAILERS

R19-3-203. Revocation, Suspension, or Renewal Denial of Retailer's License

- A.** A retailer's license may be revoked, suspended or denied renewal by the Director for any of the following reasons:
1. The retailer violates a provision of the Act or this Chapter.
 2. The retailer knowingly sells a ticket to a person less than 18 years old.
 3. The retailer sells a ticket to a person using a public assistance voucher or an electronic benefits transfer card issued by any public entity to purchase the ticket.
 43. The retailer's average weekly sales of tickets for the:
 - a. Instant games are less than 250 tickets per week for the preceding quarterly period;
 - b. On-line games are less than 400 tickets per week for the preceding quarterly period.
 54. The retailer commits an act that impairs the retailer's reputation for honesty and integrity.
 65. The retailer does not make purchase or redemption of lottery tickets convenient and readily accessible to the public.
 76. The retailer provides to the Lottery a statement, representation, warranty, or certificate that the Lottery determines is false, incorrect, or incomplete.
 87. The retailer has 2 payments returned to the Lottery for insufficient funds in a 12-month period which is caused by the retailer's actions.
 98. The retailer becomes insolvent, unable or unwilling to pay its debts, or is declared bankrupt.
 109. The retailer or an officer or controlling agent of the retailer:
 - a. Is convicted of a felony, felony theft that is designated as a misdemeanor, or a crime involving gambling or fraudulent schemes and artifices;
 - b. Is the subject of an order, judgment, or decree of a federal or state authority.
 1140. Facts are discovered which, if known at the time the retailer's license was issued or renewed, would have been grounds to deny licensure.
 1244. The retailer adds a minor as an owner, partner, or officer of the business.
 1342. The retailer or an officer or employee of the retailer sells a ticket or pays a prize to oneself.
- B.** The Director may on the Director's own motion, and shall on the written complaint of any person, investigate the acts of a licensee and may temporarily suspend, with or without imposing specific conditions or permanently revoke a license issued under this Article if the licensee is found to have committed an act or omission listed in subsection (A).
- C.** Procedure for hearings. A retailer may request a hearing regarding a revocation, suspension, or license denial. The hearing shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- D.** Procedure for filing an appeal with the Commission:
1. A person who wishes to appeal a final decision of the Director shall file an appeal with the Lottery Commission within 15 days of receipt of the Director's decision. The filed appeal shall contain the following:
 - a. A copy of the Director's decision; and
 - b. The alleged factual or legal error in the decision of the Director from which the appeal is taken.
 2. A person appealing the decision of the Director may file a written brief stating the position on the appeal within 15 days after receipt of the decision.
 3. The Commission may provide for oral argument.
 4. The Commission shall make its ruling on the appeal on the record.
- E.** A final decision of the Commission is subject to judicial review under A.R.S., Title 41, Chapter 6, Article 10 by any party to the action.
- F.** Termination of a retailer's license.
1. A retailer who receives a notice of license termination shall:
 - a. Immediately cease all sales of lottery products, and
 - b. Surrender the retailer's license and all other lottery property and products upon request by the Director's representative.

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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:

The Federal Occupational Safety and Health Administration has determined that these amendments will have minimal to modest impact for most affected industry groups and has determined the amendments to be economically feasible for all industries including small business. Cost and benefit analysis of these amendments is available for inspection, review, and copying at the Industrial Commission of Arizona, Division of Occupational Safety and Health, 800 West Washington Street, Phoenix, Arizona 85007.

9. 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: Patrick Ryan
Address: Industrial Commission of Arizona
Division of Occupational Safety and Health
800 West Washington Street
Phoenix, Arizona 85007
Telephone: (602) 542-1695
Fax: (602) 542-1614
e-mail: pat.ryan@osha.gov

10. The time, place, and nature of the proceedings for the making, 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:

An oral proceeding has been scheduled as follows:

Date: September 2, 1999
Time: 9:30 a.m.
Location: Third Floor Conference Room
Industrial Commission of Arizona
800 West Washington Street
Phoenix, Arizona 85007

Written comments may be submitted on or before 9:30 a.m., September 2, 1999.

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. Incorporation by reference and their location in the rules:

29 CFR 1926, Federal Occupational Safety and Health Standards for the Construction Industry, with amendments as of December 1, 1998. This incorporation by reference will appear in Section R20-5-601.

29 CFR 1910, Federal Occupational Safety and Health Standards for General Industry, with amendments as of March 23, 1999. This incorporation by reference will appear in Section R20-5-602.

13. The full text of the rule follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH CONSTRUCTION STANDARDS

Section

R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH CONSTRUCTION STANDARDS

R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926

Each employer shall comply with the standards ~~enumerated~~ in the *Federal Occupational Safety and Health Standards for Construction*, as published in 29 CFR 1926, with amendments as of ~~December 1, 1998, January 8, 1998~~, incorporated by reference and on file with the Office of the Secretary of State. Copies of these referenced materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to construction activity by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1926 published after ~~December 1, 1998, January 8, 1998~~.

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

A. Each employer shall comply with the standards in Subparts C through Z inclusive of the *Federal Occupational Safety and Health Standards for General Industry*, as published in 29 CFR 1910, with amendments as of ~~March 23 1999, January 8, 1998~~, incorporated by reference and on file with the Office of the Secretary of State. Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to general industry activity by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after ~~March 23, 1999, January 8, 1998~~.

- B. No change.
- C. No change.
- D. No change.