

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

PREAMBLE

1. Sections Affected

Article 1
R2-8-101
R2-8-102
R2-8-103
R2-8-105
R2-8-124
R2-8-125

Rulemaking Action

Amend
Repeal
Repeal
Repeal
Repeal
Repeal
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. § 38-714(F)(5)
Implementing statutes: R2-8-101, R2-8-102, R2-8-103, R2-8-105: A.R.S. §§ 38-702 and 38-703
R2-8-124: Laws 1974, Ch. 167
R2-8-125: A.R.S. §§ 38-748 and 38-749

3. A list of all previous notices appearing in the Register addressing the proposed rules:

Notice of Rulemaking Docket Opening: 9 A.A.R. 4455, October 17, 2003

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

Name: Susanne Dobel, Manager, External Affairs

Address: Arizona State Retirement System
3300 N. Central Avenue, 14th Floor
Phoenix, AZ 85012

Telephone: (602) 240-2039

Fax: (602) 240-5303

E-mail: susanned@asrs.state.az.us

or

Name: Nancy O. Johnson, Rules Coordinator

Address: Arizona State Retirement System
3300 N. Central Avenue, 14th Floor
Phoenix, AZ 85012

Telephone: (602) 308-5172

Fax: (602) 240-5303

E-mail: nancyj@asrs.state.az.us

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

With regard to R2-8-101, R2-8-102, R2-8-103, and R2-8-105: In 1951, the state of Arizona entered into an agreement with the federal government (now the Social Security Administration) to allow for social security contributions by political subdivisions. On January 1, 1987, the federal Omnibus budget Reconciliation Act (OBRA) became effective. The OBRA changed social security provisions to require the Internal Revenue Service to collect social security contributions. The ASRS is repealing these rules because the Board no longer performs the responsibilities required in the rules.

ASRS is repealing R2-8-124 because it is unnecessary. Applicable fixed benefit plan members are already entitled to the benefits in Laws 1974, Ch. 167. Additionally the rule is inconsistent with A.R.S. § 38-757, which currently contains the provisions for entitlement of benefits upon retirement.

ASRS is repealing R2-8-125 because it is obsolete. All modifications to the membership agreement occurred over 25 years ago. Additionally, the rule is not consistent with state statutes because it references A.R.S. § 38-752, which has been repealed.

6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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

There is no economic, small business, or consumer impact. The ASRS is repealing the rules because they have either been preempted by federal law, are unnecessary, or are obsolete and are not being used by the ASRS.

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

Name: Susanne Dobel, Manager, External Affairs

Address: Arizona State Retirement System
3300 N. Central Avenue, 14th Floor
Phoenix, AZ 85012

Telephone: (602) 240-2039

Fax: (602) 240-5303

E-mail: susanned@asrs.state.az.us

or

Name: Nancy O. Johnson, Rules Coordinator

Address: Arizona State Retirement System
3300 N. Central Avenue, 14th Floor
Phoenix, AZ 85012

Telephone: (602) 308-5172

Fax: (602) 240-5303

E-mail: nancyj@asrs.state.az.us

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

The Department has not scheduled any oral proceedings at this time. A person may submit written comments or a request for an oral proceeding on the proposed rules no later than 5:00 p.m., Monday, December 1, 2003, to the individuals listed in items #4 and #9.

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

Not applicable

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

Not applicable

13. The full text of the rule follows:

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 1. ~~SOCIAL SECURITY DIVISION~~; RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

Section

- R2-8-101. Records required of political entities Repealed
- R2-8-102. Contributions due from political entities Repealed
- R2-8-103. Reimbursement for administrative costs Repealed
- R2-8-105. Responsibility of state departments for reports and contributions Repealed
- R2-8-124. Interpretation of Chapter 54, Section 1(A), Laws of 1975 Repealed
- R2-8-125. Employee and employer contributions for System members Repealed

ARTICLE 1. ~~SOCIAL SECURITY DIVISION~~; RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

R2-8-101. Records required of political entities Repealed

A. Each political entity shall maintain records containing the following information:

1. The name, address, and Social Security number of each employee.
2. The amount and date of each payment of remuneration to an employee and the period of service covered by such payment.
3. The amount of such remuneration payment which constitutes wages subject to contributions.
4. The amount of employees' contributions withheld or collected with reference to such payment, and if collected at a time other than the time such payment was made, the date collected.

B. All copies of returns, reports, schedules, statements, or other documents.

C. All records required by these regulations shall be kept at convenient locations accessible for inspection by representatives of the Arizona State Retirement System Board. All such records shall be kept and maintained for a period of at least four years after the date the contributions to which they relate became due or after the date contributions were paid, whichever is later.

R2-8-102. Contributions due from political entities Repealed

A. A political entity's first annual wage report and contributions due thereon shall be reported and paid to the Arizona State Retirement System Board within 80 days after the agreement entered into between the Board and the political entity has been approved by the Secretary of Health and Human Services, except reports for wages paid in the year of approval shall be due on the regular due date of the first day of January of the following year or 80 days from the date of approval, whichever is later. Effective for contributions due on wages paid after December 31, 1983, employee and employer contributions are due as follows:

1. Contributions on wages paid during the first 15 days of each calendar month will be due on the 5th business day after the 15th day of each such month and will be delinquent on the next succeeding business day.
2. Contributions on wages paid from the 16th through the last day of each calendar month will be due on the fifth business day after the last day of each such month and will be delinquent on the next succeeding business day.

B. Interest shall be charged on delinquent payments at an annual rate determined monthly as the weighted average annual rate of return on all repurchase agreement or other short-term investment transactions in the investment fund of the State Retirement System during the preceding month.

C. If contributions required by the law are not paid within 30 days after their delinquent date, appropriate action shall be taken by the Arizona State Retirement System Board to enforce their payment, as provided by the law, either by deductions from state monies due to the political subdivision or by civil action.

D. The purpose of this item of R2-8-102 is to enable reduction of cost assessments resulting from state agency administration of A.R.S. §§ 38-701 through 38-707.

1. The administrative cost reduction will be accomplished by the voluntary remittance of Social Security employee contributions and/or matching employer deposits at the earliest convenient date following each payroll period and by the prompt investment, pursuant to Attorney General Opinion 63-106-L, of such deposits in short-term securities to mature, or be sold, before funds are remitted, as required, to the Federal Reserve Bank for deposit in the Social Security trust funds.
2. All interest earned from the investment of deposits will be applied against the administrative costs assessed each reporting entity pursuant to state's Social Security regulation R2-8-103. Reporting entities not participating in the current deposit opportunity will continue to be billed for their pro rata share of administrative costs; reporting entities making voluntary advance deposits will receive credit on OASI Statement of Account for the approximate amount earned from the investment of the entity's deposits.
3. If earnings exceed the pro rata cost, the participating entity will be credited with its share of such income. The cost-offsetting opportunity herewith established shall be available to reporting entities by deposits of amounts withheld each payroll period.

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R2-8-103. Reimbursement for administrative costs Repealed

- ~~**A:** Payments of a political entity's pro rata share of the cost of administering A.R.S. Title 38, Chapter 5, Article 1 shall be made on a monthly basis. Administrative costs shall become due and payable 30 days after notice has been sent to a political entity of its pro rata share of such cost.~~
- ~~**B:** Charges to political entities to defray administrative costs shall be calculated as follows: Effective January 1, 1984, the administrative costs for each month will be charged to a political entity in the ratio that the number of individuals reported by it bears to the total number of individuals reported by all political subdivisions and the state of Arizona during the most recent period for which an individual count is available. These payments of administrative costs shall likewise be deposited in the revolving fund to reimburse the fund for withdrawals for administrative purposes.~~
- ~~**C:** Payment of administrative costs will become delinquent 30 days after notice has been sent to the political entity of its pro rata share. If a political entity does not pay its pro rata share of administrative costs when due and payable, it shall be subject to an interest penalty calculated upon a monthly basis as stipulated in R2-8-102(B) and a delinquency of a portion of a month shall be subject to the penalty for the entire month.~~
- ~~**D:** In the event payment has not been made after one month's delinquency, the appropriate state officer charged with the duty of making payment of excise revenue taxes or payments to school districts shall be requested to deduct from such payments the full amount of the delinquency, together with interest and penalties. In the event a political subdivision does not receive such payments from the state officer, then action to recover the delinquency shall be brought in the appropriate court for the recovery of a money judgment against the political subdivision or for the recovery of the delinquency on the bond filed by such political subdivision with the Secretary of State if such has been required by the governor of the state.~~

R2-8-105. Responsibility of state departments for reports and contributions Repealed

- ~~**A:** Definitions:~~
- ~~1. "Department" means any state board, commission, office, department, or agency.~~
 - ~~2. "Services subject to Agreement with the Social Security Administration" includes all services performed by all employees of the state, including elected and appointed officials except:
 - ~~a. Employees in positions eligible for coverage under a retirement system existing on November 25, 1952, except as provided by section 218 of the federal Social Security Act, as amended;~~
 - ~~b. Employees who perform services in a state hospital or other state institution as patients or inmates thereof;~~
 - ~~c. Employees paid on a fee basis (see R2-8-104(F));~~
 - ~~d. Part-time appointive officers;~~
 - ~~e. Employees of instrumentalities of the state government which instrumentalities are covered under separate agreements other than the Agreement of November 25, 1952.~~~~
 - ~~3. "Wages" means all remuneration paid in a calendar year not in excess of the maximum on which Social Security contributions are due. The value of meals and lodging furnished by, or on behalf of an employer to an employee, the employee's spouse, or any of the employee's dependents is not wages for Social Security purposes if:
 - ~~a. The meals or lodging are furnished on the business premises of the employer, and~~
 - ~~b. The meals or lodging are furnished for the convenience of the employer, and~~
 - ~~c. The employee is required to accept such lodging as a condition of employment.~~The value of "wages", paid other than by cash, shall be subject to contribution payments if the conditions under (a), (b), and (c) are not met as provided herein. Wages do not include subsistence allowance for employees in travel status.~~
 - ~~4. "Contributions" means amounts paid by employees of a department with respect to wages received for services equal to the amount of tax which would be imposed by section 1400 of the Federal Insurance Contribution Act if such services constituted employment within the meaning of that Act.~~
- ~~**B:** Wage reports: Each department shall be responsible for preparing calendar annual reports of wages paid employees of such department for services subject to the Agreement entered into between the state and the Social Security Administration November 25, 1952. Such annual reports will be submitted on forms supplied the department or approved for use by the Arizona State Retirement System Board. Annual reports are due on the first day of January following the end of the calendar year.~~
- ~~**C:** Payment of contributions:~~
- ~~1. Each department shall be responsible for deducting contributions from the wages due each of its employees for each pay period, until wages paid to such employee exceed the reportable maximum in a calendar year. If wages paid an employee are the reportable maximum or less during the entire calendar year, the deduction shall be made for each pay period in the calendar year. If wages paid exceed the reportable maximum in a calendar year, then payments after the reportable maximum in wages have been made shall not be subject to the deduction of contributions.~~
 - ~~2. The employer contributions, and matching deductions from employee wages, are required from state departments and agencies. Effective for contributions due on wages paid after December 31, 1983, these employer payments, either by Division of Finance warrants or direct departmental drafts, shall be transmitted with the wage deduction warrants to the Arizona State Retirement System as follows:~~

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- a. ~~Contributions on wages paid during the first 15 days of each calendar month will be due on the 5th business day after the 15th day of each such month and will be delinquent on the next succeeding business day.~~
- b. ~~Contributions on wages paid from the 16th through the last day of each calendar month will be due on the fifth business day after the last day of each such month and will be delinquent on the next succeeding business day.~~
- Ⓓ. ~~Personal liability of employee: If for any reason a department fails to collect the amount due from an employee, whether the amount due is for the retroactive period or for the contributions on wages up to the reportable maximum paid in a calendar year, and such employee leaves the employ of the state and there are no funds, either wages or otherwise, against which such obligation may be paid by assignment by the employee, the department shall notify the attorney general of the state and request appropriate action be taken by him for recovery of the amount due and owing from the former employee. Such recoveries shall be transmitted to the Retirement Board for deposit in the Contribution Fund.~~

R2-8-124. Interpretation of Chapter 54, Section 1(A), Laws of 1975 Repealed

~~All participants in the Fixed Benefit Plan whose first retirement benefit payment is made July 1, 1974, or later shall be entitled to the benefits provided by Chapter 167, Laws of 1974.~~

R2-8-125. Employee and employer contributions for System members Repealed

~~For all employee members of the System, effective July 1, 1975, contributions by such employee members and by the employers of such employee members shall be an amount equal to seven percent of total wages paid such employees, in accordance with provisions of A.R.S. §§ 38-748 and 38-749, provided that, with respect to employees whose membership in the system is established by § 38-752, the political subdivision employers of such employees shall have, on or before August 1, 1975, submitted to the Arizona State Retirement System Board a modification of the membership agreement between such political subdivision and the Retirement Board with an effective date of July 1, 1975, further provided that if a political subdivision employer does not modify the membership agreement between the political subdivision and the Retirement Board to provide for a seven percent contribution rate by August 1, 1975, then, as to such political subdivision and its employees, the modification of the membership agreement may not be made until July 1, 1976, or on any succeeding July 1 thereafter.~~

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 33. BOARD OF EXAMINERS FOR NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

- 1. Sections Affected**

R4-33-104	<u>Rulemaking Action</u>
R4-33-205	New Section
R4-33-405	Repeal
	Repeal
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 36-446.03(B) and 36-446.12
- 3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 4085, September 19, 2003
- 4. The name and address of agency personnel with whom persons may communicate regarding the rules:**

Name:	Victoria Martin, Executive Director
Address:	Board of Examiners for Nursing Care Institution Administrators and Assisted Living Facility Managers 1400 W. Washington, Room B-8 Phoenix, AZ 85007
Telephone:	(602) 542-8156
Fax:	(602) 542-8136
- 5. An explanation of the rules, including the agency's reasons for initiating the rules:**

In order to continue its licensing and oversight functions, the Board has determined that it must increase its fees. The fee for a nursing care institution administrator examination is being increased from \$250 to \$500, while the fee for an assisted living facility manager examination is being increased from \$40 to \$100. Although A.R.S. § 36-446.03(B)(1) provides authority for the Board to charge a fee of up to \$100 for an application for a certificate as an assisted living facility manager, the Board currently does not charge the fee. In order to cover the costs of processing applications, the Board proposes to charge \$100 for an application for a certificate as an assisted living facility manager. The Board is increasing the fee for readministering an assisted living facility manager examination from \$40 to \$100. For nursing care institution administrators, the fee for readministering a state examination is being increased from \$100 to \$150. The Board is increasing its license issuance fee from \$240 to \$260 and its biennial renewal license fee from \$240 to \$300. The fees for a duplicate license or certificate, temporary certificate, and late certificate penalty are each being increased to \$50.
- 6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None
- 7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**

In order to continue its licensing and oversight functions, the Board of Examiners for Nursing Care Institution Administrators and Assisted Living Facility Managers (Board) has determined that it must increase its fees for licensing nursing care institution administrators (administrator) and certifying assisted living facility managers (manager). The Board's mission is to protect the health and safety of Arizona citizens who seek and use the services of nursing care administrators and assisted living facility managers by evaluating administrator and manager applications, testing applicants to ensure they qualify for licensure or certification, and investigating all complaints. All of these functions are accomplished through a fee-based program. The Board has not increased its fees for assisted living facility managers (formerly called Adult Care Home Managers) since the manager fee rules were first established in 1991. The Board has not increased its administrator fees since 1992.

Annual cost/revenue changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when greater than \$10,000.

Notices of Proposed Rulemaking

Costs to an applicant for an assisted living facility manager certificate will be minimally increased for an initial application, examination, issuance of a temporary certificate, or readministering a state examination. Costs will minimally increase to a certificate holder for issuance of a duplicate certificate or penalty for late renewal.

Currently, the Board charges an administrator applicant a \$350 application and examination fee, \$100 of which is nonrefundable. The Board considers the \$100 fee to be the application fee. Thus, an administrator applicant for a license will not experience any increase in costs for an application fee. Costs to an administrator applicant will be minimally increased for an examination, issuance of a license, or readministering a state examination.

A licensee will experience a minimal increase in costs for biennial renewal or issuance of a duplicate license.

Costs to a consumer using the services of nursing care administrators and assisted living facility managers should not increase.

Since the Board mission is to protect the health and safety of Arizona citizens who seek and use the services of nursing care administrators and assisted living facility managers by evaluating administrator and manager applications, testing applicants to ensure they qualify for licensure or certification, and investigating all complaints, the consumer is the ultimate beneficiary because the increase in fees will allow the Board to continue these important functions.

The Board will benefit substantially from the fee increases and will be able to continue its licensing and oversight functions.

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

Name: Victoria Martin, Executive Director
Address: Board of Examiners for Nursing Care Institution Administrators and Assisted Living Facility Managers
1400 W. Washington, Room B-8
Phoenix, AZ 85007
Telephone: (602) 542-8156
Fax: (602) 542-8136

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

An oral proceeding will be conducted by the Board at the following location in the state for the purpose of taking oral and written testimony on the proposed rules from members of the public.

Date: December 15, 2003
Time: 10:00 a.m.
Location: 1400 W. Washington, B-1 Conference Room
Phoenix, AZ 85007

The public record on the proposed rulemaking will close at 5:00 p.m. on December 15, 2003.

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

None

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

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 33. BOARD OF EXAMINERS FOR NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

ARTICLE 1. GENERAL

Section
R4-33-104. Reserved Fees

ARTICLE 2. NURSING CARE INSTITUTION ADMINISTRATOR LICENSING

Section
R4-33-205. Fees Repealed

ARTICLE 4. ADULT CARE HOME MANAGER CERTIFICATION

Section

R4-33-405. Fees Repealed

ARTICLE 1. GENERAL

R4-33-104. Fees Repealed

A. For nursing care institution administrators, the Board shall charge the following fees, which are nonrefundable unless A.R.S. § 41-1077 applies:

1. <u>Initial application</u>	<u>\$100</u>
2. <u>Examination</u>	<u>\$500</u>
3. <u>Readministering state examination</u>	<u>\$150</u>
4. <u>Issuance of a license</u>	<u>\$260</u>
5. <u>Duplicate license</u>	<u>\$50</u>
6. <u>Biennial active license renewal</u>	<u>\$300</u>
7. <u>Biennial inactive license renewal</u>	<u>\$100</u>
8. <u>Late renewal penalty</u>	<u>\$50</u>
9. <u>Temporary license</u>	<u>\$250</u>
10. <u>Certifying licensure status</u>	<u>\$10</u>
11. <u>Review sponsor's continuing education program</u>	<u>\$20</u>

B. For assisted living facility managers, the Board shall charge the following fees, which are nonrefundable unless A.R.S. § 41-1077 applies:

1. <u>Initial application</u>	<u>\$100</u>
2. <u>Examination</u>	<u>\$100</u>
3. <u>Readministering state examination</u>	<u>\$100</u>
4. <u>Issuance of a certificate</u>	<u>\$100</u>
5. <u>Duplicate certificate</u>	<u>\$50</u>
6. <u>Biennial certificate renewal</u>	<u>\$100</u>
7. <u>Late renewal penalty</u>	<u>\$50</u>
8. <u>Temporary certificate</u>	<u>\$50</u>
9. <u>Review sponsor's continuing education program</u>	<u>\$20</u>

C. If the Board approves an applicant for a license and issues a license to the applicant for less than the biennial license period, the applicant shall submit to the Board \$11 for each month remaining in the licensure period.

D. If the Board approves an applicant for a certificate and issues a certificate for less than the biennial certificate period, the applicant shall submit to the Board \$4 for each month remaining in the certificate period.

ARTICLE 2. NURSING CARE INSTITUTION ADMINISTRATOR LICENSING

R4-33-205. Fees Repealed

The Board shall charge and collect the following fees:

1. Application and examination for licensure, \$350; \$100 of this fee is nonrefundable:
 - a. Re-administration of national examination, \$150;
 - b. Re-administration of state examination, \$100;
2. Issuance of license, up to \$240, prorated monthly;
3. Biennial renewal of license, \$240;
4. Biennial renewal of inactive license, \$100;
5. Temporary license fee, \$250;
6. Duplicate license fee, \$25;
7. Penalty fee for late renewal, \$50;
8. Certification of license status, \$10;
9. Board review of sponsored continuing education programs, \$20.

ARTICLE 4. ADULT CARE HOME MANAGER CERTIFICATION

R4-33-405. Fees Repealed

Fees prescribed by the Board are as follows:

1. Examination for certification as an adult care home manager, \$40.00.
2. Issuance of adult care home manager certificate, \$100.00.
3. Biennial renewal of adult care home manager certificate, \$100.00.
4. Biennial renewal of inactive adult care home manager certificate, \$25.00.
5. Temporary adult care home manager certification fee, \$25.00.

- 6. ~~Penalty fee for late renewal, \$25.00.~~
- 7. ~~Review of continuing education programs, \$20.00.~~

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

PREAMBLE

- 1. Sections Affected**

R12-4-101	<u>Rulemaking Action</u>
R12-4-104	Amend
R12-4-107	Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 17-231
Implementing statute: A.R.S. § 17-231(A)(3)
- 3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 4201, October 3, 2003
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Mark Naugle, Rules and Risk Manager
Address: Arizona Game and Fish Department
2221 W. Greenway Road DORR
Phoenix, AZ 85023
Telephone: (602) 789-3289
Fax: (602) 789-3677
E-mail: mnaugle@gf.state.az.us
- 5. An explanation of the rules, including the agency's reasons for initiating the rules:**

The Department is promulgating rulemaking to amend R12-4-107 to prescribe a "bonus point hunt number" that will allow those with valid hunting licenses to purchase and accumulate bonus points without entering into the hunt permit-tag draw. The Department also proposes to prescribe a procedure and requirements to reinstate the bonus points of military personnel, military reserve personnel, national guard personnel, and public agency employees who are mobilized in response to a declared national or state emergency, and are thus unable to use their hunt permit-tags. Proposed rule changes to R12-4-101 and R12-4-104 are administrative in nature, made necessary by rule changes in R12-4-107, and may result in a negligible impact to the Department. The proposed rulemaking also makes technical corrections and drafting style changes to make the rule language consistent with the current requirements for rule-making language and style.
- 6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rules or proposes not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None
- 7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**

The proposed rulemaking will benefit the general hunting public by allowing the opportunity for direct purchase of bonus points. The Department has received numerous comments from the public requesting that the Department prescribe a "bonus point hunt number" so that hunters will not have to forfeit their bonus points under R12-4-107(D), or accumulate bonus points at the cost of a hunt permit-tag if an applicant is unable to use a tag for the applicable season. Conversely, this will create an additional cost to customers that wish to purchase a bonus point, but it is not unforeseen. The proposed rulemaking will benefit the Department by creating additional revenue for wildlife man-

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agement efforts through the opportunity for direct purchase of bonus points. Proposed rule changes to R12-4-101 and R12-4-104 are administrative in nature, made necessary by rule changes in R12-4-107, and may result in a negligible impact to the Department. The proposed rulemaking will also directly benefit military service personnel and public employees during declared national or state crisis. The Department will prescribe a procedure to reinstate the bonus points of such personnel who are unable to use their tags if they are drawn and subsequently called into duty in response to a state or national emergency. The proposed rulemaking will create no additional costs to any political subdivisions of this state, or businesses. The proposed rulemaking will not impact private or public employment, other than providing a benefit to military personnel and public employees that are drawn for hunt permit tags, but are unable to use them due to mobilization, activation, or required duty in response to a state or national emergency. Because the Department is not supported by the state general fund, the proposed rulemaking will not affect state revenues. The Department has determined there are no alternative methods of achieving the purpose of the proposed rulemaking.

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

Name: Mark Naugle, Rules and Risk Manager
Address: Arizona Game and Fish Department
2221 W. Greenway Road DORR
Phoenix, AZ 85023
Telephone: (602) 789-3289
Fax: (602) 789-3677
E-mail: mnaugle@gf.state.az.us

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

Date: December 5-6, 2003
Time: TBA
Location: Arizona State Fairgrounds, Wildlife Building
1820 W. McDowell
Phoenix AZ, 85007
Nature: Arizona Game and Fish Commission Meeting

The Arizona Game and Fish Commission follows Title II of the Americans with Disabilities Act. The Commission does not discriminate against persons with disabilities who wish to make oral or written comments on proposed rule-making or otherwise participate in the public comment process. Individuals with disabilities who need a reasonable accommodation (including auxiliary aids or services) to participate in the public comment process, or who require this information in an alternate form, may contact Mark Naugle at (602) 789-3289 (Voice); 1-800-367-8939 (TDD); 2222 W. Greenway Road, Phoenix, AZ 85023-4399. Requests should be made as soon as possible so that the Arizona Game and Fish Department will have sufficient time to respond.

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

None

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

None

13. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

Section

- R12-4-101. Definitions
- R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Drawing
- R12-4-107. Bonus Point System

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

R12-4-101. Definitions

A. In addition to the definitions provided in A.R.S. § 17-101, R12-4-401, and R12-4-501, the following definitions apply to this Chapter, unless the context otherwise requires:

1. "Artificial lures and flies" means man-made devices intended as visual attractants for fish and does not include living or dead organisms or edible parts thereof, natural or prepared food stuffs, artificial salmon eggs, artificial corn, or artificial marshmallows.
2. "Bonus point" means a credit that authorizes the Department to issue an applicant an additional computer-generated random number.
- ~~2-3.~~ "Commission order" means a document adopted by the Commission that does any or all of the following: open, close or alter seasons and open areas for taking wildlife; specify wildlife that may or may not be taken; set bag or possession limits for wildlife; or set the number of permits available for limited hunts.
- ~~3-4.~~ "Crayfish net" means a net not exceeding 24 inches on a side or in diameter that is retrieved by means of a hand-held line.
- ~~4-5.~~ "Hunt area" means a game management unit, portion of unit, or group of units opened to hunting by a particular hunt number.
- ~~5-6.~~ "Hunt number" means the number assigned by Commission order to any hunt area where a limited number of hunt permits is available.
- ~~6-7.~~ "Hunt permits" means the number of hunt permit-tags made available to the public as a result of a Commission order.
- ~~7-8.~~ "Hunt permit-tag" means a tag for a hunt for which a Commission order has assigned a hunt number.
- ~~8-9.~~ "Identification number" means a number assigned to each applicant or licensee by the Department, as described in R12-4-111.
- ~~9-10.~~ "License dealer" means a business authorized to sell hunting, fishing and other licenses pursuant to R12-4-105.
- ~~10-11.~~ "Live baitfish" means any species of live freshwater fish designated by Commission order as lawful for use in taking aquatic wildlife pursuant to R12-4-313.
- ~~11-12.~~ "Management unit" means an area established by the Commission for management purposes.
- ~~12-13.~~ "Minnow trap" means a trap with dimensions not exceeding 12 inches in depth, 12 inches in width and 24 inches in length.
- ~~13-14.~~ "Muzzle-loading handgun" means a firearm intended to be fired from the hand, incapable of firing fixed ammunition, having a single barrel and single chamber, and loaded through the muzzle with black powder or synthetic black powder and a single projectile.
- ~~14-15.~~ "Muzzle-loading rifle" means a firearm intended to be fired from the shoulder, incapable of firing fixed ammunition, having a single barrel and single chamber, and loaded through the muzzle with black powder or synthetic black powder and a single projectile.
- ~~15-16.~~ "Nonpermit-tag" means a tag for a hunt for which a Commission order has not assigned a hunt number and the number of tags is not limited.
- ~~16-17.~~ "Restricted nonpermit-tag" means a tag issued to a hunter pool applicant for a supplemental hunt under R12-4-115.
- ~~17-18.~~ "Simultaneous fishing" means the taking of fish by two lines and not more than two hooks or two artificial lures or flies per line.
- ~~18-19.~~ "Sink box" means a low floating device having a depression affording the hunter a means of concealment beneath the surface of the water.
- ~~19-20.~~ "Tag" means the authorization that an individual is required to obtain from the Department under A.R.S. Title 17 and 12 A.A.C. 4 before taking certain wildlife.
- ~~20-21.~~ "Waterdog" means the larval or metamorphosing stage of salamanders.
- ~~21-22.~~ "Wildlife area" means an area established pursuant to 12 A.A.C. 4, Article 8.

B. If the following terms are used in a Commission order, the following definitions apply:

1. "Antlered" means having an antler fully erupted through the skin and capable of being shed.
2. "Bearded turkey" means a turkey with a beard that extends beyond the contour feathers of the breast.
3. "Buck antelope" means a male pronghorn antelope with a horn longer than its ear.
4. "Bull elk" means an antlered elk.
5. "Ram" means any male bighorn sheep, excluding male lambs.

R12-4-104. Application Procedures for Issuance of Hunt Permit-tags by Drawing

A. For the purposes of this Section, "group" means all applications contained in a single envelope or submitted electronically over the internet as part of the same application. No more than four individuals may apply as a group except that no more than two individuals may apply as a group for bighorn sheep. Nonresidents, see subsection R12-4-114(D).

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- B. An applicant applying for a hunt permit-tag or a bonus point shall apply using a Hunt Permit-tag Application Form, available at Department offices, the Department's internet web site, and license dealers. An applicant using the Hunt Permit-tag Application Form to apply for a hunt permit-tag or a bonus point shall also apply at times and locations established by the hunt permit-tag application schedule that is published annually by the Department and available at Department offices, the Department's internet web site, and license dealers.
- C. An applicant shall sign the Hunt Permit-tag Application Form, or provide permission to another person to sign the application form for them. If applying electronically over the internet, an applicant shall attest to, or provide permission to another person to attest to, the information electronically provided.
- D. Each applicant shall provide the following information on the Hunt Permit-tag Application Form:
 - 1. Name, address, residency status, and date of birth;
 - 2. The applicant's social security number, as required under A.R.S. §§ 25-320(K) and 25-502(E), and the applicant's Department identification number, if different from the social security number on the Hunt Permit-tag Application Form;
 - 3. If licensed to take wildlife in this state, the number of the applicant's license for the year ~~in which the hunt will take place~~ corresponding with the applicable hunt number;
 - 4. If not licensed for the year ~~in which the hunt will take place~~ corresponding with the applicable hunt number, complete the License Application portion of the Hunt Permit-tag Application Form, providing the applicant's name, Department identification number, address, class of license for which application is made, residency status, length of Arizona residency (if applicable), date of birth, sex, weight, height, and color of hair and eyes; and
 - 5. Each applicant under the age of 14 applying for a hunt other than big game and not required to have a license under A.R.S. § 17-335(B) shall indicate "juvenile" in the space provided for the license number on the Hunt Permit-tag Application Form.
- E. Each applicant shall enclose as part of the hunt permit-tag application, fees as set in R12-4-102 for the following:
 - 1. The fee for the appropriate hunt permit-tag, unless application is submitted online;
 - 2. A permit application fee; and
 - 3. If a license is requested, a fee for the license.
- F. Each applicant shall enclose payment as part of the hunt permit-tag application, made payable, in U.S. currency, to the Arizona Game and Fish Department by certified check, cashier's check, money order, or personal check. If applying electronically over the internet or telephone, an applicant shall include as a part of the hunt permit-tag application, payment by valid credit card.
- G. Each applicant shall apply for a specific hunt or a bonus point by the current hunt number. If all hunts selected by the applicant are filled at the time the application is processed in the drawing, the Department shall deem the application unsuccessful.
- H. Each applicant shall make all hunt choices for the same genus within one application.
- I. An applicant shall not include applications for different genera of wildlife in the same envelope.
- J. All members of a group shall apply for the same hunt numbers and in the same order of preference. The Department shall not issue a hunt permit-tag to any group member unless sufficient hunt permit-tags are available for all group members.
- K. Each applicant shall submit only one valid application per genus of wildlife for any calendar year, except:
 - 1. If the bag limit is one per calendar year, an unsuccessful applicant may re-apply for remaining hunt permit-tags in unfilled hunt areas, as specified in the hunt permit-tag application schedule published annually by the Department.
 - 2. For genera that have multiple hunts within a single calendar year, hunters that successfully draw a hunt permit-tag during an earlier season may apply for a later season for the same genus if they have not taken the bag limit for that genus during a preceding hunt in the same calendar year.
 - 3. If the bag limit is more than one per calendar year, any person may apply as specified in the hunt permit-tag application schedule published annually by the Department for remaining hunt permit-tags in unfilled hunt areas.
- L. A person shall not apply for a bighorn sheep or buffalo hunt permit-tag when that person has taken the bag limit for that species.
- M. To participate in the bonus point system, an applicant shall comply with R12-4-107.
- N. Any Hunt Permit-tag Application Form not prepared or submitted in accordance with this Section, or not prepared in a legible manner, is not valid and shall be rejected and all fees refunded. If the Department rejects an application from any member of a group, the Department shall reject all applications from the group.
- O. Any hunt permit-tag issued for an application that is subsequently found not to be in accordance with this Section is invalid.
- P. The Department shall mail hunt permit-tags to successful applicants. The Department shall return to the applicant designated "A" on the Hunt Permit-tag Application Form overpayments and hunt permit-tag and license fees received with an unsuccessful application. Permit application fees received with valid applications shall not be refunded. Hunt permit-tag fees and licenses fees for an application for a bonus point shall not be refunded.
- Q. If the Director determines that Department error resulted in the rejection of an application ~~for a hunt permit-tag~~, the Director may authorize additional hunt permit-tags or the awarding of a bonus point in order to correct the error, provided the

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issuance of additional permits will have no significant impact on the wildlife population to be hunted and the application for a hunt permit-tag would have otherwise been successful based on its random number. An applicant who is denied a hunt permit-tag or a bonus point under this procedure may appeal to the Commission as provided under A.R.S. Title 41, Chapter 6, Article 10.

R12-4-107. Bonus Point System

A. For the purpose of this Section, “bonus point hunt number” means the hunt number assigned by the Commission in a Commission Order for use by an applicant applying only for a bonus point for a genus identified in this Section.

A.B. The bonus point system grants each person one entry in each drawing for elk, buffalo, bighorn sheep, antelope, or deer for each bonus point which that person has accumulated under this Section. Each bonus point entry is in addition to the entry normally granted by R12-4-104. When processing “group” applications as defined in R12-4-104, the Department shall use the average number of bonus points accumulated by the persons in the group, rounded to the nearest whole number. If the average is .5, the total will be rounded up to the next highest number.

B.C. The Department shall award one bonus point to each applicant who submits a valid Hunt Permit-tag Application Form and:

1. The application is unsuccessful in the drawing, or the application is for a bonus point only;
2. The application is not for hunt permit-tags left over after the drawing which are available on a first-come, first-served basis as prescribed in R12-4-114; and
- 2.3. Before the drawing, the The applicant, prior to the drawing, has purchased a hunting license valid for the year in which the hunt will take place corresponding with the applicable hunt number. The applicant shall either provide the hunting license number on the application, or submit an application and fees for the license with the drawing application Hunt Permit-tag Application Form, indicating that the applicant is to be issued the license even if not drawn for a hunt permit-tag.

D. Each applicant for a bonus point shall:

1. Submit a valid Hunt Permit-tag Application Form as prescribed in R12-4-104 with the Commission-assigned bonus point hunt number for the particular genus as the first choice hunt number on the application. Placing the bonus point hunt number as a choice other than the first choice invalidates the application;
2. Include with the application payment for the appropriate hunt permit-tag fee for the particular genus, the permit application fee, and if a license is requested, a fee for a license;
3. Submit only one Hunt Permit-tag Application Form for the same genus for each season that bonus points are issued for that season.

E.E. Each bonus point accumulated is valid only for the genus designated on the ~~unsuccessful application~~ Hunt Permit-tag Application Form.

D.F. Except for permanent bonus points awarded for hunter education, all of a person’s accumulated bonus points for a genus are forfeited if:

1. The person is issued a hunt permit-tag for that genus in a computer drawing; or
2. The person fails to ~~apply for a hunt permit-tag~~ submit a Hunt Permit-tag Application Form for that genus for five consecutive years.

E.G. An applicant issued a first-come hunt permit-tag under R12-4-114(C)(2)(d) after the computer drawing does not lose bonus points for that tag, and a valid but unsuccessful applicant for a first-come hunt permit-tag remaining after the computer drawing does not gain bonus points.

F.H. The Department shall award one permanent bonus point for each genus upon a person’s first graduation from the Department’s Arizona Hunter Education Course or for serving as a Department hunter education instructor.

1. The Department shall credit a person who graduated after January 1, 1980, but before January 1, 1991, or a person certified by the Department as an active hunter education instructor after January 1, 1980, with one permanent bonus point for each genus if the person provides the following information on a form available from the Department: Department identification number; name; address; residency status and length of Arizona residency, if applicable; date of birth; sex; weight; height; color of hair and eyes; and, for a person other than an instructor, the month and year of graduation from the Department’s Arizona Hunter Education Course.
2. An instructor or a person who has graduated shall submit the required form 30 days prior to a drawing’s application date deadline, specified in the hunt permit-tag application schedule, in order for the bonus point to be counted by the Department in that drawing.

G.I. The Department shall make an applicant’s total number of accumulated bonus points available on the Department’s web site or IVR telephone system. If the applicant disagrees with the total, the applicant shall provide previous notices or proof of compliance with subsection ~~(F)~~ (G) to prove Department error. In the event of an error, the Department shall correct the applicant’s record.

H.J. The Department shall record bonus points under an applicant’s Department identification number and the genus on the application. The Department shall not transfer bonus points between persons or genera.

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K. The Department shall reinstate any bonus points forfeited for a successful hunt permit-tag application for military personnel, military reserve personnel, national guard personnel, or public agency employees who are unable to use a hunt permit-tag due to mobilization, activation, or required duty in response to a declared national or state emergency, or required duty in response to an action by the President, Congress or a governor of the United States or its territories. Under A.R.S. § 17-332(E), no refunds for a license or hunt permit-tag will be issued to an applicant who applies for reinstatement of bonus points under this Section. In order to request that forfeited bonus points be reinstated under these circumstances, an applicant shall submit the following to the Arizona Game and Fish Department, Draw Section, 2222 W. Greenway Road, Phoenix, AZ 85023:

1. A letter from the applicant requesting reinstatement of bonus points;
2. The hunt number for which the tag is valid;
3. Evidence of mobilization or duty status, such as a letter from the public agency or official orders;
4. An official declaration of a state of emergency from the public agency or authority making the declaration of emergency, if applicable;
5. The valid, unused tag, which must be received before the beginning date of the hunt for which the tag is valid, or evidence of mobilization or activation that precluded the applicant from submitting the tag before the beginning date of the hunt.