

NOTICES OF FINAL RULEMAKING

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

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

Editor's Note: The following Notice of Final Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 at 15 A.A.R. 1942, November 20, 2009.) The Governor's Office authorized the notice to proceed through the rulemaking process on December 3, 2009.

[R10-141]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R4-46-401 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
Authorizing statute: A.R.S. § 32-3605(A)
Implementing statutes: A.R.S. §§ 32-3605(B)(1) and 32-3635(A)
- 3. The effective date of the rule:**
September 14, 2010
- The Board is requesting an immediate effective date to avoid violation of federal law (Title XI of the Financial Institution Reform, Recovery, and Enforcement Act of 1989, and rules promulgated under that Act), which requires that each state's appraiser licensing and certification regulatory program recognize and enforce the *Uniform Standards of Professional Appraisal Practice* (USPAP) prescribed by Title XI. Because the 2010-2011 edition of the *Uniform Standards of Professional Appraisal Practice* (USPAP) is effective on January 1, 2010, the rule must be effective immediately upon filing with the Secretary of State to ensure the Board remains in compliance.
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 16 A.A.R. 329, February 19, 2010
Notice of Proposed Rulemaking: 16 A.A.R. 348, February 26, 2010
Notice of Public Information: 16 A.A.R. 630, April 16, 2010
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|--|
| Name: | Daniel Pietropaulo, Executive Director |
| Address: | 1400 W. Washington St., Suite 360
Phoenix, AZ 85007 |
| Telephone: | (602) 542-1558 |
| Fax: | (602) 542-1598 |
| E-mail: | appraisal@appraisal.state.az.us |
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
The change in the rule is to comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which requires state licensing boards to recognize and enforce the *Uniform Standards of Professional Appraisal Practice* (USPAP); and A.R.S. § 32-3605(B)(1), which requires the Board to adopt standards for professional appraisal practice that are at least equal to USPAP. The amended rule incorporates by reference the 2010-2011 edition of USPAP. The revisions in the 2010-2011 edition of USPAP are the result of three exposure drafts, issued by the Appraisal Standards Board (ASB) on October 3, 2008 (First Exposure Draft), December 10, 2008 (Second Exposure Draft), and February 10, 2009 (Third Exposure Draft). The ASB received written comments from interested par-

Notices of Final Rulemaking

ties on all three Exposure Drafts and heard oral comments at public meetings on November 28, 2008, February 23, 2009, and April 3, 2009. The changes were adopted by the ASB and are incorporated in the 2010-2011 edition of USPAP and associated guidance with an effective date of January 1, 2010. The key features of the 2010-2011 edition are: (1) Definition of "Assignment." The definition of assignment was changed from "a valuation service provided as a consequence of an agreement between an appraiser and a client" to "1) an agreement between an appraiser and a client to provide a valuation service; 2) the valuation service that is provided as a consequence of such an agreement." As a result, the edits addressed the inconsistency by revising the definition rather than rewording the document whenever assignment was used to refer to the agreement. (2) Definition of "Signature." The "Comment" was removed from the definition of "Signature." This change appropriately relocates requirements for proper management of an appraiser's signature from the definition to a rule. (3) Definition of "Jurisdictional Exception." a revision to the definition of the term *Jurisdictional Exception* from "an assignment condition that voids the force of a part or parts of USPAP, when compliance with part or parts of USPAP is contrary to law or public policy applicable to the assignment," to "an assignment condition established by applicable law or regulation, which precludes an appraiser from complying with a part of USPAP." This change is intended to clarify that jurisdictional exceptions are created when compliance with USPAP is precluded by law or regulation. (4) The "Ethics Rule" was largely rewritten. The proposed changes from the Third Exposure Draft were adopted, making revisions to portions of the entire rule: the introductory section, conduct section, management section, confidentiality section, and recordkeeping section. The primary purpose is to increase clarity and enforceability, and to promote and preserve public trust. (5) The "Competency Rule" was essentially rewritten. The changes proposed in the Third Exposure Draft were adopted. The following changes to the format of the Rule were made to improve its clarity: dividing the Rule into three sections to distinguish an appraiser's competency obligations in an assignment; describes the characteristics of competency; states the alternative actions an appraiser can take when he or she is not competent to perform the assignment. (6) The "Jurisdictional Exception Rule" was revised. The rule was clarified by reorganizing the text and specifically identifying the four requirements imposed on an appraiser in assignments involving a jurisdictional exception: 1) identify the law or regulation that precludes compliance with USPAP; 2) comply with that law or regulation; 3) clearly and conspicuously disclose in the report the part of USPAP that is voided by that law or regulation; or 4) cite in the report the law or regulation requiring the exception to USPAP compliance. (7) Standard 3, Appraisal Review, Development and Reporting. The Standard has been rewritten significantly. The Standard was divided into two sections: one addressing development, and one reporting. The revised language mirrors the form and content of the other Standards. The "Comment" sections in the Standard were revised to incorporate "Comment" language found in other Standards. Some language was relocated to more appropriate locations. Revisions were made to expand and distinguish the development and reporting requirements. Other edits were made to create a more logical and comprehensive structure, and to better guide a review process that is, in practice, quite broad and flexible. Finally, revisions were made to organize and clarify the requirements that apply to a reviewer providing his/her own opinion of value, review opinion, or consulting opinion related to the work that is the subject of the appraisal review assignment.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not 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:

The Board did not review any studies.

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

Not applicable

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

The rule is being amended to adopt the latest standards of practice in the profession, as required by federal and state law. The primary groups that will be affected are the Board, licensed or certified appraisers, trainees and the public. The Board adopts the latest standards for professional appraisal practice as they are adopted by the ASB and there should be no appreciable changes in the economic impact. However, USPAP prior to the 2006 edition was revised annually, the 2006 edition was effective for 18 months, and the 2010-2011 edition is effective for two years, which results in USPAP having to be purchased less often. The cost for the new edition, which now includes Frequently Asked Questions, is \$50. Not all appraisers will find it necessary to own a copy. Some offices share copies. The cost is a deductible business expense.

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

Minor non substantive changes were made between the proposed and final rules at the request of the Governor's Regulatory Review Council staff.

11. A summary of the comments made regarding the rule and the agency response to them:

The Board held a public hearing on the proposed rule change on April 23, 2010. No written public comments were received. The Board did have an individual speak in support of the proposed changes at the meeting. At that time the Board voted to close the record, adopt the proposed rule change to become effective immediately upon filing with the Secretary of State, and proceed with the Notice of Final Rulemaking.

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

Notices of Final Rulemaking

rules:

Not applicable

13. Any material incorporated by reference and its location in the text:

The *Uniform Standards of Professional Appraisal Practice* (USPAP), 2010-2011 Edition, published by The Appraisal Foundation, 1155 15th St., NW, Suite 1111, Washington, DC 20005, phone (202) 347-7722, fax (202) 347-7727, or web site www.appraisalfoundation.org and effective nationally January 1, 2010. The location in the rules is R4-46-401.

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

No

15. The full text of the rule follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 46. BOARD OF APPRAISAL

ARTICLE 4. STANDARDS OF PRACTICE

Section

R4-46-401. Standards of Appraisal Practice

ARTICLE 4. STANDARDS OF PRACTICE

R4-46-401. Standards of Appraisal Practice

Every appraiser, in performing the acts and services of an appraiser, shall comply with the Uniform Standards of Professional Appraisal Practice (USPAP), ~~2008-2009~~ 2010-2011 edition, published by The Appraisal Foundation, which is incorporated by reference and on file with the Board. This incorporation by reference contains no future editions or amendments. A copy of the USPAP ~~2008-2009~~ 2010-2011 edition may be obtained from The Appraisal Foundation, 1155 15th St., NW, Suite 1111, Washington, DC 20005; (202) 347-7722; fax (202) 347-7727; or web site www.appraisalfoundation.org.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

**CHAPTER 1. DEPARTMENT OF TRANSPORTATION
ADMINISTRATION**

Editor's Note: The following Notice of Final Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 at 15 A.A.R. 1942, November 20, 2009.) The Governor's Office authorized the notice to proceed through the rulemaking process on February 9, 2010.

[R10-140]

PREAMBLE

1. Sections Affected

R17-1-201

R17-1-203

Rulemaking Action

Amend

Amend

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

Authorizing statutes: A.R.S. §§ 28-366 and 28-372

Implementing statute: A.R.S. § 44-6852

3. The effective date of the rules:

November 13, 2010

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

Notice of Rulemaking Docket Opening: 16 A.A.R. 446, March 19, 2010

Notice of Proposed Rulemaking: 16 A.A.R. 530, April 2, 2010

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

Notices of Final Rulemaking

Name: Dora Vasquez, Administrative Rules Supervisor
Address: Administrative Rules Unit
Department of Transportation, Motor Vehicle Division
1801 W. Jefferson St., Mail Drop 517M
Phoenix, AZ 85007
Telephone: (602) 712-8159
Fax: (602) 712-3373
E-mail: dvasquez@azdot.gov

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.azdot.gov/mvd/mvdrules/rules.asp.

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

The Arizona Department of Transportation, Motor Vehicle Division, engages in this rulemaking to amend existing rules with conforming language and to prescribe the service fee for each check, draft, order, or electronic payment dishonored because of insufficient monies, payments stopped, or closed accounts, as prescribed under A.R.S. § 28-372.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not 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

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

Not applicable

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

Laws 2009, Ch. 187, § 9 amended A.R.S. § 28-372 to specify that the director determine a fee for each electronic payment that has been dishonored because of insufficient monies, payments stopped or closed accounts. The \$25 fee established for dishonored electronic payments is the same dollar amount already assessed to the public for returned checks under A.R.S. § 44-6852.

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

At the request of G.R.R.C. staff, the Department reformatted R17-1-203 between the proposed rules and final rules without changing any of the content. The rule is now more clear, concise, and understandable.

11. A summary of the comments made regarding the rules and the agency response to them:

The agency received no comments regarding the rules.

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

None

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

None

14. Were these rules previously made as emergency rules? If so, please indicate the Register citation:

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION
ADMINISTRATION

ARTICLE 2. FEES

Section

R17-1-201. Definitions

R17-1-203. ~~Returned Check Service Charge; Penalty~~ Dishonored Payments; Fees and Charges; Penalties

ARTICLE 2. FEES

Notices of Final Rulemaking

R17-1-201. Definitions

~~A. Definitions. In addition to the definitions prescribed under A.R.S. § 28-440, the following definitions apply to R17-1-202 made by exempt rulemaking as prescribed under A.R.S. § 41-1005(A)(5). In addition to the definitions prescribed under A.R.S. §§ 28-440 and 44-6851, the following terms apply to this Article:~~

~~“Automated clearing house” has the same meaning as provided under A.A.C. R17-8-401.~~

~~“Batch” means a query-command method that initiates simultaneous production of an electronic file or series of requests that may have delayed results.~~

~~“Certified record” means a copy of a document designated as a true copy by the agency officer entrusted with custody of the original to be used for purposes prescribed under A.R.S. § 28-442.~~

~~“Electronic payment” means money which is exchanged electronically, including credit card payments, credit transfer, electronic checks, direct debit, and person-to-person payments.~~

~~“Interactive” means an electronic query-command method individually initiated by a person that produces immediate results.~~

~~“Reasonable costs” means 10 cents for each page of standard reproduction of documents and the actual costs for reproduction of documents which require special processing plus the reasonable clerical costs incurred in locating and making the documents available billed at the rate of ~~10 dollars~~ \$10 per hour per person.~~

~~“Special MVR” means a motor vehicle record that is comprised of the least possible subset of information necessary to respond to the type of request received.~~

~~“Stale-dated” means a check presented at the paying bank six months or more after the issue date of the check. A stale-dated check is not an invalid check, but the paying bank may deem the check an irregular bill of exchange and return it unpaid.~~

~~“Support document” means any customer record maintained by the agency in a file storage format as follows:~~

- ~~Electronic;~~
- ~~Hardcopy; or~~
- ~~Microfilm.~~

~~“Support document” means any customer record maintained by the agency in an electronic, hardcopy, or microfilm file storage format.~~

~~B. The following definitions apply to Sections in this Article made by regular rulemaking:
There are no definitions in this subsection.~~

R17-1-203. ~~Returned Check Service Charge; Penalty Dishonored Payments; Fees and Charges; Penalties~~

~~A. Service charge assessment:~~

- ~~1. The Department shall assess a service charge for each check, draft, or order returned because of:
 - ~~a. Insufficient monies, such as:
 - ~~i. Check amount less than minimum;~~
 - ~~ii. Check drawn against uncollected funds;~~
 - ~~iii. Credit limit exceeded;~~
 - ~~iv. Post-dated;~~
 - ~~v. Stale-dated; or~~
 - ~~vi. Uncollected funds;~~~~
 - ~~b. Stop payment, such as refer to maker; or~~
 - ~~c. Closed account, such as unable to locate account.~~~~
- ~~2. A service charge under this subsection includes:
 - ~~a. A \$25 returned check, draft, or order service charge, and~~
 - ~~b. Any applicable financial institution charge prescribed under A.R.S. § 44-6852.~~~~

~~B. Remedial remittance:~~

- ~~1. The Department shall require that payment of a service charge for a returned check, draft, or order be made by:
 - ~~a. Cash; or~~
 - ~~b. Other certified means.~~~~
- ~~2. A remittance under this subsection includes:
 - ~~a. The original remittance amount, and~~
 - ~~b. Any charge assessed under subsection (A)(2).~~~~

~~C. Penalty:~~

- ~~1. A person who does not make remittance under subsection (B) on or before the vehicle’s registration expiration date is subject to a late title and registration penalty as prescribed under A.R.S. § 28-2162.~~
- ~~2. A person who does not make remittance under subsection (B) within 45 days after the date of the Department’s written notice of a returned check, draft, or order, is subject to the following actions on the person’s license, permit, or~~

Notices of Final Rulemaking

registration that was insufficiently funded:

- a. For a driver license or permit, as prescribed under A.R.S. § 28-3301(A);
- b. For a nonoperating identification license, as prescribed under A.R.S. § 28-3301(F); or
- e. For a vehicle registration, as prescribed under A.R.S. § 28-2161(A)(2).

A. In addition to the original payment amount, the maker or drawer of a check, draft, order, or electronic payment dishonored because of insufficient monies, payments stopped, or closed accounts shall pay to the Department:

- 1. A service fee of \$25 as provided under A.R.S. §§ 28-372 and 44-6852.
- 2. Any actual charges assessed to the Department by a financial institution as a result of the dishonored instrument, and
- 3. Any collection costs due to the Department under A.R.S. § 28-372.

B. For a check, draft, or order dishonored:

- 1. Insufficient monies include:
 - a. A check written for less than the minimum amount due.
 - b. A check drawn against uncollected funds.
 - c. A check post-dated, or
 - d. A check stale-dated;
- 2. Payments stopped include an item marked refer to maker, and
- 3. Closed accounts include an item marked unable to locate account.

C. For an electronic payment dishonored:

- 1. Insufficient monies include:
 - a. A credit limit exceeded.
 - b. An e-check or other electronic payment failure, or
 - c. An inaccurate automated clearing house transaction.
- 2. Payments stopped include a credit card charge back, and
- 3. Closed accounts include an item marked unable to locate account.

D. Payments, fees, and charges due to the Department under subsection (A), shall be made by:

- 1. Cash, cashier's check, money order, or credit card for a dishonored check, draft, or order; or
- 2. Cash, cashier's check, or money order for a dishonored electronic payment.

E. Penalties.

- 1. A person who does not make payment under subsection (A) on or before the vehicle's registration expiration date is subject to a late title and registration penalty as prescribed under A.R.S. § 28-2162.
- 2. A person who does not make payment under subsection (A) within 45 days after the date of a written Department notice of a dishonored check, draft, order, or electronic payment is subject to the following actions on the person's license, permit, or registration that was insufficiently funded:
 - a. For a driver license or permit, as prescribed under A.R.S. § 28-3301(A);
 - b. For a nonoperating identification license, as prescribed under A.R.S. § 28-3301(F); or
 - c. For a vehicle registration, as prescribed under A.R.S. § 28-2161(A)(2).