

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 1. DEPARTMENT OF AGRICULTURE - ADMINISTRATION

PREAMBLE

1. Sections Affected

R3-1-101
Article 2
R3-1-201
R3-1-201
R3-1-202
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Rulemaking Action

Amend
Amend
Repeal
New Section
Repeal
Amend
Repeal

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. § 3-107

Implementing statutes: A.R.S. §§ 3-107, 41-1001.01, and 41-1092.01

3. The effective date of the rules:

July 10, 2001

4. A list of all previous notices appearing in the Register addressing the adopted rule:

Notice of Rulemaking Docket Opening: 7 A.A.R. 2013, May 4, 2001

Notice of Proposed Rulemaking: 8 A.A.R. 1132, March 22, 2002

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

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

This rulemaking updates the Department of Agriculture's rules regarding administrative hearing practices, conforming agency practices to those of the Office of Administrative Hearings. The Department is adding the definition of "administrative law judge," deleting the definition of "hearing officer," and modifying the reasons under which the Director will grant a rehearing or review of an administrative law judge's decision. The title of Article 2 is expanded to include both contested cases and appealable agency actions. This rulemaking is undertaken in response to commitments made by the Department in a five-year review of rules accepted by the Council on July 11, 2000.

7. A reference to any study that the agency relied on in its evaluation of or justification for the 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

8. 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

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

Adoption of this rule will have an impact on the following groups:

A. *The Arizona Department of Agriculture*

The Department will use the rules of the Office of Administrative Hearings when holding a hearing at the Department, with the Director acting as an Administrative Law Judge. An internal proceeding will require the time of the Director, where in the past the option existed to appoint a hearing officer.

The Department will be responsible for the costs incurred for hearings held through the Office of Administrative Hearings.

B. *Political Subdivisions*

The implementation of this rulemaking will directly affect the caseload of the Office of Administrative Hearings.

C. *Businesses Directly Affected By the Rulemaking*

The regulated community the Department serves, and their attorneys, will be beneficially affected by the use of the uniform administrative procedures of the Office of Administrative Hearings.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Based on comments from Council staff, minor clarifying and technical changes were made to the final rule.

11. A summary of the principal comments and the agency response to them:

The only comment received was a statement in support of the rulemaking by the Department's Advisory Council. The Arizona Department of Agriculture thanks the Council for its support of this rulemaking.

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

None

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

None

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 1. DEPARTMENT OF AGRICULTURE - ADMINISTRATION

ARTICLE 1. GENERAL PROVISIONS

Section
R3-1-101. Definitions

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ARTICLE 2. PRACTICE AND PROCEDURE - CONTESTED CASES AND APPEALABLE AGENCY ACTIONS

Section

- R3-1-201. ~~Contested Cases: Hearings Adjudicative Proceedings Before the Department~~
- R3-1-202. ~~Initiation of Hearing Repealed~~
- R3-1-203. ~~Hearing Officer; Disqualification; Substitution Repealed~~
- R3-1-204. ~~Communications Regarding Matters Related to a Contested Hearing Repealed~~
- R3-1-205. ~~Notice of Hearing Repealed~~
- R3-1-206. ~~Responses; Motions for More Definite Statement; Negotiated Settlement Repealed~~
- R3-1-207. ~~Prehearing Conference; Procedure and Prehearing Order Repealed~~
- R3-1-208. ~~Procedures for Motions Repealed~~
- R3-1-209. ~~Filing; Computation of Time; Extension of Time Repealed~~
- R3-1-210. ~~Record of Hearings Repealed~~
- R3-1-211. ~~Service; Proof of Service Repealed~~
- R3-1-212. ~~Default Repealed~~
- R3-1-213. ~~Intervention Repealed~~
- R3-1-214. ~~Subpoenas Repealed~~
- R3-1-215. ~~Procedure at Hearings Repealed~~
- R3-1-216. ~~Evidence Repealed~~
- R3-1-217. ~~Recommended Decision; Objections to Proposed Draft of Recommended Decision; Director's Decision Repealed~~
- R3-1-218. ~~Rehearing or Review of Decision; Basis~~
- R3-1-219. ~~Effectiveness of Orders Repealed~~

ARTICLE 1. GENERAL PROVISIONS

R3-1-101. Definitions

In addition to the definitions provided in A.R.S. § 41-1001, the following shall apply to this Chapter, unless the context otherwise requires:

- “Administrative Law Judge” means an individual, or the Director of the Department, who sits as an administrative law judge, conducts an administrative hearing in a contested case or an appealable agency action, and makes decisions regarding the contested case or appealable agency action.
- 1. “Applicant” means any person who applies for a permit, license, or certification, or a permit, license, or certification renewal from the Department and is denied that permit, license, or certification.
- 2. “Attorney General” means the Attorney General of the state of Arizona and the Attorney General’s designees.
- 3. “Department” means the Arizona Department of Agriculture.
- 4. “Director” means the Director of the Arizona Department of Agriculture.
- 5. “Hearing officer” means the Director, unless otherwise provided by law, or an individual appointed by the Director to conduct hearings.
- 6. “Oral proceeding” means a proceeding held during the rulemaking process, as described by A.R.S. § 41-1023.

ARTICLE 2. PRACTICE AND PROCEDURE - CONTESTED CASES AND APPEALABLE AGENCY ACTIONS

R3-1-201. ~~Contested Cases: Hearings Adjudicative Proceedings Before the Department~~

Unless otherwise provided by statute, this Article shall govern contested cases, referenced hereinafter as hearings, held before the Department in all proceedings in which the legal rights, duties, or privileges of a party or applicant are required by A.R.S. Title 3, A.R.S. Title 41, Chapter 6, Article 6, or by rule, to be determined after an opportunity for a hearing. These rules are not applicable to:

- 1. Oral proceedings.
- 2. Any person applying for license or permit unless the license or permit is denied.
- 3. Personnel matters, or resolution of disputes involving contracts, held before the Department of Administration.

The Department shall use the uniform administrative appeals procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern the initiation and conduct of formal adjudicative proceedings before the Department.

R3-1-202. Initiation of Hearing Repealed

- A.** ~~A hearing may be initiated only by the Department or by a party or applicant pursuant to statute, rule, or as otherwise provided by law.~~
- B.** ~~If requested by a party or applicant other than the Department, the party or applicant shall, within 30 days of the date of the decision of the Department, file a written request for hearing with the Department and shall clearly state:
 - 1. The specific actions of the Department which are the bases of the hearing request; and
 - 2. The statute or rule entitling the party or applicant to a hearing.~~
- C.** ~~Within 15 days of the receipt of a written request for hearing, the Department shall provide written notice to the party or applicant of its decision for the hearing.~~

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1. If the Department accepts the request for hearing, the Department shall give the party or applicant notice of the hearing date.
2. If the Department denies the request for hearing, the Department shall state the reasons for denial.

R3-1-203. Hearing Officer; Disqualification; Substitution Repealed

- A.** In any action pending before a hearing officer, the hearing officer is subject to disqualification for good cause shown. Any party may petition the hearing officer for the hearing officer's disqualification within five days of receipt of notice of hearing indicating the hearing officer's identity or within 20 days of discovering facts indicating grounds for disqualification or else the right to change a hearing officer is deemed waived. The petition for disqualification shall state the facts giving rise to the disqualification.
- B.** The Director shall appoint a hearing officer or any substitute hearing officer to replace a disqualified or unavailable hearing officer.
- C.** If a substitute hearing officer is appointed, the substitute hearing officer shall use any existing record and may conduct further appropriate proceedings as the hearing officer deems to be in the interests of justice.

R3-1-204. Communications Regarding Matters Related to a Contested Hearing Repealed

- A.** Except for negotiated settlements with the Director pursuant to A.R.S. § 3-368(D)(4), neither the parties nor their legal counsel shall communicate with the Director or the hearing officer concerning any matter related to a hearing pending before the Director or the hearing officer. Communication with the Director or the hearing officer is prohibited from the date a hearing is initiated until a final order is issued unless the communication takes place in the presence of all parties or their counsel or, if the communication is in writing, the party provides copies to all other parties.
- B.** Any party directly involved in a hearing who receives a prohibited communication shall file, within 48 hours, a copy of the written communication or summary of the oral communication with the Director or hearing officer and serve copies of the same on each party or their counsel.
- C.** Upon receipt of a notice described in subsection (B), the Director or hearing officer shall give all other parties reasonable opportunity to respond to the communication.

R3-1-205. Notice of Hearing Repealed

- A.** Unless otherwise provided by law, the hearing officer shall set the time and place of the hearing and serve written notice to all parties not less than 30 days prior to the hearing.
- B.** The notice shall contain the following:
1. The Department file number, the caption or title of the proceeding, and a general description of the subject matter;
 2. The time, place, and nature of the hearing;
 3. A statement of the legal authority and jurisdiction under which the hearing is to be held;
 4. A short statement from the moving party relating the factual basis for the allegation;
 5. A reference to the particular Sections of the statutes and rules involved;
 6. The name, official title, mailing address, and telephone number of the hearing officer for the hearing;
 7. A statement that a party who, after notice has been given pursuant to Article 2 of this Chapter, fails to attend or participate in a hearing or prehearing proceeding is considered to have waived the right to appear and the party may be held in default or the agency may proceed without the presence of the party;
 8. The names and mailing addresses of persons to whom notice is being given, including any counsel or employee who has been designated to appear for the Department;
 9. A statement that any party desiring to negotiate a settlement shall contact the Department to expressly request a negotiated settlement conference.
- C.** The notice may include any other matters that the hearing officer considers desirable to expedite the proceedings.

R3-1-206. Responses; Motions for More Definite Statement; Negotiated Settlement Repealed

- A.** Any party who receives a notice of hearing shall file a response to the action. The written response, to be considered, shall be filed within 15 days after receipt of the notice of hearing.
- B.** A response shall specifically admit, deny, or state that the party does not have or is unable to obtain sufficient information to admit or deny each allegation in the notice of hearing. When a party intends in good faith to deny only a part of an allegation, the party shall admit so much of it as is true and shall deny the remainder.
- C.** Within 15 days after service of the notice of hearing, any party may file a motion for a more definite statement. Such motion shall state the respects in which and the reasons why each such matter of fact should be required to be made more definite. If the motion is granted by the hearing officer, the order granting such motion shall set the time periods in which the more definite statement, and any response thereto, shall be filed.
- D.** Any party requesting a negotiated settlement conference shall contact the Department either orally or in writing. If the conference is granted, the party shall be afforded the opportunity to participate or to be represented by counsel. Unless otherwise provided by law, no negotiated settlement conference or request for negotiated settlement conference shall operate as a waiver of the party's duty to respond to the notice of hearing, to request a hearing, to raise a defense, or to stay any scheduled hearing.

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R3-1-207. Prehearing Conference; Procedure and Prehearing Order Repealed

- ~~A.~~ Upon a motion of the hearing officer or any party, the hearing officer may schedule a prehearing conference at least ten days prior to the hearing date. Within five days of completion of the filing of said motion, the hearing officer shall notify the parties of the decision to hold a prehearing conference and the date, time, and place where it will be held.
- ~~B.~~ The hearing officer may conduct the prehearing conference to deal with:
 - 1. Negotiated settlement, stipulations, clarification of issues, admissions, amendments of pleadings, prehearing briefs, pretrial statements, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, use of written presentation for direct evidence, rebuttal evidence, or cross-examination;
 - 2. Whether appearing at the hearing by way of telephone, television, or other electronic means will substitute for appearing at the proceedings in person;
 - 3. The order of presentation of evidence and cross-examination, rulings on admissibility or exclusion of evidence, rulings regarding issuance of subpoenas, discovery orders, and protective orders; and
 - 4. Such other matters as will promote the orderly and prompt conduct of the hearing.
- ~~C.~~ The hearing officer may conduct all or part of the prehearing conference by telephone, television, or other electronic means so long as each party in the prehearing conference can hear and has an opportunity to participate during the entire proceeding.
- ~~D.~~ After any prehearing conference, an order will be either entered verbally on the record or issued in writing, prior to the hearing, reciting stipulations and admissions made, actions taken, and other matters resolved. This order shall only be modified to prevent manifest injustice, as determined by the hearing officer.
- ~~E.~~ The hearing officer may issue orders to regulate the conduct of the proceedings and limiting the issues to those raised in the pleadings whether or not a prehearing conference is held.

R3-1-208. Procedures for Motions Repealed

- ~~A.~~ Motions calling for determination of any matter of law shall be filed with the hearing officer in writing.
- ~~B.~~ Any non-moving party may file a response to a motion, pursuant to R3-1-209(B) and shall serve the response upon the moving party within ten days after service of such motion.
- ~~C.~~ The moving party shall have ten days after service of a response to file a reply to that response.
- ~~D.~~ The time limits for motions, responses, and replies may be shortened or extended by the hearing officer.
- ~~E.~~ Motions shall be considered on the written materials submitted by the parties. No written pleading shall exceed 15 pages in length unless permitted by the hearing officer. No oral argument shall be heard on such motions unless requested by a party and the hearing officer so directs.
- ~~F.~~ Except as provided in subsection (A), motions and objections made during the course of the hearing may be made orally. Objections to the admission or exclusion of evidence shall be made on the record, shall be brief, and shall state the ground for the objection.

R3-1-209. Filing; Computation of Time; Extension of Time Repealed

- ~~A.~~ Upon initiation of a hearing, the Director shall assign each proceeding a number and shall maintain a docket of all proceedings.
- ~~B.~~ Unless otherwise specifically provided in the rules or by an order of the Director, an original of all pleadings shall be filed with the Director and one copy to the hearing officer within the time limits set forth in R3-1-205, R3-1-206, R3-1-207, and R3-1-208.
- ~~C.~~ All documents required to be filed may be transmitted by regular or express mail, or otherwise delivered to the Director. Service thereof shall be made simultaneously on all parties to the proceeding, pursuant to R3-1-211. A document shall be considered to be filed on the date received by the Director. When a pleading is mailed, any limitation on the time in which a response may be made thereto shall be increased by five days.
- ~~D.~~ In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither Saturday, Sunday, nor a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.
- ~~E.~~ For good cause shown, the hearing officer may grant continuances and extensions of time.

R3-1-210. Record of Hearings Repealed

The Director shall maintain the record in a hearing as prescribed in A.R.S. § 41-1061(E). Upon completion of the hearing, the Director shall maintain the docket and the records for three years.

R3-1-211. Service; Proof of Service Repealed

- ~~A.~~ Service of process by the party responsible for filing shall be required with respect to notices of hearing issued under this Article. The original shall be filed with and retained by the Director, pursuant to R3-1-210.
- ~~B.~~ Unless otherwise provided by law, service of process for notices of hearing shall be sufficient if made by personal service or by certified mail to the last known address of record of the person being served or, if served on a corporation, partner-

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ship, or association, the personnel service is made upon the statutory agent, corporate officer, partner, owner, co-owner, or agent.

- ~~C.~~ All other pleadings, notices, decisions, and orders subsequent to the notice of hearing shall be served on each of the parties. Service shall be made by personal service or by regular mail to the last known address of record of the party or the party's counsel. Service by regular mail is complete upon mailing.
- ~~D.~~ The following shall establish proof of service:
 - 1. If transmitted by certified mail, the return of the signed return receipt; or
 - 2. If by regular mail or personally served, filing with the pleading or separately with the Director a written statement that the service has been made, setting forth the date and manner of service signed by the party serving the pleading.

R3-1-212. Default Repealed

- ~~A.~~ If a party fails to attend or participate in a prehearing conference, prehearing proceeding, or hearing, any party may file a motion to default the nonparticipating party. The motion to default shall state the grounds upon which the nonparticipating party is to be defaulted together with a proposed form of default order. The party against whom the motion was filed may respond as set forth in R3-1-208(B). The hearing officer may order a default upon the hearing officer's own motion.
- ~~B.~~ The hearing officer may conduct a hearing on the motion for default order after notice to all parties.
- ~~C.~~ The hearing officer shall rule on the motion for default before commencing the hearing.
- ~~D.~~ After issuing a default order, the hearing officer shall conduct any further proceedings necessary to complete the adjudication without the defaulting party and shall determine all issues, including those affecting that party.

R3-1-213. Intervention Repealed

- ~~A.~~ A person seeking to intervene in a proceeding shall do so at least 25 days prior to a hearing. A person seeking to intervene in any hearing shall file a written petition for intervention with the hearing officer and serve the petition on each party. A petition shall state facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding.
- ~~B.~~ Any party may file a response to the petition for intervention within five days of service of the petition upon the party. A copy of the response shall be served upon each party and on each petitioner.
- ~~C.~~ A petition for intervention may be granted upon a determination that the petition complies with the requirements in subsection (A) and that the intervention sought is in the interests of justice, will not unduly broaden the scope of the inquiry, and will not impair the orderly and prompt conduct of the proceedings.
- ~~D.~~ The hearing officer shall rule on the petition for intervention and shall notify the petitioner and all parties of the decision at least 15 days prior to the hearing date.
- ~~E.~~ The hearing officer may continue the hearing, provide for a prehearing conference, or both, to give a party a specific amount of time to file a response to the petition for intervention or prepare for the hearing.

R3-1-214. Subpoenas Repealed

- ~~A.~~ Unless otherwise required by law, a request for subpoena shall be in writing, filed with the Director, and served on each party at least seven days prior to the date of hearing. The request shall state the following:
 - 1. The identification of the person or document requested;
 - 2. The facts expected to be established by the person or document subpoenaed, as needed to determine relevancy and materiality of the testimony or document sought.
- ~~B.~~ If more than two subpoenas are requested to establish a single fact in dispute, the request for subpoena shall state the reason why the additional subpoena is not repetitive.
- ~~C.~~ The person to whom a subpoena is directed shall comply with its provisions unless, prior to the date set for hearing, the hearing officer quashes or modifies the subpoena. Any request to quash or modify the subpoena shall be submitted in writing and shall briefly, but thoroughly, state the reasons therefor. The hearing officer shall grant or deny such request by order.
- ~~D.~~ The party requesting the subpoena shall serve it, as prescribed in R3-1-211, upon the person to whom it is directed and that person shall be compensated as prescribed in A.R.S. § 12-303.

R3-1-215. Procedure at Hearings Repealed

- ~~A.~~ The hearing officer shall regulate the course of the proceedings and shall conform with any prehearing order.
- ~~B.~~ To enable disclosure of relevant facts and issues, the hearing officer shall give all parties the opportunity to testify, respond, present evidence and argument, conduct examination and cross-examination of witnesses, and submit rebuttal evidence, except as restricted by an order of the hearing officer.
- ~~C.~~ The hearing officer may conduct all or part of the hearing by telephone, television, or other electronic means, so long as each party has an opportunity to participate in the entire proceeding as it takes place.
- ~~D.~~ All hearings are open to public observation, except where closed pursuant to an express provision of law. Upon motion of any party, the hearing officer may exclude any witness from the hearing until after that witness has testified.
- ~~E.~~ All hearings shall be recorded or transcribed by a court reporter. Transcripts of the hearing shall be arranged and paid for by the person seeking the transcripts.

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R3-1-216. Evidence Repealed

- ~~A. All witnesses at a hearing 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 officer shall receive relevant, probative, and material evidence, rule upon offers of proof, and exclude all evidence the hearing officer has determined to be irrelevant, immaterial, or unduly repetitious. Unless otherwise prohibited by statute, the hearing officer may admit oral or written testimony regarding a statement made by another person, even if it would be inadmissible in a civil court trial.~~
- ~~B. Unless otherwise ordered by the hearing officer, documentary evidence shall be limited in size when folded to 8 1/2 x 11 inches. The submitting party shall furnish a copy of each documentary exhibit to each party of record present, and the original document plus one additional copy shall be furnished to the Director, unless the Director or hearing officer otherwise directs. When a relevant and material matter offered in evidence by any party appears in a larger work containing other information, the party shall plainly designate the offered matter. If the offered matter is in such volume as would unnecessarily encumber the record, such book, paper, or document shall not be received in evidence but may be marked for identification and, if properly authenticated, the relevant and material matter may be read into or photocopied for the record.~~
- ~~C. All documentary evidence offered shall be subject to appropriate and timely objection or by any order of the hearing officer.~~
- ~~D. When ordered by the hearing officer, the parties shall exchange copies of exhibits prior to or at the hearing.~~

R3-1-217. Recommended Decision; Objections to Proposed Draft of Recommended Decision; Director's Decision Repealed

- ~~A. The hearing officer may draft the findings of fact and conclusions of law or allow each party the opportunity to submit proposed findings of fact and conclusions of law within ten days after the conclusion of the hearing.~~
- ~~B. The hearing officer shall render a decision which separately states findings of fact and conclusions of law based on evidence presented at the hearing. Experience, technical competence, or specialized knowledge of the hearing officer may be utilized in evaluating evidence.~~
- ~~C. The hearing officer shall render a decision, or recommended decision, within 30 days after conclusion of the hearing. If the hearing officer is not the Director, the Director shall render a decision within 15 days after receipt of a recommended decision of the hearing officer.~~

R3-1-218. Rehearing or Review of Decision; Basis

- ~~A. Unless as otherwise provided by law or rule, any party to a hearing before the Department who is aggrieved by a decision rendered in such case may file with the Director a written request for rehearing or review of the decision within 15 days after the date of the decision. The request shall specify the particular grounds for rehearing or review. The requesting party shall serve copies upon all other parties in compliance with Section R3-1-211. A request for rehearing or review under this rule may be amended at any time before it is ruled upon by the Director.~~
- ~~B. Any party may file a response to the request for rehearing.~~
- ~~C. Any party may request oral argument on the request for rehearing.~~
- ~~D. A rehearing or review of the decision may be granted for any of the following causes which materially affect the requesting party's rights:
 - 1. Irregularity in the proceedings or any abuse of discretion whereby the requesting party was deprived of a fair hearing;
 - 2. Misconduct of the Department, the hearing officer, or the prevailing party;
 - 3. Accident or surprise which could not have been prevented by ordinary prudence;
 - 4. Newly discovered material evidence which could not, with reasonable diligence, have been discovered and produced at the original hearing;
 - 5. Excessive or insufficient penalties;
 - 6. Error in the admission or rejection of evidence or other errors of law occurring during the proceedings;
 - 7. That the decision is the result of passion or prejudice; or
 - 8. That the decision is not supported by the evidence or is contrary to law.~~
- ~~E. Upon review of a request for rehearing and any response thereto, the Director may affirm or modify the decision or grant a rehearing. An order granting a rehearing shall specify with particularity the grounds on which the rehearing is granted, and the rehearing shall cover only those matters specified. All parties to the hearing may participate as parties at any rehearing.~~
- ~~D. Within 15 days after a decision is rendered, the Director may, on the Director's own initiative, order a rehearing or review of a decision for any reason for which a rehearing on motion of a party might have been granted. The order granting such a rehearing shall specify the grounds for the review of the decision.~~
- ~~A. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.~~

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- B.** The Director shall grant a rehearing or review of an administrative law judge's decision for any of the following causes materially affecting the moving party's rights:
 - 1. The decision is not justified by the evidence or is contrary to law.
 - 2. There is newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original proceeding.
 - 3. One or more of the following has deprived the party of a fair hearing:
 - a. Irregularity or abuse of discretion in the conduct of the proceeding;
 - b. Misconduct of the Department, the administrative law judge, or the prevailing party; or
 - c. Accident or surprise which could not have been prevented by ordinary prudence.
 - 4. Excessive or insufficient sanction.
- C.** The Director may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (B). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

R3-1-219. Effectiveness of Orders Repealed

- A.** ~~In accordance with R3-1-218, a decision becomes a final order 15 days after the decision is issued by the Director or the hearing officer, unless a party has filed a petition for review or reconsideration or unless otherwise stated.~~
- B.** ~~If, in a particular decision, the Director or the hearing officer makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health, and safety, the decision may be issued as a final decision without an opportunity for a reconsideration. If a decision is issued as a final decision without an opportunity for reconsideration, any application for judicial review of the decision shall be made within the time limits permitted for application for judicial review of the final decision.~~

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TITLE 13. PUBLIC SAFETY

CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
R13-4-101	Amend
R13-4-102	Amend
R13-4-103	Amend
R13-4-104	Amend
R13-4-105	Amend
R13-4-106	Amend
R13-4-107	Amend
R13-4-108	Amend
R13-4-109	Amend
R13-4-109.1	New Section
R13-4-110	Amend
R13-4-111	Repeal
R13-4-111	New Section
R13-4-112	Repeal
R13-4-112	New Section
R13-4-113	Repeal
R13-4-114	Repeal
R13-4-114	New Section
R13-4-115	Repeal
R13-4-116	Amend
R13-4-117	Amend
R13-4-118	Amend
R13-4-201	Amend
R13-4-202	Amend
R13-4-203	Amend
R13-4-204	Amend
R13-4-205	Amend
R13-4-206	Amend
R13-4-207	Repeal
R13-4-208	Amend

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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. § 41-1822

Implementing statutes: A.R.S. §§ 41-1822, 41-1823, 41-1825, 41-1828.01, and 41-1072

3. The effective date of the rule:

July 11, 2002, except as noted in individual Sections that the Section is effective six months after filing with the Secretary of State, as required by A.R.S. § 41-1823(A).

4. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 7 A.A.R. 4001, September 7, 2001

Notice of Formal Advisory Committee: 7 A.A.R. 3128, July 20, 2001

Notice of Proposed Rulemaking: 8 A.A.R. 729, February 22, 2002

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

Name: Lyle Mann, Standards and Compliance Manager, AZPOST

Address: 2643 E. University Drive
Phoenix, AZ 85034

Telephone: (602) 223-2514

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

R13-4-101 amends several definitions to clarify rules and improve procedures.

R13-4-102 amends the rule governing the operation of the Arizona Peace Officer Standards and Training Board to reflect changes in enabling statutes.

R13-4-103 deletes constables from the exemption from certification and renames peace officer categories in a more meaningful way. The deletion is made to bring the rule into compliance with an Attorney General's opinion concerning the statutory basis for the rule. This rule also sets forth the procedures for applying for certification and the applicable time-frames.

R13-4-104 establishes the concept of lapse of certification. It clarifies the time of inactivity before lapse and states that lapse in one category is not contingent upon certification in another.

R13-4-105 maintains the same minimum qualifications for appointment. It permits an agency to make a conditional offer of employment prior to the medical examination to comply with the Americans with Disabilities Act. It requires the use of a polygraph examination to verify the applicant's statements of background and qualifications. It also corrects the reference to Arizona Department of Corrections rules that have been repealed.

R13-4-106 clarifies the background investigation requirements by specifying actions required of the applicant and the appointing agency, including the parameters of the polygraph examination.

R13-4-107 updates the medical requirements for peace officers to comply with the Americans with Disabilities Act and simplifies the procedure to allow the use of a Board-trained physician to review diagnoses of a non-Board trained physician.

R13-4-108 lengthens the time for retention of agency records to better serve the public policy behind A.R.S. § 41-1828.01.

R13-4-109 simplifies the causes for disciplinary action, removes suspension for failure to complete continuing training, and clarifies that failure to request a hearing constitutes a waiver of the right to a hearing.

R13-4-109.1 adds provisions that permit the Board to restrict the duties of a peace officer if the officer fails to complete the required continuing and proficiency training or firearms qualification.

R13-4-110 incorporates the new peace officer category classifications and creates a two-track testing process for waiver of the peace officer basic course. This process will allow peace officers with ample recent training and experience to take a test covering only Arizona-specific topics and those with less experience or training, or less recent experience or training, to take a comprehensive test of the entire basic peace officer course.

R13-4-111 clarifies the training and firearms requirements for retaining peace officer certification. It also establishes the process by which outside vendors may provide the required training.

R13-4-112 contains the statutorily required time-frames.

R13-4-113 is repealed and all requirements are now incorporated in R13-4-111.

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R13-4-114 specifies the components necessary for approval as a Board prescribed course, including instructor requirements and categories, and curriculum details.

R13-4-115 regarding certified schools is being eliminated because the Board determined it was not necessary to maintain certified schools in order to conduct effective and efficient in-service training.

R13-4-116 eliminates codified curricula for two categories of peace officers due to the lack of job-task analysis validation information. It also incorporates those items from the repealed R13-4-115 that apply to academies and adds disciplinary provisions and cessation of approval for academies.

R13-4-117 is amended to reflect changes in terminology and appropriate writing style.

R13-4-118 increases the time in which to request a rehearing or review to 30 days, and to 15 days for a response, to comply with court decisions, and is amended to ensure conformity with current laws.

R13-4-201 conforms the definition of “experimentation with drugs” to the Article 1 definition.

R13-4-202 amends the reference to medical examinations to reflect the exemption from rulemaking granted the Department of Corrections several years ago and where applicable, be consistent with R13-4-105.

R13-4-203 conforms this Section with R13-4-106, where applicable.

R13-4-204 conforms this Section with the applicable Sections of Article 1.

R13-4-205 provides flexibility to the Board and the Department of Corrections by eliminating the requirement that the approved curriculum for state correctional officers be 285 hours and incorporates a time-frame for the issuance of a certificate of completion. This Section now conforms to the applicable portions of R13-4-111 and R13-4-116.

R13-4-206 is amended to reflect appropriate writing style and to incorporate the requirements of R13-4-207.

R13-4-207 is repealed and all requirements incorporated into R13-4-206.

R13-4-208 clarifies that additional training is not needed for waiver applicants.

7. 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

8. 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

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

This economic, small business and consumer impact statement analyzes the costs, savings and benefits that accrue to the Board, law enforcement agencies, licensees, and the public.

With the adoption of the proposed rules, the impact on the established Board procedures, Board staff time, and other administrative costs is minimal. The benefits to the Board and its compliance and office staff are moderate with respect to the savings due to elimination of a contracted medical consultant, and minimal with respect to all other changes.

The costs to law enforcement agencies will increase minimally for polygraph and recordkeeping and decrease moderately for medical reviews. The benefits are largely non-quantifiable. Agencies will benefit from excellent pre-hire screening methods. Experience shows fewer injuries and law suits when medically and ethically suitable persons are selected to be peace officers.

The public benefit is non-quantifiable and results from clear and concise standards, and from having peace officers that are selected on the basis of sound background investigations and medical examinations. There is no change in the costs or benefits to the licensee, other than the benefit of clear application procedures and time-frames.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Changes have been limited to grammar, spelling, word choice, and format.

11. A summary of the principal comments and agency response to them:

Two constables who are in litigation with Maricopa County objected to the rule change in R13-4-103(B), which removes the constables’ exemption from the requirement that peace officers be certified. They sent written comments, copy attached, and spoke at the public hearing. The proposed rule remains the same, as there is an Attorney General’s opinion that states that constables are not exempt from the requirement of certification of peace officers under A.R.S. § 41-1823.

It is important to note that most constables perform their duties without being certified, and the proposed change does not prevent them from doing any of their duties. There are constables who have sought and obtained certification, as

they believe they can provide better service to the public if they have peace officer certification, but peace officer certification is not required.

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

A.R.S. § 41-1823(A) requires rules that prescribe minimum qualification requirements for law enforcement officers (which includes R13-4-103, R13-4-104, R13-4-105, R13-4-106, R13-4-107, R13-4-110, and R13-4-111) be effective six months after filing with the Secretary of State.

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

None

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rule follows:

TITLE 13. PUBLIC SAFETY

CHAPTER 4. ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD

ARTICLE 1. GENERAL PROVISIONS

Section

- R13-4-101. Definitions
- R13-4-102. Internal Organization and Control of the Board
- R13-4-103. Certification of Peace Officers
- R13-4-104. Peace Officer Category Restrictions
- R13-4-105. Minimum Qualifications for Appointment
- R13-4-106. Background Investigation Requirements
- R13-4-107. Medical Requirements
- R13-4-108. Agency Records and Reports
- R13-4-109. Denial, Revocation, Suspension, ~~and or~~ Cancellation of Peace Officer Certified Status
- R13-4-109.01. Restriction of Certified Peace Officer Status: Training or Qualification Deficiencies
- R13-4-110. Basic Training Requirements
- R13-4-111. ~~Continuing Training Requirements~~ Certification Retention Requirements
- R13-4-112. ~~Proficiency Training Requirements~~ Time-frames
- R13-4-113. ~~Firearms Qualification Requirements~~ Repealed
- R13-4-114. ~~Certified Instructor Requirements~~ Minimum Course Requirements
- R13-4-115. ~~Certified School Requirements~~ Repealed
- R13-4-116. Academy Requirements
- R13-4-117. ~~Grant Applications and~~ Training Expense Reimbursements
- R13-4-118. Hearings; Rehearings

ARTICLE 2. CORRECTIONAL OFFICERS

Section

- R13-4-201. Definitions
- R13-4-202. Uniform Minimum Standards ~~for Appointment~~
- R13-4-203. Background Investigation
- R13-4-204. Records and Reports
- R13-4-205. Basic Training Requirements
- R13-4-206. Continuing Training Including Firearms Qualification
- R13-4-207. ~~Firearms Qualification Requirements~~ Repealed
- R13-4-208. ~~Reinstatement and~~ Re-employment of State Correctional Officers

ARTICLE 1. GENERAL PROVISIONS

R13-4-101. Definitions

In this Article, unless the context otherwise requires:

1. "Academy" means ~~a certified school which conducts the~~ an entity that conducts a Board-prescribed a facility at which the basic peace officer basic course, specialty officer basic course, or the limited reserve officer limited-authority basic course.
2. "Agency" means a ~~lawfully empowered~~ law enforcement entity empowered by the state of Arizona.
3. "Appointment" means the selection by an agency of a person to be a peace officer or peace officer trainee.

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4. ~~“Approved training program” means a course of instruction which has been approved by the Board for reimbursement that meets Board-prescribed course requirements.~~
“Board” means the Arizona Peace Officer Standards and Training Board.
“Board-trained physician” means an occupational medicine specialist or a physician who has attended a Board course on peace officer job functions.
5. “Cancellation” means the annulment of certified status without prejudice to reapply for certification.
6. ~~“Certified” means approved by the Board as being in compliance with these rules A.R.S. Title 41, Chapter 12, Article 8 and this Chapter.~~
7. “Denial” means the refusal of the Board to grant certified status.
“Dangerous drug or narcotic” means a substance identified in A.R.S. § 13-3401 as being a dangerous drug or narcotic drug.
“Experimentation” means the illegal use of marijuana, a dangerous drug, or narcotic as described in R13-4-105(B) and (C).
“Full-authority peace officer” means a peace officer whose authority to enforce the laws of this state is not limited by this Chapter.
“Lapse” means the expiration of certified status.
“Limited-authority peace officer” means a peace officer who is certified to perform the duties of a peace officer only in the presence and under the supervision of a full-authority peace officer.
8. “Limited correctional peace officer” means a peace officer who has authority to perform the duties of a peace officer only while employed by and on duty with the Arizona Department of Corrections, and only for the purposes of guarding, transporting, or pursuing persons under the jurisdiction of the Arizona Department of Corrections.
9. ~~“Limited reserve officer” means a reserve officer with restricted duties except when under direct supervision.~~
10. ~~“Medical consultant” means a physician employed by the Board who is a specialist in occupational medicine.~~
“Peace officer” means the same as peace officer in A.R.S. § 1-215.
11. “Peace officer trainee” means a person recruited and appointed by an agency to attend an academy.
12. “Physician” means a person licensed to practice allopathic or osteopathic medicine in this or another state.
13. ~~“Regular peace officer” means a full authority peace officer who is paid a salary.~~
14. ~~“Reserve officer” means a full authority peace officer who is not paid a salary.~~
“Restriction” means the Board’s limitation on duties allowed to be performed by a certified peace officer.
15. “Revocation” means the permanent withdrawal of certified status.
16. ~~“School administrator” means an individual who has the primary responsibility for directing a certified school or approved training program.~~
17. ~~“Service ammunition” means full performance loads equivalent in all respects to that carried on duty. munitions that perform equivalently in all respects when fired during training or qualification to those carried on duty by the peace officer.~~
18. ~~“Service handgun” means that particular handgun which the officer carries for use on duty. the specific handgun or equivalent that the peace officer carries for use on duty.~~
19. “Specialty officer” means a peace officer whose authority is limited to enforcing specific sections of the Arizona Revised Statutes or Arizona Administrative Code, as specified by the appointing agency’s statutory powers and duties.
“Success criteria” means a numerical statement that establishes the performance needed for a person to successfully demonstrate competency in a knowledge, task or ability required by this Chapter.
20. ~~“Suspension” means the temporary withdrawal of certified status. for a period of time not to exceed one year.~~
21. “Termination” means the end of employment or service with an agency as a peace officer, either through removal, discharge, resignation, retirement, or otherwise.

R13-4-102. Internal Organization and Control of the Board

- A. ~~Scheduled meetings. The Chairman shall designate the location, date and time of meetings. Notice and the agenda of the meeting shall be made public and provided to each Board member not less than five days in advance of the meeting. The Chair, in consultation with the Board, shall set regular meeting dates of the Board and shall post notice of each regular meeting according to A.R.S. § 38-431.02.~~
- B. Quorum. The following shall constitute a quorum for conducting business:
 1. ~~On issues dealing with law enforcement, five members of the Board exclusive of members authorized to participate only in corrections business;~~
 2. ~~On issues dealing solely with corrections, six members of the Board.~~
- C. ~~B. Meeting agenda. Items for Board consideration must be submitted not later than ten days prior to the scheduled meeting to be placed on the agenda. Items to be placed on the agenda for Board consideration shall be submitted no later than 20 days before the scheduled meeting.~~

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~~D.C.~~ Special meetings. Notice of meetings that are not regularly scheduled shall contain the purpose for the meeting. Except in the case of an emergency meeting declared by the Governor or the ~~Chairman Chair~~, the ~~Chairman Chair~~ shall give at least five days' written notice of ~~the a special~~ meeting to each member of the Board ~~specifying the location, date and time and shall post notice of the special meeting according to A.R.S. § 38-431.02.~~

~~E.D.~~ Subcommittees. The ~~Chairman Chair~~ may appoint subcommittees to inquire into any matter of Board interest. Each subcommittee shall report its findings, conclusions, and recommendations to the Board, in a manner directed by the ~~Chairman Chair~~.

R13-4-103. Certification of Peace Officers

A. Certified status mandatory. ~~No~~ A person who ~~does is~~ not have certified status by the Board or whose certified status is inactive shall not function as a peace officer or be assigned the duties of a peace officer by an agency, except as provided in subsection (B).

B. ~~Constables and sheriffs~~ Sheriffs are exempt from the requirement of certified status.

C. A ~~peace officer must~~ person shall satisfy the minimum qualifications and training requirements to receive certified status.

D. Peace officer categories. The categories for which certified status may be granted are:

1. ~~Regular~~ Full-authority peace officer,
2. Specialty peace officer,
3. ~~Reserve~~ Limited-authority peace officer, and
4. ~~Limited reserve~~ peace officer,
5. ~~4.~~ Limited correctional peace officer.

E. Application for certification. A person who seeks to be certified as a peace officer shall make application as follows:

1. Submit to an agency an application that contains all documents required by R13-4-105, R13-4-106(A) and (B), and R13-4-107;
2. Obtain an appointment from an agency; and
3. Obtain either a certificate of graduation from a Board-prescribed Peace Officer Basic Course or a certificate of successful completion of the waiver of training process prescribed by R13-4-110(D).

F. Establishment or enforcement of qualifications, standards, or training requirements. The Board may waive in whole or in part any provision of this Article upon a finding that the best interests of the law enforcement profession are served and the public welfare and safety is not jeopardized by the waiver. The Board may place restrictions or requirements on a peace officer as a condition of certified status.

G. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

R13-4-104. Peace Officer Category Restrictions

~~A.~~ Limited reserve peace officer. A limited reserve peace officer must be in the company of and under the direct supervision and control of a regular peace officer or reserve peace officer when engaged in patrol or investigative activities performed for the purpose of detection, prevention and suppression of crime or the enforcement of criminal and traffic laws of the state, county or municipality, except when duties are restricted to:

1. ~~Traffic direction or crowd control assistance, or~~
2. ~~Maintenance of public order in the event of riot, insurrection, or disaster.~~

A. Limited-authority peace officer.

1. A limited-authority peace officer shall be in the presence and under the supervision of a full-authority peace officer when engaged in patrol or investigative activities performed to detect, prevent, or suppress crime, or to enforce criminal or traffic laws of the state, county, or municipality.
2. A limited-authority peace officer may perform the following duties without supervision of a full-authority peace officer:
 - a. Directing traffic, or assisting with crowd control; or
 - b. Maintaining public order in the event of riot, insurrection, or disaster.

B. Limited correctional peace officer. A limited correctional peace officer shall not engage in high-speed vehicular pursuit operations.

~~B.C.~~ Peace officer category change. A certified peace officer may be appointed to another peace officer category within the same agency without the background investigation, fingerprint check, and medical examination required in ~~Section~~ R13-4-105, R13-4-106, and R13-4-107 when these requirements were previously satisfied for appointment if:

1. No more than 30 days have elapsed since the peace officer's termination, and
2. The change is to a category for which the officer is qualified under ~~Section~~ R13-4-110(A).

~~C.D.~~ Inactive status. Certified status of a peace officer ~~shall become~~ becomes inactive upon termination.

~~D.~~ Limited correctional peace officer. A limited correctional peace officer may only exercise peace officer authority while on duty with the Arizona Department of Corrections, and only for guarding, transporting, or pursuing persons under the jurisdiction of the Arizona Department of Corrections. ~~Limited correctional peace officers are not authorized to engage in high speed vehicular pursuit operations.~~

E. Lapse of certified status. Certified status of a peace officer lapses after three consecutive years on inactive status.

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~~E.F.~~ Reinstatement from inactive status. A peace officer whose certified status is inactive ~~and has not lapsed~~ may be have certification reinstated if the requirements of R13-4-105 are met for the new appointment, and when if appointed:

1. ~~In the same peace officer category, or within three years of termination and the requirements of Section R13-4-105 have been met for the new appointment;~~
2. ~~As a reserve officer or specialty officer from inactive status as a regular peace officer within three years of termination and the requirements of Section R13-4-105 have been met for the new appointment;~~
3. ~~As a regular peace officer or specialty officer from inactive status as a reserve full-authority peace officer, within six months of termination, and the requirements of Section R13-4-105 have been met for the new appointment.~~

G. Active status as a specialty, limited-authority, or limited correctional peace officer does not prevent lapse of certified status as a full-authority peace officer.

R13-4-105. Minimum Qualifications for Appointment

~~A. Prior to~~ Before appointment or attending an academy, a person shall meet the following minimum qualifications:

1. ~~The person shall be~~ Be a United States citizen.;
2. ~~The person shall be~~ Be at least 21 years of age, except that a person may attend an academy if ~~he~~ the person will be 21 prior to ~~before~~ graduating.;
3. ~~The person shall be~~ Be a high school graduate or have successfully completed a General Education Development (G.E.D.) examination.;
4. ~~The person shall have undergone~~ Undergo a complete background investigation ~~which that~~ meets the standards of Section R13-4-106 except that an applicant a person may begin an academy prior to before the results of the fingerprint check are returned. However, the ~~applicant may~~ person shall not graduate from the academy ~~nor and~~ the agency shall not receive reimbursement for ~~an applicant for which~~ the person's training expenses until a qualifying fingerprint check return result has not been is obtained.;
5. ~~The person shall have undergone~~ Undergo a medical examination ~~which that~~ meets the standards of Section R13-4-107 within one year prior to before appointment. An agency may make a conditional offer of appointment before the medical examination. An If the medical examination preceding an appointment by is conducted more than one hundred and eighty 180 days before appointment, the person shall require the submission of submit a written statement indicating from the applicant that his the person's medical condition has not changed since the examination.;
6. ~~The person shall not have been~~ Not have been convicted of a felony or any offense that would be a felony if committed in Arizona.;
7. ~~The person shall not have been~~ Not have been dishonorably discharged from the United States Armed Forces.;
8. ~~The person shall not have been~~ Not have been previously denied certified status, have certified status revoked, or have his current certified status ~~under suspension~~ suspended.;
9. ~~The person shall not~~ Not have illegally sold, produced, cultivated, or transported marijuana for sale.;
10. ~~The person shall not~~ Not have illegally used marijuana for any purpose within the past three years.;
11. ~~The person shall not~~ Not have ever illegally used marijuana other than for experimentation.;
12. ~~The person shall never~~ Not have ever illegally used marijuana while employed or appointed as a peace officer.;
13. ~~The person shall not~~ Not have illegally sold, produced, cultivated, or transported for sale any dangerous ~~drugs drug~~ drug or ~~narcotics narcotic~~, other than marijuana.;
14. ~~The person shall not~~ Not have illegally used a dangerous drugs drug or ~~narcotics narcotic~~, other than marijuana, for any purpose within the past seven years.;
15. ~~The person shall never~~ Not have ever illegally used a dangerous drugs drug or ~~narcotics narcotic~~ other than for experimentation.;
16. ~~The person shall never~~ Not have ever illegally used a dangerous drugs drug or ~~narcotics narcotic~~ while employed or appointed as a peace officer.;
17. ~~The person shall not~~ Not have a pattern of abuse of prescription medication.;
18. ~~The person shall have undergone and passed a Board-approved drug screening test, or~~ Undergo a polygraph examination ~~which that~~ polygraph examination relates to the provisions of subsection (A)(9)-(17) meets the requirements of R13-4-106, unless prohibited by law.
19. ~~The person shall not have been~~ Not have been convicted of or adjudged to have violated traffic regulations governing the movement of vehicles with ~~such~~ a frequency within the past three years so as to indicate that indicates a disrespect for traffic laws ~~and or~~ a disregard for the safety of other persons on the highway within the past three years.
20. ~~The person shall have read~~ Read the code of ethics in subsection (E) and ~~affirmed~~ affirm by signature the person's understanding and agreement to abide by the code.

- B.** The ~~illegal~~ use of ~~an illegal drug~~ marijuana, or a dangerous drug or narcotic is presumed to be not for experimentation if:
1. The use of marijuana exceeds a total of 20 times or exceeds five times since the age of 21 years; or
 2. The use of any dangerous drug or narcotic, other than marijuana, in any combination exceeds a total of five times, or exceeds one time since the age of 21 years.
- C.** An agency head who wishes to appoint ~~an applicant~~ a person whose ~~illegal drug use of marijuana or a dangerous drug or narcotic~~ is presumed to be not for experimentation under this Section shall petition the Board for a determination that, given the unique circumstances of the ~~applicant's person's use, it the use was for~~ experimentation. The petition shall:
1. Specify the type of illegal drugs used, the number of uses, the ~~age(s) age~~ age at the time of each use, and ~~shall describe the methods method~~ by which the information came to the agency's attention, and any attempts attempt made to verify the accuracy of the information, applicant's report; and
 2. State the factors the agency head wishes the Board to consider in making its determination. Those factors may include:
 - a. The duration of usage,
 - b. The motivation for use,
 - c. The time elapsed since the last use,
 - d. How the drug was obtained,
 - e. How the drug was ingested,
 - f. Why the applicant stopped using the drug, and
 - g. Any other ~~factors factor~~ factor the agency head believes ~~are is~~ relevant to the Board's determination.
- D.** With respect to a limited correctional peace ~~officers officer~~, previous completion of ~~the a~~ background investigation conducted ~~pursuant to under~~ R13-4-203 and ~~the a~~ medical physical examination conducted under pursuant to A.A.C. Title 5, Chapter 1, Article 5, R13-4-202(A)(6), satisfy satisfies the requirements of this Section when there has been no interruption of employment by the agency, except that:
1. The ~~person limited correctional peace officer~~ shall submit to ~~drug testing a polygraph examination~~ as required by subsection (A)(18); ~~of this rule, and~~
 2. ~~The agency shall make a current ACIC/NCIC criminal history inquiry. The agency shall query the National Crime Information Center/Interstate Identification Index (NCIC/III), and the Arizona Criminal Information Center/Arizona Computerized Criminal History (ACIC/ACCH) and review the returns to determine that the person meets the requirements of this Section.~~
- E.** Code of Ethics. ~~The Because~~ the people of the state of Arizona ~~have conferred confer~~ upon all peace officers the authority and responsibility to safeguard lives and property within constitutional parameters; ~~Because of this special trust and confidence, officers are expected to personally make a peace officer shall commit to the following commitment Code of Ethics and shall affirm the peace officer's commitment by signing the Code.~~
- "I will exercise self-restraint and be constantly mindful of the welfare of others. I will be exemplary in obeying the laws of the land and loyal to the state of Arizona, and my agency and its objectives and regulations. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept secure unless revelation is necessary in the performance of my duty.
- I will never take selfish advantage of my position and will not allow my personal feelings, animosities, or friendships to influence my actions or decisions. I will exercise the authority of my office to the best of my ability, with courtesy and vigilance, and without favor, malice, ~~or~~ ill will, and or without compromise. I am a servant of the people and I recognize my position as a symbol of public faith. I accept it as a public trust to be held so long as I am true to the law and serve the people of Arizona."
- F.** This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

R13-4-106. Background Investigation Requirements

- A.** Personal history statement. A person who seeks to be appointed ~~Each candidate for appointment~~ shall complete and submit to the appointing agency a personal history statement on a form prescribed by the Board ~~prior to before~~ the start of ~~the a~~ background investigation. The history statement shall contain answers to questions which that aid in determining whether ~~a the~~ person is eligible for certified status as a peace officer. The questions shall concern whether the person meets the minimum requirements for appointment, has engaged in conduct or a pattern of conduct that would jeopardize the public trust in the law enforcement profession, and is of good moral character.
- B.** Investigative requirements for the applicant. The background investigation shall include the following: To assist with the background investigation, a person who seeks to be appointed shall provide the following:
1. Proof of United States citizenship. Copy A copy of a birth certificate, United States passport, or United States naturalization papers ~~shall be is~~ acceptable proof. ~~Proof of citizenship shall be retained by the agency.~~
 2. Proof of education. Copy A copy of a diploma, certificate, or transcript ~~shall be is~~ acceptable proof. ~~Proof of education shall be retained by the agency.~~
 3. Record of any military discharge. A copy of the Military Service Record ~~Form (DD Form 214, Member 4) shall be is~~ acceptable proof. ~~Proof of any military discharge shall be retained by the agency.~~

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- ~~4. Department of Transportation driving record. A copy of the Motor Vehicle Division record on the applicant's driving history shall be retained by the agency.~~
 - ~~4. Personal references. The names and addresses of at least three people who can provide information as personal references.~~
 - ~~5. Personal reference and previous employer inquiries. Information provided by personal references and at least three previous employers of the applicant shall be recorded and retained by the agency.~~
 - ~~5. Previous employers or schools attended. The names and addresses of all employers and schools attended within the previous five years.~~
 - ~~6. Law enforcement agency records. Law enforcement agency records in jurisdictions where the applicant has lived or worked in the past five years shall be checked. Information obtained shall be recorded and retained by the agency.~~
 - ~~6. Residence history. A listing of the complete address for every location that the person has lived in the last five years.~~
 - ~~7. Federal Bureau of Investigation and Department of Public Safety records. The applicant shall have undergone a fingerprint check with these departments. A copy of the Fingerprint Card Inventory Sheet shall be retained by the agency.~~
 - ~~8. National and Arizona Criminal Information Center checks. A copy of the NCIC/ACIC response shall be retained by the agency.~~
 - ~~9. The results of a Board approved drug screening test, or polygraph examination, as required by R13-4-105.~~
- C. Investigative requirements for the agency. A complete background investigation includes the following inquiries and a review of the returns to determine that the person seeking appointment meets the requirements of R13-4-105, and that the person's personal history statement is accurate and truthful. For each person seeking to be appointed, the appointing agency shall:**
1. Query all the law enforcement agency records in jurisdictions listed in subsections (B)(5) and (B)(6);
 2. Query the motor vehicle division driving record from any state listed in subsections (B)(5) and (B)(6);
 3. Complete and submit a Fingerprint Card Inventory Sheet to the Federal Bureau of Investigation and Arizona Department of Public Safety for query;
 4. Query the National Crime Information Center/Interstate Identification Index (NCIC/III), and the Arizona Criminal Information Center/Arizona Computerized Criminal History (ACIC/ACCH), or the equivalent for each state listed in subsections (B)(5) and (B)(6);
 5. Contact all personal references and employers listed in subsections (B)(4) and (B)(5) and document the answers to inquiries concerning whether the person meets the standards of this Section:
 - a. Administer a polygraph examination, unless prohibited by law. The results shall include a detailed report of the pre-test interview and any post-test interview and shall cover responses to all questions that concern minimum standards for appointment as required by R13-4-105, truthfulness on the personal history statement, and the commission of any crimes; and
 - b. If the results of the background investigation show that the person meets minimum qualifications for appointment, has not engaged in conduct or a pattern of conduct that would jeopardize public trust in the law enforcement profession, and is of good moral character, complete a report that attests to those findings.

R13-4-107. Medical Requirements

- A. Medical Categories. The medical categories for certification are:**
1. Category I. No medical, physical, or mental circumstance exists that limits the person's ability to effectively perform all the duties of a peace officer or creates a reasonable probability of substantial harm to the person or others;
 2. Category II. A medical, physical, or mental circumstance exists that absent a reasonable accommodation by the appointing agency would limit the person's ability to effectively perform all the duties of a peace officer or create a reasonable probability of substantial harm to the person or others; and
 3. Category III. A medical, physical, or mental circumstance exists that despite reasonable accommodation by the appointing agency limits the person's ability to effectively perform all the duties of a peace officer or creates a reasonable probability of substantial harm to the person or others.
- A.B. Medical categories: Eligibility for certified status. The following categories are established for the purpose of classifying medical circumstances used in to determine eligibility for certified status:**
1. Category I. No medical, physical, or mental circumstance exists which would limit the person's ability to effectively perform the duties of a peace officer on a continuing basis or creates a reasonable probability of substantial harm to the person or others. A person in this category Category I may be certified appointed when if in compliance with the person meets all other standards qualifications.
 2. Category II. A medical, physical, or mental circumstance, exists which could limit the person's ability to effectively perform the duties of a peace officer on a continuing basis or may create a reasonable probability of substantial harm to the person or others. An agency shall determine if the person's medical, physical, or mental circumstance will interfere with his ability to perform the duties of a peace officer and if so, whether reasonable accommodations can be made which will allow him to function of as a peace officer on a continuing basis without creating a reasonable probability of substantial harm to the person or others. If an agency determines that the medical, physical, or mental cir-

~~circumstance does not affect the ability of the person to perform the duties of a peace officer or that reasonable accommodations can be made and~~ If an agency chooses to make the required accommodation and appoint the a person in Category II, and the examination was made by a Board-trained physician, the appointment may be made without further action by the Board. However, if the examining physician has not been trained by the Board, a medical review as prescribed in under subsection (H) by a Board-trained physician is required to determine eligibility for certified status. If the Board-trained physician agrees with the finding of the other physician, the appointment may be made without further action by the Board.

3. ~~Category III. A medical, physical or mental circumstance exists where it is not possible to make reasonable accommodations which allow a person to perform the duties of a peace officer on a continuing basis without creating a reasonable probability of substantial harm to the person or others, or which substantially impairs the person's ability to function as a peace officer. A person in this category shall not be granted certified status.~~

Category III. If an agency wishes to appoint a person in Category III, the agency shall submit a letter to the Board asking for a determination of eligibility for certification. The letter shall include a report from a Board-trained physician identifying the medical limitations and the proposed accommodations. The Board shall determine the person's eligibility for certified status, based upon whether the appointing agency is able to make reasonable accommodations, and whether by placing restrictions or requirements on the person as a condition of certified status under R13-4-103(F), the person is able to perform the duties authorized within the restriction without endangering the person or others.

B. Medical, physical or mental circumstances in Category III include:

1. ~~Contagious hepatitis;~~
2. ~~Contagious tuberculosis;~~
3. ~~Total hearing loss;~~
4. ~~Visual acuity worse than 20/40 after correction.~~

C. Medical, physical, or mental circumstances in Category II and Category III include:

1. Angina pectoris;
2. Asthma;
3. Cancer - metastatic or leukemia;
4. Cardiac arrhythmias or murmurs;
5. Cerebral vascular accident;
6. Chest pains of unknown origin;
7. Contagious hepatitis;
8. Contagious tuberculosis;
- ~~9.~~9. Chronic respiratory disease;
- ~~8.~~10. Diabetes, insulin dependent or ketosis-prone;
- ~~9.~~11. Fixation of major joint;
- ~~10.~~12. Hearing not specified in ~~subsections (B) or (D)~~ subsection (D);
- ~~11.~~13. Herniated lumbar disc;
- ~~12.~~14. Hypertension, uncontrolled;
- ~~13.~~15. Inguinal hernia;
- ~~14.~~16. Liver or renal dysfunction;
- ~~15.~~17. Migraine headache;
- ~~16.~~18. Myocardial infarction, history of;
17. Neuroses;
- ~~18.~~19. Paralysis;
- ~~19.~~20. Pilonidal cyst;
- ~~20.~~21. Prosthetic device, e.g., limbs, hearing aid, colostomy;
- ~~21.~~22. Recurrent dislocation of a major joint;
- ~~22.~~23. Schizophrenia or manic depressive psychosis;
- ~~23.~~24. Scoliosis greater than 15 degrees;
- ~~24.~~25. Seizure disorders;
- ~~25.~~26. Current substance abuse;
- ~~26.~~27. Valvular heart disease, uncorrected;
- ~~27.~~28. Vision not specified in ~~subsections (B) or (D)~~ subsection (D) or monocular vision;
- ~~28.~~29. Wasting disease, chronic, e.g., such as multiple sclerosis, myasthenia gravis, or amyotrophic lateral sclerosis; and
- ~~29.~~30. Any other medical, physical, or mental circumstance which that the examining physician determines may interfere with the person's ability to ~~effectively~~ function as a peace officer effectively on a continuing basis or may create a reasonable probability of substantial harm to the person or others.

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- D.** Vision and hearing. Vision and hearing meeting the following requirements ~~shall be~~ are classified in Category I:
1. Visual acuity of:
 - a. 20/20 or better uncorrected; ~~or~~
 - b. 20/20 or better, corrected by spectacles or hard contact lenses, if uncorrected acuity is 20/80 or better; ~~or~~ The applicant shall demonstrate satisfactory adaptation to the contact lenses; or
 - c. 20/20 or better, corrected by soft contact lenses, if the uncorrected acuity is 20/200 or better. The candidate applicant must shall demonstrate satisfactory adaptation to the ~~contacts.~~ contact lenses;
 2. Vision capable of distinguishing basic color groups against a favorable background.
 3. Peripheral vision:
 - a. ~~Which~~ That does not reveal scotoma or quadrantonopia; or
 - b. In which vision perimeter testing is intact at 170 degrees; ~~and~~
 4. Uncorrected hearing with no loss greater than 25 db in the 500, 1000, 2000, or 3000 hertz frequencies as measured by an audiometer.
- E.** Medical history. ~~Each applicant must~~ A person who seeks to be appointed shall supply to the examining physician a statement of the person's medical history ~~which that~~ includes past and present diseases, injuries, operations, immunization status, and medications taken.
- F.** Medical examination. The examining physician shall review the ~~candidate's~~ person's medical history and examine the ~~candidate~~ person. ~~The physician shall indicate if any of the medical, physical, or mental circumstances in Category II and III exist describe how any circumstances in Category II affect the person's ability to perform the duties of a peace officer, specify the type and duration of any treatment required.~~
- G.** Examination report. The examining physician shall record the findings of the medical examination on a form prescribed by the Board. The physician shall indicate whether a medical, physical, or mental circumstance in Category II or III exists, describe how the circumstance affects the person's ability to perform the duties of a peace officer, and specify the type and duration of any treatment required. In all Category II or III cases, the physician shall advise the appointing agency in writing of any limitation on the person's ability to function as a peace officer.
- H.** Category II and Category III reviews. The diagnosis of a person with a circumstance classified in Category II or Category III by ~~his~~ an examining physician who is not Board trained shall be reviewed by ~~the medical consultant~~ a Board-trained physician if the agency intends to appoint the person. ~~The medical consultant~~ Board-trained physician may review prior medical examination reports ~~of concerning the applicant person~~ and contact examining physicians to review their findings. If required by the Board-trained physician, An an independent medical examination may be required shall be conducted, if the agency wishes to appoint the person, and the applicant person may shall be referred to a specialist in the appropriate medical field.
- I.** ~~Medical consultant's report. The medical consultant shall advise the Board in writing of any limitations on the person's ability to function as a peace officer or any medical, physical, or mental circumstances which creates a reasonable probability of substantial harm to the person or others if he were to perform the duties of a peace officer.~~
- J.** ~~Board action. The Board shall determine the person's eligibility for certified status based upon a finding of whether reasonable accommodations can be made by the agency to allow the person to function as a peace officer without endangering himself or others. The Board may place restrictions or requirements on the person as a condition of certified status.~~
- K.** ~~I. Additional findings. The requesting appointing agency may submit to the Board results of additional examinations or tests, or obtain additional opinions from other licensed physicians. Additional findings may be considered by the Board in reviewing a candidate's eligibility for certified status.~~
- L.** ~~Costs of examinations. The expense of the review of previously conducted medical examinations by the medical consultant shall be the responsibility of the Board. The expense of additional examinations, tests, or opinions, shall be borne by the person or requesting agency.~~
- J.** This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

R13-4-108. Agency Records and Reports

- A.** Agency reports. On forms prescribed by the Board, an agency shall submit:
1. A report by the agency head attesting that the requirements of Section R13-4-105 ~~have been~~ are met for each person appointed. The report shall be submitted to the Board ~~prior to~~ before a person ~~attending~~ attends an academy or ~~performing~~ performs the duties of a peace officer.
 2. ~~A copy of any Arizona Department of Public Safety or Federal Bureau of Investigation criminal history record, which includes any arrest or conviction of a person appointed by the agency. The copy of the record shall be submitted to the Board upon receipt by the agency.~~
 3. ~~A~~ A report of the termination of a peace officer. The report shall be submitted to the Board within 15 days of the termination and include:
 - a. The nature of the termination and effective date;
 - b. A detailed description of any termination for cause; and
 - c. A detailed description of, and supporting documentation for, any cause existing for suspension or revocation of certified status.

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- B.** Agency records. ~~An Agency~~ agency records shall be made make its records available upon the request of the Board or staff. The agency shall maintain the following for each person for whom certification is sought:
1. An application file that contains all of the information required in R13-4-103(E) and R13-4-106(C) for each person appointed for certification as a peace officer;
 - ~~1-2.~~ A copy of reports submitted pursuant to under subsection (A);
 - ~~2-3.~~ A signed copy of the affirmation to the Code of Ethics required pursuant to Section under R13-4-105;
 - ~~3-4.~~ A written report of the results of all a completed or partially completed background investigations investigation and all written documentation obtained or recorded pursuant to under Section R13-4-106;
 - ~~4-5.~~ A completed medical report required pursuant to under Section R13-4-105; and
 - ~~5-6.~~ A record of all continuing training, proficiency training, and firearms qualifications conducted pursuant to under Section R13-4-111, R13-4-112 and R13-4-113.
- C.** Record retention. An agency shall maintain the records required by this Section as follows:
1. For applicants investigated ~~pursuant to under Section R13-4-106~~ who are not appointed; ~~records shall be retained for one year~~ three years;
 2. For applicants who are appointed: ~~records shall be retained for five years from the date of appointment termination,~~ except records retained ~~pursuant to under subsection (B)(6), which~~ shall be retained for three years following completion of training.

R13-4-109. Denial, Revocation, Suspension, and or Cancellation of Peace Officer Certified Status

- A.** Causes for denial, suspension, or revocation. The Board may deny certified status or suspend or revoke the certified status of a peace officer for:
1. Failure to satisfy a minimum qualification for appointment listed in R13-4-105;
 - ~~1-2.~~ Willful falsification of Willfully providing false information to in connection with obtain obtaining or reactivating certified status;
 - ~~2-3.~~ A medical, physical, or mental disability which that substantially impairs limits the person's ability to perform the duties of a peace officer effectively, or may create a reasonable probability of substantial harm to the person or others, for which a reasonable accommodation cannot be made;
 - ~~3-4.~~ A violation Violation of a restriction or requirement for certified status pursuant to imposed under Section R13-4-109.01, R13-4-107(J) or R13-4-103(F); or Section R13-4-118(A)(1);
 - ~~4-5.~~ Addiction to or the The unlawful illegal use of marijuana, a dangerous drug, or a narcotics narcotic; or dangerous drugs;
 - ~~5-6.~~ Unauthorized use of or being under the influence of spirituous liquor on duty; or excessive use of spirituous liquor which would tend to discredit the law enforcement profession;
 - ~~6-7.~~ The commission of a felony, an offense which that would be a felony if committed in this state, or an offense involving dishonesty, unlawful sexual conduct, or physical violence;
 - ~~7-8.~~ Malfeasance, misfeasance, or nonfeasance in office; or
 - ~~8-9.~~ Any other conduct or pattern of conduct that would tend tends to disrupt, diminish, or otherwise jeopardize public trust in the law enforcement profession.
- ~~**B.** Additional causes for suspension. Certified status may be suspended when a peace officer fails to satisfy the requirements of Sections R13-4-111, R13-4-112 or R13-4-113. The suspension shall remain in effect until the requirements are met and certified status shall be reinstated upon notice to the Board of their satisfaction.~~
- ~~**C.** Cause for cancellation. The Board may shall cancel the certified status of a peace officer if the Board upon determining determines that the person was not qualified when certified status was granted, and revocation is not warranted under subsection (A).~~
- ~~**D.** Cause for mandatory revocation. Upon the receipt of a certified copy of the a judgment of a felony conviction of a peace officer, the Board shall revoke certified status of the peace officer.~~
- ~~**E.** Action by the Board. Upon receipt of a report information that cause exists for the denial to deny certification, or to cancellation cancel, suspension suspend, or revocation of revoke the certified status of a peace officer, the Board shall determine the whether action is to be taken initiated regarding the retention of certified status. The Board may conduct additional inquiries or investigations to obtain sufficient information to make a fair determination in making its determination.~~
- ~~**F.** Notice of action. The Board shall notify the affected person of a decision to pursue a denial, cancellation, suspension or revocation Board action to initiate proceedings regarding certified status for a cause listed under subsection (A) or (B). The notice shall be delivered by certified mail or personal delivery served as required by A.R. S. § 41-1092.04, and specify the cause for the action. Within ten 30 days of delivery, the person named in the notice shall advise the Board or its staff in writing whether a hearing is requested, if he intends to appear before the Board and if he will be represented by an attorney. Failure to file a written request for hearing at the Board offices within 30 days of service of the notice constitutes a waiver of the right to a hearing.~~
- ~~**G.** Effect of agency action. No action Action by an agency or a decision resulting from an appeal of that action shall does not preclude action by the Board to deny, cancel, suspend, or revoke the certified status of a peace officer.~~

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R13-4-109.01. Restriction of Certified Peace Officer Status: Training or Qualification Deficiencies

- A.** Restricted status. The Board shall restrict certified status if a peace officer fails to satisfy the requirements of R13-4-111.
1. The Board shall consider reports of training or qualification deficiencies at a regularly scheduled public meeting and provide a peace officer alleged to have a training or qualification deficiency the opportunity to be heard without referral to an independent hearing officer. The issue at the public meeting shall be restricted to whether the peace officer has successfully completed the required training or qualification and can produce documentation to verify it.
 2. A restriction shall remain in effect until the training or qualification requirement is met and the peace officer files written verification of the training or qualification with the Board.
 3. The Board shall provide notice of action and hearing, or reinstatement following a restriction under this Section by regular mail to the peace officer at the employing agency address. The Board shall provide a copy of the restriction or reinstatement notice by regular mail to the agency head.
- B.** Firearms qualification. If a peace officer fails to satisfy R13-4-111(C), the peace officer shall not carry or use a firearm on duty.
- C.** Continuing and proficiency training. If a peace officer fails to satisfy R13-4-111(A) or (B), the peace officer shall not engage in enforcement duties, carry a firearm, wear or display a badge, wear a uniform, make arrests, perform patrol functions, or operate a marked police vehicle.

R13-4-110. Basic Training Requirements

- A.** Required training for certified status. ~~No peace officer~~ A person shall not receive certified status or ~~be used as a peace officer~~ perform the duties of a peace officer until the ~~individual person~~ person ~~has successfully completed~~ completes basic training as follows:
1. A ~~regular or reserve full-authority~~ peace officer shall complete the 585-hour ~~basic~~ full-authority peace officer basic course, specified in R13-4-116, at an academy.
 2. A specialty ~~peace~~ peace officer shall complete ~~either the 280-hour~~ a Board-prescribed specialty peace officer basic course or ~~the 585-hour basic full-authority~~ peace officer basic course, specified in R13-4-116, at an academy.
 3. A ~~limited reserve officer limited-authority~~ peace officer shall complete ~~either the 200-hour~~ a Board-prescribed limited reserve limited-authority peace officer basic course or ~~the 585-hour basic full-authority~~ peace officer basic course, specified in R13-4-116, at an academy.
 4. A limited correctional peace officer shall complete the correctional service officer basic course specified in R13-4-205 and the 48-hour limited correctional peace officer supplement specified in R13-4-116, at the Arizona correctional officer training academy.
- B.** Exceptions. The training requirements in subsection (A) ~~may be~~ are waived when ~~using a peace officer~~ an agency uses a person:
1. During a riot, insurrection, disaster, or other event ~~which has exhausted~~ that exhausts the ~~manpower~~ peace officer resources of ~~an~~ the agency and the ~~peace officer~~ person is attending an academy; or
 2. During ~~an approved~~ a field training program ~~which that~~ is a component of a basic training program at an academy, when the ~~peace officer~~ person is under the direct supervision and control of a certified peace officer.
- C.** Firearms training required.
1. ~~Unless otherwise specified in this Section, a peace officer shall complete the~~ The firearms qualification ~~course~~ courses required in ~~R13-4-113 R13-4-116(E)~~ shall, unless otherwise specified in this rule Section, be successfully completed prior to any ~~before~~ the peace officer ~~carrying~~ carries a firearm in the course of duty.
 2. ~~Prior to~~ Before carrying a firearm in the course of duty, a limited correctional peace officer shall:
 - a. Meet the requirements of R13-4-2076, and
 - b. Complete a night-time firearms qualification shoot based on the course of fire ~~set forth~~ described in R13-4-2076.
- D.** Waiver of required training. A person ~~who is not eligible for reinstatement of certified status as a peace officer~~ whose certified status is lapsed or a person who has functioned in the capacity of a peace officer ~~for~~ in another state or a ~~for~~ for a federal law enforcement agency ~~whose training substantially conforms to these rules may apply to the Board for a waiver of required training. If the Board determines that the best interests of the law enforcement profession are served and the public welfare and safety is not jeopardized, The~~ the Board ~~may~~ shall grant a complete or partial waiver if:
1. An application and written verification of previous experience and training ~~are~~ is submitted by ~~an~~ the appointing agency on a form prescribed by the Board; ~~Written verification of previous experience and training must accompany the application.~~
 2. The ~~applicant~~ person meets the minimum qualifications listed in R13-4-105;
 3. The person complies with the requirements of R13-4-103(E)(1);
 4. The agency complies with the requirements of R13-4-106(C); and,
 - 3-5. The ~~applicant~~ person successfully completes ~~a~~ an ~~comprehensive~~ comprehensive examination measuring ~~his~~ the person's comprehension of the ~~peace officer~~ peace officer basic course ~~as follows: The examination shall be approved by the Board and include a written test and practical demonstrations of proficiency in firearms, physical conditioning, defensive driving and pursuit operations.~~

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- a. A person who, during the last three years, has at least two years of experience as a peace officer in another state or for a federal law enforcement agency, and whose basic training and in-service training records demonstrate substantial comparability to Arizona's full-authority peace officer basic course, shall take an examination composed of legal and liability issues specific to Arizona from topical areas listed in R13-4-116(E)(1);
 - b. A person whose certification is lapsed shall take a comprehensive examination covering all of the functional areas specified in R13-4-116(E)(1); or
 - c. A person whose out-of-state experience does not meet the criteria of subsection (D)(5)(a), but whose basic training and in-service training records demonstrate substantial comparability to Arizona's full-authority peace officer basic course, shall take a comprehensive examination covering all of the functional areas specified in R13-4-116(E)(1); and
6. In addition to the written test, the person satisfactorily performs the practical demonstrations of proficiency in physical aptitude, defensive driving, pursuit operations and firearms, including firearms qualifications, as required under R13-4-116(E)(1).

E. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

R13-4-111. Continuing Training Requirements Certification Retention Requirements

A. Continuing training required. The following requirements apply to certified peace officers:

1. A regular peace officer or reserve officer shall complete eight hours of continuing training at a certified school each calendar year beginning the year following receipt of certified status.
2. A specialty officer or limited reserve officer shall complete eight hours of continuing training at a certified school every three years beginning from the date he received certified status.
3. A limited correctional peace officer shall complete eight hours of continuing training every three years beginning on January 1, following the date the individual received certified status and may satisfy the requirements of this rule with training:
 - a. Approved in R13-4-206;
 - b. Provided by an instructor certified under R13-4-205(C); and
 - c. Addressing a topic area enumerated in subsection (B)(2), of this rule.

B. Curriculum. The following curriculum provisions are required for continuing training conducted by a certified school:

1. The course curriculum must be initially approved as to topic area and substance by the Board and approved thereafter:
 - a. Each year for regular peace officer and reserve officer curriculum;
 - b. Every three years for specialty officer, limited reserve, and limited correctional peace officer curriculum.
2. The curriculum shall contain material from one or more of the following topic areas:
 - a. Search and seizure;
 - b. New procedures and technology;
 - c. Officer survival techniques;
 - d. Management and supervision;
 - e. Interviewing and questioning;
 - f. Crime prevention;
 - g. Arizona Revised Statutes;
 - h. Court decisions;
 - i. Other law enforcement related topics.

C. Equivalency credit. If approved by the Board as being equivalent to a certified school, the continuing training requirements may also be satisfied in whole or in part by completion of an equivalent training program conducted by a non-certified school:

1. Individual requests for Board approval require the submission of:
 - a. A petition for equivalency credit describing the training program, the institution or organization providing the training, and the number of hours attended;
 - b. A certificate or other verification of attendance.
2. Training programs approved on an ongoing basis may meet all or part of the continuing training requirements. Proof of attendance shall be provided upon request of the Board or staff.

A. Continuing training required.

1. The following continuing training standards apply for a peace officer to retain certification:
 - a. A full-authority peace officer shall complete eight hours of continuing training each calendar year beginning January 1, following the date the officer was certified.
 - b. A specialty officer or limited-authority peace officer shall complete eight hours of continuing training every three calendar years beginning January 1, following the date the officer was certified.
 - c. A limited correctional peace officer shall complete eight hours of continuing training every three years beginning on January 1, following the date the officer was certified.

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2. Continuing training course standards for peace officers.
 - a. The curriculum for a continuing training course shall consist of advanced or remedial instruction on one or more of the topic areas specified in R13-4-116(E)(1).
 - b. The instructor for a continuing training course shall meet the requirements of R13-4-114(A)(2)(a) or (b), and
 - c. The training provider shall provide to each attendee for audit purposes an attendance verification certificate that includes a statement that the provider believes the course meets the requirements of this Section.
 - d. If the training provider is an agency, the agency shall make available to the Board for audit purposes, attendance rosters and the lesson plan or other information sufficient to determine compliance with this Section.
 - e. If the training provider is an outside provider, such as an individual, a corporation, business, company, or governmental entity, that does not seek confirmation that the course meets the requirements under subsection (A)(3)(c), the outside provider shall provide to the attendees a lesson plan or other information sufficient to determine compliance with this Section, or
 - f. If an outside provider seeks and receives confirmation under subsection (A)(3)(c), the provider shall distribute a copy of the Board's written confirmation to the attendee.
 3. Training providers. Courses of continuing training may be conducted by the Board, an agency, or an outside provider.
 - a. All courses for continuing training provided by the Board meet the requirements of this Section.
 - b. Agency-provided training meets the requirements of this Section if all the requirements of subsection (A)(2) are met.
 - c. Outside-provider training meets the requirements of this Section if all the requirements of subsection (A)(2) are met. The Board shall inform an outside provider in writing whether the course meets these requirements if a course package is submitted to the Board, before the training is conducted, that includes:
 - i. A description of the training course that allows the Board to determine whether the course contains advanced or remedial instruction on one or more of the topic areas specified in R13-4-116;
 - ii. The name of the person, or if applicable the institution or organization, providing the training with sufficient information to allow the Board to determine whether the requirements of R13-4-114(A)(2)(a) or (b) are met;
 - iii. A course schedule listing the number of instructional hours; and
 - iv. An attestation that the training provider shall make the lesson plan or other information sufficient to determine compliance with this Section available to the Board for audit purposes, and that the requirements of subsection (A)(2)(b) will be met.
 - d. The Board's confirmation that a course conducted by an outside provider meets the requirements of this Section is effective as long as the information submitted to the Board remains accurate and unchanged.
 4. A limited correctional peace officer may also satisfy the requirements of this Section with training:
 - a. Approved under R13-4-206,
 - b. Provided by an instructor who meets the requirements of R13-4-205(C)(5), and
 - c. Addressing a topic area enumerated in R13-4-116(E)(4).
 5. Required records. A peace officer shall provide to the appointing agency a copy of all documents provided to the peace officer as required under subsection (A)(2)(c), (A)(2)(e), or (A)(2)(f). The documents shall be maintained by the appointing agency and made available for Board audit.
- B. Proficiency training required.**
1. To retain certification, each peace officer below the first level supervisory position within the peace officer's appointing agency shall complete eight hours of proficiency training every three years beginning January 1, following the date the peace officer was certified.
 2. Proficiency training course standards.
 - a. Proficiency training is training that requires the physical demonstration of one or more performance objectives included in the 585-hour Full-Authority Peace Officer Basic Course under R13-4-116 and also requires the demonstration of the use of judgment in the application of that physical act.
 - b. The curriculum for a proficiency training course shall consist of advanced or remedial instruction on one or more of the following topic areas:
 - i. Defensive tactics and impact weapons,
 - ii. Tactical firearms (not the annual firearms qualification required under this Section),
 - iii. Emergency vehicle operations,
 - iv. Pursuit operations,
 - v. First aid and emergency care,
 - vi. Physical conditioning, and
 - vii. High-risk stops.
 - c. The instructor for a proficiency training course shall meet the requirements of R13-4-114(A)(2)(c).
 - d. The training provider shall provide an attendance verification certificate to each attendee for audit purposes including a statement that the provider believes the course meets the requirements of this Section.

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- e. If the training provider is an agency, the agency shall make available to the Board for audit purposes, the lesson plan or other information sufficient to determine compliance with this Section, and attendance rosters.
- f. If the training provider is an outside provider, such as an individual, corporation, business, company, or governmental entity that does not seek confirmation under subsection (B)(3)(c) that the course meets the requirements of this Section, the outside provider shall provide to the attendees a lesson plan or other information sufficient to determine compliance with this Section.
- g. If an outside provider seeks and receives confirmation under subsection (B)(3)(c), the outside provider shall distribute a copy of the Board's written confirmation to the attendee.
- 3. Training providers. Proficiency training courses may be conducted by the Board, an agency, or an outside provider.
 - a. All courses of proficiency training provided by the Board meet the requirements of this Section.
 - b. Agency-provided proficiency training meets the requirements of this Section if all the requirements of subsection (B)(2) are met.
 - c. Outside-provider training may meet the requirements of this Section. The Board shall inform an outside provider in writing whether the course meets these requirements if a course package is submitted to the Board, before the training is conducted, that includes:
 - i. A description of the training course that allows the Board to determine whether the course contains advanced or remedial instruction on one or more of the topic areas specified in subsection (B)(2);
 - ii. The name of the person, or if applicable the institution or organization, providing the training with sufficient information to allow the Board to determine whether the requirements of R13-4-114(A)(2)(c) are met;
 - iii. A course schedule listing the number of instructional hours; and
 - iv. An attestation that the training provider will make the lesson plan and other information sufficient to determine compliance with this Section available to the Board for audit purposes, and that the requirements of subsection (B)(2)(d) will be met.
 - d. The Board's confirmation that a course conducted by an outside provider meets the requirements of this Section is effective as long as the information submitted to the Board remains accurate and unchanged.
- 4. A limited correctional peace officer may also satisfy the requirements of this Section with training:
 - a. Approved in R13-4-206.
 - b. Provided by an instructor who meets the requirements of R13-4-205(C), and
 - c. Addressing a topic area enumerated in subsection (B)(2) except (B)(2)(d).
- 5. Required records. A peace officer shall provide to the appointing agency a copy of all documents provided to the peace officer as required under subsection (B)(2)(d), (B)(2)(f) or (B)(2)(g). The documents shall be maintained by the appointing agency and made available for Board audit.
- C. Firearms qualification required. A peace officer authorized to carry a firearm shall qualify to continue to be authorized to carry a firearm each calendar year beginning the year following certification. The peace officer shall qualify by completing a Board-prescribed firearms qualification course, using a service handgun and service ammunition, and a Board-prescribed target identification and judgment course.**
 - 1. Firearms qualification course standards.
 - a. A firearms qualification course is a course:
 - i. Prescribed under R13-4-116(E)(1), or
 - ii. Determined by the Board to measure firearms competency at least as accurately as courses prescribed under R13-4-116(E)(1).
 - b. A firearms qualification course shall include:
 - i. A timed accuracy component;
 - ii. A type and style of target that is equal to, or more difficult than, targets used in a course prescribed under R13-4-116(E)(1); and
 - iii. A success criterion that is equal to, or more difficult than, criteria used in a course prescribed under R13-4-116(E)(1).
 - 2. Firearms target identification and judgment course standards.
 - a. A firearms target identification and judgment course is a course:
 - i. Prescribed under R13-4-116(E)(1), or
 - ii. Determined by the Board to measure target identification and judgment competency at least as accurately as courses prescribed under R13-4-116(E)(1).
 - b. A firearms target identification and judgement course shall include:
 - i. A timed accuracy component;
 - ii. A type and style of target discrimination test that is equal to, or more difficult than, those used in a course prescribed under R13-4-116(E)(1); and
 - iii. A success criterion that is equal to, or more difficult than, criteria used in a course prescribed under R13-4-116(E)(1).

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3. Firearms qualification courses and firearms target identification and judgment courses shall be instructed by a firearms instructor meeting the requirements of R13-4-114(A)(2)(c).

D. This Section is effective six months after filing with the Secretary of State as required by A.R.S. § 41-1823(A).

R13-4-112. Proficiency Training Requirements Time-frames

A. Proficiency training required. All peace officers below the first level supervisory position shall complete eight hours of proficiency training at a certified school every three years beginning with the date they receive certified status.

B. Curriculum. The following curriculum provisions are required for proficiency training provided by a certified school:

1. The course curriculum must be initially approved as to topic area and substance by the Board and approved thereafter every three years.
2. The curriculum shall cover one or a combination of the following topic areas:
 - a. Defensive tactics;
 - b. Baton training;
 - c. Tactical firearms (not firearms qualification);
 - d. Defensive driving and pursuit operations;
 - e. First aid and emergency care;
 - f. Tactical operations;
 - g. Skills areas unique to an agency.
3. Limited correctional peace officers may satisfy the requirements of this rule with training:
 - a. Approved in R13-4-206;
 - b. Provided by an instructor certified under R13-4-205(C); and
 - c. Addressing a topic area enumerated in subsection (B)(2), of this rule.

A. For the purposes of A.R.S. § 41-1073, the Board establishes the following time-frames for peace officer certification:

1. Administrative completeness review time-frame: 90 days.
2. Substantive review time-frame: 180 days.
3. Overall time-frame: 270 days.

B. The administrative completeness review time-frame begins on the date the Board receives the document required by R13-4-108(A)(1).

1. Within 90 days, the Board shall review the application file and issue to the appointing agency a statement of administrative completeness or a notice of administrative deficiencies that lists each item required by R13-4-105 that is missing.
2. If the Board issues a notice of administrative deficiency, the agency shall submit the missing documents and information within 90 days of the notice. The administrative completeness review time-frame is suspended from the date of the deficiency notice until the date the Board receives the missing documents and information.
3. If the agency fails to provide the missing documents and information within the 90 days provided, the Board shall close the applicant's file. An applicant whose file is closed and who wants to be certified shall apply again under R13-4-103.
4. When the file is administratively complete, the Board shall provide written notice of administrative completeness to the agency.

C. The substantive review time-frame begins on the date the Board issues the notice of administrative completeness.

1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information.
2. The agency shall submit to the Board the additional information identified in the request for additional information within 60 days. The time-frame for the Board to finish the substantive review of the application is suspended from the date of the request for additional information until the Board receives the additional information.
3. The Board shall close the file of an applicant if the additional information requested is not supplied within the 60 days provided. An applicant whose file is closed and who wants to be certified shall apply again under R13-4-103.
4. When the substantive review is complete, the Board shall grant or deny certification.

R13-4-113. Firearms Qualification Requirements Repealed

A. ~~Firearms qualification required. A peace officer authorized to carry a firearm shall qualify each calendar year beginning the year following the receipt of certified status, using a service handgun and service ammunition or equivalent, on a Board approved firearms qualification course presented by a certified instructor.~~

B. ~~Approved firearms qualification course. An approved firearms qualification course is one that is authorized for presentation pursuant to R13-4-116, consisting of a timed accuracy component and a target identification and judgement component.~~

C. ~~Course approval. Academies and law enforcement agencies submitting a firearms qualification course to the Board for approval shall meet the requirements of R13-4-116(C)(3-4) and must also identify the type and style of target to be used as a part of the approved success criteria.~~

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R13-4-114. ~~Certified Instructor Requirements~~ Minimum Course Requirements

- A.** ~~Certified instructor categories. Certified instructors shall be classified into the following categories:-~~
1. ~~General instructor. An instructor authorized to teach in certified schools in topics not requiring a specialty instructor.~~
 2. ~~Specialty instructor. An instructor authorized to teach in certified schools in topics listed in subsection (E).~~
- B.** ~~Certified instructor requirements. A person must meet the following requirements to receive certified status as an instructor:~~
1. ~~An applicant for instructor shall have:~~
 - a. ~~Two years experience as a certified peace officer; or~~
 - b. ~~One year experience and a degree from an accredited college or university; or~~
 - c. ~~A nomination by an agency head or school administrator as a specialist.~~
 2. ~~Instructional ability shall be demonstrated by:~~
 - a. ~~Successful completion of an instructor training course at a certified school; or~~
 - b. ~~If nominated as a specialist, documentation that clearly demonstrates his expertise and ability to enhance training in a special field; or~~
 - c. ~~Successful completion of an examination prescribed by the Board which measures instructor ability and knowledge of educational philosophy.~~
- C.** ~~Specialty instructor requirements. To apply for certified status as a specialty instructor for a topic area listed in subsection (E), a person must:-~~
1. ~~Be certified as a general instructor; and~~
 2. ~~Submit a completed application on a form prescribed by the Board; and~~
 3. ~~Submit documentation of advanced training and experience in the topic area.~~
- D.** ~~Limited waiver. The Board may waive the requirement to be a general instructor pursuant to subsection (C)(1), for a person teaching topics in subsection (E), if he instructed one of those topics prior to the adoption of this section and is otherwise qualified. The waiver shall apply only to instruction of the topic previously taught.~~
- E.** ~~Topics requiring specialty instructors. A certified school shall use a specialty instructor for classroom instruction, field training, practical exercises and evaluation of students for the following topic areas:~~
1. ~~Firearms;~~
 2. ~~Baton;~~
 3. ~~First aid and emergency care;~~
 4. ~~Defensive tactics;~~
 5. ~~Physical conditioning;~~
 6. ~~Defensive driving and pursuit operations.~~
- F.** ~~Lapse of certified status. Certified instructor status shall lapse five years from the date of certification.~~
- G.** ~~Renewal of certified status. The Board may renew the certified status of an instructor based upon a review of applicable inspection reports and any written endorsement of a school administrator or agency head which attests to the instructor's proficiency.~~
- H.** ~~Denial, suspension or revocation. The Board may deny, suspend or revoke the certified status of an instructor for failure to comply with the provisions of this section or demonstrate proficiency.~~
- I.** ~~Notice of denial, suspension or revocation. The Board shall immediately notify a certified instructor of a decision to deny, suspend or revoke by certified mail or personal service. The notice shall include the reason for the action and provisions for a hearing pursuant to Section R13-4-118.~~
- A.** Instructors. A Board-prescribed course shall be facilitated by an instructor meeting the requirements of this Section.
1. Instructor classifications.
 - a. General instructor. A person qualified to teach topics not requiring a proficiency instructor under subsection (A)(1)(c).
 - b. Specialist instructor. A person, other than an Arizona peace officer, qualified to teach a topic in which the instructor has special expertise but who does not qualify for general instructor status.
 - c. Proficiency instructor. A person qualified to teach a topic area listed in R13-4-111(B)(2)(b).
 2. Instructor qualification standards.
 - a. A general instructor shall meet the requirements of (i) and (iv) of this subsection and either the requirement of (ii) or (iii):
 - i. Have two years experience as a certified peace officer;
 - ii. Successfully complete a Board sponsored instructor training course or an instructor training course that contains all of the performance objectives and demonstrations of the Board sponsored instructor course;
 - iii. Possess a community college or university teaching certificate;
 - iv. Maintain instructional competency.

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- b. A specialist instructor shall meet the requirements of (i) and (vi) of this subsection, either (ii) or (iii), and either (iv) or (v):
 - i. Have the nomination of an agency head or the administrator of an academy authorized to provide a basic peace officer course;
 - ii. Possess a professional license or certification other than a peace officer certification that relates to the topics to be taught;
 - iii. Provide documentation that demonstrates the expertise and ability to enhance peace officer training in a special field;
 - iv. Successfully complete a Board-sponsored instructor training course or a training course that contains all of the performance objectives and demonstrations of the Board-sponsored instructor course;
 - v. Possess a community college or university teaching certificate;
 - vi. Maintain instructional competency.
 - c. A proficiency instructor shall meet the requirements of (i) and (iv) of this subsection and either (ii) or (iii):
 - i. Meet the requirements for general instructor;
 - ii. Successfully complete a proficiency instructor course in a topic area listed in R13-4-111(B)(2)(b) that includes a competency assessment to instruct in that area within the 585-hour full-authority peace officer basic course listed in R13-4-116(E);
 - iii. Complete a form prescribed by the Board, that documents advanced training and experience in the topic area including a competency assessment to instruct in that area within the 585-hour full-authority peace officer basic course as listed in R13-4-116(E);
 - iv. Maintain instructional competency.
 - d. A proficiency instructor shall meet the requirements of subsection (A)(2)(c) separately for each topic area listed in R13-4-111(B)(2)(b).
3. Instructional competency. An academy administrator or an agency head shall immediately notify the Board in writing of any instructor:
- a. Who jeopardizes the safety of students or the public,
 - b. Whose instruction violates acceptable training standards,
 - c. Who is grossly deficient in performance as an instructor, or
 - d. Who is a proficiency instructor and is no longer able to satisfactorily complete the competency assessment to instruct in the instructor's topic area within the 585-hour full-authority peace officer basic course.
4. Retention of instructor status. If the Board determines that an instructor fails to comply with the provisions of this Section, has an instructional deficiency, or fails to maintain proficiency, any course facilitated by the instructor does not meet the requirements of this Section.
- B. Curriculum Standards. Curriculum for Board prescribed courses shall meet the following standards.**
1. Curriculum.
- a. Curriculum development shall employ valid, job-based performance objectives and learning activities, and promote student, officer, and public safety, as determined by a scientifically conducted validation study of the knowledge, skills, abilities, and aptitudes needed by the affected category of Arizona peace officer.
 - b. The Board shall maintain and provide upon request, a copy of curricula that meet the standards of this Section.
 - c. Curriculum for a Board-prescribed course shall meet or exceed the requirements of subsection (B)(2), unless otherwise provided in this Section.
2. Curriculum format standard. Curriculum used for a Board-prescribed course shall consist of the following:
- a. A general statement of instructional intent that summarizes a desired learning outcome. The statement is broad in scope, has a general statement of desired outcome, and includes long-term or far-reaching learning goals.
 - b. Lesson plans containing:
 - i. Course title,
 - ii. Hours of instruction,
 - iii. Materials and aids to be used,
 - iv. Instructional strategy,
 - v. Topic areas in outline form,
 - vi. Performance objectives or learning activities,
 - vii. Success criteria, and
 - viii. Reference material;
 - c. Performance objectives consisting of at least the following components:
 - i. The learner, which is an individual or group that performs a behavior as the result of instruction;
 - ii. The behavior, which is an observable demonstration by the learner at the end of instruction that shows that the objective is achieved and allows evaluation of the learner's capabilities to perform the behavior; and

- iii. The conditions, which is a description of the important conditions of instruction or evaluation under which the learner performs the behavior. Unless specified otherwise within the lesson plan, instruction and evaluation will be in written or oral form;
- d. Learning activities. A student is not required to demonstrate learning of learning activities as a condition for successfully completing the training. Learning activities are subject areas for which performance objectives are not appropriate because either:
 - i. Reliable and meaningful assessment of mastery of the material would be extremely difficult or impossible, or
 - ii. Mastery of the material is not likely to bear a direct relationship to the ability to perform entry-level peace officer job duties;
- e. The following decimal numbering system to provide a logical means of organization:
 - i. Functional area (1.0, 2.0, 3.0)
 - ii. Topic area (1.1.0, 1.2.0, 1.3.0), and
 - iii. Performance objective or learning activity (1.1.1, 1.1.2, 1.1.3)

13-4-115. ~~Certified School Requirements Repealed~~

- ~~A. Certified status required. Unless otherwise provided for in this Article, only a certified school may provide training required to receive or maintain certified status. The Board may grant certified status to a school in compliance with this Section.~~
- ~~B. Certified schools. Certified status is required for an academy which provides the basic peace officer course and a school which provides certified instructor training, continuing training or proficiency training required for certified status.~~
- ~~C. Required standards. A school must meet the following standards to receive and retain certified status:
 - 1. Certified instructors shall be used to provide instruction required for certified status;
 - 2. The facilities of a training school must be approved by the Board as being in compliance with subsection (D);
 - 3. The school must be in compliance with the provisions of Sections R13 4 111, R13 4 112, and R13 4 116.~~
- ~~D. Facility requirements. To receive Board approval a school shall meet the following requirements applicable to the course of instruction provided:
 - 1. A classroom with adequate heating, cooling, ventilation, lighting and space;
 - 2. Chairs with tables or arms for writing;
 - 3. Visual aid devices for classroom presentation;
 - 4. Equipment in good condition for specialized instruction;
 - 5. A safe driving range for conducting the defensive and pursuit driving course;
 - 6. A firing range with adequate backstop to insure the safety of all persons on or near the range;
 - 7. A safe location for practical exercises.~~
- ~~E. Required records and reports. For each session the school administrator shall:
 - 1. Maintain a written synopsis of the session including persons enrolled, persons completing, agencies participating, highlights and any unusual events;
 - 2. Maintain a final schedule of classes, reflecting any changes in dates, times, instructors or training location;
 - 3. Submit a report for each session of all persons completing the session.~~
- ~~F. Lapse of certified status. When a certified school ceases to conduct approved training programs for 12 consecutive months, the certified status shall lapse. Otherwise, a school's certified status is valid until surrendered, suspended or revoked.~~
- ~~G. Denial, suspension or revocation. The Board may deny, suspend or revoke the certified status of a school for failure to comply with the provisions of this Section.~~
- ~~H. Notice of denial, suspension or revocation. The Board shall, within five days of a decision to deny, suspend or revoke, notify the school administrator by certified mail or personal service of the action. The notice shall include the reason for the action and the provisions for a hearing pursuant to Section R13 4 118.~~

R13-4-116. Academy Requirements

- A. Unless otherwise provided in this Article, only an academy that the Board determines meets the standards prescribed in this Section may provide the basic training required to receive certified peace officer status.
- B. An academy shall have the following:
 - 1. A classroom with adequate heating, cooling, ventilation, lighting, and space;
 - 2. Chairs with tables or arms for writing;
 - 3. Visual aid devices for classroom presentation;
 - 4. Equipment in good condition for specialized instruction;
 - 5. A safe driving range for conducting the defensive and pursuit driving course;
 - 6. A firing range with adequate backstop to ensure the safety of all persons on or near the range; and
 - 7. A safe location for practical exercises.

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~~A.C.~~ Administrative requirements. An academy shall:

1. Establish and maintain written policies, procedures, and rules concerning the operation of the academy, entrance requirements, and student and instructor conduct;
2. Admit only persons who meet the requirements of R13-4-105, as attested to by the appointing agency on a form prescribed by the Board; are appointed by an agency. A person appointed by an agency must submit an agency application as described in subsection (D) paragraph 4 prior to admission;
3. ~~Administer a written examination measuring competency in reading and writing English prescribed by the Board to each student at the beginning of each academy session;~~ Administer to each student at the beginning of each academy session a written examination prescribed by the Board measuring competency in reading and writing English;
4. Administer a standardized comprehensive examination prescribed by the Board to all students ~~prior to~~ before graduation; and
5. Ensure that all instructors are qualified under R13-4-114(A).

~~B.D.~~ Academic requirements. An academy shall ~~do the following:~~

1. Establish a curriculum with performance objectives and learning activities that meet the requirements of R13-4-114(B) and subsection (E) of this Section; provide course content and minimum number of hours for each functional area prescribed in subsection (C).
2. Require instructors to use lesson plans that cover the course content and list the performance objectives ~~and learning activities to be achieved~~ and learning activities to be used;
3. Administer written, oral, or practical demonstration examinations ~~which that~~ measure the attainment of performance objectives; prescribed for each block of instruction.
4. Review examination results with each student. The student shall make and understand any necessary corrections and sign and date an acknowledgment that ~~he~~ the student participated in the review;:-
5. Require ~~each~~ a student to successfully complete ~~examinations~~ an examination in each ~~block of instruction, prior to topic area before~~ graduating.
 - a. Successful completion of a written or oral examination ~~shall be~~ is a score of ~~70%-70 percent~~ 70 percent or greater.
 - b. ~~Scores For a student who scores of less than 70% 70 percent, the academy shall: require the cadet to:~~
 - i. ~~Receive Provide~~ Provide remedial training to the student; and
 - ii. ~~Be re-examined~~ Re-examine the student in ~~the area~~ areas of deficiency.
 - c. ~~No The academy shall not allow a student to take more than one re-examination per block of instruction shall be allowed topic area;~~
6. Require ~~each~~ a student to qualify with firearms as ~~set forth~~ described in R13-4-110(C) R13-4-116(E);
7. Ensure ~~that each~~ a student also meet meets the Board-approved success criteria for the ~~functional areas concerning~~ police proficiency skills; under subsection (E) (1);
8. Provide remedial training for a student who misses a class ~~prior to before~~ allowing the student to graduate; and
9. ~~Allow no~~ Not allow a student to graduate who has been absent more than 32 hours from the full-authority ~~basic~~ peace officer basic course or 16 hours from ~~the a~~ a specialty officer basic course or ~~limited reserve~~ limited-authority peace officer basic course. ~~to graduate.~~

~~C.E.~~ Basic course ~~specifications~~ requirements. An academy shall ~~develop~~ use curricula that meet the requirements of R13-4-114 for the approved following basic courses of instruction, based on the following criteria:

1. Approved courses. The 585-hour full-authority basic peace officer course shall include all of the topics listed in each of the following functional areas:
 - a. ~~585-Hour Basic Peace Officer Course.~~
 - i. ~~Functional Area I—Introduction to Law Enforcement—To minimally include the topics of:~~
 - (1) ~~Criminal Justice Systems~~
 - (2) ~~History of Law Enforcement~~
 - (3) ~~Law Enforcement Services~~
 - (4) ~~Supervision and Management~~
 - (5) ~~Ethics and Professionalism~~
 - ii. ~~Functional Area II—Law and Legal Matters—To minimally include the topics of:~~
 - (1) ~~Introduction to Criminal Law~~
 - (2) ~~Laws of Arrest~~
 - (3) ~~Search and Seizure~~
 - (4) ~~Rules of Evidence~~
 - (5) ~~Summonses, Subpoenas and Warrants~~
 - (6) ~~Civil Process~~
 - (7) ~~Administration of Criminal Justice~~
 - (8) ~~Juvenile Law and Procedures~~
 - (9) ~~Courtroom Demeanor~~
 - (10) ~~Constitutional Law~~

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- (11) Substantive Criminal Law Titles 4, 13, and 36
- (12) Liability Issues
- iii. Functional Area III – Patrol Procedures – To minimally include the topics of:
 - (1) Patrol and Observation
 - (2) High Risk Stops
 - (3) Domestic Disputes and Crisis Intervention
 - (4) Mental Illness
 - (5) Crimes in Progress
 - (6) Crowd and Riot Control
 - (7) Bomb Threats and Disaster Training
 - (8) Intoxication Cases
 - (9) Communication Systems
 - (10) Hazardous Materials
 - (11) Bias Motivated Crimes
 - (12) Fires
 - (13) Civil Disputes
- iv. Functional Areas IV – Traffic Control – to minimally include the topics of:
 - (1) Impaired Driver Cases
 - (2) Traffic Citations
 - (3) Traffic Collision Investigation
 - (4) Traffic Collision (Practical)
 - (5) Traffic Direction
 - (6) Substantive Traffic Law Title 28
- v. Functional Area V – Crime Scene Management – To minimally include the topics of:
 - (1) Preliminary Investigation and Crime Scene Management
 - (2) Crime Scene Investigation (Practical)
 - (3) Physical Evidence Procedures
 - (4) Interviewing and Questioning
 - (5) Fingerprinting
 - (6) Sex Crimes Investigations
 - (7) Death Investigations (which shall also incorporate training on Sudden Infant Death Syndrome)
 - (8) Organized Crime Activity
 - (9) Investigation of Specific Crimes
 - (10) Narcotics and Dangerous Drugs
- vi. Functional Area VI – Community and Police Relations – To minimally include the topics of:
 - (1) Public and Police Interaction
 - (2) Victimology
 - (3) Human Communications
 - (4) Crime Prevention
- vii. Functional Area VII – Report Writing – To minimally include the topics of:
 - (1) Report Writing
 - (2) Note Taking
 - (3) Police Information Systems
- viii. Functional Area VIII – Police Proficiency Skills – To minimally include the topics of:
 - (1) First Aid/Care
 - (2) Firearms Training
 - (3) Physical Conditioning and Performance
 - (4) Stress Management
 - (5) Defensive Tactics
 - (6) Vehicle Operations
 - (7) Pursuit Operations
 - (8) Use of Force
 - (9) Baton
- ix. Functional Area IX – Orientation and Introduction – To minimally include the topics of:
 - (1) Examinations and Reviews
 - (2) Counseling
 - (3) Elective Time

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- a. Functional Area I - Introduction to Law Enforcement.
 - i. Criminal justice systems.
 - ii. History of law enforcement.
 - iii. Law enforcement services.
 - iv. Supervision and management.
 - v. Ethics and professionalism, and
 - vi. Stress management.
- b. Functional Area II - Law and Legal Matters.
 - i. Introduction to criminal law.
 - ii. Laws of arrest.
 - iii. Search and seizure.
 - iv. Rules of evidence.
 - v. Summonses, subpoenas, and warrants.
 - vi. Civil process.
 - vii. Administration of criminal justice.
 - viii. Juvenile law and procedures.
 - ix. Courtroom demeanor.
 - x. Constitutional law.
 - xi. Substantive criminal law, A.R.S. Titles 4, 13, and 36, and
 - xii. Liability issues.
- c. Functional Area III - Patrol Procedures.
 - i. Patrol and observation (part 1).
 - ii. Patrol and observation (part 2).
 - iii. Domestic violence.
 - iv. Mental illness.
 - v. Crimes in progress.
 - vi. Crowd control formations and tactics.
 - vii. Bomb threats and disaster training.
 - viii. Intoxication cases.
 - ix. Communication and police information systems.
 - x. Hazardous materials.
 - xi. Bias-motivated crimes.
 - xii. Fires, and
 - xiii. Civil Disputes.
- d. Functional Area IV - Traffic Control.
 - i. Impaired driver cases.
 - ii. Traffic citations.
 - iii. Traffic collision investigation.
 - iv. Traffic collision (practical).
 - v. Traffic direction, and
 - vi. Substantive Traffic Law, A.R.S. Title 28.
- e. Functional Area V - Crime Scene Management.
 - i. Preliminary investigation and crime scene management.
 - ii. Crime scene investigation (practical).
 - iii. Physical evidence procedures.
 - iv. Interviewing and questioning.
 - v. Fingerprinting.
 - vi. Sex crimes investigations.
 - vii. Death Investigations (including training certified by the Department of Health Services on sudden infant death syndrome).
 - viii. Organized crime activity.
 - ix. Investigation of specific crimes, and
 - x. Narcotics and dangerous drugs.
- f. Functional Area VI - Community and Police Relations.
 - i. Cultural awareness.
 - ii. Victimology.
 - iii. Interpersonal communications.
 - iv. Crime prevention, and
 - v. Police and the community.

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- g. Functional Area VII - Records and Reports. Report writing.
- h. Functional Area VIII - Police Proficiency Skills.
 - i. First aid.
 - ii. Firearms training (including firearms qualification).
 - iii. Physical conditioning.
 - iv. High risk stops.
 - v. Defensive tactics.
 - vi. Vehicle operations, and
 - vii. Pursuit operations.
- i. Functional Area IX - Orientation and Introduction.
 - i. Examinations and reviews.
 - ii. Counseling, and
 - iii. Non-Board specified courses.
- b. 280 Hour Specialty Officer's Basic Course
 - i. Functional Area I - Introduction to Law Enforcement - To minimally include the topics of:
 - (1) Criminal Justice Systems
 - (2) Law Enforcement Services
 - (3) Supervision and Management
 - (4) Ethics and Professionalism
 - ii. Functional Area II - Law and Legal Matters - To minimally include the topics of:
 - (1) Introduction to Criminal Law
 - (2) Laws of Arrest
 - (3) Search and Seizure
 - (4) Rules of Evidence
 - (5) Administration of Criminal Justice
 - (6) Juvenile Law and Procedures
 - (7) Courtroom Demeanor
 - (8) Constitutional Law
 - (9) Liability Issues
 - iii. Functional Area III - Enforcement Procedures - To minimally include the topics of:
 - (1) Enforcement Techniques and Tactics
 - (2) Crimes in Progress
 - (3) Communication Systems and Procedures
 - (4) Hazardous Materials / First Responder
 - (5) Bias Motivated Crimes
 - iv. Functional Area IV - Criminal Investigation - To minimally include the topics of:
 - (1) Preliminary Investigation and Crime Scene Management
 - (2) Physical Evidence Procedures
 - (3) Interviewing and Questioning
 - v. Functional Area V - Community and Police Relations - To minimally include the topics of:
 - (1) Public and Police Interaction
 - (2) Victimology
 - (3) Human Communications
 - vi. Functional Area VI - Records and Reports - To minimally include the topics of:
 - (1) Report Writing
 - (2) Note Taking
 - (3) Police Information Systems
 - vii. Functional Area VII - Police Proficiency Skills - To minimally include the topics of:
 - (1) First Aid / Care
 - (2) Defensive Driving
 - viii. Functional Area VIII - Agency Specific Training - A minimum of 40 hours of training in this functional area is required. Specialty officers not completing Functional Area IX - Full Custody Arrest Skills, are required to complete a minimum of 80 hours of training in this functional area.
 - ix. Functional Area IX - Full Custody Arrest Skills - This functional area is only required for specialty officers who are authorized by their appointing agency to make full custody arrests and carry a firearm. Training to minimally include the topics of:
 - (1) High Risk Vehicle Stops
 - (2) Defensive Tactics
 - (3) Firearms Training

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- (4) Physical Conditioning and Performance
- (5) Stress Management
- (6) Pursuit Operations
- (7) Use of Force
- (8) Baton
- x. ~~Functional Area X – Administrative Time – To minimally include the topics of:~~
 - (1) Orientation and Introduction
 - (2) Examinations and Reviews
 - (3) Counseling
- e. 200-Hour Basic Limited Reserve Peace Officer Course
 - i. ~~Functional Area I – Introduction to Law Enforcement – To minimally include the topics of:~~
 - (1) Criminal Justice Systems
 - (2) History of Law Enforcement
 - (3) Ethics and Professionalism
 - ii. ~~Functional Area II – Law and Legal Matters – To minimally include the topics of:~~
 - (1) Introduction to Criminal Law
 - (2) Laws of Arrest
 - (3) Search and Seizure
 - (4) Rules of Evidence
 - (5) Courtroom Demeanor
 - (6) Constitutional Law
 - (7) Substantive Criminal Law Titles 4, 13, and 36
 - iii. ~~Functional Area III – Patrol Procedures – To minimally include the topics of:~~
 - (1) Patrol and Observation
 - (2) High Risk Vehicle Stops
 - (3) Domestic Disputes and Crisis Intervention
 - (4) Crimes in Progress
 - (5) Crowd and Riot Control
 - (6) Communication Systems and Procedures
 - (7) Bias Motivated Crimes
 - (8) Fires
 - (9) Civil Disputes
 - iv. ~~Functional Area IV – Traffic Enforcement and Investigation – To minimally include the topics of:~~
 - (1) Traffic Citations
 - (2) Traffic Direction
 - (3) Substantive Traffic Law Title 28
 - v. ~~Functional Area V – Crime Scene Management – To minimally include the topics of:~~
 - (1) Preliminary Investigation and Crime Scene Management
 - (2) Interviewing and Questioning
 - vi. ~~Functional Area VI – Community and Police Relations – To minimally include the topics of:~~
 - (1) Public and Police Interaction
 - (2) Victimology
 - (3) Human Communications
 - vii. ~~Functional Area VII – Report Writing – To minimally include the topics of:~~
 - (1) Report Writing
 - (2) Note Taking
 - (3) Police Information Systems
 - viii. ~~Functional Area VIII – Police Proficiency Skills – To minimally include the topics of:~~
 - (1) First Aid / Care
 - (2) Firearms Training
 - (3) Physical Conditioning and Performance
 - (4) Stress Management
 - (5) Defensive Tactics
 - (6) Vehicle Operations
 - (7) Use of Force
 - (8) Baton
 - ix. ~~Functional Area IX – Administrative Time – To minimally include the topics of:~~
 - (1) Orientation and Introduction
 - (2) Examinations and Reviews

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- (3) Counseling
2. The specialty peace officer basic course shall include all of the topics necessary from the 585-hour full authority basic peace officer course for the curriculum to meet the requirements of R13-4-114(B).
 3. The limited-authority peace officer basic course shall include all of the topics necessary from the 585-hour full authority basic peace officer course for the curriculum to meet the requirements of R13-4-114(B).
 - d. ~~48-Hour Limited Correctional Peace Officer Supplement~~
 - i. ~~Functional Area I – Introduction to Law Enforcement – To minimally include the topic of Management and Supervision.~~
 - ii. ~~Functional Area II – Law and Legal Matters – To minimally include the topics of:~~
 - (1) ~~Laws of Arrest~~
 - (2) ~~Search and Seizure~~
 - iii. ~~Functional Area III – Patrol Procedures – To minimally include the topics of:~~
 - (1) ~~Patrol and Observation~~
 - (2) ~~Bias Motivated Crimes~~
 - iv. ~~Functional Area IV – Crime Scene Management – To minimally include the topic of Preliminary Investigation, and Crime Scene Management.~~
 - v. ~~Functional Area V – Proficiency Skills – To minimally include the topics of:~~
 - (1) ~~First Aid~~
 - (2) ~~Firearms Training~~
 2. ~~Administrative functions shall be exempt shall be exempt from the requirement of subsection (C)(4)(a) through (d). These functions may include, but are not limited to:~~
 - a. ~~Orientation~~
 - b. ~~Introductions~~
 - e. ~~Examinations and reviews~~
 - d. ~~Counseling~~
 4. The 48-hour limited correctional peace officer supplement course shall include all of the topics listed in the following functional areas:
 - a. Functional Area I - Introduction to Law Enforcement: Management and Supervision.
 - b. Functional Area II - Law and Legal Matters.
 - i. Laws of arrest, and
 - ii. Search and seizure.
 - c. Functional Area III - Patrol Procedures.
 - i. Patrol and observation, and
 - ii. Bias-motivated crimes.
 - d. Functional Area IV - Crime Scene Management.
 - i. Preliminary investigation, and
 - ii. Crime scene management.
 - e. Functional Area V - Proficiency Skills.
 - i. First aid, and
 - ii. Firearms training.
 - f. Administrative functions such as orientation, introductions, examinations and reviews, and counseling are exempt from the requirements of R13-4-114(B).
 3. ~~Curriculum approval. Curricula submitted to the Board for approval shall meet or exceed the requirements of subsection (C)(4), unless otherwise stated in this rule. Academies and law enforcement agencies must also submit for approval, any substantive changes in performance objectives. Curricula submitted for approval shall be received by the Board staff no later than 30 days prior to the next regularly scheduled Board meeting. The Board shall approve curricula that employ valid, job-based performance objectives and learning activities, and promote cadet, officer, and public safety, as determined by a scientifically conducted validation study.~~
 4. ~~Curriculum development. Curricula submitted to the Board for approval must incorporate each block of instruction and contain lesson plans with performance objectives and applicable learning activities.~~
 - a. ~~A block of instruction is a general statement of instructional intent that summarizes a desired learning outcome. The statement should be broad in scope, have general statement of ends and be long-term or far-reaching.~~
 - b. ~~Lesson plans submitted to the Board for approval shall contain:~~
 - i. ~~Course title~~
 - ii. ~~Hours of instruction~~
 - iii. ~~Materials and aids to be used~~
 - iv. ~~Instructional strategy~~
 - v. ~~Topic areas in outline form~~
 - vi. ~~Success criteria~~

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- vii. Performance objectives and learning activities to be achieved.
- e. Performance objectives shall follow a format approved by the Board and minimally consist of three components:
 - i. The learner—An individual or group that performs a behavior as the result of instruction.
 - ii. The behavior—A demonstration by the student at the end of instruction which is evidence that the objective has been achieved. What is described shall be an observable activity to be performed by the student. This allows evaluation of the student's capabilities relative to the stated behavior. Performance objectives for each block of instruction shall describe the expected behavior in action terms which are readily observable, measurable, and easily evaluated; i.e., "the student will identify, demonstrate or perform."
 - iii. The conditions—A description of the important conditions of instruction or evaluation under which the student will perform the stated behavior. If not specifically stated it will be implied that instruction and evaluation will be in written or oral form.
- d. Valid learning activities shall be included in curricula submitted to the Board for approval. Peace officers shall not be required to demonstrate the learning of these activities as a condition for successfully completing the training. Learning activities shall be comprised of subject areas identified for which performance objectives are not considered appropriate out of recognition that either:
 - i. Reliable and meaningful assessment (i.e., testing) to evaluate mastery of the material would be extremely difficult if not infeasible, or
 - ii. Mastery of the material is not likely to bear a direct relationship to the ability to perform entry level patrol officer job duties.
- e. Functional areas, blocks of instruction, performance objectives, and learning activities shall use the following decimal numbering system to provide a logical means of organization and reference:
 - i. Functional Areas (1.0, 2.0, 3.0, etc.)
 - ii. Blocks of Instruction (1.1.0, 1.2.0, 1.3.0, etc.)
 - iii. Performance Objectives / Learning Activities (1.1.1, 1.1.2, 1.1.3, etc.)
- f. The school administrator shall, initially and each calendar year thereafter, review and approve each lesson plan used in the academy. The school administrator shall also sign and date an acknowledgment of approval for each lesson plan.

D.F. Records required. An academy administrator shall ~~maintain~~ ensure that the following records are maintained and make them available for inspection by the Board or staff. ~~An academy shall provide to the Board Copies copies of records shall be provided~~ upon request.

1. A record of all ~~persons~~ students attending the academy;
2. A manual containing the policies, procedures, and rules of the academy;
3. A document signed by each ~~person~~ student attending the academy indicating ~~they have~~ that the student has received and read a copy of the academy policies, procedures, and rules;
4. An application from the appointing agency for each ~~person~~ student in attendance attesting that the requirements of Section R13-4-105 ~~have been~~ are met; ~~Application shall be made on a form prescribed by the Board;~~
5. A copy of all lesson plans used by instructors and the ~~school administrator's~~ acknowledgments of approval after the initial inspection under subsection (H), the academy administrator shall annually review and approve each lesson plan used in the academy, and shall sign and date an acknowledgment of approval for each lesson plan;
6. A copy of all examinations, answer sheets or records of performance, and examination review acknowledgments;
7. An attendance roster for all classes or other record ~~which~~ that identifies absent ~~persons~~ students;
8. A record of classes missed by students attending the academy and the remedial training they received;
9. A record of disciplinary actions for all persons attending the academy; ~~and~~
10. A file for each person attending the academy containing ~~his~~ that person's performance history.

E.G. Reports required. The ~~school~~ academy administrator for the academy shall submit to the Board:

1. ~~Within~~ At least ten working days prior to before the start of each academy session, a complete schedule of classes containing the name of the instructor for each class and the actual training location;
2. ~~Within~~ No more than five working days after the start of each academy session, a roster containing the appointing agency, full name, and social security number of each ~~person~~ student in attendance;
3. ~~Within~~ No more than five working days of a termination after the dismissal of a ~~person~~ student attending an academy from the academy, notification of the ~~termination~~ dismissal and the reason;
4. On the tenth day of each month a report containing:
 - a. A summary of training activities and ~~academy~~ progress of the academy class to date;
 - b. Unusual occurrences, accidents, or liability issues; ~~and~~
 - c. ~~Problems~~ Other problems or matters of interest noted in the course of the academy, if not included under subsection (H)(4)(b);
 - d. Changes to academy staff or instructors;
 - e. Changes or additions to programs.

5. No more than ten working days after the end of each academy session, a complete schedule of classes containing the name of the instructor for each class and the training location;
6. No more than ten working days after the end of each academy session, a roster containing the appointing agency, full name and social security number of each person successfully completing the training, on a form prescribed by the Board.

~~F.H.~~ Required inspections. Prior to granting an academy certified status Before an academy provides training to persons seeking certification for any category of peace officer, the Board staff shall conduct an onsite inspection of the academy to determine compliance with this Section and R13-4-114, shall be conducted by the Board staff. Additional Board staff shall conduct additional inspections shall be conducted as often as the Board deems necessary. Following an inspection:

1. Staff shall present an inspection report to the Board describing academy compliance in meeting standards; Within 30 days of the inspection, the Board staff shall provide to the academy administrator an inspection report including any remedial action the academy is required to take to comply with the standards of this Section and R13-4-114;
2. The school administrator shall, within 60 days of his receipt of the inspection report, submit a response which identifies the remedial action to be taken in correcting any deficiencies described in the report. Within 30 days of receipt of the inspection report, the academy administrator shall submit a response that identifies the remedial action taken or to be taken to correct any deficiencies described in the report.
3. Within 30 days of receipt of notice that all remedial action has been completed, Board staff shall conduct another inspection.
4. Following each inspection, Board staff shall present an inspection report to the Board describing the academy's compliance in meeting the standards of this Section and R13-4-114.

I. When an academy ceases to conduct a basic peace officer course for 12 consecutive months, the academy shall not provide training until Board staff conducts another inspection as required by subsection (H). Otherwise, an academy may continue to provide training unless the Board determines that the academy is not in compliance with the standards of this Section and R13-4-114.

J. If the Board finds that an academy fails to comply with the provisions of this Section or R13-4-114, the academy may not provide training to persons seeking to be certified as peace officers.

R13-4-117. Grant Applications and Training Expense Reimbursements

A. Approval of training programs courses. The Board may shall approve or deny training programs courses for training expense reimbursement based on compliance with this Section and R13-4-111, and availability of funds. Approval may be given regardless of the certified status of the school or instructor providing the training. The Board may withdraw approval for reimbursement at any time.

B. Application for reimbursement. Prior to Before the beginning of any approved a training program described in R13-4-111, each an agency planning to participate in the school training and apply for reimbursement, shall notify the Board on prescribed forms.

C. Claim for reimbursement. When a person completes a an approved training programs course has been completed, the appointing qualified agencies participating agency may submit a claim for reimbursement on a form prescribed by the Board. The claim must shall be submitted within 60 days after completion of training.

D. Allowable reimbursements. The Board shall allow the following reimbursements shall be allowed up to the limit approved subject to the limits on the amount of reimbursement as determined by the Board under subsection (E):

1. The actual cost of lodging and meals while a peace officer is in attendance at an approved school attends a training course,
2. The salary at the actual rate of pay a peace officer received while attending an approved a training program course,
3. Tuition for an approved a training program course on a pro rata basis for the actual hours of training attended, and
4. Other expenses incurred by a peace officer.

E. Limitations on reimbursements. The following limitations shall apply to applications for reimbursement involving training courses.

1. The Board shall not reimburse Reimbursement shall not be paid to an agency when if the peace officer has previously completed the same training program course within three years.
2. The Board shall not reimburse an agency Reimbursement for a peace officers officer who fails failing to complete a approved training program course shall not be paid except upon request of the appointing agency. The agency must shall present the reasons for the non-completion to the Board with the request for reimbursement.
3. The Board may pay salary Salary reimbursement for an approved a training program course is payable only for the actual hours of training attended at the percentage rate established by the Board.
4. The Board shall not reimburse an agency for Agency payment of insurance, medical, pension, uniform, clothing, equipment, or other benefits or expenses of a peace officer while attending an approved a training program course. shall not be reimbursed.

F. Academy reimbursement. The Board may reimburse an academy for the actual costs of materials, books, ammunition, registration fees and tuition, necessary for completion of a basic course may be paid to an academy up to the limits set by the Board. To receive reimbursement an academy shall furnish paid Paid receipts; or invoices; and or other information as

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required by the Board; ~~shall be furnished in order to verify costs incurred. Any amount not actually expended shall be returned to the Board. The Board shall not reimburse an academy. No reimbursement shall be paid to an academy for costs incurred for registration fees, tuition, books, materials, or ammunition for a peace officer, when if the Board has made these such reimbursements have been made for the peace officer's a previous attendance at an academy.~~

R13-4-118. Hearings; Rehearings

- A.** Request for hearing. The Board shall grant a hearing to any peace officer, agency, certified school or instructor aggrieved by a decision of the Board in reference to any of the following:
1. Establishment or enforcement of qualifications, standards or training requirements. The Board may waive in whole or in part any provisions of this Article, except for medical requirements pursuant to Section R13-4-107, upon a finding that the best interests of the law enforcement profession are served and the public welfare and safety is not jeopardized. The Board may place restrictions or requirements on a peace officer, instructor or school as a condition of certified status.
 2. Refusal of a reimbursement claim, submitted by an agency to the Board.
 3. Denial, suspension or revocation, except mandatory revocation pursuant to Section R13-4-109(D).
- B.** Selection of hearing officer. The Board may select an independent hearing officer to preside in any hearing granted under this rule.
- C.** Right to counsel. Before a hearing each party shall announce the presence of legal counsel for the record. The presiding hearing officer shall advise each party without legal counsel that the party is entitled to counsel at his own expense.
- D.** Oaths or affirmations. All testimony received at a hearing shall be under oath or affirmation.
- E.** Witness fees. If the Board issues a subpoena upon request by the appealing party, fees and mileage shall be paid by the appealing party and not paid from the Peace Officers' Training Fund.
- F.** Failure of affected party to appear at hearing. If after proper notification, the party requesting the hearing fails to appear before the Board or its hearing officer at the time and place designated for the hearing, the Board may consider the case based on the information available.
- G.** Decision by the Board. The decision of the Board shall be rendered within 60 days after conclusion of a hearing. Such decision shall be in writing and may contain findings of fact. Notice of the decision shall be served upon the party by either personal delivery or certified mail addressed to the party's last known residence or place of business.
- H.** Motion for rehearing. Rehearing may be granted on motion of a party or on the Board's initiative. Any party aggrieved by a decision in a contested case before the Board may file with the Board, not later than ten days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor.
- I.** Response. A response may be filed within ten 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 or oral argument.
- J.** Grounds for rehearing. A rehearing or review of a decision by the Board may be granted for any of the following causes materially affecting the moving party's rights:
1. Irregularity in the administrative proceedings of the agency, the Board or its designated representative, the prevailing party, or any abuse of discretion where the moving party was deprived of a fair hearing;
 2. Misconduct of the Board, its hearing officer, or the prevailing party;
 3. Accident or surprise which could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the hearing;
 5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing;
 6. The decision was not justified by the evidence or the decision was contrary to law.
- K.** Action by the Board. The Board may affirm or modify the decision or grant a rehearing to any or all of the parties, on all or part of the issues, for any of the reasons set forth in this Section. An order granting a rehearing shall specify the particular grounds granting the rehearing and the rehearing shall concern only those matters so specified.
- A.** If a respondent makes a proper request for hearing under R13-4-109(E), the hearing shall be held in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- B.** If a respondent fails to comply with the requirements under R13-4-109(E) within 30 days of the notice of action sent under R13-4-109(E), the Board may consider the case based on the information available.
- C.** If a respondent requests a hearing, but fails to appear at the hearing, the Board or administrative law judge may vacate the hearing. If a hearing is vacated, the Board may deem the acts and violations charged in the notice of action admitted, and impose any of the sanctions provided by A.R.S. § 41-1822(C)(1).
- D.** The Board shall render a decision in writing. The Board shall serve notice of the decision upon each party as required by A.R.S. § 41-1092.04.
- E.** A party may file a motion for rehearing or reconsideration of the decision with the Board not later than 30 days after service of the Board's decision, specifying the particular grounds for the motion.

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- F.** The Board may grant a rehearing or reconsideration of a decision for any of the following reasons materially affecting the moving party's rights:
1. Irregularity in the administrative proceedings, or any abuse of discretion that deprives the moving party was deprived of a fair hearing;
 2. Misconduct of the Board, the administrative law judge, or the prevailing party;
 3. Mistake or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the hearing;
 5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing; or
 6. The decision was not justified by the evidence or the decision was contrary to law.
- G.** The Board may affirm or modify the decision or grant a rehearing to any or all of the parties, on part or all of the issues, for any of the reasons in subsection (F). An order granting a rehearing shall specify the particular issues in the rehearing and the rehearing shall concern only the matters specified.

ARTICLE 2. CORRECTIONAL OFFICERS

R13-4-201. Definitions

In this Article, unless the context otherwise requires:

1. "Academy" means the ~~Arizona Department of Corrections'~~ Correctional Officer Training Academy (COTA) of the Arizona Department of Corrections in Tucson, Arizona, or a satellite location authorized by the Director.
2. "Appointment" means the selection of a person as a correctional officer.
3. "Applicant" means a person who applies to be a correctional officer.
4. "A.R.S." means ~~Arizona Revised Statutes~~.
5. "Board" is defined in A.R.S. ~~§ 41-1661(3)~~ § 41-1661(2).
6. "Cadet" means an applicant who meets the requirements for appointment as a ~~Correctional Officer~~ correctional officer and ~~has subsequently been~~ is selected to attend the academy.
7. "Correctional Officer officer" is defined in A.R.S. ~~§ 41-1661(2)~~ § 41-1661(3).
"Dangerous drug or narcotic" is defined in R13-4-101.
8. "Department" means the Arizona Department of Corrections.
9. "Director" is defined in A.R.S. § 41-1661(4).
10. "Employing agency" is defined in A.R.S. § 41-1661(5).
11. "Experimentation" means ~~the limited use of illegal drugs which does not demonstrate a pattern of abuse.~~
"Experimentation" means the illegal use of marijuana, a dangerous drug, or narcotic, as described in R13-4-105(B) and (C).
12. "State ~~Correctional Officer~~ correctional officer" means a person employed by the Department in the correctional service officer and correctional program officer series.

R13-4-202. Uniform Minimum Standards ~~for Appointment~~

- A.** ~~Prior to admission~~ To be admitted to the academy for training as a state correctional officer, a person shall: ~~meet the following minimum qualifications:~~
1. Be a citizen of the United States or be eligible to work in the United States;:
 2. Be at least 21 years of age;:
 3. Be a high school graduate or have successfully completed a General Education Development (G.E.D.) examination or equivalent as specified in R13-4-203(C)(3);:
 4. Have a valid Arizona driver's license (Class 2 or higher);:
 5. ~~Have undergone~~ Undergo a complete background investigation ~~which that~~ meets the standards of ~~Section R13-4-203;~~
 6. ~~Have undergone~~ Undergo a physical examination (within 12 months ~~prior to before~~ appointment) as prescribed by the Director by a licensed physician designated by the Director; ~~which meets the requirements of A.A.C. Title 5, Chapter 1, Article 5, Medical and Physical Requirements for Appointment as a Correctional Service Officer.~~
 7. Not have been dishonorably discharged from the United States Armed Forces;:
 8. Not have experimented with marijuana within the past 12 months;:
 9. Not have experimented with a dangerous ~~drugs~~ drug or ~~narcotics~~ narcotic within the past five years;:
 10. ~~Never have~~ Not have ever illegally used marijuana, or ~~narcotics, or dangerous drugs~~ a dangerous drug or narcotic other than for experimentation;:
 11. Not have a pattern of abuse of prescription medication;:
 12. Not have committed a felony or a misdemeanor, ~~if of a nature that the Board determines that the nature of the offense is judged by the Board to have~~ has a reasonable relationship to the functions of the position, in accordance with A.R.S. § 13-904(E).

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- B.** Code of Ethics. To enhance the quality of performance, and the conduct and the behavior of correctional officers, ~~all persons~~ a person appointed to ~~such classifications~~ be a correctional officer shall commit to the following Code of Ethics and shall affirm the commitment by signing the code, on a form designated by the Board: make the following commitment:

"I shall maintain high standards of honesty, integrity, and impartiality, free from any personal considerations, favoritism, or partisan demands. I shall be courteous, considerate, and prompt when dealing with the public, realizing that ~~we~~ I serve the public. I shall maintain mutual respect and professional cooperation in my relationships with other staff members.

I shall be firm, fair, and consistent in the performance of my duties. I shall treat others with dignity, respect, and compassion, and provide humane custody and care, void of all retribution, harassment, or abuse. I shall uphold the ~~Constitution~~ Constitutions of the United States and the state of Arizona, and all ~~along with~~ federal and state laws. Whether on or off duty, in uniform or not, I shall conduct myself in a manner that will not bring discredit or embarrassment to my agency or the state of Arizona.

I shall report without reservation any corrupt or unethical behavior ~~which that~~ could affect either inmates, employees, or the integrity of my agency. I shall not use my official position for personal gain. I shall maintain confidentiality of information that has been entrusted to me and designated as such.

I shall not permit myself to be placed under any kind of personal obligation ~~which that~~ could lead any person to expect official favors. I shall not accept or solicit from anyone, either directly or indirectly, any thing of economic value such as a gift, gratuity, favor, entertainment, or loan, ~~which that~~ is or may appear to be, designed to influence my official conduct. I will not discriminate against any inmate, employee, or any member of the public on the basis of race, gender, creed, or national origin. I will not sexually harass or condone sexual harassment ~~with or against~~ of any person. I shall maintain the highest standards of personal hygiene, grooming, and neatness while on duty or otherwise representing the state of Arizona."

R13-4-203. Background Investigation

- A.** The Department shall ~~be responsible for conducting~~ conduct a background investigation before an applicant is admitted to the academy. The Department shall review the personal history statement submitted ~~pursuant to R13-4-203(B)~~ under subsection (B) and the results of the background investigation required in ~~R13-4-203(C)~~ subsection (C) to determine that the person meets the requirements of R13-4-202, and that the person's personal history statement is accurate and truthful.
- B.** Personal history. ~~Each~~ An applicant shall complete and submit to the employing agency a personal history statement on a form prescribed by the Board. The history statement shall be completed ~~prior to~~ before the start of the background investigation. It shall contain answers to questions ~~consistent with the information sought in the background investigation~~ required in ~~R13-4-203~~ subsection (C).
- C.** Investigative requirements. Before admitting an applicant to the academy, the Department shall collect, verify, and ~~have on record~~ retain documents ~~which establish~~ establishing that an applicant meets the standards ~~for appointment~~ specified in this Article. At a minimum, this documentation shall include:
- ~~1. Proof of the applicant's age and United States citizenship or eligibility to work in the United States. A copy of either the applicant's birth certificate, United States passport, Certification of United States Naturalization, Certificate of Nationality, Immigration Form I-151 or I-1551 Work Permit shall be acceptable proof.~~
 1. Proof of the applicant's age and United States citizenship or eligibility to work in the United States. A copy of any of the following is acceptable proof:
 - a. The applicant's birth certificate.
 - b. United States passport.
 - c. Certification of United States Naturalization.
 - d. Certificate of Nationality, or
 - e. Immigration Form I-151 or I-1551.
 2. Proof of the applicant's valid Arizona driver's license. A copy of the applicant's Arizona driver's license, along with written verification of the driving record from the Arizona Department of Transportation, Motor Vehicle Division, ~~shall be is acceptable~~ required proof.
 3. Proof that the applicant is a high school graduate or its equivalent. The following are acceptable proof:
 - a. A copy of a high school diploma, or graduation certificate;
 - ~~a.b. The successful~~ Successful completion of the Arizona General Education Development (G.E.D.) ~~Tests~~ tests or successful completion of an equivalent test from another state, ~~which that~~ meets or exceeds the Arizona Department of Education's requirement for ~~such G.E.D. testing;~~ shall be considered the equivalent of high school graduation.
 - ~~b.c.~~ In the absence of proof of successful high school graduation or successful completion of General Education Development Tests G.E.D. tests, ~~the following shall be considered acceptable:~~
 - i. A copy of an Associate's Degree or transcript from an accredited college or university showing successful completion of high school equivalency;
 - ii. A certificate issued by the United States Armed Forces Institute (U.S.A.F.I.) ~~prior to~~ before December 31, 1974, showing successful completion of high school equivalency;~~or~~ ;

- iii. A United States Military Service Record DD Form 214-#4 with the Education block indicating high school completion, or
- e-iv. ~~An~~ The applicant may submit other evidence of high school education equivalency for consideration by the Board.
- 4. Record of any military discharge. A copy of the Military Service Record Form (DD Form 214-#4) ~~shall be~~ is acceptable proof.
- 5. Results of a psychological fitness assessment, approved by the Director and conducted by a psychologist or psychiatrist designated by the Department.
- 6. Personal reference and previous employer inquiries. Information provided by at least three personal references and all previous employers of the applicant for the past five years shall be ~~retained~~ documented by the Department.
- 7. Law enforcement agency records. The Department shall request and review law ~~Law~~ enforcement agency records in jurisdictions where the applicant has lived, or worked, or attended school in the past five years ~~shall be requested and reviewed~~. Information obtained shall be ~~recorded and retained~~ documented by the Department.
- 8. ~~National and Arizona Criminal Information Center ("NCIC"/"ACIC") checks. Results of the Department's query of the National Crime Information Center/Interstate Identification Index (NCIC/III), and the Arizona Criminal Information Center/Arizona Computerized Criminal History (ACIC/ACCH), or the equivalent for each state where the applicant has lived, worked, or attended school in the past five years and review of that criminal history record for any arrest or conviction to determine compliance with R13-4-202. A copy of the NCIC/ACIC response shall be retained by the Department.~~
- 9. An applicant fingerprint card ~~which has been~~ processed by the Arizona Department of Public Safety and the Federal Bureau of Investigation.
 - a. The Department shall process an ~~An~~ applicant fingerprint card ~~shall have been processed~~ for all cadets entering the academy ~~and retained by the Department~~, except as otherwise provided in ~~R13-4-203~~ subsections (C)(9)(b) and (C)(9)(c). Fingerprint cards shall be processed by the Department, ~~regardless of the existence of~~ even if the applicant has a processed applicant fingerprint card from a previous employer.
 - b. ~~In the event that~~ If an applicant fingerprint card ~~has not been~~ is not fully processed ~~by the time when~~ the applicant is ready to enter the academy, the Department may allow the applicant to attend the academy ~~if provided that:~~
 - i. A computerized criminal history check has been made and the results are on file with the Department, ~~and~~
 - ii. The applicant meets all other ~~specifications of this rule and the requirements of~~ requirements of this Section and R13-4-202.
 - c. ~~No cadet graduating from the academy shall continue in employment as a state correctional officer without a fully processed fingerprint card being received by the Department within 15 weeks from the date of admission to the academy. If the Department has not received a fully processed fingerprint card within 15 weeks of the date of admission to the academy, the person does not meet the requirements of this Section. Upon receipt of a fully processed card, the person may be re-employed under R13-4-208.~~

R13-4-204. Records and Reports

- A. Reports. The Department shall submit to the Board: a report by the Director attesting that each person completing the academy meets the requirements of R13-4-202.
 - 1. ~~A report by the Director attesting that each person completing the academy meets the requirements of R13-4-202.~~
 - 2. ~~A quarterly report of all state correctional officers terminated during the 90 days preceding the date of the report and showing the effective dates for each termination.~~
- B. Records. The Department shall make Department records ~~shall be made~~ available to the Board upon the request of the Board or its staff, ~~and The Department shall be kept~~ keep the records in a central location. The ~~agency~~ Department shall maintain:
 - 1. A copy of reports submitted ~~pursuant to~~ under subsection R13-4-204(A);
 - 2. All written documentation obtained or recorded ~~pursuant to~~ under R13-4-202 and R13-4-203; ~~and~~
 - 3. A record of all advanced training, specialized training, continuing education, and firearms ~~qualifications~~ qualification conducted ~~pursuant to~~ under R13-4-206 and R13-4-207.
- C. Record retention. The Department shall maintain the records required by this Section as follows:
 - 1. For applicants investigated ~~pursuant to~~ under R13-4-203 who are not appointed, ~~records shall be retained for~~ two years; ~~and~~
 - 2. For applicants who are appointed; ~~records shall be retained for~~ five years from the date of appointment, except records retained ~~pursuant to~~ under subsection R13-4-204(B)(3), ~~which shall be retained for~~ three years.

R13-4-205. Basic Training Requirements

- A. Required training for state correctional officers. ~~Prior to~~ Before appointment as a state correctional officer, a person shall ~~have successfully completed~~ complete a Board-approved, ~~288 hour~~, basic correctional officer training program. ~~Such~~ This program shall ~~minimally~~ meet or exceed the requirements of this Section.

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- B.** Board approval. The Department shall secure initial Board approval for a 288-hour, basic correctional officer training program within the time frame specified in A.R.S. § 41-1823(A). Curricula or training materials which require Board approval, as specified in R13-4-205 through R13-4-207, shall be received by staff no later than 30 days prior to the next regularly scheduled Board meeting, to ensure adequate time for review. The Department shall be responsible for regular curriculum review, as specified in R13-4-205 and must submit for approval any substantive changes in course topics, performance objectives, success criteria or hours of instruction.
- B.** Curricula or training material approval time-frames.
1. For the purposes of A.R.S. § 41-1073, the Board establishes the following time-frames for curricula or training material that require Board approval under this Section and R13-4-206.
 - a. Administrative completeness time-frame: 60 days.
 - b. Substantive review time-frame: 60 days.
 - c. Overall time-frame: 120 days.
 2. The administrative completeness review time-frame begins on the date the Board receives the documents required by this Section or R13-4-206.
 - a. Within 90 days, the Board shall review the documents and issue to the Department a statement of administrative completeness or a notice of administrative deficiencies that lists each item required by this Section that is missing.
 - b. If the Board issues a notice of administrative deficiency, the Department shall submit the missing documents and information within 90 days of the notice. The administrative completeness time-frame is suspended from the date of the deficiency notice until the date the Board receives the missing documents and information.
 - c. If the Department fails to provide the missing documents within the 90 days provided, the Board shall deny the approval.
 - d. When the file is administratively complete, the Board shall provide written notice of administrative completeness to the Department.
 3. The substantive review time-frame begins on the date the Board issues the notice of administrative completeness.
 - a. During the substantive review time-frame, the Board may make one comprehensive written request for additional information.
 - b. The Department shall submit to the Board the additional information identified in the request for additional information within 60 days. The time-frame for the Board to finish the substantive review of the application is suspended from the date of the request for additional information until the Board receives the additional information.
 - c. The Board shall deny the approval if the additional information is not supplied within the 60 days provided.
 - d. When the substantive review is complete, the Board shall grant or deny approval.
- C.** Basic course specifications.
1. The Department shall develop the curricula curriculum for the basic correctional officer training program.
 - a. The curricula curriculum shall include courses in the following functional areas:
 - i. Functional Area I - Ethics and Professionalism;
 - ii. Functional Area II - Inmate Management;
 - iii. Functional Area III - Legal Issues;
 - iv. Functional Area IV - Communication Skills;
 - v. Functional Area V - Officer Safety, including firearms;
 - vi. Functional Area VI - Applied Skills;
 - vii. Functional Area VII - Security, Custody, and Control;
 - viii. Functional Area VIII - Conflict and Crisis Management; and
 - ix. Functional Area IX - Medical Emergencies, and Physical, and Mental Health.
 - b. The curricula curriculum shall also contain ~~relevant~~ administrative time for orientation, counseling, testing, and remedial training. The amount of time allotted shall be suggested by the Department and approved by the Board. Approved administrative time may be used to satisfy R13-4-205(A) but shall be excluded from all other requirements of this rule.
 2. ~~Curricula submitted to the Board for approval shall contain lesson outlines which include: course title, hours of instruction, materials and aids to be used, instructional strategy, topic areas in outline form, success criteria and the performance objectives to be achieved. The Director or his designee shall initially and each calendar year thereafter review and approve each lesson plan used in the academy. The Director or his designee shall also sign and date an acknowledgment of approval for each lesson plan.~~
 2. Curricula Curriculum submitted to the Board for approval shall contain lesson plans that include:
 - a. Course title.
 - b. Hours of instruction.
 - c. Materials and aids to be used.
 - d. Instructional strategy.

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- e. Topic areas in outline form.
 - f. Success criteria, and
 - g. The performance objectives or learning activities to be achieved.
3. After initial approval, the Director or the Director's designee shall annually review and approve each lesson plan used in the academy. The Director or the Director's designee shall sign and date an acknowledgment of approval for each lesson plan.
- 3.4. A performance objective shall consist of three components:
- a. The learner, ~~—An~~ which is an individual or group that performs a behavior as the result of instruction;
 - b. The behavior, ~~—An~~ which is an observable demonstration by the student learner at the end of instruction ~~which is evidence that shows that the objective has been~~ is achieved and allows evaluation of the learner's capabilities relative to the behavior. ~~What is described shall be an observable activity to be performed by the student. This allows evaluation of the student's capabilities relative to the stated behavior. Performance objectives for each block of instruction shall describe the expected behavior in action terms which are readily observable, measurable, and easily evaluated; i.e., "the student will identify, demonstrate, or perform."~~
 - c. The conditions, ~~—A~~ which is a description of the important conditions of instruction or evaluation under which the student learner will perform the stated behavior. ~~If not specifically stated it will be implied that~~ Unless specified otherwise, the instruction and evaluation will shall be in written or oral form.
- 4.5. ~~Instructors of Board approved~~ Instructors of basic correctional officer training courses shall meet ~~certification~~ instructor proficiency requirements developed by the Department and approved by the Board. Instructors shall be qualified by education, experience, or a combination of both, and shall be ~~certified~~ affirmed by the Department as having the necessary qualifications ~~prior to before~~ before delivering any instruction. In addition to ~~basic certification~~ these requirements, instructors of courses dealing with the proficiency skills of defensive tactics, physical conditioning, firearms, and medical emergencies shall ~~be required to~~ complete specialized training as developed by the Department and approved by the Board. Instructors shall use lesson plans as described in ~~R13-4-205(B)(2)~~ subsection (C)(2).
- D. Academic requirements.**
- 1. Cadets shall be given any combination of written, oral, or practical demonstration examinations capable of measuring their attainment of the performance objectives in each approved lesson plan.
 - 2. Academy staff shall review examination results and academic progress with cadets on a weekly basis. Academy staff shall ensure that cadets are aware of correct responses.
 - 3. Cadets shall ~~successfully~~ complete all examinations ~~prior to before~~ before graduating from the academy. To successfully complete a written or oral examination, a cadet shall have a ~~minimum passing~~ score of at least 70% 70 percent.
 - a. ~~Scores of less than 70% For a student who receives a score of less than 70 percent, the academy shall require provide~~ the cadet to receive with remedial training in areas of deficiency.
 - b. ~~Cadets shall be offered no~~ The academy shall not offer more than one re-examination per lesson plan.
 - 4. ~~Cadets~~ Each cadet shall qualify with firearms as specified in ~~R13-4-207~~ subsection (C). Firearms qualification shall include:
 - a. 50-shot daytime or nighttime qualification course with service handgun. The minimum passing score is 210 points out of a possible 250 points;
 - b. Seven-shot qualification course with service shotgun; and
 - c. Target identification and discrimination course.
 - 5. ~~Cadets~~ Each cadet shall ~~also~~ meet success criteria described in the Board-approved curriculum for the proficiency skills of self-defense, physical conditioning, and medical emergencies, as approved under ~~R13-4-205(B) R13-4-205(C).~~
 - 6. ~~Cadets~~ An academy shall provide cadets who do not attend a lesson ~~shall be provided~~ with remedial training prior to before graduation.
 - 7. An academy shall not graduate ~~Cadets~~ a cadet who must attends ~~at least less than 90% 90 percent~~ of the total hours of basic training ~~in order to shall not~~ graduate from the academy.
- E. Exceptions.** A cadet shall not function as ~~an appointed~~ a state correctional officer except:
- 1. As a part of a bona fide exercise within the approved basic training program at ~~an~~ the academy, ~~when if~~ if the cadet is under the direct supervision and control of ~~an appointed~~ a state correctional officer; or
 - 2. At the discretion of the Director, for the duration of an emergency situation including, but not limited to riots, insurrections, and natural disasters. ~~Cadets shall successfully meet the requirement of R13-4-205(D)(4) prior to carrying a firearm in the course of duty. A cadet shall not carry a firearm in the course of duty unless the cadet has successfully met the requirement of R13-4-205(D)(4).~~
- F. Waiver of required training.** The Board ~~may~~ shall grant a complete or partial waiver of the required basic training, at the request of the Director, upon a finding by the Board that the best interests of the corrections profession are served and the public welfare and safety is not jeopardized by the waiver if:
- 1. ~~The~~ An applicant successfully completes a basic corrections recruit training course comparable to or exceeding, in hours of instruction and subject matter, the Board-approved basic ~~corrections~~ correctional officer training course and

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has a minimum of one year of experience as a correctional officer. Written verification of previous experience and training ~~must~~ shall accompany the application;

2. ~~The~~ An applicant meets the minimum qualifications specified in R13-4-202; and
3. ~~The~~ An applicant successfully completes a comprehensive examination measuring comprehension of the basic ~~corrections~~ correctional officer training course. The examination shall be prepared by the Department and approved by the Board. It shall include a written test and practical demonstrations of proficiency in firearms, physical conditioning, and defensive tactics.

~~G. Issuance of certificate. Upon receiving notification from the academy that a cadet meets the training requirements specified in this Section or conditions of equivalency have been met under the provisions of R13-4-205(F), a Certificate of Completion shall be issued, provided that the provisions of R13-4-202 are met. Certificate of completion time-frame. The Board shall provide certificates of completion for each person named in the Director's attestation made under R13-4-204(A) within 30 days of Board receipt. The Board shall mail certificates of completion to the Director for distribution.~~

R13-4-206. Continuing Training Including Firearms Qualification

~~A. Continuing training requirement. On or after May 1, 1993, all appointed state correctional officers shall be required to receive eight hours of Board-approved continuing training each calendar year.~~

1. A state correctional officer shall receive eight hours of Board-approved continuing training each calendar year beginning January 1, following the date the officer received certified status.
2. A state correctional officer authorized to carry a firearm shall qualify each calendar year after appointment beginning January 1, following the date the officer received certified status, on a Board-approved course of fire, under subsection (E). Firearms qualification shall not be used to satisfy the requirements of R13-4-206(B).

~~B. Continuing training requirements may be fulfilled by the following:~~

1. ~~Advanced training programs, or~~
2. ~~Specialized training programs.~~

~~C. Advanced training programs. The Department shall develop, design, implement, maintain, evaluate, and revise advanced training programs which that include courses enhancing a correctional officer's knowledge, skills, or abilities for the job that person the correctional officer performs. The courses within this program shall be approved by the Board and include advanced or remedial training in any topic listed in R13-4-205(C) topics which the Department shall develop, design, implement, maintain, evaluate and revise.~~

~~D. Specialized training programs. The Department shall develop, design, implement, maintain, evaluate, and revise specialized training programs which that address a particular need of the Department and target a select group of officers. The courses within this program shall be approved by the Board and include topics which the Department shall develop, design, implement, maintain, evaluate, and revise. These courses shall be different from those found in the basic corrections training program or any advanced training programs.~~

~~E. The Director shall advise the Board of compliance with this rule as provided in R13-4-204(B)(3).~~

Firearms qualification required. A correctional officer authorized to carry a firearm shall qualify to continue to be authorized to carry a firearm each calendar year beginning the year following the receipt of certified status by completing a Board prescribed firearms qualification course using a service handgun, service shotgun, and service ammunition, and a Board prescribed target identification and judgment course.

1. Firearms qualification course standards.

a. A firearms qualification course is:

- i. A course prescribed under R13-4-205(C); or
- ii. A course determined by the Board to measure firearms competency at least as accurately as the course prescribed under R13-4-205(C).

b. All courses shall include:

- i. A timed accuracy component;
- ii. A type and style of target that is equal to, or more difficult than the targets used under R13-4-205(C); and
- iii. Success criteria that are equal to, or more difficult than the success criteria used under R13-4-205(C).

2. Firearms target identification and judgment course standards.

a. A firearms target identification and judgment course is:

- i. A course prescribed under R13-4-205(C); or
- ii. A course determined by the Board to measure target identification and judgment competency at least as accurately as those prescribed under R13-4-205(C).

b. All courses shall include:

- i. A timed accuracy component;
- ii. A type and style of target discrimination that is equal to, or more difficult than, those used under R13-4-205(C); and
- iii. Success criteria that are equal to, or more difficult than, those used under R13-4-205(C).

3. All courses shall be presented by a firearms instructor meeting the requirements of R13-4-205(C)(5).

R13-4-207. ~~Firearms Qualification Requirements Repealed~~

- ~~A. A state State correctional officer-officers who are is authorized to carry a firearm shall requalify each calendar year after appointment, on all an applicable Board-approved courses course of fire. Firearms requalification may not be used to satisfy the requirements of R13-4-206.~~
- ~~B. Approved firearms qualification courses. A certified-qualified instructor, as defined in R13-4-205(C)(4)-R13-4-205(C)(5) shall administer the following components:~~
- ~~1. 50-shot daytime or nighttime qualification course with service handgun. Minimum passing score shall be 210 points out of a possible 250 points.~~
 - ~~2. 7-shot qualification course with service shotgun.~~
 - ~~3. Target identification and discrimination course.~~
- ~~C. Alternate firearms qualification courses. Equivalent firearms qualification courses may be administered if approved by the Board.~~

R13-4-208. ~~Reinstatement and Re-employment of State Correctional Officers~~

- ~~A. State A state correctional officers officer who terminates terminates their employment may be reinstated re-employed by the Department within two years from the date of termination; if provided the individual person meets the requirements of R13-4-202 and R13-4-203, at the time of re-employment. Reinstatement shall be made without any of the testing or academic attendance requirements as specified in R13-4-205.~~
- ~~B. State A state correctional officers officer who terminates terminates their employment may be re-employed by the Department if re-employment is sought within a period of more than two years, but less than three years, from the original date of termination, if the person meets the requirements of R13-4-202 and R13-4-203, at the time of re-employment, and completes the waiver provisions of R13-4-205(F). Re-employment shall be subject to the individual's ability to meet the requirements of R13-4-202 and R13-4-203 and complete the waiver provisions of R13-4-205(F).~~
- ~~C. A person who seeks re-employment more than three years from date of termination shall meet all the requirements of this Article at the time of re-employment.~~

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

**CHAPTER 1. DEPARTMENT OF TRANSPORTATION
ADMINISTRATION**

PREAMBLE

1. Sections Affected:

Article 4
R17-1-401
R17-1-402
R17-1-403
R17-1-404
R17-1-405
R17-1-406
R17-1-407

Rulemaking Action:

New Article
New Section
New Section
New Section
New Section
New Section
New Section
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. § 28-366
Implementing statute: A.R.S. § 28-374

3. The effective date of the rules:

July 10, 2002

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 8 A.A.R. 495, February 1, 2002
Notice of Proposed Rulemaking: 8 A.A.R. 517, February 8, 2002

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

Name: George R. Pavia, Department Rules Supervisor

Address: Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079

Telephone: (602) 712-8446

Fax: (602) 241-1624

E-mail: gpavia@dot.state.az.us

or

Name: Kathleen L. Morley, Assistant Division Director, Motor Carrier & Tax Services

Address: Motor Vehicle Division
Department of Transportation, Mail Drop 501M
1801 W. Jefferson
Phoenix, AZ 85007

Telephone: (602) 712-4021

Fax: (602) 712-6539

E-mail: kmorley@dot.state.az.us

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules/index.htm.

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

The Arizona Department of Transportation, Motor Vehicle Division, "MVD," is implementing an A.R.S. § 28-374 allowed provision to require alternative payment method by electronic funds transfer for entities owing more than \$20,000 annually in motor vehicle or use fuel taxes. The program is also offering voluntary electronic funds transfer service as an option for other entities or payers as approved by the director.

7. A reference to any study that the agency relied on its evaluation or justification for the 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

8. 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

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

ADOT does not impose any direct agency-based costs on any entity with these rules. While there is a potential for lost revenue in interest earnings, larger payers recognize and overall savings in the convenience and reduction in employee hours to make remittances through electronic funds transfer. Under the former payment system, payers remitted largely by issue of hardcopy checks. Taxpayers benefit by being able to take advantage of electronic payment methods thereby providing a less paper-oriented environment and potentially saving administrative costs and mailing concerns. For the recommended transfer method, ACH debit, ADOT assumes the set-up costs for the remitting party. The optional ACH credit method bears minimal costs to the remitting party. Contracted competitive government third parties will benefit through voluntary participation and a less manual process for meeting daily deposit requirements formerly made almost exclusively by hardcopy checks. The Highway User Revenue Fund, "HURF," benefits through more direct and timely payment of tax liabilities and increased earnings on net revenues. Costs are netted against earnings in the HURF. This results in an overall benefit to the citizens of the state.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

A typographical error was corrected in R17-1-406 which had been erroneously designated R17-4-406. The title of this Section was also changed from "Procedures for Payment" in the proposed rule to "Payment Procedures" in the final rule.

The agency made other minor format, lexical, and structural changes to bring the rules into compliance with the Arizona Administrative Procedure Act and upon recommendations made by Governor's Regulatory Review Council staff.

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11. A summary of the principal comments and the agency response to them:

The agency received only one comment on this rulemaking. The commenter, on behalf of a large oil company, suggested that if electronic transfer problems occur with a payer's opt-in ACH credit method that perhaps an alternative wire transfer could also be permitted in order to ensure meeting a payment deadline. The agency's program responded that in cases of necessity, a wire transfer would be acceptable assuming the payer first obtains the agency program's verbal approval. The program did not make any change in rule language resulting from the comment, but rather maintains that latitude for emergency change in transfer method is not contrary to regulatory provisions as proposed.

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

Not applicable

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

None

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

**CHAPTER 1. DEPARTMENT OF TRANSPORTATION
ADMINISTRATION**

ARTICLE 4. ~~RESERVED~~ ELECTRONIC FUNDS TRANSFER

Section

- R17-4-401. Definitions
- R17-1-402. General Requirements
- R17-1-403. Authorization Agreement
- R17-1-404. Methods of Electronic Funds Transfer
- R17-1-405. Departmental Termination of EFT Agreement
- R17-4-406. Payment Procedures
- R17-1-407. Timely Payment

ARTICLE 4. ~~RESERVED~~ ELECTRONIC FUNDS TRANSFER

R17-1-401. Definitions

The following definitions apply for purposes of this Article:

1. "Automated clearing house" or "ACH" means a central distribution and settlement point for the electronic clearing of debits and credits between financial institutions.
2. "ACH credit" means an electronic funds transfer:
 - a. Generated by a payer, and
 - b. Cleared through an ACH for deposit to the Department account.
3. "ACH debit" means an electronic transfer of funds from a payer's account:
 - a. Authorized by a payer-signed authorization agreement.
 - b. Generated at a payer's instruction, and
 - c. Cleared through an ACH for deposit to the Department account.
4. "Addendum record" means the information required by the Department in an ACH credit transfer or wire transfer, in the approved electronic format prescribed in R17-1-405(B).
5. "Authorized means of transmission" means the deposit of funds into the Department account by electronic funds transfer.
6. "Cash Concentration or Disbursement plus" or "CCD plus" means the standardized data format approved by the National Automated Clearing House Association for remitting tax payments electronically.
7. "Data Collection Center" means a third party that, under contract with the Department, collects and processes electronic funds transfer payment information from payers.
8. "Department" or "ADOT" means the Arizona Department of Transportation.
9. "EFT Program" means the payment of taxes by electronic funds transfer under this Article.
10. "Electronic Funds Transfer" or "EFT" means any transfer of funds initiated:
 - a. By a person authorizing a financial institution to debit or credit an account under this Article; and
 - b. Through one of the following:
 - i. Electronic terminal.

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- ii. Telephone.
- iii. Computer, or
- iv. Magnetic tape.
- 11. “Financial institution” means:
 - a. A state or national bank.
 - b. A trust company.
 - c. A state or federal savings and loan association.
 - d. A mutual savings bank, or
 - e. A state or federal credit union.
- 12. “IFTA” means International Fuel Tax Agreement.
- 13. “IRP” means International Registration Plan.
- 14. “Payment information” means the data that the Department requires of a payer making an electronic funds transfer payment.
- 15. “Payer” means a taxpayer or a third party representing a taxpayer.
- 16. “Payer information number” means a confidential code assigned by the Department that identifies a payer and allows the payer to give payment information to the Department’s Data Collection Center.
- 17. “State Servicing Bank” means a bank designated under A.R.S. Title 35, Chapter 2, Article 2.
- 18. “Taxpayer verification number” means an optional taxpayer-generated number that a payer may use to verify an ACH credit transaction.
- 19. “Tax type” means the category of tax imposed by the Department.
- 20. “Wire transfer” means an instantaneous electronic funds transfer initiated by a payer.

R17-1-402. General Requirements

- A. Mandatory Participation.** Beginning on the first day of the month at least 120 days after this Section becomes effective, a payer owing motor vehicle or use fuel taxes of \$20,000 or more for the immediately preceding tax year under A.R.S. Title 28, Chapter 16, Article 1 or 2, shall remit payment by a Department-authorized method of EFT under R17-1-404. A payer with remittance requirements under this subsection shall initiate electronic funds transfer by submitting to the Department an EFT authorization agreement in compliance with R17-1-403.
- B. Voluntary Participation.** Beginning on the first day of the month at least 180 days after this Section becomes effective, the following payers may elect to participate in the EFT Program by submitting to the Department an EFT authorization agreement specified in R17-1-403.
 - 1. A payer with a recurring fee or tax liability.
 - 2. An authorized third party.
 - 3. An IRP or IFTA jurisdiction, and
 - 4. Other entity or payer determined by the Director.
- C. Voluntary Discontinuance.** A voluntary participant in the EFT Program shall give written notice to the Department at least 45 days before discontinuing EFT Program participation.

R17-1-403. Authorization Agreement

- A. A payer shall complete an electronic funds transfer authorization agreement in the form prescribed by the Department at least 45 days before initiation of the first applicable transaction. The payer shall provide the following information on the authorization agreement:**
 - 1. Payer’s name and address;
 - 2. Payer’s federal tax identification number;
 - 3. Payer’s Arizona Tax Account Number, if applicable;
 - 4. Type of action being authorized;
 - 5. Fee or tax type;
 - 6. Payment method;
 - 7. Name and phone number of the payer’s EFT contact person;
 - 8. Financial institution name and address;
 - 9. Bank account type;
 - 10. Name on bank account;
 - 11. Bank account number; and
 - 12. Bank routing transit number.
- B. A payer shall submit a revised authorization agreement to the Department at least 30 days before any change in information required in subsection (A) is made to the agreement.**
- C. The Department shall deny authorization for electronic funds transfer if a payer or voluntary payer does not submit the information in subsection (A).**

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R17-1-404. Methods of Electronic Funds Transfer

- A.** A payer shall authorize remittance by ACH debit for electronic funds transfer unless the Department grants permission to remit by ACH credit.
- B.** The Department may authorize remittance by ACH credit for a payer that requests it on an EFT authorization agreement form.
- C.** A payer unable to remit by an established payment method may request that the Department accept deposits to the Department account by wire transfer according to the following procedure:
 - 1.** A payer shall:
 - a.** Contact the Department.
 - b.** State the reason preventing timely compliance under either the ACH credit or debit method, and
 - c.** Obtain verbal approval for wire transfer of tax payment to the Department account before initiating a transmission.
 - 2.** A payer making a wire transfer shall submit the addendum record required under R17-4-405 with an approved wire transfer.

R17-1-405. Departmental Termination of EFT Agreement

- A.** After finding grounds for withdrawal, the Department may:
 - 1.** Withdraw permission to use the ACH credit method of EFT, if the payer is an EFT Program participant under R17-1-402(A); or
 - 2.** Withdraw permission to pay by EFT, if the payer is an EFT Program participant under R17-1-402(B).
- B.** Each of the following is grounds for withdrawal:
 - 1.** Failure to make timely EFT payments.
 - 2.** Failure to provide payment information.
 - 3.** Failure to provide the required addendum record with EFT payment, or
 - 4.** Failure to make correct payment.

R17-1-406. Payment Procedures

- A.** A payer remitting by the ACH debit method shall report payment information to the Department Data Collection Center no later than the time prescribed by the State Servicing Bank on the last business day before the payment due date.
 - 1.** A payer shall communicate payment information by one of the following means:
 - a.** Operator-assisted communication of payment information made orally by rotary or touch-tone telephone.
 - b.** Touch-tone communication of payment information made by using a touch-tone telephone keypad.
 - c.** Computer terminal link with the Data Collection Center, or
 - d.** Other means available and approved by the Data Collection Center.
 - 2.** A payer shall communicate the following payment information to the Department Data Collection Center:
 - a.** Payer information number.
 - b.** Department-assigned account number.
 - c.** Tax type.
 - d.** Payment amount.
 - e.** Tax period.
 - f.** Payment due date, and
 - g.** Payment sequence number.
- B.** A payer authorized to remit by the ACH credit method shall initiate a payment transaction directly with a financial institution to ensure a payment is deposited to the Department account by the payment due date. A payer shall make an ACH credit transfer in the CCD plus addendum format by providing the following information:
 - 1.** The Department-assigned account number.
 - 2.** The tax type.
 - 3.** The payment amount.
 - 4.** The tax or reporting period.
 - 5.** The payment sequence number.
 - 6.** The payer's taxpayer verification number provided optionally at the payer's discretion, and
 - 7.** The American Bank Association nine-digit number of the receiving bank.

R17-1-407. Timely Payment

- A.** A payer remitting a payment through EFT shall ensure the completion of each transaction by the payment due date.
- B.** If a tax due date occurs on a Saturday, Sunday, or legal holiday, a payer shall make the electronic funds transfer by 5:00 p.m. of the next business day.
- C.** An EFT program participant is subject to penalty prescribed under A.R.S. §§ 28-5621, 28-5721, or 28-5722 for past due payment.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES**

PREAMBLE

1. Sections Affected

R17-4-501
R17-4-502
Exhibit A

Rulemaking Action

New Section
Amend
New Exhibit

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. § 28-366

Implementing statutes: A.R.S. §§ 28-3005, 28-3052, 28-3153, 28-3158, 28-3159, 28-3164, 28-3171, 28-3172, 28-3306, 28-3314, and 28-3315

3. The effective date of the rules:

July 12, 2001

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Recodification: 7 A.A.R. 3479, August 10, 2001

Notice of Rulemaking Docket Opening: 7 A.A.R. 5187, November 16, 2001

Notice of Proposed Rulemaking: 7 A.A.R. 5482, December 14, 2001

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

Name: George R. Pavia, Department Rules Supervisor

Address: Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079

Telephone: (602) 712-8446

Fax: (602) 241-1624

E-mail: gpavia@dot.state.az.us

To track the progress of an ADOT rulemaking matter, visit the agency web site at www.dot.state.az.us/about/rules.

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

The Arizona Department of Transportation, Motor Vehicle Division ("Division") amended the medical general provisions rule for clarity and conciseness. The Division made a new definitions Section at R17-4-501, deleting the R17-4-502(A) definitions subsection. Additionally, the Division added Exhibit A, the medical screening questions and certification on the Arizona driver license application.

Recodification of Title 17 of the *Arizona Administrative Code*, effective July 20, 2001, renumbered the medical general provisions rule to R17-4-502 from R17-4-520. The recodification also renumbered former R17-4-501 to R17-5-706, making R17-4-501 available for the new definitions Section. All Title 17 references in proposed R17-4-502 reflect numbering consistent with the recodification. The recodification also changed:

- The Chapter 4 heading to "Department of Transportation Title, Registration, and Driver Licenses" from "Department of Transportation Motor Vehicle Division," and
- The Article 5 heading to "Safety" from "Driver Licenses".

These final rules state the Division's process to medically screen, for safe motor vehicle operation, people requesting or holding an Arizona driver license. The final rules notify the public that an Arizona driver license requires disclosure of any visual, physical, psychological, or substance-related conditions that may affect a person's ability to operate a motor vehicle safely. By tying condition disclosure to safe operating ability, the rules and Exhibit A minimize inconvenience and cost to driver license applicants and licensees.

7. A reference to any study that the agency relied on in its evaluation of or justification for the 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

8. 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

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

In this summary:

- “Minimal” means less than \$1000,
- “Moderate” means between \$1000 and \$10,000, and
- “Substantial” means more than \$10,000.

The Division incurs substantial costs to review driver license applications, to maintain and review licensees’ driving records, and to run the medical screening process. The medical screening process fulfills the Division’s statutory obligations, protects the public, and keeps some people with disabilities mobile.

The Arizona Attorney General’s Office incurs substantial costs to represent the Division in proceedings for judicial review of the licensing actions by the Division based on the medical screening process. The Attorney General’s Office fulfills its statutory representation of the Division and participates in driver license applicants’ and licensees’ exercise of their due process rights.

Like other third-party payers, the State Compensation Fund, a public entity established under A.R.S. § 23-981 to provide workers’ compensation coverage to Arizona employers and to pay compensation and expenses for workers’ job-related injuries and occupational diseases, incurs substantial costs to provide payments for vehicle modification and for driver rehabilitation specialists’ services to drivers with disabilities from job-related injuries or occupational diseases. The substantial benefit of keeping some people with disabilities mobile and working offsets these costs. Workers’ compensation insurance premiums received by the State Fund under A.R.S. Title 23, Chapter 6 also offset payments for vehicle modification and driver rehabilitation specialists’ services.

The Department of Economic Security Rehabilitation Services Administration (RSA) provides vocational rehabilitation services under A.R.S. Title 23, Chapter 3. Section 23-501(8) defines “vocational rehabilitation service” to include transportation “necessary to enable a disabled person to engage in a remunerative occupation....” As a governmental third-party payer, the RSA incurs substantial costs to provide payments for vehicle modification and driver rehabilitation specialists’ services, for vocational purposes, to some Arizona residents with disabilities. The substantial benefit of keeping some people with disabilities mobile and working offsets these costs. Note that the United States Department of Veterans Affairs also may provide payments to some Arizona veterans for vehicle modification and driver rehabilitation for disabilities connected to military service.

Although the preliminary economic impact summary indicated that the Division’s medical screening process affects the Board of Behavioral Health Examiners, the Board provided information that it does not receive increased requests for certification from substance abuse counselors because of the Division’s medical screening process. By statute, the Division may require substance abuse evaluations prepared by Board-certified substance abuse counselors (CSACs) or other appropriate professionals for some driver license applicants and licensees as part of the medical screening process. Of the approximately 1200 CSACs in Arizona, only a small number prepare Division-required substance abuse evaluations. (Approximately 12 counseling businesses advertise preparation of the substance abuse evaluations in the Phoenix, Arizona *Yellow Pages*.) Therefore, the Division’s medical screening process does not measurably affect the Board’s staffing and application processing costs or the amount of certificate issuance and renewal fees, authorized by A.R.S. § 32-3272, that the Board receives.

The DPS and local law enforcement agencies provide secondary enforcement of the driver license requirement and of driver license restrictions. A law enforcement officer who stops a driver for speeding also may issue a citation under A.R.S. § 28-3480 for operating a vehicle in violation of a driver license restriction, such as failure to have a steering wheel spinner device. The Division’s medical screening process does not result in additional costs to DPS or to other Arizona law enforcement agencies.

The Rotary Clubs, Arthritis Foundation, or other non-profits may provide some payment for vehicle modification and driver rehabilitation in Arizona. Medical insurance carriers also may provide these payments, but rarely do so in Arizona. Like the State Compensation Fund and the RSA, these non-governmental third-party payers incur substantial costs to provide payments for vehicle modification and for driver rehabilitation specialists’ services to drivers with disabilities. The substantial benefit of keeping some people with disabilities mobile offsets these costs.

Vehicle manufacturers incur substantial costs to provide rebates (generally \$1000) to drivers with disabilities who buy new vehicles for modification to accommodate disabilities. The substantial benefit of vehicle sales offsets rebate costs. Vehicle manufacturers and dealers also benefit substantially from drivers with disabilities who buy vehicles

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with factory-installed “options” that accommodate disabilities such as automatic transmission, power steering, power brakes, or power seats. The cost of these options varies with the vehicle make and model.

Vehicle modifiers receive substantial benefits for installing adaptive equipment in vehicles for people with disabilities.

Certified substance abuse counselors (CSACs) receive moderate to substantial benefits for preparing substance abuse evaluations for driver license applicants and licensees required to obtain these evaluations during the Division’s medical screening process.

Driver rehabilitation specialists conduct driving evaluations of people with disabilities and instruct these people in driving safely with disabilities and with adaptive equipment. Driver rehabilitation specialists receive substantial benefits for providing these services. The benefits to driver rehabilitation specialists and the concomitant costs to driver license applicants, licensees, or third-party payers do not directly result from the Division’s medical screening process, which does not require a driver rehabilitation specialist’s evaluation or instruction by a driver rehabilitation specialist. However, some vehicle modifiers require a driver rehabilitation specialist’s evaluation and instruction and a doctor’s prescription for vehicle adaptive equipment. Some driver license applicants or licensees voluntarily use driver rehabilitation specialists’ services.

Through the medical screening process the Division identifies a driver license applicant or licensee who is an alcoholic, drug dependent, visually disqualified, physically disqualified, or psychologically disqualified from driving. The Division then takes the appropriate action to deny or withdraw the person’s Arizona driving privilege or Arizona driver license. The Division’s medical screening process removes unsafe drivers from Arizona roads, lowering the indemnification exposure of insurance companies that write motor vehicle policies. Although the Division cannot determine the exact amount of insurance companies’ indemnification savings, it is a substantial amount.

These final rules and the Division’s medical screening process regulate applicants for Arizona driver license applicants and licensees. These final rules and the Division’s medical screening process do not regulate the not-for-profit entities or the for-profit businesses identified in this economic impact summary. However, the identified businesses ultimately benefit from the Division’s medical screening process.

The general public benefits from the Division’s medical screening process that helps reduce motor-vehicle-accident-related property damage, physical injuries, and deaths. The Division cannot determine the dollar value of safer Arizona roads, but it is a substantial amount.

An Arizona driver license applicant or licensee may have time and monetary costs from examinations, evaluations, and interviews required by the Division’s medical screening process. Additional costs arise from vehicle modification to accommodate particular physical disabilities, from a driver rehabilitation specialist’s services, and from obtaining a doctor’s prescription for vehicle adaptive equipment. Other costs to applicants, licensees, and family members, such as the expense and inconvenience of obtaining or providing alternative transportation, may arise in the medical screening process.

Under A.R.S. §§ 28-3153(A)(7) through 28-3153(A)(9), 28-3153(A)(11), 28-3306(A)(5), and 28-3315(H), to obtain and keep an Arizona driver license a person must have the visual, medical, and psychological ability to operate a motor vehicle safely. The Division’s medical screening process gives effect to the statutory requirement, increasing safety on the Arizona roads. The important benefits of increased safety and keeping disabled people mobile, along with the pecuniary benefits to vehicle manufacturers and dealers, to motor vehicle insurers, to vehicle adaptation businesses, to driver rehabilitation businesses, and to CSAC businesses outweigh the medical screening process costs to driver license applicants, licensees, family members, third-party payers, and the Division.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The Division made the following technical changes to make the rules more clear, concise, and understandable:

- Added the word “visual” to R17-4-501(7), R17-4-501(10)(a), R17-4-502((A)(1), R17-4-502(B)(3)(a), R17-4-502(B)(3)(b), and R17-4-502(B)(5)(c);
- Added the phrase “or appropriate specialist” to R17-4-501(10)(a);
- Added the word “appropriate” to R17-4-501(10)(b);
- Changed the statutory citation in R17-4-501(18)(b) from A.R.S. § 36-2501(3) to A.R.S. § 36-2501(A)(3);
- Changed the first line of R17-4-501(10) to “‘Evaluation’ means an assessment, to determine whether a disqualifying medical condition exists,” from “‘Evaluation’ means an assessment of” and deleted subsection (10)(d); and
- Moved R17-4-502(B)(5)(d) to subsection (B)(6):

6. Upon receipt of the notification required under subsection (B)(5), the Division will require the licensee to:

- a. Complete the medical screening questions and certification on the application, and**
- b. Continue with the screening process for safe operation of a motor vehicle.**

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Other grammatical and clerical changes were made based on suggestions from G.R.R.C. staff.

11. A summary of the principal comments and the agency response to them:

The record in this rulemaking action closed at 5:00 p.m., on January 18, 2002. The Division did not receive any oral or written comments. No member of the public appeared at the oral proceeding on January 14, 2002.

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

Not applicable

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

None

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES**

ARTICLE 5. SAFETY

Section

R17-4-501. ~~Recodified~~ Definitions

R17-4-502. ~~General provisions~~ Provisions for Visual, Physical, and Psychological Ability to Operate a Motor Vehicle Safely
Exhibit A. Medical Screening Questions and Certification

ARTICLE 5. SAFETY

R17-4-501. ~~Recodified~~ Definitions

In this Article:

1. "Adaptation" means a modification of or addition to the standard operating controls or equipment of a motor vehicle.
2. "Applicant" or "licensee" means a person:
 - a. Applying for an Arizona driver license or driver license renewal, or
 - b. Required by the Division to complete an examination successfully or to obtain an evaluation.
3. "Application" means the Division form required to be completed by or for an applicant for a driver license or driver license renewal.
4. "Arizona Driver License Manual" or "manual" means the reference booklet for applicants, issued by the Division, containing non-technical explanations of the Arizona motor vehicle laws.
5. "Certified substance abuse counselor" is defined in A.R.S. § 28-3005(C)(1).
6. "Director" means the Division Director or the Division Director's designee.
7. "Disqualifying medical condition" means a visual, physical, or psychological condition, including substance abuse that impairs functional ability.
8. "Division" means the Arizona Department of Transportation, Motor Vehicle Division.
9. "Driver license" is defined in A.R.S. § 28-101(19).
10. "Evaluation" means a medical assessment of an applicant or licensee by a specialist as defined under (17) of this Section to determine whether a disqualifying medical condition exists.
11. "Examination" means testing or evaluating an applicant's or licensee's:
 - a. Ability to read and understand official traffic control devices,
 - b. Knowledge of safe driving practices and the traffic laws of this state, and
 - c. Functional ability.
12. "Functional ability" means the ability to operate safely a motor vehicle of the type permitted by an Arizona driver license class or endorsement.
13. "Licensee" means a person issued a driver license by this state.
14. "Licensing action" means an action by the Division to:
 - a. Issue, deny, suspend, revoke, cancel, or restrict a driver license; or
 - b. Require an examination or evaluation of an applicant or licensee.
15. "Medical screening questions and certification" means the questions and certification on the application, as shown in Exhibit A following this Section.
16. "Physician" means a person licensed to practice medicine or osteopathy in any state, territory, or possession of the United States or the Commonwealth of Puerto Rico.

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17. “Specialist” means:
 - a. A physician who is a surgeon or a psychiatrist;
 - b. A physician whose practice is limited to:
 - i. A particular anatomical or physiological area or function of the human body, or
 - ii. Patients within a specific age range; or
 - c. A psychologist.
18. “Substance abuse” means:
 - a. Use of alcohol in a manner that makes the user an alcoholic as defined in A.R.S. § 36-2021(1), or
 - b. Drug dependency as described in A.R.S. § 36-2501(A)(5).
19. “Substance abuse evaluation” means an assessment by a physician, appropriate specialist, or certified substance abuse counselor to determine whether the use of alcohol or a drug impairs functional ability.
20. “Successful completion of an examination” means an applicant or licensee:
 - a. Establishes the visual ability, physical ability, and psychological ability to operate a motor vehicle safely, or
 - b. Achieves a score of at least 80 percent on a written test or road test.

R17-4-502. General provisions Provisions for Visual, Physical, and Psychological Ability to Operate a Motor Vehicle Safely

A. Definitions:

1. “Applicant” means any person who applies for a driver’s license or driver’s license renewal or is required to complete a re-examination.
2. “Application” means the forms provided by the Motor Vehicle Division prior to the issuance or renewal of a driver’s license.
3. “Department” means the Motor Vehicle Division of the Arizona Department of Transportation.
4. “Director” means the Director of the Motor Vehicle Division, or his designee.
5. “License” means any driver’s license or permit the Department is authorized to issue to operate a motor vehicle.
6. “Licensee” means a person who has a current license issued by the Department.
7. “Licensing action” means any action by the Department involving the issuance, denial, suspension, revocation, cancellation, restriction or re-examination of a license under this Article.
8. “Medical condition” means any condition in these rules which could affect a person’s functional ability to safely operate a motor vehicle.
9. “Medical examination” means an evaluation of a person’s physical or mental status performed by a physician in accordance with the rules under this Article, in order to determine a person’s functional ability to operate a motor vehicle with the results reported on a form prescribed by the Department.
10. “Medical questionnaire” means a series of questions designed to indicate the existence of a medical condition.
11. “Medical screening question” means a question designed to describe the medical condition(s) identified in the medical questionnaire.
12. “Medical specialist” means a physician certified by a recognized medical specialty board and approved by the Department.
13. “Physician” means a medical doctor or doctor of osteopathy licensed to practice in Arizona, a contiguous U.S. state, or employed by the federal government and practicing in Arizona.

A. Applicant’s or licensee’s responsibility. To comply with the Division’s screening process for safe operation of a motor vehicle, an applicant or licensee shall:

1. Provide the Division with all requested information about the applicant’s or licensee’s visual, physical, or psychological condition;
2. Successfully complete all required examinations;
3. Obtain all required evaluations;
4. Ensure timely submission of evaluation reports to the Division; and
5. Appear at all required interviews.

B. Failure to meet licensing standards. No person shall be licensed or allowed to maintain a driver license who fails to meet the medical licensing standards. Screening process for safe operation of a motor vehicle. This subsection and subsection (C) through subsection (E) state the screening process for safe operation of a motor vehicle.

1. An applicant shall complete the application, including the medical screening questions and certification.
2. An applicant without a valid driver license, who successfully completes all required examinations, shall obtain an evaluation if:
 - a. The Division informs the applicant that the applicant’s responses to the medical screening questions indicate the existence of a disqualifying medical condition; or
 - b. The applicant comes under subsection (C)(1)(a), subsection (C)(1)(c), or subsection (C)(1)(d).

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3. An applicant for license renewal shall successfully complete an examination if the applicant's responses to the medical screening questions indicate that since the applicant's last driver license renewal:
 - a. The applicant has developed a visual, physical, or psychological condition that may constitute a disqualifying medical condition, or
 - b. There has been a change in an existing visual, physical, or psychological condition that may impair the applicant's functional ability.
 4. As soon as an applicant's medical condition allows, the applicant shall notify the Division, in writing or by telephone, that the applicant has or may have a medical condition not previously reported to the Division that affects the applicant's functional ability.
 5. Upon receipt of the notification required under subsection (B)(4), the Division shall require the applicant to:
 - a. Complete the medical screening questions and certification on the application, and
 - b. Continue with the screening process for safe operation of a motor vehicle.
- C. Medical screening process: Evaluation, interview, and additional evaluation. An applicant or licensee shall submit to an evaluation, attend an interview, or submit to an additional evaluation as required by the Division.
1. The license application shall include a medical questionnaire. If the applicant indicates a medical condition or if the Department personnel observes an apparent medical condition, the applicant or licensee will be required to complete the medical screening question. The Division shall require an evaluation if the Director notifies the applicant or licensee in writing that:
 - a. An applicant or licensee comes under the provisions of R17-4-503 or R17-4-506;
 - b. An applicant or licensee reports a possible disqualifying medical condition or fails to successfully complete an examination;
 - c. An applicant or licensee exhibits unexplained confusion, loss of consciousness, or incoherence that is observed by Division personnel; or
 - d. A person with direct knowledge submits to the Division written information about specific events or conduct indicating the applicant or licensee may have a disqualifying medical condition.
 2. If the person's response to the medical screening question indicates the likelihood that a medical condition exists, the person must submit to a medical examination within 30 days from the Department mailing date. The applicant or licensee shall have the physician, appropriate specialist, or certified substance abuse counselor who performs an evaluation submit, to the Division's Medical Review Program, an evaluation report on a Division-prescribed form.
 3. If the evaluation report on an applicant or licensee is inconclusive regarding the existence of a disqualifying medical condition, The applicant or licensee may be required by the Department Division shall require the applicant or licensee to appear for an interview to clarify explain information disclosed by in the medical examination evaluation report.
 - 3.4. If the existence of a disqualifying medical condition remains inconclusive after an interview with the applicant or licensee, The Department the Division may shall require an additional medical examination evaluation, performed by a medical an appropriate specialist, if the initial medical examination reported to the Department is insufficient to establish that the applicant or licensee possesses the functional ability to safely operate a motor vehicle based on the medical licensing standards in the Article and reported to the Division's Medical Review Program on the Division-prescribed form.
 5. The Department shall not be held liable for any expenses The applicant or licensee shall pay for any expense incurred by an the applicant or licensee in the process of meeting to show compliance with the medical licensing visual, physical, and psychological standards for a driver license.
- D. Reporting requirements: Licensing action. The Division shall take a licensing action after requiring an applicant or licensee to complete an examination successfully, obtain an evaluation and submit an evaluation report, or appear at an interview.
1. Failure to complete the medical screening question at the time of application will result in an order to submit to a medical examination within 30 days from the date of the order. The Division shall deny a driver license if an applicant:
 - a. Fails to complete successfully an examination; or
 - b. Fails to:
 - i. Obtain an evaluation;
 - ii. Have the physician, appropriate specialist, or certified substance abuse counselor submit an evaluation report to the Division within 30 days after the Division notifies the applicant that an the evaluation is required; or
 - iii. Appear at an interview; or
 - c. Has an evaluation report submitted that indicates a disqualifying medical condition.
 2. Failure to submit to the medical examination and submit the required report to the Department as required within the time frame shall result in a suspension of the driver's license or denial of issuance until compliance is met. The Divi-

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sion shall summarily suspend a licensee's driver license under A.R.S. §§ 28-3306(A)(5) and 41-1064(C) for a reason stated in subsection (D)(1).

3. ~~If a person experiences any medical condition after being licensed, he is required to report this condition to the Department within five days of occurrence, or as soon as the medical condition allows. The Division shall issue a revocation notice with a notice of summary suspension. The revocation notice shall inform the applicant that:~~
 - a. Unless the Division receives a licensee's timely hearing request under subsection (F), the revocation becomes effective:
 - i. Fifteen days after the date licensee is personally served with the notice; or
 - ii. Twenty days after the date the notice is mailed to the licensee.
 - b. A person who wishes to obtain a license after suspension or revocation shall reapply for a license as follows:
 - i. After suspension as specified in A.R.S. § 28-3315(H); and
 - ii. After revocation as specified in A.R.S. § 28-3315(B).
4. The Division shall issue a driver license to an applicant or shall not suspend or revoke a licensee's driver license if:
 - a. The applicant or licensee successfully completes all required examinations and the Division does not require an evaluation; or
 - b. The applicant or licensee obtains all required evaluations and the most recent evaluation report submitted on behalf of the applicant or licensee conclusively indicates no disqualifying medical condition.

E. Driver license restrictions. If an applicant or licensee uses an adaptation, including those listed below to demonstrate functional ability during an examination, the Division shall indicate the adaptation as a restriction on a driver license issued to the applicant or licensee and on the applicant's or licensee's driving record.

1. Automatic transmission.
2. Hand dimmer switch.
3. Left-foot gas pedal.
4. Parking-brake extension.
5. Power steering.
6. Power brakes.
7. Six-way power seat.
8. Right-side directional signal.
9. A device enables an operator to spin the steering wheel.
10. A device that enables full foot control.
11. Dual outside mirrors.
12. Chest restraints.
13. Shoulder restraints.
14. A device that extends pedals.
15. A device that enables full hand control, and
16. Adapted seat.

E.F. ~~Hearings and appeals.~~ This subsection states the hearing procedure for licensing actions taken by the Division after the screening process for safe operation of a motor vehicle.

1. ~~If the Division takes an adverse All cases where licensing actions action have been taken under this Section, the licensee or an applicant or licensee may request a hearing with the executive hearing section Division's Executive Hearing Office. A hearing request is timely if received by the Division:~~
 - a. ~~within~~ Within 15 days from after the date of the licensing action notice is delivered to the applicant or licensee,
or
 - b. Within 20 days after the date the notice is mailed to the applicant or licensee.
2. ~~All hearing procedures are defined in administrative rule R17-4-901 and R17-4-902. R17-1-501 through R17-1-511 and R17-1-513 govern a hearing conducted under this subsection.~~
3. The administrative law judge shall sustain, modify, or void the Division's licensing action.

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Exhibit A. Medical Screening Questions and Certification

Medical Screening

(Driver Applicants Only)

_____ Yes _____ No Do you have an alcohol or drug dependency that may affect your ability to operate a motor vehicle safely?

If Yes: _____ Yes _____ No Have you been in recovery for one year or more?

_____ Yes _____ No Do you have a court-appointed guardian because you are incapacitated?

_____ Yes _____ No Do you have a medical condition (other than a condition requiring vision correction by eye-glasses or contact lenses) that may affect your ability to operate a motor vehicle safely?

If Yes, explain below.

Medical Conditions

Certification

All Applicants: I certify that the information above is true and correct. I understand that I must report a change of address or name to the Division within ten days.

Driver applicants: I understand the laws, rules, and regulations described in the Arizona Driver License Manual, and that I am required to report to the Division in writing, within ten days, any medical condition that develops or worsens that may affect my ability to operate a motor vehicle safely.

Applicant Signature (If under 18, Legal Guardian certificate on the back must be completed)

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS

PREAMBLE

1. Sections Affected:

R17-5-201
R17-5-202
R17-5-203
R17-5-205
R17-5-208
R17-5-209
R17-5-210

Rulemaking Action:

New Section
Amend
Amend
Amend
Amend
Amend
Repeal

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. § 28-366

Implementing statutes: A.R.S. §§ 28-5204 and 28-5235

3. The effective date of the rules:

July 10, 2002

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 8 A.A.R. 622, February 8, 2002

Notice of Proposed Rulemaking: 8 A.A.R. 895, March 8, 2002

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

Name: George R. Pavia, Department Rules Supervisor

Address: Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079

Telephone: (602) 712-8446

Fax: (602) 241-1624

E-mail: gpavia@dot.state.az.us

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules/index.htm.

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

MVD engages in this rulemaking to incorporate sections of the 2001 edition of the 49 CFR by reference into Arizona Motor Carrier Safety and Hazardous Materials Transportation administrative rules. For purposes of clarity, general definitions are moved to a new Section, R17-5-201, created just for definitions.

This rulemaking also introduces two amendments:

1. In R17-5-203(B)(3), an additional provision redefines Commercial Motor Vehicle to include operation for interstate commerce with a gross vehicle weight greater than 10,001 pounds. Compliance to federal regulations is already required for this provision under 49 CFR 390.5; but statewide law enforcement wishes specifically to codify the provision in rule language to reinforce compliance with Motor Carrier Safety Assistance Program "MCSAP" requirements on the state level and ensure receipt of MCSAP grant funding.
2. In R17-5-208(6)(a), language is deleted to help reduce confusion concerning medical reporting requirements for insulin dependent diabetics applying for a CDL under the waiver pilot program. The applicant must report hypoglycemic insulin reactions that occurred within a 12-month period before applying for a CDL. The Medical Review Program of MVD has maintained this standard since the initiation of the pilot program, but has encountered repeated misunderstanding of actual requirements by prospective applicants and reporting physicians.

Other minor amendments are made to reflect modifications in 49 CFR 2001 section naming and numbering. This rulemaking does not arise from a five-year review but is an annual update.

7. A reference to any study that the agency relied on its evaluation or justification for the 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

8. 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

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

The economic impact of this rulemaking is negligible. No substantial changes are introduced since the last rulemaking, effective July 12, 2001. The new Section and amendments in this rulemaking provide minimal benefit to the agency and regulated persons in reduction of confusion and employee time required to clarify regulatory provisions.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

One minor correction was made in R17-5-209(A)(1)(a) to bring rule language into agreement with the Subchapter A title according to the 2001 49 CFR. Other minor grammatical, sentence structure, and syntactical changes were made upon recommendations by the Governor's Regulatory Review Council staff.

11. A summary of the principal comments and the agency response to them:

The agency received no comments on this rulemaking.

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

None

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

In R17-5-202, subsection (A):

49 CFR Parts 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399, published October 1, 2001.

In R17-5-209, subsection (A):

49 CFR Parts 107, 171, 172, 173, 177, 178, and 180, published October 1, 2001.

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION COMMERCIAL PROGRAMS

ARTICLE 2. MOTOR CARRIERS

Section

R17-5-201. ~~Reserved~~ Definitions

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; ~~Definitions~~; Application

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General Applicability and Definitions; General Requirements and Information

R17-5-205. Motor Carrier Safety: 49 CFR 382 - Controlled Substances and Alcohol Use and Testing

R17-5-208. Insulin-~~Dependent~~ dependent Commercial Driver License Waiver Pilot Study Program

R17-5-209. Hazardous Materials Transportation

R17-5-210. ~~Definitions~~ Repealed

ARTICLE 2. MOTOR CARRIERS

R17-5-201. ~~Reserved~~ Definitions

A. The following definitions apply to this Article unless context indicates otherwise:

1. "Audit" means any inspection of a transporter's motor vehicle, equipment, books, or records to determine compliance with this Article and A.R.S. Title 28, Chapter 14.
2. "Co-applicant" means an employer or potential employer.
3. "Commercial driver license" or "CDL" has the meaning prescribed in A.R.S. § 28-3001(2).
4. "Danger to public safety" means any condition of a transporter likely to result in serious peril to the public if not discontinued immediately.
5. "Division" or "MVD" means the Motor Vehicle Division, Arizona Department of Transportation.

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6. “Division Director” means the Assistant Director of the Arizona Department of Transportation for the Motor Vehicle Division or the Assistant Director’s designated agent.
7. “Hearing Office” means the Arizona Department of Transportation, Motor Vehicle Division, Executive Hearing Office.
8. “Transporter” means any person, driver, motor carrier, shipper, manufacturer, or motor vehicle, including any motor vehicle transporting a hazardous material, hazardous substance, or hazardous waste, subject to this Article and A.R.S. Title 28, Chapter 14.
9. “Violation” means any conduct, act, or failure to act required or prohibited under this Article and A.R.S. Title 28, Chapter 14.

B. Any definition prescribed under A.R.S. § 28-5201 also applies to this Article.

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Definitions; Application

A. The Division incorporates by reference 49 CFR 40, 382, 390, 391, 392, 393, 395, 396, 397, and 399 published October 1, 2000, 2001, and no later amendments or editions, and with the changes described in R17-5-202 through R17-5-508. Copies of the incorporated material are on file with the Federal Motor Carrier Safety Administration, the Division, and the Office of the Secretary of State, as amended by R17-5-202 through R17-5-208.

B. ~~The following definitions apply for purposes of R17-5-202 through R17-5-208 unless indicated otherwise:~~

1. ~~“Co-applicant” means an employer or potential employer.~~
2. ~~“Commercial driver license” or “CDL” has the meaning prescribed in A.R.S. § 28-3001(2).~~
3. ~~“Division” or “MVD” means the Motor Vehicle Division, Arizona Department of Transportation.~~
4. ~~“Division Director” means the Assistant Director of the Arizona Department of Transportation for the Motor Vehicle Division or the Assistant Director’s designated agent.~~

~~**C.**~~ **B.** The regulations of 49 CFR, incorporated by subsection (A), apply as amended by R17-5-203 through R17-5-208 to:

1. A motor carrier as defined in A.R.S. § 28-5201 except a motor carrier transporting passengers for hire in a motor vehicle with a design capacity of ~~6~~ six or fewer persons.
2. A vehicle owned or operated by the state, a political subdivision, or a public authority of the state that is used to transport hazardous materials in an amount requiring the vehicle to be marked or placarded as prescribed in R17-5-209.

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General Applicability and Definitions; General Requirements and Information

A. 49 CFR 390.3 General applicability is amended as follows:

1. Paragraph (a) is amended to read:
Regulations incorporated in this Section are applicable to all motor carriers operating in Arizona and any vehicle owned or operated by the state, a political subdivision, or a state public authority that is used to transport a hazardous material in an amount requiring the vehicle to be marked or placarded as prescribed in R17-5-209.
2. Paragraph (b) is amended to read:
A motor carrier driver domiciled in Arizona who operates a commercial motor vehicle defined in A.R.S. § 28-3001 shall comply with the requirements of A.R.S. Title 28, Chapter 8 and any rule made under that Chapter.
3. Paragraph (c) is amended to read:
A motor carrier operating in Arizona in furtherance of a commercial enterprise, shall comply with the financial responsibility requirement specified in A.R.S. Title 28, Chapter 9, Article 2, and 49 CFR 387.

B. 49 CFR 390.5 Definitions. The definitions listed in 49 CFR 390.5 are amended as follows:

1. If the term “Commercial Motor Vehicle” or “CMV” is used in reference to the controlled ~~substance~~ substances and alcohol use and testing requirement of 49 CFR 382, the term has the meaning prescribed in 49 CFR 382.107.
2. If the term “Commercial Motor Vehicle” or “CMV” is used in reference to the licensing requirements prescribed under A.R.S. § 28-3223, the term has the meaning prescribed under A.R.S. § 28-3001.
3. If the term “Commercial Motor Vehicle” or “CMV” is not used in reference to the controlled ~~substance~~ substances and alcohol use and testing requirement of 49 CFR 382 or the licensing requirement prescribed under A.R.S. § 28-3223, the term means a self-propelled, motor-driven vehicle or vehicle combination, used on a public highway in this state in furtherance of a commercial enterprise that:
 - a. Has a gross vehicle weight rating (GVWR) as a single vehicle or a gross combination weight rating (GCWR) of 18,001 pounds or more for purposes of intrastate commerce;
 - b. Transports passengers for hire and has a design capacity of ~~7~~ seven or more persons; or
 - c. Transports a hazardous material in an amount requiring marking or placarding as prescribed in ~~R17-4-436 R17-5-209; and~~
 - d. Is not an intrastate-operating tow truck that has a GVWR up to 26,000 pounds, but a tow truck operator remains subject to all other provisions prescribed under 49 CFR 391.41, 391.43, 391.45, 391.47, and 391.49-; and
 - e. Operates for purposes of interstate commerce with a GVWR of greater than 10,001 pounds.
4. “Exempt intracity zone” is deleted ~~from R17-5-203 through R17-5-206~~ and has no application in ~~this Section. R17-5-203 through R17-5-206.~~

5. "For-hire motor carrier," "private motor carrier", "private motor carrier of passengers (business)," and "private motor carrier of passengers (nonbusiness)" are deleted from R17-5-203 through R17-5-206 and the term "motor carrier" is substituted.
6. ~~"Gross combination weight rating (GCWR)" has the meaning prescribed under 49 CFR 390.5, Definitions.~~
- 7-6. "Gross vehicle weight rating (GVWR)" ~~has the meaning prescribed under 49 CFR 390.5, Definitions,~~ is amended by adding:
- In the absence of a value specified by the manufacturer and the vehicle identification number, law enforcement shall use a vehicle's actual gross weight or declared gross weight to determine the GVWR.
- 8-7. "Regional Director of Motor Carriers" means the Division Director of the Arizona Department of Transportation, Motor Vehicle Division.
- 9-8. "Special agent" means an officer or agent of the Department of Public Safety, the Division, or a political subdivision, who is trained and certified by the Department of Public Safety to enforce Arizona's Motor Carrier Safety requirements.
- 10-9. "State" means a state of the United States or the District of Columbia.
- 11-10. "Tow truck" has the meaning prescribed under A.A.C. R13-3-101.
- C. 49 CFR 390.15 Assistance in investigations and special studies. Paragraph (a) is amended to read:
- A motor carrier shall make all records and information pertaining to an accident available to a special agent upon request or as part of any inquiry within the time the request or inquiry specifies. A motor carrier shall give a special agent all reasonable assistance in the investigation of any accident including providing a full, true, and correct answer to any question of the inquiry.
- D. 49 CFR 390.21 Marking of CMVs. Paragraph (a) is amended to read:
- This Section applies to all motor carrier vehicles operated in Arizona. A motor carrier not subject to U.S. Department of Transportation marking requirements shall mark its vehicle with the:
1. Company name, or
 2. Business trade name and
 3. City and state.
- E. 49 CFR 390.23 Relief from regulations.
1. Paragraph (a) is amended to read:
Regulations contained in 49 CFR 390 through 397 do not apply to a motor carrier that:
 - a. Is exempt from federal jurisdiction, and
 - b. Operates a commercial motor vehicle used or designated to provide relief during an emergency.
 2. Paragraphs (a)(1), ~~(a)(1)(A), (a)(1)(B), and (a)(1)(B)(ii)~~ (a)(1)(i), (a)(1)(i)(A), (a)(1)(i)(B), and (a)(1)(ii) are deleted.
 3. Paragraph ~~(a)(2)(A)~~ (a)(2)(i)(A) is amended as follows:
An emergency has been declared by a federal, state, or local government official having authority to declare an emergency; and
 4. Paragraph ~~(a)(2)(B)~~ (a)(2)(i)(B) is amended as follows:
The Arizona Department of Public Safety Commercial Vehicle Enforcement Bureau determines a local emergency exists that justifies an exemption from any or all of these Parts. If the Arizona Department of Public Safety Commercial Vehicle Enforcement Bureau determines relief from these regulations is necessary to provide vital service to the public, relief shall be granted with any restrictions the Arizona Department of Public Safety considers necessary.
 5. Paragraph ~~(b)~~ is amended as follows: "Interstate commerce" as used in paragraph (b) means engagement in a commercial enterprise.
- F. 49 CFR 390.25 Extension of relief from regulations - emergencies is amended as follows:
- A motor carrier seeking to extend a period of relief from these regulations shall obtain approval from the Arizona Department of Public Safety Commercial Vehicle Enforcement Bureau. The motor carrier shall give full details of the additional relief requested. The Arizona Department of Public Safety shall observe time limits for emergency relief from regulations as prescribed under 49 CFR 390.23(a), but may extend a period of relief after considering:
1. Severity of the emergency,
 2. Nature of relief services to be provided by the motor carrier, and
 3. Other restrictions that may be necessary.
- G. 49 CFR 390.27 Locations of motor carrier safety service centers is amended to read:
- A motor carrier requesting relief from these regulations shall contact the Arizona Department of Public Safety, Commercial Vehicle Enforcement Bureau, Telephone (602) 223-2522.

R17-5-205. Motor Carrier Safety: 49 CFR 382 - Controlled Substances and Alcohol Use and Testing

- A. 49 CFR 382.103 Applicability. Paragraph (a)(1) is amended to read:
The commercial driver license requirements of the state of Arizona.
- B. 49 CFR 382.115 Starting date for testing programs. Paragraph (a) is amended to read:
The controlled ~~substance~~ substances and alcohol use and testing requirements commence for all motor carriers on the date this Section goes into effect.

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C. Paragraphs (b) through (d) are Paragraph (b) is deleted.

R17-5-208. Insulin-Dependent ~~dependent~~ Commercial Driver License Waiver Pilot Study Program

The Division shall create a pilot study program for insulin-dependent diabetics to process, monitor, and evaluate the feasibility of establishing a waiver program for intrastate drivers who are disqualified as prescribed in the provisions of 49 CFR 391.41 (b)(3), but who are otherwise qualified. All requirements of R17-5-204 apply except subsections (B)(3) and (B)(4).

1. The Medical Review Officer, authorized to approve or deny waiver applications, shall administer the pilot study program.
2. The study program begins on the effective date of this rule and terminates ~~2~~ two years from that date.
3. All waivers issued through the study program terminate upon the expiration of the study program.
4. The Division Director may extend the study or establish a permanent waiver process after review of the study program results.
5. An insulin-dependent diabetic may apply for a waiver, restricted to the state of Arizona, for participating in the ~~2~~ two-year pilot study if:
 - a. The applicant submits blood glucose logs to ~~the~~ an endocrinologist or medical examiner at an annual examination or at any time as directed by the medical review section.
 - b. The applicant has a driving record meeting the minimum requirements of safe driving as specified in applicable federal and state safety regulations and has no serious traffic violation as described under A.R.S. § 28-3312(E), no period of driver disqualification, and no reportable accident for the ~~3~~ three-year period before submitting the waiver application.
 - c. A separate signed statement from an examining ophthalmologist is submitted that the applicant has been examined and does not have unstable proliferative diabetic retinopathy, unstable advancing disease of blood vessels in the retina, and has stable acuity of at least 20/40 Snellen in each eye, with or without corrective lenses.
6. An insulin-dependent diabetic commercial driver license applicant shall provide:
 - a. A board-certified or board-eligible endocrinologist with a complete medical history including the date insulin use began, all hospitalization reports, consultation notes for diagnostic examinations, special studies pertaining to the diabetes and follow-up reports, and reports of any hypoglycemic insulin reactions within the prior 12 months ~~or~~ from the date the applicant started using insulin, ~~whichever is later~~.
 - b. An examination by a board-certified or board-eligible endocrinologist. The complete medical examination shall consist of a comprehensive evaluation of the applicant's medical history and current status, including a review of:
 - i. Fasting blood studies glucose, glycosylated hemoglobin/Hb Alc I including lab reference page and urinalysis performed during the last ~~6~~ six months; and
 - ii. Insulin dosages and types, diet utilized for control, and any significant factors such as smoking, alcohol use, and other medications; or drugs taken.
 - c. A statement prepared and signed by the examining endocrinologist whose status as board-certified or board-eligible is indicated. The signed statement shall include separate declarations indicating the following medical determinations:
 - i. The endocrinologist is familiar with the applicant's medical history for the past 12 months whether through actual treatment over that time or through consultation with a physician who has treated the applicant during that time.
 - ii. The applicant is free from insulin reactions including severe hypoglycemia and hypoglycemia awareness, and has had no more than ~~1~~ one documented hypoglycemic reaction per month in the previous 12 months ~~or~~ from the date the applicant started using insulin injections, ~~whichever is later~~.
 - iii. The applicant does not have severe hypoglycemia episodes of altered consciousness requiring the assistance of another person to regain control.
 - iv. The applicant does not have hypoglycemia unawareness or the inability to recognize the early symptoms of hypoglycemia such as sweating, anxiety, forceful heartbeat, and light-headedness.
 - v. The applicant's diabetic condition will not adversely affect the applicant's ability to operate a commercial motor vehicle; and
 - vi. The applicant is educated in diabetes and its management and is thoroughly informed of and understands procedures to follow to monitor and manage the applicant's diabetes and procedures to follow if complications arise.
 - d. An insulin-dependent applicant for a commercial driver license waiver shall meet the following requirements for the last ~~3~~ three years before application:
 - i. Have a driving record that contains no suspension or revocation of the applicant's driver license for the operation of any motor vehicle, including personal vehicles, except a suspension or revocation due to nonpayment of fines;
 - ii. Have no involvement in an accident as defined in 49 CFR 390.5 for which the applicant received a citation for a moving traffic violation while operating a commercial motor vehicle;

- iii. Have no conviction for a disqualifying offense described in 49 CFR 383.51, or more than 4 one serious traffic violation as described in 49 CFR 383.51 and A.R.S. § 28-3312(E) while operating a commercial motor vehicle; and
- iv. Have no more than 2 two convictions for any non-serious moving traffic violations while operating a commercial motor vehicle.
- e. The applicant shall immediately report any arrest, citation, or conviction to the MVD Medical Review Program. Failure to do so may result in denial or rescission of the waiver.

R17-5-209. Hazardous Materials Transportation

A. Incorporation of federal regulations.

- 1. The Motor Vehicle Division incorporates the following portions of the Federal Hazardous Materials Regulations by reference. Materials incorporated by reference are on file in the Secretary of State's Office. The incorporated Hazardous Materials Regulations are published in 49 CFR Transportation, Subtitle B - Other Regulations Relating to Transportation, Chapter I - Research and Special Programs Administration, Department of Transportation:
 - a. Subchapter A - Hazardous Materials and Oil Transportation; Part 107 - Hazardous materials program procedures; and
 - b. Subchapter C - Hazardous Materials Regulations; Parts:
 - i. 171 - General information, regulations, and definitions;
 - ii. 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, and training requirements;
 - iii. 173 - Shippers - general requirements for shipments and packagings;
 - iv. 177 - Carriage by public highway;
 - v. 178 - Specifications for packagings; and
 - vi. 180 - Continuing qualification and maintenance of packagings.
- 2. These parts are incorporated as printed in the October 1, ~~2000~~ 2001 edition, and those sections of the October 1, 1991 edition authorized for use under the transitional provisions of Section 171.14 of the October 1, ~~2000~~ 2001 edition.

B. Application and exceptions.

- 1. Application.
 - a. Regulations incorporated in subsection (A) apply as amended by subsection (C) to motor carriers, shippers, and manufacturers as defined in A.R.S. § 28-5201.
 - b. Regulations incorporated in subsection (A) also apply to any vehicle owned or operated by the state, a political subdivision, or a state public authority, used to transport a hazardous material, including hazardous substances and hazardous waste.
- 2. Exceptions. An authorized emergency vehicle, as defined in A.R.S. § 28-101, is excepted from the provisions of this Section.

C. Amendments. The following sections of the Federal Hazardous Materials Regulations, incorporated under subsection (A), are amended as follows:

- 1. Part 171. General information, regulations, and definitions.
 - a. Section 171.1 Purpose and scope. Paragraph (a) is amended to read:

“The transportation of hazardous materials by and their offering to: (1) interstate, intrastate, and foreign motor carriers; and (2) vehicles owned or operated by the state, a political subdivision or a state public authority, which are used to transport hazardous material.”
 - b. Section 171.8 Definitions and abbreviations. Section 171.8 is amended by revising the definitions for “Carrier,” “Hazmat employer,” and “Person,” and adding a definition for “Highway” as follows:

“‘Carrier’ means a person engaged in the transportation of passengers or property by highway as a common, contract, or private carrier and also includes the state, a political subdivision, and a state public authority engaged in the transportation of hazardous material.”

“‘Hazmat employer’ means a person who uses 4 one or more of its employees in connection with: transporting hazardous material; causing hazardous material to be transported or shipped; or representing, marking, certifying, selling, offering, reconditioning, testing, repairing, or modifying containers, drums, or packagings as qualified for use in the transportation of hazardous material. This term includes motor carriers, shippers, and manufacturers defined in A.R.S. § 28-5201 and includes the state, political subdivisions, and state public authorities.”

“‘Highway’ means a public highway defined in A.R.S. § 28-5201.”

“‘Person’ has the same meaning ~~defined as~~ in A.R.S. § 28-5201.”
- 2. Part 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, and training requirements.

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Section 172.3 Applicability.

Paragraph (a)(2) is amended to read:

“Each motor carrier that transports hazardous materials, and each state agency, political subdivision, and state public authority that transports hazardous material by highway.”

3. Part 177. Carriage by public highway.
 - a. Section 177.800 Purpose and scope of this part and responsibility for compliance and training.
~~Paragraph (a) is amended as follows: The~~ In paragraph (a), the phrase “by private, common, or contract carriers by motor vehicle” is amended to read, “by a motor carrier operating in Arizona, a state agency, a political subdivision, or a state public authority that transports hazardous material by highway.”
 - b. Section 177.802 Inspection. Section 177.802 is amended to read: “Records, equipment, packagings, and containers under the control of a motor carrier or other persons subject to this part, affecting safety in transportation of hazardous material by motor vehicle, must be made available for examination and inspection by an authorized representative of the Department as prescribed in A.R.S. §§ 28-5204 and 28-5231.”

R17-5-210. Definitions Repealed

A. ~~The following definitions apply to R17-5-211 and R17-5-212:~~

1. ~~“Audit” means any inspection of a transporter’s motor vehicle, equipment, books, or records to determine compliance with:
 - a. ~~R17-5-202 through R17-5-209; and~~
 - b. ~~A.R.S. Title 28, Chapter 14.~~~~
2. ~~“Danger to public safety” means any condition of a transporter likely to result in serious peril to the public if not discontinued immediately.~~
3. ~~“Director” means the Division Director, Arizona Department of Transportation, Motor Vehicle Division or the director’s designee.~~
4. ~~“Division” means the Motor Vehicle Division of the Arizona Department of Transportation and persons authorized by the Division.~~
5. ~~“Hearing Office” means the Arizona Department of Transportation, Motor Vehicle Division, Executive Hearing Office.~~
6. ~~“Transporter” means any person, driver, motor carrier, motor vehicle, shipper, manufacturer, including any motor vehicle transporting hazardous material, a hazardous substance, or hazardous waste, subject to:
 - a. ~~R17-5-202 through R17-5-209; and~~
 - b. ~~A.R.S. Title 28, Chapter 14.~~~~
7. ~~“Violation” means any conduct, act, or failure to act required or prohibited under:
 - a. ~~R17-5-202 through R17-5-209; and~~
 - b. ~~A.R.S. Title 28, Chapter 14.~~~~

B. Any definition prescribed under A.R.S. § 28-5201 also applies to R17-5-211 and R17-5-212.