

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 12. OFFICE OF THE SECRETARY OF STATE

PREAMBLE

1. Sections Affected

Article 12
R2-12-1201
R2-12-1202
R2-12-1203
R2-12-1204
R2-12-1205
R2-12-1206
R2-12-1207
R2-12-1208
R2-12-1209

Rulemaking Action

New Article
New Section
New Section

2. The specific authority for the rulemaking, including both the authorizing statutes (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 47-9410

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

Notice of Rulemaking Docket Opening: 9 A.A.R. 386, February 7, 2003

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

Name: Russ Savage
Electronic Transactions Liaison

Address: Office of the Secretary of State
1700 W. Washington, 7th Floor
Phoenix, AZ 85007

Telephone: (602) 542-2022

Fax: (602) 542-1575

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

In accordance with A.R.S. § 41-369, the Secretary of State may establish policies, procedures, fees and any other duties or services required to permit the commission of electronic notary public.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, 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 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

Arizona Administrative Register
Notices of Proposed Rulemaking

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

The establishment of electronic notarial services for electronic transactions, by which the role of the electronic notary public will be to maintain public trust in electronic transactions for those requiring levels of authenticity equivalent to notarized paper documents.

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: Russ Savage
Electronic Transactions Liaison

Address: Office of the Secretary of State
1700 W. Washington, 7th Floor
Phoenix, AZ 85007

Telephone: (602) 542-2022

Fax: (602) 542-1575

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

Persons may contact Russ Savage of the Secretary of State, 1700 W. Washington, 7th Floor, Phoenix, AZ 85007 within the thirty days following publication of this notice.

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

Not applicable

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

None

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 12. OFFICE OF THE SECRETARY OF STATE

ARTICLE 12. ELECTRONIC NOTARY

Section

<u>R2-12-1201.</u>	<u>Application and Renewal</u>
<u>R2-12-1202.</u>	<u>Applicant Filing Fee, Bond and Bond Filing Fee</u>
<u>R2-12-1203.</u>	<u>Notarial Journal</u>
<u>R2-12-1204.</u>	<u>Standards for Electronic Notary Token and Notary Service Electronic Certificate</u>
<u>R2-12-1205.</u>	<u>Use of Electronic Notary Tokens and Notary Service Electronic Certificate</u>
<u>R2-12-1206.</u>	<u>Approval of Time Stamp Token Provider</u>
<u>R2-12-1207.</u>	<u>Fees</u>
<u>R2-12-1208.</u>	<u>Penalty Fee for Lack of Notice</u>
<u>R2-12-1209.</u>	<u>Civil Penalties</u>

ARTICLE 12. ELECTRONIC NOTARY

R2-12-1201. Application and Renewal

Each applicant for an electronic notary commission or a renewal of an electronic notary commission shall:

1. Submit to the Secretary of State a verified application on a form furnished by the Secretary of State that provides the following information about the applicant:
 - a. Full name and any former names used by the applicant;
 - b. Physical address and telephone number;
 - c. Mailing address and telephone number;
 - d. Business address, telephone number, fax number and email address, if applicable;
 - e. County of residence;
 - f. Gender;
 - g. Date of birth;
 - h. The previous commission number of the applicant if previously an electronic notary or notary public appointed under A.R.S. § 41-312 in Arizona, if applicable;

Arizona Administrative Register
Notices of Proposed Rulemaking

- i. Responses to questions regarding the applicant's background on the following subjects:
 - i. Whether the applicant has been convicted of a felony or an undesignated offense in this or any other jurisdiction and whether the applicant has been restored to civil rights.
 - ii. Whether the applicant has been Convicted of a lesser offense involving moral turpitude or of a nature that is incompatible with the duties of a notary public in this or any other jurisdiction such as a finding that the applicant engaged in conduct that would violate A.R.S. § 41-313 if adjudicated in Arizona, or that the applicant engaged in conduct that constituted misconduct in public office or demonstrated dishonesty or a lack of veracity.
 - iii. Whether the applicant has ever had a professional license revoked, suspended, restricted, or denied for misconduct, dishonesty, or any cause that relates to the duties or responsibilities of a notary public such as a finding that the applicant engaged in conduct that would violate A.R.S. § 41-313 if adjudicated in Arizona, or that the applicant engaged in conduct that demonstrated dishonesty or a lack of veracity.
 - iv. Whether the applicant has had a notary commission revoked, suspended, restricted, or denied in this state or any other jurisdiction.
 - v. Statement that applicant is of 18 years of age or older.
 - vi. Statement of being an Arizona resident.
 - vii. Whether the applicant holds or has held a notary commission in another state or jurisdiction and the commission number and jurisdiction, if applicable.
2. The Secretary of State may require that the applicant provide a detailed explanation and supporting documentation for each response on the application regarding the applicant's background.
3. Each applicant shall register with the Secretary of State their possession of an approved electronic notary token within ninety days of submitting the application.

R2-12-1202. Applicant Filing Fee, Bond and Bond Filing Fee

- A.** The application and renewal fee is \$25.
- B.** The bond filing fee is \$25.
- C.** The applicant shall purchase a surety bond in the amount of \$25,000. The original bond shall be filed with the Secretary of State's office accompanying the application or renewal.
- D.** The bond shall contain, on its face, the oath of office for the electronic notary public as specified in A.R.S. § 38-231(G). The electronic notary shall endorse the oath on the face of the bond, immediately below the oath, by signing the electronic notary's name under which the person has applied to be commissioned as an electronic notary and exactly as the name appears on the electronic notary application form filed with the Secretary of State's Office.

R2-12-1203. Notarial Journal

- A.** An Electronic Notary Public shall keep a journal of all electronic notarial acts in bound paper form with the same form as required in A.R.S. § 41-319 herein referenced as a "journal." If an electronic notary act is conducted upon an electronic signature that is not recognized under A.R.S. § 41-132, the electronic notary shall have the signer sign the paper journal in a manner consistent with A.R.S. § 41-319.
- B.** The journal shall be under the control of the electronic notary.
- C.** If an electronic notary also holds commission as a notary public appointed under A.R.S. § 41-312, and the commission dates are identical between the two commissions, then the electronic notary may use the notary public journal as the electronic notary paper journal. If the dates are not identical, then the electronic notary shall maintain two separate journals.
- D.** If a Notary Services Electronic Certificate is used in a manner to create an electronic signature in a notarial act, the document name, title, brief description of contents, and the time stamp shall be entered into the issuing electronic notary's journal as a Notary Service Electronic Certificate entry.
- E.** Journals are not deemed received until the Secretary of State accepts the journals as complete. The electronic notary shall not be subject to a penalty for delay outside the control of the electronic notary in delivering the journal to the Secretary of State.

R2-12-1204. Standards for Electronic Notary Token and Notary Service Electronic Certificate

- A.** An electronic notary token, and subsequently a notary service electronic certificate, shall be approved under A.R.S. § 41-132.
- B.** A provider of an electronic notary token may not provide an official electronic notary token to a person unless the person first presents evidence of the electronic notary commission for that person to the provider.
- C.** A provider of a notary service electronic certificate may not provide an official notary service electronic certificate to a person unless the person presents him or herself before and receives authorization from an electronic notary for reception of the notary service electronic certificate.
- D.** An electronic notary token shall contain:
 1. The commission number of the electronic notary.
 2. The full name of the electronic notary, as commissioned as an electronic notary.
 3. The expiration date of the notary's commission.

Arizona Administrative Register
Notices of Proposed Rulemaking

4. A link to the commission record of the electronic notary on the Secretary of State's official web site.
5. Any applicable information relative to A.R.S. § 41-132.

E. A notary service electronic certificate shall contain:

1. The commission number of the electronic notary authorizing the notary service electronic certificate.
2. The identification of the authorizing electronic notary's electronic notary token.
3. The full name of the individual, as presented to the electronic notary.
4. A link to the authorizing commission record of the electronic notary on the Secretary of State's official web site.
5. Any applicable information relative to A.R.S. § 41-132.

F. An electronic notary may possess only one electronic notary token.

R2-12-1205. Use of Electronic Notary Tokens and Notary Service Electronic Certificate

- A.** An electronic notary may only use an electronic notary token for the duties set forth in A.R.S. §§ 41- 351 through 41-369 and interactions with the provider of the electronic notary token.
- B.** A person may only use a notary service electronic certificate for the purposes of creating electronic notarized documents and interactions with the provider of the notary service electronic certificate.
- C.** Use of an Electronic Notary Token is not complete without:
1. Incorporating the Electronic Notary Token elements into the document;
 2. Either directly incorporating the time and date of notarization or incorporating the time and date of notarization using a process of an approved time stamp provider;
 3. Affixing the notary's electronic signature.
- D.** Use of a notary service electronic certificate is not complete without:
1. Presence of a date and time stamp from an approved time stamp token provider;
 2. Affixing the notary's electronic signature.

R2-12-1206. Approval of Time Stamp Token Provider

Any person or entity that can provide a service that synchronizes time as defined in A.R.S. § 1-242 into a process using an Electronic Notary Token or a Notary Service Electronic Certificate, where applicable, may be added to the list of approved time stamp token providers. All time stamp tokens that interact with electronic notary tokens and notary service electronic certificates need to meet the applicable technology standards required by A.R.S. § 41-132.

R2-12-1207. Fees

Electronic notaries may charge the following fees:

1. Fee for an acknowledgment shall be not be more than \$25.
2. Fee for an oath or affirmation shall be not be more than \$25.
3. Fee for a jurat shall be not be more than \$25.
4. Fee for authorizing a Notary Service Electronic Certificate to a person shall be not be more than \$50. This does not include any vendor fees or charges to the person for reception of the Notary Service Electronic Certificate.
5. Fee for any other notarial act shall be not be more than \$25.

R2-12-1208. Penalty Fee for Lack of Notice

The penalty to be imposed upon an electronic notary for failure to provide signed notice as defined in the statute to the Secretary of State of each loss, theft, or compromise of the electronic notary's journal shall be \$10 per use of electronic notary token up to a maximum of \$500. When audit trail is not recoverable, the maximum of \$500 shall be imposed upon the electronic notary for each failure to provide proper notice of a loss, theft, or compromise of the electronic notary's journal.

R2-12-1209. Civil Penalties

- A.** The Penalty to be imposed upon an electronic notary for failure to provide signed notice as defined in the statute to the Secretary of State of each loss, theft, or compromise of a notary service electronic certificate or of loss, theft or compromise of any materials or processes used in creating an Electronic Notary Token or authorizing a Notary Service Electronic Certificate shall be \$10 per day, up to a maximum of \$500 for each failure to provide proper notice of a loss, theft, or compromise of a notary service electronic certificate or compromise of any materials or processes used in creating an electronic notary token.
- B.** The Penalty to be imposed upon an electronic notary for each failure to provide signed notice as defined in the statute to the Secretary of State of a change of address shall be \$10 per day, up to a maximum of \$250 for each failure to provide proper notice of a change of address.

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

PREAMBLE

- 1. Sections Affected**

R20-5-601	<u>Rulemaking Action</u>
R20-5-602	Amend
	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. § 23-405(4)
Implementing statute: A.R.S. § 23-410

- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 184, January 24, 2003

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

Name:	Patrick Ryan, Assistant Director
Address:	Division of Occupational Safety and Health Industrial Commission of Arizona 800 W. Washington, Suite 203 Phoenix, AZ 85007
Telephone:	(602) 542-1695
Fax:	(602) 542-1614
E-mail:	pat.ryan@osha.gov

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

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

The Occupational Safety and Health Administration (OSHA) has revised the construction industry safety standards to require that traffic control signs, signals, barricades or devices protecting workers conform to Part VI of either the 1988 Edition of the Federal Highway Administration (FHWA) Manual on Uniform Traffic Control Devices (MUTCD), with 1993 revisions (Revision 3) or the Millennium Edition of the FHWA MUTCD (Millennium Edition), instead of the American National Standards Institute (ANSI) D6.1-1971, Manual on Uniform Traffic Control Devices for Streets and Highways (1971 MUTCD).

In order to conform to the Federal Occupational Safety and Health Standards as required by Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requiring state administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the U.S. Department of Labor, The Industrial Commission is amending R20-5-601 by adopting amendments for 29 CFR 1926, Subpart G, Signs, Signals and Barricades.

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

The Occupational Safety and Health Administration (OSHA) has revised its standards for means of egress. The purpose of this revision is to rewrite the existing requirements in clearer language so they will be easier to understand by employers, employees, and others who use them. The revisions reorganize the text, remove inconsistencies among sections, and eliminate duplicative requirements. The rules are performance-oriented to the extent possible, and more concise than the original, with fewer subparagraphs, and fewer cross-references to other OSHA standards. Additionally, a table of contents has been added that is intended to make the standards easier to use. Also, OSHA is changing the name of the subpart from "Means of Egress" to "Exit Routes, Emergency Action Plans, and Fire Prevention Plans" to better describe the contents.

Finally, OSHA has evaluated the National Fire Protection Association's Standard 101, Life Safety Code, 2000 Edition (NFPA 101-2000), and has concluded that the standard provides comparable safety to the Exit Routes Standard. Therefore, employers who wish to comply with the NFPA 101-2000 instead of the OSHA standards for Exit Routes may do so.

In order to conform to the Federal Occupational Safety and Health Standards as required by Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requiring state administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the U.S. Department of Labor, The

Arizona Administrative Register
Notices of Proposed Rulemaking

Industrial Commission is amending R20-5-602 by adopting amendments for 29 CFR 1910, Subpart E, Exit Routes, Emergency Action Plans, and Fire Prevention Plans.

Copies of the material are available for inspection or reproduction at the Arizona Division of Occupational Safety and Health, 800 W. Washington, Room 203, Phoenix, Arizona 85007, and can be downloaded from the Federal OSHA web site www.osha.gov.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, 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 rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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

The Division has determined that these revisions will have little to no impact for affected industry groups and has determined the revisions to be economically feasible for all industries including small business. Cost and benefit analysis of these amendments is available for inspection, review, and copying at the Industrial Commission of Arizona, Division of Occupational Safety and Health, 800 W. Washington, Phoenix, Arizona 85007.

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

Name: Patrick Ryan, Assistant Director
Address: Division of Occupational Safety and Health
Industrial Commission of Arizona
800 W. Washington, Suite 203
Phoenix, AZ 85007
Telephone: (602) 542-1695
Fax: (602) 542-1614
E-mail: pat.ryan@osha.gov

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

An oral proceeding has been scheduled as follows:

Date: March 12, 2003
Time: 9:00 a.m.
Location: Hearing Room A
Industrial Commission of Arizona
800 W. Washington
Phoenix, AZ 85007

Written comments may be submitted on or before 9:00 a.m., March 12, 2003.

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

Not applicable

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

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

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

13. The full text of the rule follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Section

- R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926
R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

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

Each employer shall comply with the standards in the *Federal Occupational Safety and Health Standards for Construction*, as published in 29 CFR 1926, with amendments as of ~~January 18, 2001~~ September 12, 2002, incorporated by reference and on file with the Office of the Secretary of State. Copies of these referenced materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to construction activity by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1926 published after ~~January 18, 2001~~ September 12, 2002.

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

Each employer shall comply with the standards in Subparts C through Z inclusive of the *Federal Occupational Safety and Health Standards for General Industry*, as published in 29 CFR 1910, with amendments as of ~~January 18, 2001~~ November 7, 2002, incorporated by reference and on file with the Office of the Secretary of State. Copies of these reference materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to general industry activity by all employers, both public and private, in the state of Arizona; provided that this rule shall not apply to those conditions and practices which are the subject of rule R20-5-601. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after ~~January 18, 2001~~ November 7, 2002.