

## 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 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

##### PREAMBLE

**1. Sections Affected**

R4-26-101  
R4-26-204  
R4-26-205  
R4-26-206  
R4-26-207  
Table 1  
R4-26-211  
R4-26-308

**Rulemaking Action**

Amend  
Amend  
Amend  
Amend  
Amend  
Amend  
Amend  
Amend

**2. The specific statutory authority for the rulemaking, including both the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 32-2063

Implementing statutes: A.R.S. §§ 32-2061 et seq.

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

Notice of Rulemaking Docket Opening: 10 A.A.R. 2606, June 25, 2004

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

Name: Maxine McCarthy, Executive Director

Address: Arizona Board of Psychologist Examiners  
1400 W. Washington, Room 235  
Phoenix, AZ 85007

Telephone: (602) 542-8162

Fax: (602) 542-8279

E-mail: info@psychboard.az.gov

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

Changes to R4-26-101 would amend the definition of "confidential record" and "national examination". Changes to R4-26-204 would amend the Board's remedial examination procedures. Changes to R4-26-205 would eliminate the gathering of information not required by statute for license renewal. Changes to R4-26-206 would specifically set out the requirements for a psychologist on inactive status to reinstate his or her license to active status. Changes to R4-26-207 would simplify the method of computing the prorated amount of continuing education (CE) that new licensees must complete; add the requirement that licensees obtain four hours of CE in the subject area of domestic violence and child abuse; allow licensees to receive ethics credit for attending Board meetings; and remove the requirement that licensees must keep documentation of CE for the last four years. Changes to Table 1 "Time-frames (in Days) for Processing Applications" would lengthen the Board's substantive review time for applications from 60 days to 90 days. Changes to R4-26-211 would remove the requirement that foreign applicants provide a personally prepared chronological statement of studies and research that is comparable to a transcript. Finally, changes to R4-26-308 would make it consistent with A.R.S. § 41-1092.09(C). The Board has initiated this rulemaking in response to its Five-Year-Review of Rules.

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**6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or 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:**

Many of the proposed rule changes will result in minimal savings in administrative costs by eliminating inefficient procedures and reducing burdens on Board staff. Applicants and licensees would have a small benefit as well through reduced administrative requirements. The proposed rule that licensees obtain four hour of continuing education ("CE") every two year in child abuse and domestic violence will impose a minor burden on licensees. These hours, however, are not additional, but a part of the 60 hours that are already required every two years. Licensees will also be able to fulfill the requirement that they obtain four hours of CE credit in ethics by attending Board meetings. This may result in more licensees attending Board meetings and improving their understanding of the Board's procedures and ethical mandate, while saving the licensee the cost of paying to attend a CE workshop or seminar in ethics. The change lengthening the Board's substantive review time for license applications will help to keep the Board from exceeding its licensing time-frames and having to refund fees to applicants and pay penalties. The economic impact on other state agencies, such as the Office of the Secretary of State and the Governor's Regulatory Review Council, is expected to be minimal.

**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: Marcus Harvey, Deputy Director  
Address: Arizona Board of Psychologist Examiners  
1400 W. Washington, Room 235  
Phoenix, AZ 85007  
Telephone: (602) 542-8161  
Fax: (602) 542-8279  
E-mail: licensing@psychboard.az.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:**

No proceeding has been scheduled but a person may request an oral proceeding on the proposed rule by submitting a written request to the Board office by 5 p.m. on Monday, August 23, 2004.

**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. Any material incorporated by reference and its location in the rules:**

None

**13. The full text of the rules follows:**

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

ARTICLE 1. GENERAL PROVISIONS

Section  
R4-26-101. Definitions

ARTICLE 2. LICENSURE

Section  
R4-26-204. Examinations  
R4-26-205. Renewal of License  
R4-26-206. ~~Inactive Status~~ Reinstatement of License from Inactive to Active Status  
R4-26-207. Continuing Education  
Table 1. Time-frames (In Days) for Processing Applications

R4-26-211. Foreign Graduates

ARTICLE 3. REGULATION

Section

R4-26-308. Rehearing or Review of Decision

ARTICLE 1. GENERAL PROVISIONS

**R4-26-101. Definitions**

In this Chapter:

“Additional examination” means an examination administered by the Board to determine the competency of an applicant and may include questions about the applicant’s knowledge and application of Arizona law, the practice of psychology, ethical conduct, and psychological assessment and treatment practices.

“Administrative completeness review” means the Board’s process for determining that an applicant has provided all of the information and documents required by the Board to determine whether to grant a license to the applicant.

“Advertising” means the use of any communications media to disseminate information regarding the qualifications of a psychologist or to solicit clients for psychological services, whether or not the psychologist pays for the dissemination of the information. Methods of advertising include a published statement or announcement, directory listing, business card, personal resume, brochure, or any electronic communication conveying professional qualifications or promoting the use of the psychologist’s professional services.

“Applicant” means an individual requesting licensure, renewal, or approval from the Board.

“Application packet” means the forms and documents the Board requires an applicant to submit to the Board.

“Case,” in the context of R4-26-106(D), means a legal cause of action instituted before an administrative or judicial court.

“Case conference” means a meeting that includes the discussion of a particular client or case that is related to the practice of psychology.

“Client record” means “adequate records” as defined in A.R.S. § 32-2061(A)(2), “medical records” as defined in A.R.S. § 12-2291(4), and all records pertaining to assessment, evaluation, consultation, intervention, treatment, or the provision of psychological services in any form or by any medium.

“Confidential record” means:

Minutes of an executive session of the Board;

A record that is classified as confidential by a statute or rule applicable to the Board;

An applicant’s or licensee’s college or university transcript if requested by a person other than the applicant or licensee;

All materials relating to an investigation by the Board, including a complaint, response, client record, witness statement, investigative report, or any other information relating to a client’s diagnosis, treatment, or personal or family life;

Home address, ~~and~~ home telephone number and E-mail address of an applicant or a licensee;

Test scores of an applicant or a licensee;

Date of birth of an applicant or a licensee; and

Social security numbers of an applicant or a licensee.

“Credentialing agency” means the Association of State and Provincial Psychology Boards, the National Register of Health Service Providers in Psychology, or the American Board of Professional Psychology.

“Days” means calendar days.

“Diplomate” means a status bestowed on a person by the American Board of Professional Psychology after successful completion of the work and examinations required.

“Directly available,” in the context of A.R.S. § 32-2071(D)(2), means immediately available in person, by telephone, or by electronic transmission.

“Dissertation” means a document prepared as part of a graduate doctoral program that includes, at a minimum, separate sections that:

Review the literature on the psychology topic being investigated, state each research question under investigation, and state each hypothesis investigated;

Describe the method or procedure used to investigate each research question or each hypothesis;

Describe and summarize the findings and results of the investigation;

Discuss the findings and compare them to the relevant literature presented in the literature review section; and

List the references used in the various sections of the dissertation, a majority of which are either listed in journals of the American Psychological Association, Psychological Abstracts, or classified as a psychology subject by the Library of Congress.

“Fellow” means a status bestowed on a person by a psychology association or society.

“Gross negligence” means a psychologist knows or has reason to know of facts that would lead a reasonable psychologist

to realize that the psychologist's act or failure to act creates an unreasonable risk of harm and involves a high degree of probability that substantial harm may result.

"Internship training program" means the supervised professional experience required in A.R.S. § 32-2071(D).

"National examination" means the ~~national examination~~ Examination for Professional Practice in Psychology provided by the Association of State and Provincial Psychology Boards.

"Party" means the Board, an applicant, a licensee, or the state.

"Primarily psychological," in the context of A.R.S. § 32-2071(A)(6), means subject matter that covers the practice of psychology as defined in A.R.S. § 32-2061(A)(8).

"Psychometric testing" means measuring cognitive and emotional processes and learning.

"Raw test data" means information collected during a psychologist's assessment and evaluation.

"Residency" means the same as in A.R.S. § 32-2071(H), but does not include a domicile or hospital residency.

"Retired," as used in A.R.S. § 32-2073(E), means a psychologist has permanently stopped practicing psychology, as defined in A.R.S. § 32-2061(A)(8).

"Substantive review" means the Board's process for determining whether an applicant meets the requirements of A.R.S. § 32-2071 through § 32-2076 and this Chapter.

"Successfully completing," as used in A.R.S. § 32-2071(A)(4), means receiving a passing grade in a course from a school or institution.

"Supervise" means to control, oversee, and review the activities of an employee, intern, trainee, or resident who provides psychological services.

"Supervisor" means a psychologist licensed or certified as a psychologist in the state in which the supervision occurs.

#### R4-26-204. Examinations

##### A. General Rules

~~1. The Board administers the national examination and may administer an additional examination.~~

~~2-1.~~ Under A.R.S. § 32-2072(B), an applicant who fails ~~an~~ the national examination at least three times in Arizona or any other jurisdiction, shall comply with the following requirements before taking another examination:

a. The applicant shall ~~meet with the Board to~~ review the areas of deficiency and ~~to develop and~~ implement a program of study ~~and~~ or practical experience designed to remedy the applicant's deficiencies. This remedial program may consist of course work, self-study, internship experience, supervision, or any combination of these.

~~b. An applicant shall not submit a new license application until after completion of the remedial program described in subsection (A)(2)(a). In addition to the information required on the original application, the new application shall include documentation of all professional activities of the applicant since the date of the original application.~~

b. The applicant shall submit a new application that includes documentation of all professional activities of the applicant since the date of the original application, in addition to the information required on the original application.

2. Examination deadline. The Board may administratively close the file of an applicant accepted to sit for a Board examination who fails to sit for that examination within one year from the date of the Board's approval. An applicant whose file has been closed and who later wishes to pursue licensure shall reapply and pay the applicable fee. The applicant and the Board's Executive Director may agree in writing one time to extend the applicant's deadline to sit for the examination up to six months. An applicant shall submit a request for extension on or before the expiration of the applicant's examination deadline.

~~3. If an applicant who has been accepted to sit for a Board examination fails to appear at the time scheduled for the commencement of the examination or any part of the examination, the applicant is not eligible to sit for that examination.~~

~~4-3.~~ The Board shall deny a license if an applicant commits any of the following acts:

a. Violates the confidentiality of examination materials;

b. Removes any examination materials from the examination room;

c. Reproduces any portion of a licensing examination;

d. Aids in the reproduction or reconstruction of any portion of a licensing examination;

e. Pays or uses another person to take a licensing examination for the applicant or to reconstruct any portion of the licensing examination;

f. Obtains examination material, either before, during, or after an examination, or uses or purports to use any examination materials that were removed or taken from an examination for the purpose of instructing or preparing applicants for examinations;

g. Sells, distributes, buys, receives, or has possession of any portion of a future, current, or previously administered licensing examination that is not authorized by the Board or its authorized agent for release to the public;

h. Communicates with any other examinee during the administration of a licensing examination;

i. Copies answers from another examinee or permits the copying of answers by another examinee;

j. Possesses during the administration of a licensing examination any books, equipment, notes, written or printed

materials, or data of any kind, other than material distributed during the examination; or

k. Impersonates another examinee.

**B. National Examination.**

Under A.R.S. §§ 32-2063 and 32-2072, the Board shall ~~require that an applicant take and pass~~ administer the national examination. An applicant approved by the Board to take the national examination passes the examination if the applicant's score equals or exceeds the passing score recommended by the Association of State and Provincial Psychology Boards. When the Board receives the examination results ~~The the~~ Board shall notify the applicant in writing of the examination results ~~when the Board receives the results from the Association of State and Provincial Psychology Boards.~~

**C. Additional Examination.**

1. An applicant shall pass the national examination before being permitted by the Board to take an additional examination.
2. Under A.R.S. § 32-2072(A), the Board may administer an additional examination to all applicants to determine the adequacy of the applicant's knowledge and application of Arizona law. The additional examination may also cover the practice of psychology, ethical conduct, and psychological assessment and treatment practices.
  - a. The Board shall review and approve the additional examination before administration. The additional examination may be developed by the Board, a committee of the Board, consultants to the Board, or independent contractors.
  - b. The additional examination may be administered by the Board, a committee of the Board, consultants to the Board, or independent contractors.
  - c. Applicants, examiners, and consultants to the Board shall execute a security acknowledgment form stating that they shall maintain examination security.

**R4-26-205. Renewal of License**

**A.** The Board considers license renewal applications timely filed if delivered to the Board's office and date stamped or post-marked before May 1 of the year that the license expires.

**B.** A renewal application form provided by the Board, signed and dated by the licensee, shall contain:

1. Applicant's name, business and home addresses, social security number, license number, business and home telephone numbers, gender, date of birth, and preference designation for directory and mailing addresses;
2. Whether the applicant is currently licensed or certified as a psychologist in another jurisdiction, and if so, where;
3. Whether the applicant is currently a licensed or certified member of another profession, and if so, which profession and where;
4. ~~Whether the applicant is a diplomate of the American Board of Professional Psychology, and if so, in which specialties;~~
5. ~~Whether the applicant is a fellow, member, or associate of the American Psychological Association;~~
6. ~~Whether the applicant is a member of other professional associations and if so, which ones;~~
7. ~~Whether the applicant is a member of any hospital staff or provider panel and if so, which ones;~~
8. ~~Whether the applicant has completed the required 60 hours of continuing education; and if not, an explanation of the reasons;~~
9. ~~Whether the applicant has been denied a license or certificate to practice any profession by any state or Canadian province;~~
10. ~~Whether the applicant has ever relinquished responsibilities, resigned a position, or been fired while a complaint was pending against the applicant;~~
11. ~~Whether the applicant has ever resigned or been terminated from a professional organization, hospital staff, or provider panel or surrendered a license while a complaint against the applicant was being investigated or adjudicated;~~
12. ~~Whether the applicant has been disciplined by any agency or regulatory board of a state or Canadian province, or by any professional organization, hospital staff, or provider panel for acts pertaining to the applicant's conduct as a psychologist or as a professional in any other field, and if so, a report of those actions including the name and address of the disciplinary agency, the nature of the action, and a statement of the charges and findings;~~
13. ~~Whether the applicant has been convicted of a felony or a misdemeanor other than a minor traffic offense in any state or country;~~
14. ~~Whether the applicant is currently under investigation by any professional organization, hospital staff, or provider panel of which the applicant is a member or governmental regulatory board or agency concerning the ethical or legal propriety of the applicant's conduct;~~
15. ~~Whether the applicant has been sued in civil or criminal court pertaining to the applicant's practice as a psychologist, the applicant's work under a license or certificate in another profession, or the applicant's work as a member of a particular profession;~~
16. ~~Whether the applicant is delinquent in payment of a judgment for child support;~~
17. ~~Whether the applicant has had an application for membership to any professional organization rejected, or has had any professional organization, ethics committee, or health care institution suspend or revoke the applicant's member-~~

ship or placed the applicant on probation or otherwise censured the applicant for unethical or unprofessional conduct or other violation of eligibility or membership requirements;

~~18-15.~~ Whether the applicant has any condition that in any way impairs or limits the applicant's ability to practice psychology safely and effectively in Arizona;

~~19-16.~~ Whether the applicant is requesting any of the following inactive status options:

- a. Mental or physical disability,
- b. Voluntary inactive status,
- c. Retirement, or
- d. Medical or inactive continuation;

~~20-17.~~ Whether the applicant is requesting expired status;

~~21-18.~~ A signed attestation of the veracity of the information provided; and

~~22-19.~~ Any other information authorized by statute.

- C. A licensee who applies for renewal in a timely manner, but fails to complete the required 60 hours of continuing education, may reinstate an expired license and continue practicing between May 1 and July 1 by paying a reinstatement fee in addition to the regular renewal fee, under A.R.S. § 32-2074(B). The licensee shall complete the continuing education requirements by July 1 of the same year.
- D. A licensee who fails to complete the required 60 hours of continuing education by July 1 and reinstate a license under subsection (C) may have from July 1 of the renewal year to May 1 of the next year to complete the continuing education requirements by paying an additional delinquent compliance fee.
- E. If as a result of an audit of continuing education records, the Board disallows some or all of a licensee's credit hours for failure to conform to the standards listed in R4-26-207, and the remaining hours are less than the number required, the Board shall deem the licensee as failing to satisfy the continuing education requirements. The licensee shall have 90 days from the mailing date of notification of disallowance to complete the continuing education requirements for the past reporting period and, upon completion shall provide the Board with an affidavit documenting how the disallowance has been cured. If the Board does not receive an affidavit of cure within 90 days of the mailing date of notification of disallowance, or the Board deems the affidavit insufficient, the Board may proceed to take disciplinary action under A.R.S. § 32-2081.

#### **R4-26-206. ~~Inactive Status~~ Reinstatement of License from Inactive to Active Status**

~~To determine whether a psychologist has maintained and updated the professional knowledge and capability to resume active practice as a psychologist when considering reinstatement of a psychologist on inactive status to active status, pursuant to A.R.S. § 32-2073(G), the Board shall determine whether the psychologist has satisfied the continuing education requirements applicable to psychologists on active status. Psychologists who have, while on inactive status, fulfilled the continuing education requirements of a psychologist on active status shall be presumed to have maintained and updated their professional knowledge and capability to practice as a psychologist, unless the Board is presented with evidence to the contrary.~~

~~**A.** When considering reinstatement of a psychologist on inactive status to active status, a psychologist who is on inactive status shall be presumed to have maintained and updated their professional knowledge and capability to practice as a psychologist if the psychologist presents to the Board documentation of completion of a prorated amount of continuing education applicable to psychologists on active status.~~

~~**B.** To calculate the minimum number of continuing education hours that a psychologist on inactive status must obtain the Board shall divide the minimum of 60 hours of continuing education required by 24 and multiply that amount by the number of months that have elapsed since May 1 of the current two-year license-renewal period.~~

#### **R4-26-207. Continuing Education**

A. A licensee shall complete a minimum of 60 hours of continuing education during each two-year license renewal period. One clock hour of instruction, training, preparation of a published book or journal article, or making a presentation equals one continuing education credit.

~~1. A psychologist licensed for less than two years shall earn continuing education credit based on the number of weeks remaining between the date of the psychologist's licensure and May 1 of the next renewal year.~~

~~2. Continuing education hours are prorated from the date of the Board correspondence notifying an applicant of approval for licensure. To calculate the number of continuing education hours that a new licensee must obtain:~~

~~a. Count the number of weeks between the week following the date of new licensure notification and May 1 of the next renewal year;~~

~~b. Divide the number of weeks by 104, the total number of weeks in the renewal period; and~~

~~e. Multiply that number by 60, the total number of continuing education hours required.~~

~~1. Continuing education hours are prorated from the date of the Board correspondence notifying an applicant of approval for licensure. To calculate the minimum number of continuing education hours that a new licensee must obtain the Board shall divide the minimum of 60 hours of continuing education required by 24 and multiply that amount by the number of months that remain until the next biennial renewal date.~~

3-2. The same method specified in subsection (A)(2)(1) is used to calculate the minimum number of continuing education hours required in each of the categories listed in subsection (B) (C). Calculations that result in a fractional number are rounded to the next largest whole number.

**B.** ~~During the two-year license period, a licensee shall obtain a minimum of 40 hours from Category I as described in subsection (B)(1). A licensee shall obtain a minimum of four of the 40 hours in professional ethics as described in subsection (B)(1)(a). The other 20 required continuing education hours may be from Category I or Category II.~~

~~1. Category I consists of:~~

~~a. Post-doctoral study sponsored by a regionally accredited university or college as listed in A.R.S. § 32-2071(A)(1), that provides a graduate level degree program, or a course, seminar, workshop, or home study with certificate of completion, or a continuing education program offered by a national, international, regional, or state association, society, board, or continuing education provider, if:~~

~~i. At least 75% of the program is related to the “practice of psychology” as defined in A.R.S. § 32-2061(A)(8); and~~

~~ii. The program’s instructor meets the qualifications stated in subsection (C);~~

~~b. Attending a Board meeting. A licensee shall receive four continuing education hours for attending a full day Board meeting and two continuing education hours for attending a half day Board meeting. A licensee shall complete documentation provided by the Board at the time the licensee attends a Board meeting. The Board shall not accept more than 10 continuing education hours obtained by attending a Board meeting from a licensee for each renewal period; and~~

~~e. Serving as a complaint consultant. A licensee who serves as a Board complaint consultant may receive continuing education hours equal to the actual number of hours served as a complaint consultant up to a maximum of 20 continuing education hours per renewal period.~~

~~2. Category II consists of:~~

~~a. Self study or study groups for professional growth and development as a psychologist;~~

~~b. Publication of authored or co-authored psychology books, psychology book chapters, or articles in peer-reviewed psychology journals;~~

~~e. Presentation of symposia or papers at a state, regional, national, or international psychology meeting;~~

~~d. Attendance at or participation in case conferences; or~~

~~e. Courses, workshops, seminars, or symposia for professional growth and development as a psychologist or enhancement of psychological practice, education or administration.~~

**B.** A licensee shall obtain a minimum of four of the 40 hours required under Category I in each of the following subject areas:

1. Professional ethics;

2. Domestic violence or child abuse;

**C.** During the two-year license period, a licensee shall obtain a minimum of 40 hours from Category I as described in subsection (C)(1). The other 20 required continuing education hours may be from Category I or Category II.

1. Category I consists of:

a. Post-doctoral study sponsored by a regionally accredited university or college as listed in A.R.S. § 32-2071(A)(1), that provides a graduate-level degree program, or a course, seminar, workshop, or home study with certificate of completion, or a continuing education program offered by a national, international, regional, or state association, society, board, or continuing education provider, if:

i. At least 75% of the program is related to the “practice of psychology” as defined in A.R.S. § 32-2061(A)(8); and

ii. The program’s instructor meets the qualifications stated in subsection (D);

b. Attending a Board meeting. A licensee shall receive four continuing education hours in professional ethics as required under subsection (B)(1) for attending a full-day Board meeting and two continuing education hours for attending a half-day Board meeting. A licensee shall complete documentation provided by the Board at the time the licensee attends a Board meeting. The Board shall not accept more than 10 continuing education hours obtained by attending a Board meeting from a licensee for each renewal period; and

c. Serving as a complaint consultant. A licensee who serves as a Board complaint consultant may receive continuing education hours equal to the actual number of hours served as a complaint consultant up to a maximum of 20 continuing education hours per renewal period.

2. Category II consists of:

a. Self-study or study groups for professional growth and development as a psychologist;

b. Publication of authored or co-authored psychology books, psychology book chapters, or articles in peer-reviewed psychology journals;

c. Presentation of symposia or papers at a state, regional, national, or international psychology meeting;

d. Attendance at or participation in case conferences; or

e. Courses, workshops, seminars, or symposia for professional growth and development as a psychologist or

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enhancement of psychological practice, education or administration.

**~~C~~D** The Board shall not approve continuing education unless the continuing education instructor:

1. Is currently licensed or certified in the instructor’s profession or works at least 20 hours each week as a faculty member at a regionally accredited college or university, as listed in A.R.S. § 32-2071(A);
2. Is a fellow as defined in R4-26-101 or a diplomate as defined in R4-26-101; or
3. Demonstrates competence and expertise in the subject or material the instructor teaches by having an advanced degree, teaching experience, work history, authored professional publication articles, or presented seminars in that subject or material.

**~~D~~E** A licensee who organizes and presents a continuing education activity shall receive the same number and category of continuing education hours described in subsection ~~(B)~~ (C) as those persons attending the continuing education activity. The Board shall not allow credit more than once in a two-year license renewal period for organizing and presenting a continuing education function on the same topic or content area.

**~~E~~F** A licensee elected to an officer position in an international, national, regional, or state psychological association or society, or appointed to a government psychology board or committee, shall receive 10 Category I continuing education hours equal to the actual number of hours served in the position up to a maximum of 10 hours per renewal period.

**~~F~~G** Each licensee shall keep the following documents that substantiate completion of continuing education hours for the ~~two~~ previous consecutive license renewal ~~periods~~ period:

1. A certificate of attendance;
2. Statement signed by the provider verifying participation in the activity;
3. Official transcript;
4. Documents indicating a licensee’s participation as an elected officer or appointed member as specified in subsection ~~(E)~~ (F); or
5. A signed affidavit to document self-study activity that includes a description of the activity, the subject covered, the dates, and the number of hours involved.

**~~G~~H** The Board may audit a licensee’s compliance with continuing education requirements. The Board may deny renewal or take other disciplinary action against a licensee who fails to obtain or document required continuing education hours. The Board may discipline a licensee who commits fraud, deceit, or misrepresentation regarding continuing education hours.

**~~H~~I** A licensee who cannot meet the continuing education requirement for good cause may seek an extension of time to complete the continuing education requirement by submitting a written request to the Board, including the renewal fee.

1. Good cause is limited to licensee illness, military service, or residence in a foreign country for at least 12 months of the license renewal period.
2. A licensee shall submit a request for extension on or before the expiration of a license. The Board shall not grant a time extension longer than one year.
3. A licensee who cannot complete the continuing education requirement within the time extension may apply to the Board for inactive license status under A.R.S. § 32-2073(E).

**~~I~~J** The Board shall not allow continuing education hours in excess of the 60 required hours to be carried beyond the two-year renewal period in which they were accrued.

**~~J~~K** Courses, workshops, seminars, or symposia designed to increase income or office efficiency are not eligible for continuing education hours.

**Table 1. Time-frames (in days) for Processing Applications**

Type of Time-frame	Statutory or Rule Authority	Administrative Completeness Time-frame	Time to Respond to Notice of Deficiency	Substantive Review Time-frame	Time to Respond to Request for Additional Information	Overall Time-frame
Approval or denial to take the national examination	A.R.S. §§ 32-2071, 32-2071.01, 32-2072; and A.A.C. R4-26-204	30	240	<del>60</del> <u>90</u>	240	<del>90</del> <u>120</u>
Approval or denial of application for licensure by examination waiver	A.R.S. §§ 32-2071, 32-2071.01, 32-2072(C)(1)	30	240	<del>60</del> <u>90</u>	240	<del>90</del> <u>120</u>

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Approval or denial of application for licensure by credential	A.R.S. §§ 32-2071.01, 32-2072; and A.A.C. R4-26-203.01	30	240	<del>60</del> 90	240	<del>90</del> 120
Approval or denial to take additional examination	A.R.S. §§ 32-2071, 32-2071.01, 32-2072; and A.A.C. R4-26-204	30	240	<del>60</del> 90	240	<del>90</del> 120
Approval or denial of application for renewal of license	A.R.S. § 32-2074; A.A.C. R4-26-205	60	N/A	90	N/A	150
Approval or denial of application for reinstatement of expired license	A.R.S. § 32-2074; A.A.C. R4-26-206	60	N/A	90	N/A	150
Approval or denial of extension for continuing education requirement	A.R.S. § 32-2074 A.A.C. R4-26-207	60	N/A	90	N/A	150

**R4-26-211. Foreign Graduates**

- A. Under A.R.S. § 32-2071(B), an applicant for licensure whose application is based on graduation from a foreign institution of higher education shall provide the Board with documents and evidence to establish that the applicant’s formal education is equivalent to a doctoral degree in psychology from a regionally accredited institution as described in A.R.S. § 32-2071(A).
- B. An applicant shall provide the following information to the Board:
  - 1. An original and a copy of the doctoral diploma or certificate of graduation. The original shall be returned, and the copy shall be retained by the Board.
  - 2. An official transcript, containing an original university seal or comparable document recording all course work completed.
  - 3. A certified English translation of all documents submitted.
  - 4. Evidence of completion of the requirements of A.R.S. § 32-2071(C)(D) and (E).
  - 5. Evidence that the doctoral dissertation or project was primarily psychological. The Board may require the applicant to submit the doctoral dissertation or project.
  - 6. ~~A statement prepared by the applicant, based upon the documents referred to in this Section, indicating the chronological sequence of studies and research. The format of this statement shall be comparable to a transcript issued by United States universities.~~

**ARTICLE 3. REGULATION**

**R4-26-308. Rehearing or Review of Decision**

- A. Except as provided in subsection (G), any party in a contested case before the Board who is aggrieved by a Board order or decision rendered in such case may file with the Board, not later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds for rehearing or review. For purposes of this subsection, ~~a Board order or decision is served when personally delivered or mailed by certified mail to the party at the party’s last known residence or place of business~~ service is complete on personal service or five days after the date that a Board order or decision is mailed to the party’s last known address.
- B. A motion for rehearing or review may be amended at any time before it is ruled upon by the Board. A response may be filed within 15 days after service of such motion or amended motion by any other party. The Board may require written briefs upon the issues raised in the motion and may provide for oral argument. A party who files pleadings or other documents with the Board shall file an original and 11 3-hole punched copies.
- C. A rehearing or review of a Board order or decision may be granted for any of the following causes materially affecting the moving party’s rights:
  - 1. An irregularity in the administrative proceedings of the agency, its hearing officer, or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
  - 2. Misconduct of the Board, its hearing officer, or the prevailing party;

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- 3. An accident or surprise that could not be prevented by ordinary prudence;
  - 4. Newly discovered material evidence that could not with reasonable diligence be discovered and produced at the original hearing;
  - 5. Excessive or insufficient penalties;
  - 6. An error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the case; or
  - 7. A Board order or decision that is not justified by the evidence or is contrary to law.
- D. The Board may affirm or modify a Board order or decision or grant a rehearing or review to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing or review shall specify the grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters so specified.
  - E. Not later than 30 days after a Board order or decision is rendered, the Board may on its own initiative order a rehearing or review of its order or decision for any reason specified in subsection (C). After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case the order granting such a rehearing or review shall specify the grounds for rehearing or review.
  - F. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after such service, serve opposing affidavits. The Board for good cause or by written agreement of all parties may extend for not more than 20 days the period for service of opposing affidavits. Reply affidavits may be permitted.
  - G. If the Board finds that the immediate effectiveness of a Board order or decision is necessary for the immediate preservation of the public peace, health, and safety and that a rehearing or review of the Board order or decision is impracticable, unnecessary, or contrary to the public interest, the Board order or decision may be issued as a final order or decision without an opportunity for a rehearing or review. If a Board order or decision is issued as a final order or decision without an opportunity for rehearing or review, any application for judicial review of the order or decision shall be made within the time permitted for final orders or decisions.
  - H. For purposes of this Section, "contested case" is defined as provided in A.R.S. § 41-1001.
  - I. To the extent that the provisions of this Section are in conflict with the provisions of any statute providing for rehearing or review of orders or decisions of the Board, such statutory provisions shall govern.

NOTICE OF PROPOSED RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY  
DEVELOPMENTAL DISABILITIES

PREAMBLE

- 1. **Sections Affected**

Article 17	Action
R6-6-1701	Repeal
R6-6-1702	Repeal
R6-6-1703	Repeal
R6-6-1704	Repeal
R6-6-1705	Repeal
R6-6-1706	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. §§ 41-1954(A)(1)(i); (A)(3); 46-134(12); 36-552; 36-554

Implementing statutes: A.R.S. §§ 36-551.01 and 36-569
- 3. **A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 10 A.A.R. 2726, July 2, 2004
- 4. **The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name:	Beth Broeker
Address:	1789 W. Jefferson, Site Code 837A Phoenix, AZ 85007

Notices of Proposed Rulemaking

or

P.O. Box 6123, Site Code 837A  
Phoenix, AZ 85005

Telephone: (602) 542-6555

Fax: (602) 542-6000

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

The Department, in compliance with R1-6-108, completed a five-year review report on the rules in Chapter 6 as required by A.R.S. § 41-1056. The Department identified the need to revise and update these rules in order to comply with changes initiated by the Arizona Legislature, any applicable Federal Statutes and to Division practices.

This Article contains rules describing specific requirements and responsibilities for establishing at least three Human Rights Committees composed of at least seven and not more than 15 persons with expertise in one or more of the following areas: psychology, law, medicine, education, special education, and parents of the developmentally disabled. The rules stipulate that each committee shall meet at least six times each calendar year and, within three months of its formation, each committee shall have established written rules by which the committee and its membership shall be governed.

R6-6-1701, R6-6-1702, R6-6-1703, R6-6-1704, R6-6-1705 and R6-6-1706 are proposed for repeal because these rules were adopted by Laws 2000, Chapter 261, Section 2 as A.R.S. § 41-3801.

**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 the study, all data underlying each study, and any analysis of the study and other supporting material:**

The agency did not review any studies relating to this rule.

**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:**

In accordance with A.R.S. § 41-1055(D)(3), the Department is not required to prepare an economic, small business, and consumer impact statement because the repeal of these rules decreases monitoring, recordkeeping or reporting burdens.

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

Name: Beth Broeker

Address: 1789 W. Jefferson, Site Code 837A  
Phoenix, AZ 85007

or

P.O. Box 6123, Site Code 837A  
Phoenix, AZ 85005

Telephone: (602) 542-6555

Fax: (602) 542-6000

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

The Department has not scheduled any oral proceedings. Written comments may be submitted to the person listed above. Pursuant to A.R.S. § 41-1023(C), the Department will schedule oral proceedings if one individual files a written request for an oral proceeding with the person listed above within 30 days after the 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:**

Not applicable

**13. The full text of the rules follows:**

TITLE 6. ECONOMIC SECURITY

CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY  
DEVELOPMENTAL DISABILITIES

ARTICLE 17. ~~HUMAN RIGHTS COMMITTEES~~ REPEALED

Section

Article 17	<del>Human Rights Committees</del> <u>Repealed</u>
R6-6-1701.	<del>Establishment of Committees</del> <u>Repealed</u>
R6-6-1702.	<del>Membership</del> <u>Repealed</u>
R6-6-1703.	<del>Procedure</del> <u>Repealed</u>
R6-6-1704.	<del>Committee Responsibilities</del> <u>Repealed</u>
R6-6-1705.	<del>Staff</del> <u>Repealed</u>
R6-6-1706.	<del>Access to Records</del> <u>Repealed</u>

ARTICLE 17. ~~HUMAN RIGHTS COMMITTEES~~ REPEALED

**R6-6-1701. ~~Establishment of Committees~~ Repealed**

~~There shall be at least three Human Rights Committees established by the Department. The Director shall have the option of establishing more than one committee to serve a District or of sanctioning the operation of a committee in association with a service provider. However, every committee shall meet the requirements of this Article.~~

**R6-6-1702. ~~Membership~~ Repealed**

- ~~A. Candidates for initial membership on a local committee shall be recruited by the Department Administrator with input and advice from the local Association for Retarded Citizens, Developmental Disabilities Advisory Council, and any other appropriate local advocacy organization. The Director shall appoint committee members from the list of candidates recruited locally.~~
- ~~B. Each committee shall be composed of at least 7 and not more than 15 persons with expertise in one or more of the following areas: psychology, law, medicine, education, special education, and parents of the developmentally disabled.~~
- ~~C. No employee of the Department or of a service provider which is associated with a sanctioned Human Rights Committee may be a voting member of a committee.~~
- ~~D. When there is a vacancy in committee membership, nominees may be presented to the committee by advocacy groups, committee members or the Department Administrator. Upon recommendation by the committee, by at least a majority vote, the Director shall appoint a person to fill the vacancy.~~

**R6-6-1703. ~~Procedure~~ Repealed**

~~Each committee shall meet at least six times each calendar year. Within three months of its formation, each committee shall have established written rules by which the committee and its membership shall be governed. Such rules shall in no way conflict with this Article and shall set out at least terms of membership, quorum and attendance requirements, and procedures for conducting committee business. Committee rules shall be approved by at least a majority vote of the committee and are subject to veto by the Department Administrator if, in his opinion, the rules do not promote participation by all interested sectors of the community which is to be served by the committee.~~

**R6-6-1704. ~~Committee Responsibilities~~ Repealed**

- ~~A. The Human Rights Committee shall provide independent oversight and review of the following areas:
  - 1. To ensure that the rights of clients are protected as provided in R6-6-903.
  - 2. With regard to research in the field of developmental disabilities.
  - 3. With regard to incidents of possible abuse, neglect or denial of a client's rights.~~
- ~~B. Written objections of the committee to actions by employees of the Division or service providers shall be forwarded to the Assistant Director for review.~~
- ~~C. Each committee shall issue an annual report summarizing its activities and making recommendations of changes it believes the Division should consider implementing.~~

**R6-6-1705. ~~Staff~~ Repealed**

~~A committee may request the services of a consultant to advise it on specific issues or a staff person. The cost of the consultant or staff person shall be assumed by the Division subject to the availability of funds specifically allocated for this use. A consultant or staff person may be a member of another Human Rights Committee or an employee of the Department or a service provider. No committee consultant or staff person shall vote or otherwise direct committee decision-making.~~

**R6-6-1706. ~~Access to Records~~ Repealed**

~~Committee members, staff persons and consultants shall have access to Division client records to the extent necessary to dis-~~

charge their respective duties, provided that they have signed a statement agreeing to adhere to all applicable statutes and rules regarding confidentiality.

## NOTICE OF PROPOSED RULEMAKING

### TITLE 7. EDUCATION

#### CHAPTER 2. STATE BOARD OF EDUCATION

##### PREAMBLE

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b>1. <u>Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R7-2-1001                          | Amend                           |
| R7-2-1011                          | New Section                     |
- 2. The specific authority for rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 15-213  
Implementing statute: A.R.S. § 15-213(A)(3)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**  
Notice of Rulemaking Docket Opening: 10 A.A.R. 2944, July 23, 2004 (*in this issue*).
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**  
Name: Christy Farley  
Executive Director, State Board of Education  
  
Address: 1535 West Jefferson, Room 418  
Phoenix, AZ 85007  
  
Telephone: (602) 542-5057  
Fax: (602) 542-3046  
E-mail: cfarley@ade.az.gov
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**  
The State Board of Education is seeking to add new sections to the Board rules, R7-2-1011, governing school district procurement to meet the requirements of A.R.S. § 15-213(A)(3). These proposed rules establish the process for online bidding for use by schools and school districts. The proposed rules reflect the online bidding model established in statute for state agencies under A.R.S. § 41-2672.
- 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:**  
Not applicable
- 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:**  
The proposed rules will not diminish any previous grant of authority of a political subdivision of this state.
- 8. The preliminary summary of the economic, small business, and consumer impact:**  
Neither the State Board of Education, the Department of Education, nor any school districts or other political subdivisions will be subject to additional costs by these rules. There will be no effect on small business or on state revenues, and there is not a less-intrusive method for accomplishing the goals achieved by these rules.  
  
The economic and consumer impact is expected to be positive for school districts by allowing districts to procure goods and information services in a manner that best meets their needs while providing adequate safeguards in the procurement process and insuring cost effectiveness.
- 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: Christy Farley, Executive Director  
State Board of Education  
Address: 1535 W. Jefferson, Room 418  
Phoenix, AZ 85007

Notices of Proposed Rulemaking

Telephone: (602) 542-5057  
Fax: (602) 542-3046  
E-mail: cfarley@ade.az.gov

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

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

Date: September 15, 2004  
Time: 9:00 a.m.  
Location: State Board of Education  
1535 W. Jefferson, Room 437  
Phoenix, AZ 85007

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

Not applicable

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

None

**13. The full text of the rules follows:**

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 10. SCHOOL DISTRICT PROCUREMENT

Section

R7-2-1001. Definitions

R7-2-1011. Online Bidding for Procurement of Goods and Information Services

ARTICLE 10. SCHOOL DISTRICT PROCUREMENT

**R7-2-1001. Definitions**

In this Article, unless the context otherwise requires:

1. "Advantageous to the school district" means in the best interest of the school district; does not necessarily mean lowest bid/cost.
2. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. It also may include persons doing business under a variety of names, or where there is a parent-subsidiary relationship between persons.
3. "Application benefit" means a quantified assessment of the benefits to be achieved in school district program and support areas by the information systems or telecommunications systems proposed by the vendor, including reasonably projected reductions in program costs and increases in productivity of school district personnel.
4. "Architect services," "engineer services," "land surveying services," "assayer services," "geologist services" and "landscape architect services" means those professional services within the scope of the practice of those services as provided in A.R.S. Title 32, Chapter 1, Article 1.
5. "Bid sample" means an item furnished by a bidder to show the characteristics of the item offered in the bid.
6. "Bidder prequalification" means determining in accordance with this Article that a prospective bidder or offeror satisfies the criteria for being included on the bidders' list.
7. "Brand name or equal specification" means a specification that uses one or more manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet school district requirements, and that provides for the submission of equivalent products.
8. "Brand name specification" means a specification limited to one or more items by manufacturers' names or catalogue numbers.
9. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.
10. "Capability" means capability at the time of contract award.

11. "Change order" means a written order which directs the contractor to make changes that the changes clause of the contract authorizes the governing board to order.
12. "Clergy" means a minister of a religion.
13. "Construction" means the process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property. Construction does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.
14. "Contract" means all types of agreements, including purchase orders, regardless of what they may be called, for the procurement of materials, services or construction or the disposal of materials.
15. "Contract modification" means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.
16. "Contractor" means any person who has a contract with a school district.
17. "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit.
18. "Cost" means the aggregate cost of all materials and services, including labor performed by force account.
19. "Cost analysis" means the evaluation of cost data.
20. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead and other cost elements that have been actually incurred or that are expected to be incurred by the contractor in performing the contract.
21. "Cost-plus-a-percentage-of-cost contract" means a contract that, prior to completion of the work, the parties agree that the fee will be a predetermined percentage of the total cost of the work.
22. "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are reasonable, allowable and allocable in accordance with the contract terms and the provisions of this Article, and a fee, if provided for in the contract.
23. "Data" means documented information, regardless of form or characteristic.
24. "Days" means calendar days and shall be computed pursuant to A.R.S. § 1-243.
25. "Debarment" means an action taken under R7-2-1161 et seq., to prohibit a person from participating in school district procurements.
26. "Defective data" means data that is inaccurate, incomplete or noncurrent.
27. "Dentist" means a person defined in A.R.S. § 32-1202 who also is licensed pursuant to A.R.S. Title 32, Chapter 11.
28. "Descriptive literature" means information available in the ordinary course of business that shows the characteristics, construction or operation of an item offered in a bid or proposal.
29. "Designee" means the governing board member or school district employee who has been delegated procurement authority by the governing board as specified by board action.
30. "Detailed record" means minutes, which shall include the date, time, place, persons in attendance and a summary of what was said by whom and the decisions made. The minutes may be made either in writing or by a recording.
31. "Discussions" means an exchange of information or any form of negotiation.
32. "District representative" shall be a district employee who has been most closely involved in the procurement being protested or shall be the governing board. There may be more than one appointed for different purposes and different procurements.
33. "Earth-moving, material-handling, road maintenance and construction equipment" means a track-type tractor, motor grader, excavator, landfill compactor, wheel tractor scraper, off-highway truck, wheel loader or track loader having a published manufacturer's minimum unit list price of \$50,000 or more and a minimum expected life cycle of three years.
34. "Eligible procurement unit" means a public procurement unit or a nonprofit educational or public health institution.
35. "Employee" means an individual drawing a salary from a school district and any noncompensated individual performing personal services for any school district.
36. "Excess materials" means any materials which have a remaining useful life but which are no longer required by the using district in possession of the materials.
37. "Expendable materials" means all tangible materials other than nonexpendable materials.
38. "Fair market value" means the price at which sales have been consummated for assets of like type, quality, and quantity in a particular market at the time of acquisition.
39. "Filed" means delivery to the district representative, school district or its hearing officer, whichever is applicable. A time/date stamp affixed to a document by the school district shall be determinative of the time or delivery for purposes of filing.
40. "Finished goods" means units of manufactured product awaiting sale.
41. "Force account" means work performed by the school district's regularly employed personnel.
42. "Goods" shall have the same definition as provided in the Arizona Uniform Commercial Code, Arizona Revised Statutes 47-2105 (A) for purposes of the Arizona Administrative Code, Chapter 7, Articles 10 and 11. "Goods" shall also include "finished goods" as defined in this rule.
- ~~42-43.~~ "Governing board" has the meaning defined in A.R.S. § 15-101(7).

- ~~43-44.~~ “Incremental award” means an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required.
- ~~45.~~ “Information services” means data processing, telecommunications and office systems technologies and services.
- ~~44-46.~~ “Information systems” means a system of hardware, software or vendor support costing more than \$100,000 that processes information or data by electronic data processing methods and devices.
- ~~45-47.~~ “Interested party” means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract or by the failure to award a contract. Whether an actual or prospective bidder or offeror has an economic interest will depend upon the circumstances of each case.
- ~~46-48.~~ “Invitation for bids” means all documents, whether attached or incorporated by reference, which are used for soliciting bids in accordance with the procedures prescribed in R7-2-1024.
- ~~47-49.~~ “Legal counsel” means a person licensed as an attorney pursuant to rules of the Arizona Supreme Court, Vol. 17A, A.R.S.
- ~~48-50.~~ “Life cycle” means the useful life of the information systems, telecommunications systems or equipment to the original using school district to perform the application for which it was initially procured.
- ~~49-51.~~ “Local public procurement unit” means any political subdivision and any agency, board, department, or other instrumentality of such political subdivision.
- ~~50-52.~~ “Materials” means all property, including equipment, supplies, printing, insurance and leases of property, but does not include land, a permanent interest in land or real property or leasing space.
- ~~51-53.~~ “May” denotes the permissive.
- ~~52-54.~~ “Minor informality” means mistakes, excluding judgmental errors, that have negligible effect on price, quantity, quality, delivery or other contractual terms and the waiver or correction of such mistake does not prejudice other bidders or offerors.
- ~~53-55.~~ “Multiple award” means an award of an indefinite quantity contract for one or more similar materials or services to more than one bidder or offeror.
- ~~54-56.~~ “Multistep sealed bidding” means a two-phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by the school district and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.
- ~~55-57.~~ “Nonexpendable materials” means all tangible materials which have an original acquisition cost over an amount set by regulation and a probable useful life of more than one year.
- ~~56-58.~~ “Nonprofit educational or public health institution” means any educational or public health institution, no part of the income of which is distributable to its members, directors, or officers.
- ~~59.~~ “Online bidding” means a procurement process in which school districts and charter schools receive vendors’ bids for goods, services, construction or information services electronically over the internet in a real-time, competitive bidding event.
- ~~57-60.~~ “Outright purchase” means the initial cost to the school district for the earth-moving, material-handling, road maintenance and construction equipment or any other equipment, including all vendor charges and financing costs.
- ~~58-61.~~ “Paper” means newspaper, high-grade office paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and related types of cellulosic material containing not more than 10% by weight or volume of noncellulosic material such as laminates, binders, coatings or saturants.
- ~~59-62.~~ “Paper product” means paper items or commodities, including paper napkins, towels, corrugated paper and related types of cellulosic products containing not more than 10% by weight or volume of noncellulosic material such as laminates, binders, coatings or saturates.
- ~~60-63.~~ “Person” means any corporation, business, individual, union, committee, club, other organization or group of individuals.
- ~~61-64.~~ “Physician” means a person licensed pursuant to A.R.S. Title 32, Chapter 13 or 17.
- ~~62-65.~~ “Post-consumer material” means a discard generated by a business or residence that has fulfilled its useful life. Post-consumer material does not include discards from industrial or manufacturing processes.
- ~~63-66.~~ “Posted prices” means the sale price determined by the school district to be fair market value.
- ~~64-67.~~ “Price analysis” means the evaluation of price data.
- ~~65-68.~~ “Price data” means information concerning prices, including profit, for materials, services or construction substantially similar to those being procured under a contract or subcontract. In this definition, “prices” refers to offered or proposed selling prices, historical selling prices or current selling prices of the items being purchased.
- ~~66-69.~~ “Procurement” means buying, purchasing, renting, leasing or otherwise acquiring any materials, services or construction. Procurement also includes all functions that pertain to the obtaining of any material, service, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- ~~67-70.~~ “Proprietary specification” means a specification that describes a material made and marketed by a person having

the exclusive right to manufacture and sell such material and excludes other material with similar quality, performance or functional characteristics from being responsive to the solicitation.

- ~~68-71.~~ "Public procurement unit" means either a local public procurement unit, the Arizona Department of Administration, or any other state or an agency of the United States.
- ~~69-72.~~ "Purchase description" means the words used in a solicitation to describe the materials, services or construction for purchase and includes specifications attached to, or made a part of, the solicitation.
- ~~70-73.~~ "Purchase request" or "purchase requisition" means that document, or electronic transmission, whereby a school district requests that a contract be entered into for a specific need, and may include, but is not limited to, the description of the requested item, delivery schedule, transportation data, criteria for evaluation, suggested source of supply and information supplied for the making of any written determination required by this Article.
- ~~71-74.~~ "Qualified products list" means an approved list of materials described by model or catalogue numbers that, prior to competitive solicitation, the governing board has determined will meet the applicable specification requirement.
- ~~72-75.~~ "Recycled paper" means paper products which have been manufactured from materials otherwise destined for the waste stream and which contain at least 40% recovered wastepaper with 10% of that being post-consumer material.
- ~~73-76.~~ "Request for proposals" means all documents, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed in R7-2-1042.
- ~~74-77.~~ "Residual value" means the guaranteed minimum market value of the earth-moving, material-handling, road maintenance and construction equipment or any other equipment at the end of the life cycle of the equipment being procured, as determined by a guaranteed minimum value offered by the vendor or other parties in its bid.
- ~~75-78.~~ "Responsible bidder or offeror" means a person who has the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance.
- ~~76-79.~~ "Responsive bidder or offeror" means a person who submits a bid which conforms in all material respects to the invitation for bids or request for proposals.
- ~~77-80.~~ "School district" has the meaning defined in A.R.S. § 15-101(15), whose authority is exercised by the governing board or its designee.
- ~~78-81.~~ "Shall" denotes the imperative.
- ~~79-82.~~ "Services" means the furnishing of labor, time or effort by a contractor which does not involve the delivery of a specific end product other than required reports and performance. "Services" does not include employment agreements or collective bargaining agreements.
- ~~80-83.~~ "Solicitation" means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations or any other invitation or request by which the school district invites a person to participate in a procurement.
- ~~81-84.~~ "Specification" means any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing or preparing a material, service or construction item for delivery.
- ~~82-85.~~ "Specification for a common or general use item" means a specification that has been developed and approved for repeated use in procurements pursuant to R7-2-1102(A).
- ~~83-86.~~ "Specified professional services" means services of an architect, engineer, land surveyor, assayer, geologist and landscape architect.
- ~~84-87.~~ "Standard commercial material" means material that, in the normal course of business, is customarily maintained in stock or readily available by a manufacturer, distributor or dealer for the marketing of such material.
- ~~85-88.~~ "Surplus materials" means any materials that no longer have any use to the school district or materials acquired from the United States government. This includes obsolete materials, scrap materials and nonexpendable materials that have completed their useful life cycle.
- ~~86-89.~~ "Suspension" means an action taken by the governing board under R7-2-1168 temporarily disqualifying a person from participating in school district procurements.
- ~~87-90.~~ "Technical offer" means unpriced written information from a prospective contractor stating the manner in which the prospective contractor intends to perform certain work, its qualifications and its terms and conditions.
- ~~88-91.~~ "Telecommunications systems" means systems costing more than \$100,000, including but not limited to all instrumentalities, facilities, apparatus and services, for the transmission and reception of messages, impressions, signs, signals, pictures, sounds or any other symbols by wire, radio, optical cable, electromagnetic or other similar means.
- ~~89-92.~~ "Total cost" means total cost as defined in A.R.S. § 15-213(F).
- ~~90-93.~~ "Total life cycle cost" means vendor costs, total school district costs and financing costs throughout the life cycle of the information systems or telecommunications systems being purchased or any other equipment purchased less residual value.
- ~~91-94.~~ "Total school district costs" means costs to the school district for the information systems or telecommunications systems including energy, facilities, repair costs, present value of monies, vendor charges, personnel costs and all other identifiable school district costs.
- ~~92-95.~~ "Vendor charges" means costs of all vendor support, materials, transportation and all other identifiable costs associated with the vendor's proposal or bid.

Notices of Proposed Rulemaking

93-96. "Vendor costs" means costs of all hardware, materials, software, transportation, vendor support and all other identifiable costs associated with the vendor's proposal or bid.

94-97. "Vendor support" means services provided by the vendor for items such as consulting, education, training, management of the information systems or telecommunications systems or any other systems purchased, systems planning, development, integration and maintenance and training.

95-98. "Wastepaper" means recyclable paper and paperboard, including high-grade office paper, computer paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and corrugated paper.

**R7-2-1011. Online Bidding for Procurement of Goods and Information Services**

- A.** If a school district designee determines that electronic, online bidding is more advantageous than other procurement methods provided in State Board of Education Rules Articles 10 and 11, a designee may use online bidding to obtain bids electronically for the purchase of goods and information services.
- B.** An online bidding solicitation must designate an opening date and time.
- C.** The closing date and time for an online solicitation may be fixed or remain open depending on the structure of the item being bid online. Information regarding the closing date and time must be included in the solicitation. At the opening date and time, the school district must begin accepting online bids and must continue accepting bids until the bid is officially closed.
- D.** All online bids must be posted electronically and updated on a real-time basis.
- E.** School districts, through their designee, may:
  - 1. Require bidders to register before the opening date and time and, as part of that registration, require bidders to agree to any terms, conditions or other requirements of the solicitation.
  - 2. Prequalify bidders and allow only those bidders who are prequalified to submit bids on line.
- F.** School districts retain their existing authority to determine the criteria that will be used as a basis for making awards.
- G.** R7-2-1021 through R7-2-1050 do not apply to solicitations issued pursuant to this rule, except that:
  - 1. All bids submitted electronically through an online bidding process are public information and are subject to the same public disclosure laws that govern bids received through the sealed bid process.
  - 2. All remedies available to school districts and bidders through the sealed bid process under this chapter are also available to school districts and bidders in an online bidding process.
- H.** Charter schools may utilize the online bidding process set forth in this rule if consistent with the terms of their charters, including any provisions regarding procurement and compliance with the Uniform System of Financial Records for Charter Schools.

**NOTICE OF PROPOSED RULEMAKING**

**TITLE 20. COMMERCE, BANKING, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

**PREAMBLE**

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b>1. <u>Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R20-5-602                          | 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: 10 A.A.R. 2612, June 25, 2004
- 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<br>Industrial Commission of Arizona<br>800 W. Washington St., Suite 203<br>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. R20-5-602 The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910.

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, Arizona Division of Occupational Safety and Health (ADOSH) is amending R20-5-602 by adopting amendments for 29 CFR 1910, the Federal Occupational Safety and Health Standards for General Industry, Subpart T, Commercial Diving Operations.

This rulemaking allows employers of recreational diving instructors and diving guides to comply with an alternative set of requirements instead of the decompression-chamber requirements in the current CDO standards. The rule applies only when these employees engage in recreational diving instruction and diving-guide duties; use an open-circuit, a semi-closed-circuit, or a closed-circuit self-contained underwater-breathing apparatus supplied with a breathing gas that has a high percentage of oxygen mixed with nitrogen; dive to a maximum depth of 130 feet of sea water; and remain within the no-decompression limits specified for the partial pressure of nitrogen in the breathing-gas mixture. These alternate requirements essentially are the same as the terms of a variance granted by OSHA to Dixie Divers, Inc. in 1999.

Copies of the material are available for inspection or reproduction at the Arizona Division of Occupational Safety and Health, 800 West Washington Street, Room 203, Phoenix, Arizona 85007, and can be downloaded from the Federal OSHA web site [www.osha.gov](http://www.osha.gov).

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

None

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

Not applicable

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

The 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 West Washington Street, Phoenix, Arizona 85007.

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

Name: Patrick Ryan  
Address: Industrial Commission of Arizona  
Division of Occupational Safety and Health  
800 W. Washington St.  
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: August 24, 2004  
Time: 9:00 a.m.  
Location: Hearing Room A  
Industrial Commission of Arizona  
800 W. Washington St.  
Phoenix, AZ 85007

Written comments may be submitted on or before 9:00 a.m., August 4, 2004.

**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:**

R20-5-602. 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

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

**ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

**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 ~~€ B~~ through Z inclusive of the *Federal Occupational Safety and Health Standards for General Industry*, as published in 29 CFR 1910, with amendments as of ~~November 7, 2002~~ February 17, 2004, 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 ~~November 7, 2002~~ February 17, 2004.