



# Arizona Administrative REGISTER

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# From the Publisher

## ABOUT THIS PUBLICATION

The authenticated pdf of the *Administrative Register* (A.A.R.) posted on the Arizona Secretary of State's website is the official published version for rulemaking activity in the state of Arizona.

Rulemaking is defined in Arizona Revised Statutes known as the Arizona Administrative Procedure Act (APA), A.R.S. Title 41, Chapter 6, Articles 1 through 10.

The *Register* is cited by volume and page number. Volumes are published by calendar year with issues published weekly. Page numbering continues in each weekly issue.

In addition, the *Register* contains notices of rules terminated by the agency and rules that have expired.

## ABOUT RULES

Rules can be: made (all new text); amended (rules on file, changing text); repealed (removing text); or renumbered (moving rules to a different Section number). Rulemaking activity published in the *Register* includes: proposed, final, emergency, expedited, and exempt rules as defined in the APA, and other state statutes.

New rules in this publication (whether proposed or made) are denoted with underlining; repealed text is stricken.

## WHERE IS A "CLEAN" COPY OF THE FINAL OR EXEMPT RULE PUBLISHED IN THE REGISTER?

The *Arizona Administrative Code* (A.A.C.) contains the codified text of rules. The A.A.C. contains rules promulgated and filed by state agencies that have been approved by the Attorney General or the Governor's Regulatory Review Council. The *Code* also contains rules exempt from the rulemaking process.

The authenticated pdf of *Code* chapters posted on the Arizona Secretary of State's website are the official published version of rules in the A.A.C. The *Code* is posted online for free.

## LEGAL CITATIONS AND FILING NUMBERS

On the cover: Each agency is assigned a Chapter in the *Arizona Administrative Code* under a specific Title. Titles represent broad subject areas. The Title number is listed first; with the acronym A.A.C., which stands for the *Arizona Administrative Code*; following the Chapter number and Agency name, then program name. For example, the Secretary of State has rules on rulemaking in Title 1, Chapter 1 of the *Arizona Administrative Code*. The citation for this chapter is 1 A.A.C. 1, Secretary of State, Rules and Rulemaking

Every document filed in the office is assigned a file number. This number, enclosed in brackets, is located at the top right of the published documents in the *Register*. The original filed document is available for 10 cents a page.

# Arizona Administrative REGISTER

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This publication is available online for free at [www.azsos.gov](http://www.azsos.gov).

**ADMINISTRATIVE CODE**  
A price list for the *Arizona Administrative Code* is available online at [www.azsos.gov](http://www.azsos.gov).

**PUBLICATION DEADLINES**  
Publication dates are published in the back of the *Register*. These dates include file submittal dates with a three-week turnaround from filing to published document.

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# Participate in the Process

## Look for the Agency Notice

Review (inspect) notices published in the *Arizona Administrative Register*. Many agencies maintain stakeholder lists and would be glad to inform you when they proposed changes to rules. Check an agency's website and its newsletters for news about notices and meetings.

Feel like a change should be made to a rule and an agency has not proposed changes? You can petition an agency to make, amend, or repeal a rule. The agency must respond to the petition. (See A.R.S. § 41-1033)

## Attend a public hearing/meeting

Attend a public meeting that is being conducted by the agency on a Notice of Proposed Rulemaking. Public meetings may be listed in the Preamble of a Notice of Proposed Rulemaking or they may be published separately in the *Register*. Be prepared to speak, attend the meeting, and make an oral comment.

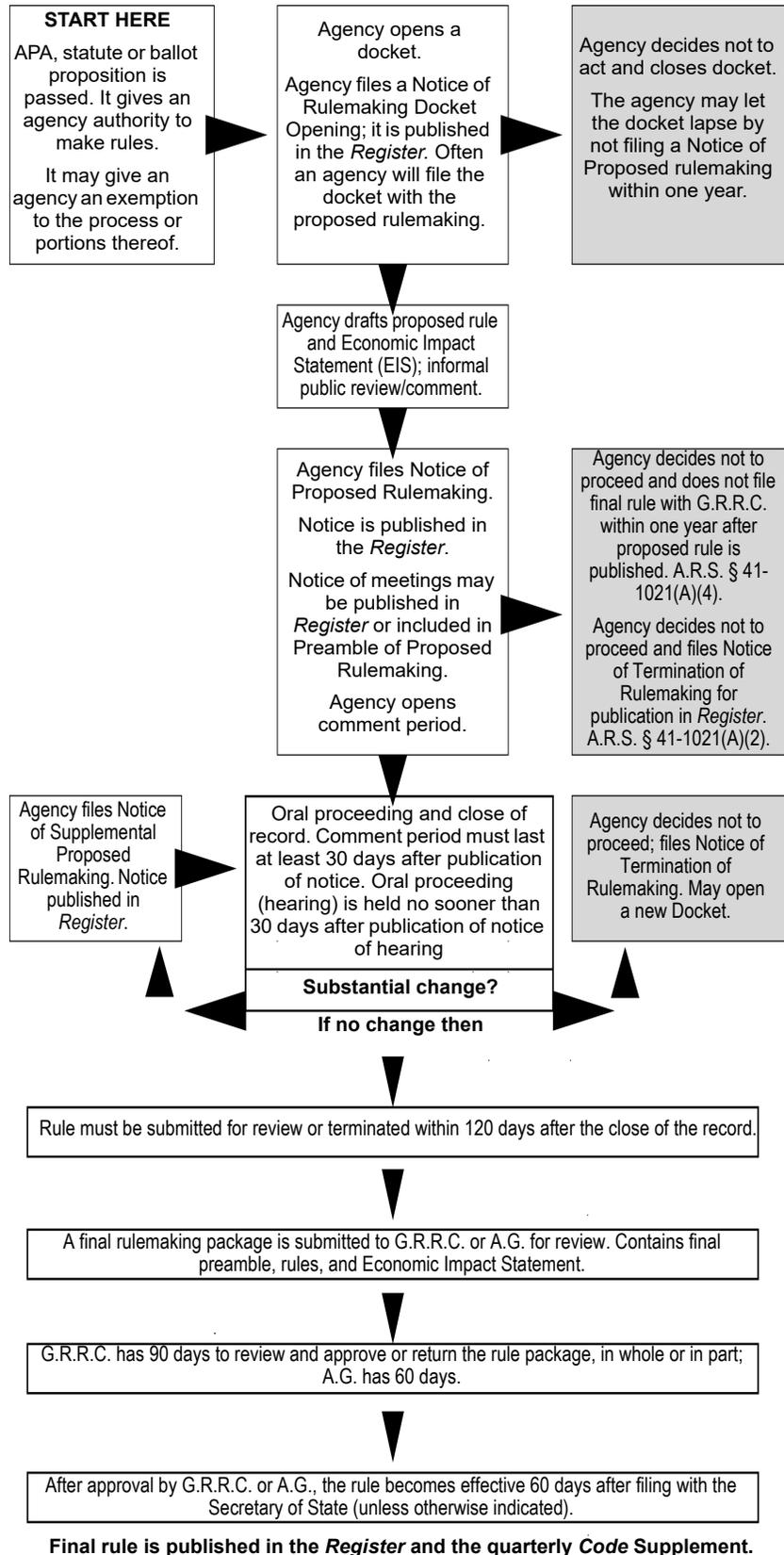
An agency may not have a public meeting scheduled on the Notice of Proposed Rulemaking. If not, you may request that the agency schedule a proceeding. This request must be put in writing within 30 days after the published Notice of Proposed Rulemaking.

## Write the agency

Put your comments in writing to the agency. In order for the agency to consider your comments, the agency must receive them by the close of record. The comment must be received within the 30-day comment timeframe following the *Register* publication of the Notice of Proposed Rulemaking.

You can also submit to the Governor's Regulatory Review Council written comments that are relevant to the Council's power to review a given rule (A.R.S. § 41-1052). The Council reviews the rule at the end of the rulemaking process and before the rules are filed with the Secretary of State.

# Arizona Regular Rulemaking Process



## Definitions

**Arizona Administrative Code (A.A.C.):** Official rules codified and published by the Secretary of State's Office. Available online at [www.azsos.gov](http://www.azsos.gov).

**Arizona Administrative Register (A.A.R.):** The official publication that includes filed documents pertaining to Arizona rulemaking. Available online at [www.azsos.gov](http://www.azsos.gov).

**Administrative Procedure Act (APA):** A.R.S. Title 41, Chapter 6, Articles 1 through 10. Available online at [www.azleg.gov](http://www.azleg.gov).

**Arizona Revised Statutes (A.R.S.):** The statutes are made by the Arizona State Legislature during a legislative session. They are compiled by Legislative Council, with the official publication codified by Thomson West. Citations to statutes include Titles which represent broad subject areas. The Title number is followed by the Section number. For example, A.R.S. § 41-1001 is the definitions Section of Title 41 of the Arizona Administrative Procedures Act. The "§" symbol simply means "section." Available online at [www.azleg.gov](http://www.azleg.gov).

**Chapter:** A division in the codification of the *Code* designating a state agency or, for a large agency, a major program.

**Close of Record:** The close of the public record for a proposed rulemaking is the date an agency chooses as the last date it will accept public comments, either written or oral.

**Code of Federal Regulations (CFR):** The *Code of Federal Regulations* is a codification of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government.

**Docket:** A public file for each rulemaking containing materials related to the proceedings of that rulemaking. The docket file is established and maintained by an agency from the time it begins to consider making a rule until the rulemaking is finished. The agency provides public notice of the docket by filing a Notice of Rulemaking Docket Opening with the Office for publication in the *Register*.

**Economic, Small Business, and Consumer Impact Statement (EIS):** The EIS identifies the impact of the rule on private and public employment, on small businesses, and on consumers. It includes an analysis of the probable costs and benefits of the rule. An agency includes a brief summary of the EIS in its preamble. The EIS is not published in the *Register* but is available from the agency promulgating the rule. The EIS is also filed with the rulemaking package.

**Governor's Regulatory Review (G.R.R.C.):** Reviews and approves rules to ensure that they are necessary and to avoid unnecessary duplication and adverse impact on the public. G.R.R.C. also assesses whether the rules are clear, concise, understandable, legal, consistent with legislative intent, and whether the benefits of a rule outweigh the cost.

**Incorporated by Reference:** An agency may incorporate by reference standards or other publications. These standards are available from the state agency with references on where to order the standard or review it online.

**Federal Register (FR):** The *Federal Register* is a legal newspaper published every business day by the National Archives and Records Administration (NARA). It contains federal agency regulations; proposed rules and notices; and executive orders, proclamations, and other presidential documents.

**Session Laws or "Laws":** When an agency references a law that has not yet been codified into the Arizona Revised Statutes, use the word "Laws" is followed by the year the law was passed by the Legislature, followed by the Chapter number using the abbreviation "Ch.," and the specific Section number using the Section symbol (§). For example, Laws 1995, Ch. 6, § 2. Session laws are available at [www.azleg.gov](http://www.azleg.gov).

**United States Code (U.S.C.):** The Code is a consolidation and codification by subject matter of the general and permanent laws of the United States. The Code does not include regulations issued by executive branch agencies, decisions of the federal courts, treaties, or laws enacted by state or local governments.

## Acronyms

A.A.C. – *Arizona Administrative Code*

A.A.R. – *Arizona Administrative Register*

APA – *Administrative Procedure Act*

A.R.S. – *Arizona Revised Statutes*

CFR – *Code of Federal Regulations*

EIS – *Economic, Small Business, and Consumer Impact Statement*

FR – *Federal Register*

G.R.R.C. – *Governor's Regulatory Review Council*

U.S.C. – *United States Code*

## About Preambles

The Preamble is the part of a rulemaking package that contains information about the rulemaking and provides agency justification and regulatory intent.

It includes reference to the specific statutes authorizing the agency to make the rule, an explanation of the rule, reasons for proposing the rule, and the preliminary Economic Impact Statement.

The information in the Preamble differs between rulemaking notices used and the stage of the rulemaking.



**NOTICES OF PROPOSED RULEMAKING**

This section of the *Arizona Administrative Register* contains Notices of Proposed Rulemaking.

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same *Register* issue.

When an agency files a Notice of Proposed Rulemaking under the Administrative Procedure Act (APA), the notice is published in the *Register* within three weeks of filing. See the publication schedule in the back of each issue of the *Register* for more information.

Under the APA, 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).

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency that promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #10 for the close of record and information related to public hearings and oral comments.

**NOTICE OF PROPOSED RULEMAKING  
TITLE 4. PROFESSIONS AND OCCUPATIONS  
CHAPTER 2. AGRICULTURAL EMPLOYMENT RELATIONS BOARD**

[R21-171]

**PREAMBLE**

<b><u>1. Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
R4-2-101	Amend
R4-2-102	Amend
R4-2-103	Amend
R4-2-104	Amend
R4-2-201	Amend
R4-2-202	Amend
R4-2-204	Amend
R4-2-205	Amend
R4-2-206	Amend
R4-2-207	Amend
R4-2-209	Amend
R4-2-210	Amend
R4-2-212	Amend
R4-2-213	Amend
R4-2-215	Renumber
R4-2-215	Amend
R4-2-216	Repeal
R4-2-216	Renumber
R4-2-216	Amend
R4-2-217	Renumber
R4-2-217	Amend
R4-2-218	Renumber
R4-2-218	Amend
R4-2-302	Amend
R4-2-303	Amend
R4-2-304	Amend
R4-2-305	Amend
R4-2-407	Amend
<b><u>2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):</u></b>	
Authorizing statute: A.R.S. § 23-1387(B)	
Implementing statute: A.R.S. §§ 23-1381 through 23-1395	
<b><u>3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rules:</u></b>	
Notice of Rulemaking Docket Opening: 27 A.A.R. 2375, October 22, 2021 ( <i>in this issue</i> )	



**4. The agency's contact person who can answer questions about the rulemaking:**

Name: Lisa James  
Address: Arizona Department of Agriculture  
1688 W. Adams St.  
Phoenix, AZ 85007  
Telephone: (602) 542-1164  
Fax: (602) 364-0830  
Email: [ljames@azda.gov](mailto:ljames@azda.gov)

**5. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**

This rulemaking is the result of suggested changes made by the Governor's Regulatory Review Council during the Board's five-year rule review in 2016, as well as an extensive review to update the rules for consistency and accuracy as necessary.

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

None

**7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking 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:**

*Overview:*

The Agricultural Employment Relations Board was re-established by the Arizona State Legislature in 1993 as a result of Laws 1993, Chapter 139 to provide a means to collective bargaining that is fair and equitable to agricultural employers, labor organizations, and employees. Further, the Board was established to provide orderly election procedures in order to resolve questions concerning representation of agricultural employees and to declare that certain acts are unfair labor practices that are prohibited and that are subject to control by the police power of this state.

The Board's statutes are modeled after the National Labor Relations Act, which specifically excludes agricultural workers from its jurisdiction.

The Legislature recognized a balance between agricultural labor and employers was essential and thus created a Board with two labor representatives, two employer representatives, and three public representatives. The mandated balance of the Board precludes dominance by either labor or employers. The creation of the Board also declared that employees are free to organize, to take concerted action and, through representatives of their own choosing, to enter into collective bargaining contracts establishing their wages and the terms and conditions of employment.

The establishment of the Board recognized that, while the right to strike is a basic right of organized labor, "such right must take into account the perishable character and the seasonal nature of agricultural products and must be limited and regulated accordingly." (A.R.S. § 23-1381)

By establishing the Board, the Legislature declared that the uninterrupted production, packing, processing, transporting, and marketing of agricultural products is vital to the public interest. Arizona's agriculture industry was credited in 1993, the most recent year for which statistics are available, as being a \$6.3 billion industry. The perishable and seasonal nature of much of Arizona's agriculture industry makes it incredibly vulnerable to irreparable harm should a strike take place without the oversight of the Board.

*A. The Agricultural Employment Relations Board.*

The Board will use the rules of the Office of Administrative Hearings ("OAH") when holding a hearing at the Board, or may choose to assign a matter to the OAH. The Board will be responsible for the costs incurred for hearings held through the OAH. Based on experience this expense is expected to be negligible.

During the past five years, no hearings have been necessary, and one election was held.

The Board will incur modest expenses related to educating the regulated community on the amendments.

*B. Political Subdivision.*

The implementation of this rulemaking will directly affect the caseload of the OAH, but to a very minimal extent.

*C. Businesses Directly Affected By the Rulemaking.*

The regulated community the Board serves, and their attorneys, will be beneficially affected by the use of the uniform administrative procedures of the OAH.

*D. Private and Public Employment.*

Private employment in the agriculture industry is protected by the implementation of these rules ensuring labor the right to organize and to be protected from the potential of unfair labor practices.

Public employment is not directly affected by the implementation and enforcement of this rulemaking.

*E. Consumers and the Public.*

Consumers and the public are indirectly affected by the implementation and enforcement of this rulemaking. It is in the best interest of the consumer for food production to be uninterrupted by a prolonged and costly labor dispute. Consumer pricing and the availability of food product is in part dependent upon peaceful labor and management relationships.



F. *State Revenue.*

This rulemaking will have no impact on state revenue.

**9. The agency’s contact person who can answer questions about the economic, small business, and consumer impact statement:**

Name: Lisa James  
 Address: Arizona Department of Agriculture  
 1688 W. Adams St.  
 Phoenix, AZ 85007  
 Telephone: (602) 542-1164  
 Fax: (602) 364-0830  
 Email: [ljames@azda.gov](mailto:ljames@azda.gov)

**10. Time, place, and nature of proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

The Agricultural Employment Relations Board will accept written comments until close of business on Friday, December 3, 2021. Written comments can be sent to agency personnel listed in item 4.

Oral comments may be made at the oral hearing scheduled for Wednesday, December 1, 2021 at 10:00 a.m., at the Arizona Department of Agriculture, 1688 W. Adams Street, Phoenix, AZ 85007, Room 206.

**11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

There are no other matters prescribed by statute applicable to the Board, its rules, or its class of rules.

**a. Does the rule require a permit, whether a general permit is used and if not, the reasons that a general permit is not used.**

A permit is not required for these rules.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

There are no federal laws applicable to the subject of these rules.

**c. Whether a person submitted an analysis to the agency that compares the rule’s impact of the competitiveness of business in this state to the impact on business in other states:**

No comparative analysis of competitiveness was submitted.

**12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

None

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

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 2. AGRICULTURAL EMPLOYMENT RELATIONS BOARD**

**ARTICLE 1. GENERAL PROVISIONS**

Section

- R4-2-101. Definitions
- R4-2-102. Strikes
- R4-2-103. Notice of Appearance; Signing Pleadings and Documents; Filing Documents
- R4-2-104. Service of Process and Legal Documents

**ARTICLE 2. ELECTIONS**

Section

- R4-2-201. Contents of Petition for Election
- R4-2-202. Withdrawal of Petition
- R4-2-204. Investigation of Petition
- R4-2-205. Time for Submission of Authorizations
- R4-2-206. Form and Content of Authorizations
- R4-2-207. Validity of Authorizations
- R4-2-209. Showing of Interest Computation
- R4-2-210. Existence of a Question of Representation
- R4-2-212. Intervention by a Subsequent Labor Organization
- R4-2-213. Peak Employment During Eligibility Period and Election
- R4-2-215. Objections to Election; Investigation
- R4-2-216. ~~Investigation of Objections to Election Repealed~~
- R4-2-217, R4-2-216. Run-off Elections
- R4-2-218, R4-2-217. Consent-election Agreements
- R4-2-218. Renumbered



ARTICLE 3. UNFAIR LABOR PRACTICES

- Section
- R4-2-302. Form and Contents of Charge
- R4-2-303. Investigation of Charge
- R4-2-304. Complaint
- R4-2-305. Refusal to Issue Complaint

ARTICLE 4. HEARINGS

- Section
- R4-2-407. Rehearing or Review of Decision; Basis

ARTICLE 1. GENERAL PROVISIONS

R4-2-101. Definitions

In addition to the definitions provided in A.R.S. § 23-1382, the following terms apply to this Chapter:

- “Act” means the Agricultural Employment Relations Act, A.R.S. Title 23, Chapter 8, Article 5, § 23-1381, et seq.
- “Administrative Law Judge” or “ALJ” means an individual, or the Board, who ~~sits as an administrative law judge, conducts an and makes decisions regarding an~~ administrative hearing in a contested case or an appealable agency action, ~~and makes decisions regarding the contested case or appealable agency decision according to A.R.S. Title 23, Chapter 8, Article 5, and these rules adopted there-under.~~
- “Authorization period” means the four pay periods immediately preceding the filing of a petition for election under A.R.S. § 23-1389(C).
- “Bargaining unit” means those employees who share a community of interest with regard to wages and terms and conditions of employment as described in A.R.S. § 23-1389(B).
- “Board agent” means any individual acting on behalf of the Board, including the Executive Secretary, the General Counsel, and investigators with whom the Board contracts to investigate issues relating to unfair labor practice charges and petitions for election.
- “Calendar year” means the period beginning January 1 and ending December 31.
- “Complete contact information” means mailing address, email address, phone number, and in the case of an organization or corporation, the name of the contact individual.
- “Consent election” means an election held following the Board’s approval of a voluntary and complete consent election agreement submitted to the Board.
- “Eligibility period” means the three pay periods immediately preceding the filing of a petition for election under A.R.S. § 23-1389(C).
- “Executive Secretary” means the Executive Secretary appointed by the Board under A.R.S. § 23-1388.
- “General Counsel” means the attorney representing the Board.
- “Independent contractor” means an employer engaged in the business of supplying labor to a farm or ranch.
- ~~“Investigator” means a person with whom the Board contracts to investigate issues relating to unfair labor practice charges and petitions for election.~~
- “Leave of absence” means an employment status determined by the employer and the employee permitting the employee to cease work for that employer for a specified period of time.
- “Pay period” means the seven-day period used by an agricultural employer for payroll purposes. If the agricultural employer does not use a seven-day pay period, pay period means a seven-day period, Sunday through Saturday.
- “Respondent” means the employer in a certification election or current representative in a decertification election.
- ~~“Signature” means the name or mark of an individual, written by that individual to authenticate a writing.~~

R4-2-102. Strikes

- ~~A. A dispute between an independent contractor and agricultural employees or their representative shall not be deemed to be a labor dispute involving the farm or ranch, or the owner, lessee, or operator of the farm or ranch. A person shall not use a picket sign unless the sign clearly states the person against whom the employees or their representative are conducting the strike.~~
- ~~B. Employees or their representative may advertise their dispute with the agricultural employer and picket the employer. Employees or their representative shall not picket so as to interfere with the work of a neutral employer or supplier who is not involved in the dispute. A dispute between an independent contractor and agricultural employees or their representative shall not be deemed to be a labor dispute involving the farm or ranch, or the owner, lessee, or operator of the farm or ranch.~~

R4-2-103. Notice of Appearance; Signing Pleadings and Documents; Filing Documents

- A. The attorney of a party to a proceeding under investigation by the Board shall promptly file a ~~Notice~~ notice of Appearance ~~appearance~~ with the Board. Once filed, the notice shall remain in effect for the duration of the proceeding, or until the Board is notified, in writing, that the attorney is not representing the party.



- B. A document filed with the Board shall be signed by the party or the party's attorney. A signature constitutes a certification that the signer has read the document, has a good faith basis for submission of the document, and that it is not filed for the purpose of delay or harassment.
- ~~C. A person shall file a document with the Board at its principal office, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, with the exception of Arizona legal holidays or by mail. A document is considered filed on the date it is received by the Board.~~

#### R4-2-104. Service of Process and Legal Documents

- A. A person serving a petition for election, petition for decertification, objection to an election, or subpoena shall serve according to A.R.S. § 23-1391(C).
- B. Other than documents listed in subsection (A), or as provided in A.R.S. § 23-1391(C), documents may be filed with the Board electronically, by mail or personal delivery. Electronic document delivery to the Board shall be sent to the Executive Secretary email address listed on the AERB website at: <https://agriculture.az.gov/boards-councils/agricultural-employment-relations-board>. Documents shall be personally delivered or mailed to the Board's principal office, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, with the exception of Arizona legal holidays. A document is considered filed on the date its signed copy is received by the Board.
- ~~B.C. If an attorney enters an appearance a notice of appearance in a proceeding, service of motions and papers upon the attorney according to A.R.S. § 23-1391(C) constitutes service upon the party.~~

### ARTICLE 2. ELECTIONS

#### R4-2-201. Contents of Petition for Election

- A. A petition for certification election filed under A.R.S. § 23-1389(C) by an agricultural employee, a group of agricultural employees, an individual, or a labor organization acting on the employees' behalf, shall be signed under oath and shall contain the following information:
1. The name and complete contact information of the agricultural employer;
  - ~~2. The address of the agricultural employer;~~
  - ~~3. 2.~~ A description of the bargaining unit that the petitioner claims to be appropriate;
  - ~~4. 3.~~ The approximate number of employees in the alleged appropriate unit;
  - ~~5. 4.~~ A brief statement that the employer declines to recognize the petitioner as a bargaining representative ~~within the meaning of A.R.S. § 23-1382(10)~~, or that the petitioner is currently recognized but desires certification under the Act;
  - ~~6. 5.~~ The name, affiliation, if any, and address complete contact information of petitioner;
  - ~~7. 6.~~ The name and address complete contact information of any other person who claims to represent an employee in the alleged appropriate bargaining unit;
  - ~~8. 7.~~ Whether a strike or picketing is in progress at the agricultural employer's establishment and, if so, the approximate number of employees participating, and the date the strike or picketing commenced;
  - ~~9. 8.~~ A statement that the petition for election is supported by ~~30 percent~~ 0% or more of the agricultural employees in the bargaining unit; and
  - ~~10. 9.~~ Any other relevant fact.
- B. A petition for decertification election filed under A.R.S. § 23-1389(J) by an agricultural employee, a group of agricultural employees, a labor organization, or an individual acting on the employees' behalf, shall be signed under oath and contain the following information:
1. The name and address complete contact information of the petitioner;
  2. A statement that:
    - a. A representative other than petitioner has been certified, or is currently recognized by the employer;
    - b. Petitioner desires to rescind the certification; and
    - c. ~~The~~ Includes the unit claimed to be appropriate, a description of the unit, and the number of employees in the unit;
  3. The name, affiliation, if any, and address complete contact information of the person whose recognition or certification the petitioner seeks to rescind;
  4. A statement whether the agricultural employer has a contract with any labor organization or other representative of its employees and, if so, the expiration date;
  5. Whether a strike or picketing is in progress at the agricultural employer's establishment and, if so, the approximate number of employees participating, and the date the strike or picketing commenced;
  6. A statement that the petition for decertification election is supported by ~~30 percent~~ 0% or more of the agricultural employees in the bargaining unit; and
  7. Any other relevant fact.
- C. The Board shall not accept ~~for filing~~ a petition for election that is submitted for filing if it does not contain all the information required by subsections (A) or (B).
- D. The Executive Secretary shall, within 10 days after the filing of a petition for election with the Board, send a copy of the petition to the respondent named in the petition. If the Board certified a representative other than the petitioner, a copy of the petition shall also be sent to the certified representative.

#### R4-2-202. Withdrawal of Petition

~~The petitioner and respondent may stipulate to withdraw a petition for election that is filed with the Board. A petition for election that is filed with the Board may not be withdrawn unless the petitioner and the respondent stipulate to the withdrawal.~~

#### R4-2-204. Investigation of Petition

- A. ~~The~~ In addition to the notice of a petition sent under R4-2-201(D), the Board or its agent shall ~~notify~~ contact the agricultural employer by ~~telephone the most expeditious method~~ within 10 days after a petition for election is filed; ~~and, within~~ within seven days of noti-



fication, the agricultural employer shall furnish each employment record, payroll signature list, and other pertinent data requested by the Board or its agent to investigate the petition. The agricultural employer shall certify in writing and under oath that the information provided to the Board is true, complete, and accurate.

- B. The Board shall review each authorization submitted under R4-2-205, as soon as practicable, to determine whether there is reasonable cause to believe a question of representation exists under A.R.S. § 23-1389 and R4-2-210.
- C. The Board may conduct any investigation it deems necessary, following a review of the authorizations and pertinent employment data, to determine whether a question of representation exists including, but not limited to, a field investigation. In the event of any formal or informal interview during the investigation with an agricultural employee, the Board shall create and keep in its records a written investigative report, which shall include the name, affiliation, if any, complete contact information, and title of the agricultural employee interviewed and a summary of the agricultural employee’s statements made during the interview. Any name, complete contact information, and statement recorded in such investigative report shall be subject to the confidentiality established under subsection (D) and (E) and R4-2-208.
- D. The Board shall conduct an investigation in a manner that preserves the confidentiality of the identity of an agricultural employee ~~who does or does not sign an~~ and the employee's position regarding authorization. The Board shall not disclose an investigative report or the identity of a person interviewed in conjunction with the investigation except as required by law.
- E. ~~The~~ Except as required by law, the Board or its agent shall not disclose to any person or party the number of authorizations filed; an investigative report; the identity of a person interviewed in conjunction with the investigation; or any other information concerning the investigation, except as required by law.

**R4-2-205. Time for Submission of Authorizations**

- A. A petitioner shall submit every authorization with the petition for a certification ~~election~~ or decertification election. Except as provided in subsection (B), the Board shall not accept an authorization after the petition for certification ~~election~~ or decertification election is filed.
- B. If the Board or its agent initially determines that the showing of interest is insufficient to warrant a pre-election hearing, the Board shall notify the petitioner that additional authorizations may be filed with the Board within the next two business days. An additional authorization is not valid unless it is signed after the day the petition is filed ~~and~~; the individual signing the authorization ~~is~~ was an agricultural employee at the time the authorization ~~is~~ was signed; ~~and at any time the signing employee was employed~~ during the eligibility period.

**R4-2-206. Form and Content of Authorizations**

- A. An individual can show interest by completing an authorization card or signing a petition.
- B. An individual authorization card submitted to the Board as evidence of a showing of interest is not valid unless the card contains only one name, one signature, and the following legible information, ~~which is printed unless otherwise specified by the Board:~~
  1. The employee’s name, name of employer, and social security or employee identification number;
  2. The signature of the employee and date in the employee’s own handwriting; and
  3. A statement that the employee ~~is authorizing knowingly providing authorization that the petitioner to~~ may represent that employee for the purpose of collective bargaining in ~~this state~~ Arizona only, ~~and to authorization that the petitioner may~~ file a petition for election under A.R.S. § 23-1389.
- C. A signature petition submitted as authorization to evidence a showing of interest is not valid unless it contains:
  1. The signature of the employee, social security or employee identification number, and date in the employee’s own handwriting; and
  2. The name of the employer and a statement that the employee ~~is authorizing knowingly providing authorization that the petitioner to~~ may represent that employee for the purpose of collective bargaining in ~~this state~~ Arizona only, ~~and to authorization that the petitioner may~~ file a petition for election under A.R.S. § 23-1389.

**R4-2-207. Validity of Authorizations**

- A. ~~A valid~~ An authorization ~~is one that is~~ valid if signed at any time during the authorization period by an individual who is an agricultural employee at the time of signing the authorization, ~~or is if~~ signed as prescribed in R4-2-205(B).
- B. An authorization is valid even if the agricultural employee who signed that authorization also signed an authorization for another labor organization.
- C. An authorization signed by an agricultural employee hired after the date the petition is filed is not valid for the purpose of computing the showing of interest.

**R4-2-209. Showing of Interest Computation**

- A. The Board or its agent shall compute the showing of interest for any pay period within the eligibility period by taking the total number of agricultural employees employed in the bargaining unit during that pay period and determining how many of those employees signed a valid authorization as prescribed in this Article.
- B. To determine whether an individual is an agricultural employee, permanent, within the meaning of A.R.S. § 23-1382(1), six months means 132 work days.
- C. The Board shall not include ~~as an employee~~ in the bargaining unit for a pay period an agricultural employee who is eligible for unemployment benefits for the entire pay period.
- D. The Board shall not include in the bargaining unit for a pay period an agricultural employee who is on a leave of absence for the entire pay period unless the following conditions are met:
  1. The employer produces a document, signed by the employee and notarized, stating that the employee was placed on leave of absence for a specified period of time;
  2. The date of the employee’s projected return does not exceed six months from the date the petition for election is filed; and



3. ~~Substantial evidence does not exist establishing that the employee is not on a bona fide leave of absence or will not return from the leave of absence as scheduled. There is no substantial evidence establishing that the employee's leave of absence is a pretense or that the employee will not return from the leave of absence as scheduled.~~
- E. The Board shall not include in the bargaining unit an agricultural employee who is placed on workers' compensation leave, unless the following conditions are met:
1. The employer produces a document signed by a licensed physician stating the date the employee was placed on workers' compensation leave and the date of the employee's projected return;
  2. The date of the employee's projected return does not exceed six months from the date the petition for election is filed; and
  3. ~~Substantial evidence does not exist establishing that the employee is not on a bona fide workers' compensation leave or will not return from the workers' compensation leave as scheduled. There is no substantial evidence establishing that the employee's workers' compensation leave is a pretense or that the employee will not return from the workers' compensation leave of absence as scheduled.~~

#### R4-2-210. Existence of a Question of Representation

A question of representation exists in the bargaining unit if ~~there is a 30% showing of interest of at least 30 percent is made~~ in the final pay period of the eligibility period and in either of the other two pay periods of the eligibility period.

#### R4-2-212. Intervention by a Subsequent Labor Organization

- A. ~~As~~ The ALJ may allow a subsequent labor organization to intervene only at the initial session of the pre-election hearing on a petition filed by the first labor organization and may place the subsequent labor organization on an election ballot only if the ALJ finds:
1. The subsequent labor organization filed with the Board a petition for certification election together with a sufficient number of signed authorizations to meet the ~~30 percent~~ showing of interest required to establish a question of representation under R4-2-210; and
  2. The subsequent labor organization filed its petition and authorizations not later than seven days before the scheduled start of the initial session of the pre-election hearing.
- B. In determining the validity of an authorization filed by a subsequent labor organization, the Board shall use the same authorization period as that of the original petitioner.
- C. In determining the showing of interest for a subsequent labor organization, the Board shall use the same eligibility period as that of the original petitioner.

#### R4-2-213. Peak Employment During Eligibility Period and Election

- A. ~~The Board shall hold an election when the bargaining unit is at peak.~~ A bargaining unit is at peak when the number of employees in the unit is not less than ~~66 2/3 percent~~ of the maximum number of employees who have been or will be employed in the bargaining unit during the current crop growing season. ~~If peak does not occur at any time during the remainder of the current growing season, the Board shall hold the election at peak during the following growing season.~~
- B. In determining the total number of bargaining unit employees who have been or will be employed at any one time during the current growing season, the ALJ shall consider:
1. The employer's prior peak employment figures;
  2. The types of crops grown;
  3. The past and present acreage for the crop or crops in question;
  4. The number of employees at other farms with the same or similar crops and similar acreage; and
  5. Any other relevant fact.
- C. A question of representation exists in a bargaining unit only if the bargaining unit is at peak during the eligibility period ~~as required by R4-2-210~~. The respondent named in a petition has the burden to allege and prove that the bargaining unit is not at peak during a pay period in an eligibility period.
- ~~D. The Board shall hold an election when the bargaining unit is at peak. If peak does not occur at any time during the remainder of the current growing season, the Board shall hold the election at peak during the following growing season.~~

#### R4-2-215. Objections to Election: Investigation

- A. Within seven days after the tally of the ballots by the Board, a party may file with the Board an objection to the conduct of the election or conduct affecting the results of the election. The party filing the objection shall specifically set forth each fact and allegation in support of the objection. The party filing the objection shall simultaneously serve a copy of the objection on all other parties and file a ~~statement~~ certificate of service with the Board. The party filing the objection shall not raise in the objection an issue that was or could have been raised in either a challenge to the petition or the pre-election hearing.
- B. ~~The Board shall not take further action if on an objection to the conduct of the election or conduct affecting the results of the election if the objection is not filed timely filed, or does not comply with subsection (A), or the number of challenged ballots is insufficient to affect the election results and a run-off election is not required under R4-2-217. The Board shall send a written notice to all parties that it will take no further action.~~
- C. ~~The Board shall immediately issue a certification of the results of the election, including certification or decertification of the representative, as appropriate, if:~~
1. ~~Objections are not filed within the time prescribed in subsection (A), or~~
  2. ~~The number of challenged ballots is insufficient to affect the election results, and~~
  3. ~~A run-off election is not required under R4-2-217.~~

If any objection meets the requirements of subsection (A), the Board shall investigate objections to the conduct of an election or conduct affecting the results of an election. If the Board determines that the objection is valid, the Board shall decertify the election results. The Board shall dismiss the objection if the Board determines that the objection is invalid. Any action by the Board under this section shall comply with A.R.S. § 23-1387(C).



- D. ~~A party may appeal the Board’s decision as prescribed in Title 41, Chapter 6, Article 10. If the Board decertifies the election results or dismisses the objection under subsections (B) or (C), the Board shall serve all the parties with its written decision. If the Board dismisses the objection, it shall immediately issue a certification of the results of the election, including certification or decertification of the representative, as appropriate. An aggrieved party may appeal the Board’s decision as prescribed in Article 4, within 30 days after the party receives the notice of the decision. The Board may extend the time for filing an appeal for good cause.~~
- E. In investigating an objection, if the Board determines that substantial and material factual issues exist that can be resolved only after a hearing, the Board shall issue a Notice of Hearing. Any hearing under this subsection and any objection to the resulting decision shall be initiated and conducted as prescribed by Article 4.

**R4-2-216. Investigation of Objections to Election Repealed**

- A. ~~The Board shall investigate objections to the conduct of an election or conduct affecting the results of an election if the objections meet the requirements of R4-2-215(A). The Board shall dismiss the objections and certify the results of the election on the basis of an administrative investigation if the Board determines that the objections are invalid.~~
- B. ~~An aggrieved party may appeal the Board’s dismissal of the objections as prescribed in Article 4, within 30 days after the party receives the notice of dismissal of the objection. The Board may extend the time for filing an appeal for good cause.~~
- C. ~~If the Board determines that substantial and material factual issues exist that can be resolved only after a hearing, the Board shall issue a Notice of Hearing.~~
- D. ~~Any hearing under this Section and any objection to the ALJ’s decision shall be initiated and conducted as prescribed in Article 4.~~

**~~R4-2-217, R4-2-216. Run-off Elections~~**

- A. ~~If an election ballot provides for a choice among at least two labor organizations and “no union,” and none of the choices on the ballot receive a majority of valid votes cast, the Board shall, as soon as practicable, conduct a run-off election.~~
- B. ~~In a run-off election, only an individual who is an agricultural employee in the appropriate bargaining unit on the date of the run-off election is eligible to vote.~~
- C. ~~The ballot in a run-off election shall provide for a selection between the labor organization receiving the highest number of votes in the original election and “no union.”~~
- D. ~~The Board shall administer a run-off election as prescribed in R4-2-214 through R4-2-216.~~

**~~R4-2-218, R4-2-217. Consent-election Agreements~~**

~~An agricultural employer may enter into a consent-election agreement with one or more individuals or labor organizations that present to the employer a claim to be recognized as the representative of a designated bargaining unit. The parties shall submit to the Board an agreement containing a description of the appropriate bargaining unit, a proposed time and place for holding the election, and a statement specifying which agricultural employees within the appropriate bargaining unit are eligible to vote. The Board shall conduct a consent election if the Board finds that the consent-election agreement is fair and ~~nonexclusive~~ not collusive. The Board shall conduct a consent election consistent with the methods followed by the Board in conducting elections.~~

**~~R4-2-218. Renumbered~~**

**ARTICLE 3. UNFAIR LABOR PRACTICES**

**R4-2-302. Form and Contents of Charge**

- A. A charging party shall include the following in the charge:
  1. ~~The full name, address, and telephone number and complete contact information~~ of the individual, agricultural employer, or labor organization making the charge;
  2. If the charge is filed by a labor organization, the full name and ~~address~~ complete contact information of any national or international labor organization of which it is an affiliate or constituent unit;
  3. The full name and ~~address~~ complete contact information of the individual, agricultural employer, or labor organization against whom the charge is made; and
  4. A clear and concise statement of the facts constituting the alleged unfair labor practice.
- B. A charging party shall make the charge in writing, sign the charge, and declare under penalty of perjury that its contents are true and correct to the best of the charging party’s knowledge, information, and belief.
- C. ~~The Board shall not accept a charge for filing unless it contains that is submitted for filing if it does not contain~~ all the information required in subsections (A) and (B).

**R4-2-303. Investigation of Charge**

- A. The Board shall, ~~as directed by R4-2-104(A),~~ serve a copy of a filed charge upon the individual, agricultural employer, or labor organization against whom the charge is made.
- B. The General Counsel ~~or designee~~ shall conduct a preliminary investigation of the charge under A.R.S. § 23-1390(K). After the preliminary investigation, and at the discretion of the General Counsel, the General Counsel may:
  1. Refuse to issue a complaint; or
  2. File a complaint against any individual, agricultural employer, or labor organization named in the charge that the General Counsel believes may have committed an unfair labor practice; and
  3. ~~Seek~~ If directed by the Board, seek appropriate injunctive relief or a restraining order, as provided for in A.R.S. § 23-1390.
- C. An investigative report, note, memorandum, oral or written statement, tape recording, and any other information or work product prepared or obtained by the General Counsel ~~or designee~~ during an investigation is not subject to subpoena powers of the Act and a person shall not disclose this information to any person without the consent of the General Counsel, unless otherwise provided by law.

**R4-2-304. Complaint**

- A. If the General Counsel decides after investigating a charge that a formal proceeding should be instituted, the General Counsel shall issue and serve, ~~as directed by R4-2-104(A),~~ on each party a complaint stating the alleged unfair labor practice. The General Counsel



shall include in the complaint a clear and concise statement of the ~~facts upon which the assertion~~ legal and factual basis of the Board's jurisdiction ~~is based~~ and a clear and concise description of the act that is claimed to constitute an unfair labor practice. The General Counsel shall include a notice of hearing issued under Article 4 with the complaint.

- B. After the hearing date is set, the General Counsel shall not amend the complaint unless the General Counsel makes a motion to amend and the ALJ grants a the motion to amend made by the General Counsel.
- C. The General Counsel may withdraw a complaint before the hearing. After the opening of the hearing, the complaint may be withdrawn upon motion by the General Counsel with consent of the ALJ.

#### **R4-2-305. Refusal to Issue Complaint**

- A. If, after a charge is filed, the General Counsel declines to issue a complaint or, having withdrawn a complaint, refuses to reissue it, the General Counsel shall ~~advise~~ serve a written statement of the grounds for the action on each party in writing, accompanied by a statement of the grounds for the action. The charging party may file a request to reconsider the refusal to issue or reissue the complaint with the General Counsel within 10 days of receipt of notice of the refusal and shall simultaneously serve a copy on all other parties. The General Counsel shall file any response to the request within seven days of receiving it. The General Counsel shall ~~advise all parties of the decision, serve the decision on each party~~ in writing and within seven days of the date the decision is made.
- B. The charging party may file a request to reconsider with the General Counsel if, after the General Counsel refuses to issue or reissue a complaint, newly discovered material evidence is found that could not with reasonable diligence have been discovered at the time the original charge was filed. The request shall be filed ~~immediately upon~~ within 10 days after the discovery of the evidence.
- C. Nothing in this Section prohibits or limits the General Counsel from issuing or reissuing a complaint following a notice of refusal to issue a complaint or withdrawal of a complaint, however, if a complaint is withdrawn or dismissed on the General Counsel's own motion, the General Counsel shall not reissue the complaint more than six months after the date of the withdrawal or dismissal of the original complaint.
- D. ~~If a complaint is withdrawn or dismissed on the General Counsel's own motion, the General Counsel shall not reissue the complaint more than six months after the date of the withdrawal or dismissal of the original complaint. Service under this section shall be as directed by R4-2-104(A).~~

### **ARTICLE 4. HEARINGS**

#### **R4-2-407. Rehearing or Review of Decision; Basis**

- A. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.
- B. The Board shall grant a rehearing or review of a final administrative law decision for any of the following causes materially affecting the moving party's rights:
  - ~~1. The decision is not justified by the evidence or is contrary to law;~~
  - ~~2. There is newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original proceeding;~~
  - ~~3. One or more of the following has deprived the party of a fair hearing:
 
    - a. Irregularity or abuse of discretion in the conduct of the proceeding;
    - b. Misconduct of the Board, the ALJ, or the prevailing party; or
    - e. Accident or surprise that could not have been prevented by ordinary prudence; or~~
  - ~~4. Excessive or insufficient sanction.
 
    1. Irregularity in the administrative proceedings or abuse of discretion depriving the moving party of a fair hearing;
    2. Misconduct of the Board, ALJ, or the prevailing party;
    3. Accident or surprise that could not reasonably have been prevented;
    4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;
    5. Excessive or insufficient penalties;
    6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the proceedings; or
    7. The decision is not justified by the evidence or is contrary to law.~~
- C. The Board may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (B). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.



NOTICES OF FINAL EXEMPT RULEMAKING

This section of the Arizona Administrative Register contains Notices of Final Exempt Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these rules.

Questions about the interpretation of the final exempt rule should be addressed to the agency proposing them. Refer to Item #5 to contact the person charged with the rulemaking.

NOTICE OF FINAL EXEMPT RULEMAKING
TITLE 7. EDUCATION
CHAPTER 2. STATE BOARD OF EDUCATION

[R21-173]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action
2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific), and the statute or session law authorizing the exemption:
3. The effective date of the rules and the agency's reason it selected the effective date:
4. A list of all notices published in the Register as specified in R1-1-409(A) that pertains to the record of the exempt rulemaking:
5. The agency's contact person who can answer questions about the rulemaking:
6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:
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:
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:
9. The summary of the economic, small business and consumer impact, if applicable:
10. A description of the changes between the proposed rules, including supplemental notices and final rules (if applicable):
11. A summary of the comments made regarding the rule and the agency response to them:



requesting the Board remove language that was already removed from the rule in 2019. The Board also received public comments requesting the Board remove language that prohibits sex education instruction and materials from including the teaching of abnormal, deviate, or unusual sexual acts and practices. The Board did not make this change because the Board's parameters for this rulemaking was to only make changes to conform and comply with HB 2035.

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

Not applicable

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

Not applicable

**14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:**

Not applicable

**15. The full text of the rule follows:**

**TITLE 7. EDUCATION**

**CHAPTER 2. STATE BOARD OF EDUCATION**

**ARTICLE 3. CURRICULUM REQUIREMENTS AND SPECIAL PROGRAMS**

Section

R7-2-303. Sex Education

**ARTICLE 3. CURRICULUM REQUIREMENTS AND SPECIAL PROGRAMS**

**R7-2-303. Sex Education**

- A. Instruction in sex education in the public schools of Arizona, including instruction provided after hours, shall be offered only in conformity with the following requirements. Nothing in this section shall be construed to require a school district or charter school provide sex education instruction to pupils.
1. Common schools: Nature of instruction; approval; format.
    - a. Supplemental/elective nature of instruction. The common schools of Arizona may provide a specific elective lesson or lessons concerning sex education as a supplement to the health course of study.
      - i. This supplement may only be taken by the student at the written request of the student's parent or guardian. When the school district or charter school seeks consent pursuant to this subsection, the school district or charter school shall inform the parent or guardian of their right to review the instructional materials and activities.
      - ii. Alternative elective lessons from the state-adopted optional subjects shall be provided for students who do not enroll in elective sex education.
      - iii. ~~Elective sex education lessons shall not exceed the equivalent of one class period per day for 1/8 of the school year for grades K through four. School districts and charter schools may not provide sex education lessons or instruction before grade five.~~
      - iv. Elective sex education lessons shall not exceed the equivalent of one class period per day for 1/4 of the school year for grades five through eight.
    - b. Local governing board approval. All elective sex education lessons to be offered shall first be approved by the local governing board.
      - i. Each local governing board contemplating the offering of elective sex education shall establish an advisory committee with membership representative of district size and the racial and ethnic composition of the community to assist in the development of lessons and advise the local governing board on an ongoing basis. All meetings of committees that are authorized for the purposes of reviewing and selecting the sex education course of study shall be publicly noticed at least two weeks before occurring and be open to the public pursuant to Arizona Revised Statutes Title 38, Chapter 3, Article 3.1.
      - ii. The local governing board shall review the total instructional materials and approve all lessons and curricula in the course of study to be offered in sex education.
      - iii. The local governing board shall make any proposed sex education course of study available and accessible for review and public comment for at least ~~sixty~~ 60 days before the governing board or governing body decides whether to approve that course of study. The local governing board shall publicize and hold at least two public hearings within the ~~sixty-day~~ 60-day period for the purpose of receiving public input at least one week prior to the local governing board meeting at which the elective sex education lessons will be considered for approval. Public input may include written comments, oral comments and comments submitted electronically.
      - iv. The local governing board shall maintain for viewing by the public, both online and in-person pursuant to A.R.S. § 15-102(A)(2), the total instructional materials to be used in approved elective sex education lessons within the school district or charter school at least two weeks before any instruction is offered.
    - c. Format of instruction.
      - i. Lessons shall be taught to boys and girls separately.
      - ii. Lessons shall be ungraded, require no homework, and any evaluation administered for the purpose of self-analysis shall not be retained or recorded by the school or the teacher in any form.
      - iii. Lessons shall not include tests, psychological inventories, surveys, or examinations containing any questions about the student's or the student's parents' personal beliefs or practices in sex, family life, morality, values or religion.



- 2. High schools: Course offering; approval; format.
  - a. A course in sex education may be provided in the high schools of Arizona.
  - b. This course may only be taken by the student at the written request of the student’s parent or guardian.
  - c. Alternative elective lessons from the state-adopted optional subjects shall be provided for students who do not enroll in elective sex education.
  - d. All meetings of committees that are authorized for the purposes of reviewing and selecting the sex education course of study shall be publicly noticed at least two weeks before occurring and be open to the public pursuant to Arizona Revised Statutes Title 38, Chapter 3, Article 3.1.
  - e. The local governing board shall review the total instructional materials and approve all lessons and curricula in the course of study to be offered in sex education.
  - f. The local governing board shall make any proposed sex education course of study available and accessible for review and public comment for at least sixty days before the governing board or governing body decides whether to approve that course of study. The local governing board shall publicize and hold at least two public hearings within the sixty-day period for the purpose of receiving public input at least one week prior to the local governing board meeting at which the elective sex education lessons will be considered for approval. Public input may include written comments, oral comments and comments submitted electronically.
  - g. Lessons shall not include tests, psychological inventories, surveys, or examinations containing any questions about the student’s or the student’s parents’ personal beliefs or practices in sex, family life, morality, values or religion.
  - h. Local governing boards shall maintain for viewing by the public, both online and in-person ~~pursuant~~ according to A.R.S. § 15-102(A)(2), the total instructional materials to be used in all sex education courses to be offered in high schools within the school district or charter school at least two weeks before any instruction is offered.
- 3. Content of instruction: Common schools and high schools.
  - a. All sex education materials and instruction shall be age appropriate, recognize the needs of exceptional students, meet the needs of the district, recognize local community standards and sensitivities, shall not include the teaching of abnormal, deviate, or unusual sexual acts and practices, and shall include the following:
    - i. Emphasis upon the power of individuals to control their own personal behavior. Pupils shall be encouraged to base their actions on reasoning, self-discipline, sense of responsibility, self-control and ethical considerations such as respect for self and others; and
    - ii. Instruction on how to say “no” to unwanted sexual advances and to resist negative peer pressure. Pupils shall be taught that it is wrong to take advantage of, or to exploit, another person.
  - b. All sex education materials and instruction which discuss sexual intercourse shall:
    - i. Stress that pupils should abstain from sexual intercourse until they are mature adults;
    - ii. Emphasize that abstinence from sexual intercourse is the only method for avoiding pregnancy that is 100 percent effective;
    - iii. Stress that sexually transmitted diseases have severe consequences and constitute a serious and widespread public health problem;
    - iv. Include a discussion of the possible emotional and psychological consequences of preadolescent and adolescent sexual intercourse and the consequences of preadolescent and adolescent pregnancy;
    - v. Advise pupils of Arizona law pertaining to the financial responsibilities of parenting, and legal liabilities related to sexual intercourse with a minor.
- B. Certification of compliance. All districts and charter schools offering a local governing board-approved sex education course or lesson shall certify, under the notarized signature of both the president of the local governing board and the chief administrator of the school district or charter school, compliance with this rule except as specified in subsection (C). Acknowledgment of receipt of the compliance certification from the State Board of Education is required as a prerequisite to the initiation of instruction. Certification of compliance shall be in a format and with such particulars as shall be specified by the Department of Education.
- C. School districts and charter schools shall make any existing sex education course of study available and accessible for review both online and in person by June 30, 2021.

**NOTICE OF FINAL EXEMPT RULEMAKING  
TITLE 7. EDUCATION  
CHAPTER 2. STATE BOARD OF EDUCATION**

[R21-174]

**PREAMBLE**

<b><u>1. Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
R7-2-300	Amend
R7-2-310	Amend
R7-2-311	Amend
R7-2-1001	Amend
R7-2-1069	Amend
R7-2-1070	Amend
R7-2-1141	Amend
<b><u>2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific), and the statute or session law authorizing the exemption:</u></b>	
Authorizing statute: A.R.S. § 15-203(A)(1)	



Implementing statute: A.R.S. §§ 15-213 and 15-741

Exemption statute: A.R.S. § 41-1005(F)

3. **The effective date of the rules and the agency's reason it selected the effective date:**  
September 27, 2021
4. **A list of all notices published in the Register as specified in R1-1-409(A) that pertains to the record of the exempt rulemaking:**  
Not applicable
5. **The agency's contact person who can answer questions about the rulemaking:**  
Name: Alicia Williams, Executive Director  
Address: State Board of Education  
1700 W. Washington, Suite 300  
Phoenix, AZ 85007  
Telephone: (602) 542-5057  
Fax: (602) 542-3046  
Email: inbox@azsbe.az.gov
6. **An agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:**  
Regarding changes to R7-2-300, R7-2-310 and R7-2-311, A.R.S. § 15-741 requires the Board to adopt rules for the purposes of implementing statewide assessments. The rules governing statewide assessment had not been amended in 30 years and included antiquated language in need of an update.  
Regarding changes to Article 10, School District Procurement, SB 1056 from the 2021 legislative session made changes to public procurement code that impacted school district procurement. Specifically, the legislation allows school districts to use a shorter capital cost repayment schedule than required in statute regarding energy cost savings projects. During the rulemaking process, the Board also removed a requirement for providers to cover the costs of a study performed to establish the scope of the contract and more because the requirement was excluded from statute. Other technical and conforming changes were recommended by the Office of the Auditor General.
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 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, if applicable:**  
The rules are not expected to have significant, if any, economic impact on small businesses.
10. **A description of the changes between the proposed rules, including supplemental notices and final rules (if applicable):**  
Not applicable
11. **A summary of the comments made regarding the rule and the agency response to them:**  
The Board opened rulemaking procedures at the June 28, 2021 meeting. A public hearing was held on July 28, 2021. The Board received updates on the rules at the August 27, 2021 meetings and closed the rulemaking procedures at the September 27, 2021 meeting. The Board did not receive public comments regarding R7-2-300, R7-2-310 and R7-2-311. The Board did receive public comments supporting the rules and the removal of the requirement for providers to cover the cost of a study. The Board, at the recommendation of the Office of the Auditor General, agreed with this suggestion.
12. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**  
Not applicable
13. **Incorporations by reference and their location in the rules:**  
Not applicable
14. **Was this rule previously made as an emergency rule? If so, please indicate the Register citation:**  
Not applicable
15. **The full text of the rule follows:**

## TITLE 7. EDUCATION

### CHAPTER 2. STATE BOARD OF EDUCATION

#### ARTICLE 3. CURRICULUM REQUIREMENTS AND SPECIAL PROGRAMS

Section  
R7-2-300. Adoption of Assessments



- R7-2-310. Pupil Achievement Testing
- R7-2-311. Pupil Testing Variable Information

**ARTICLE 10. SCHOOL DISTRICT PROCUREMENT**

**PART I. IN GENERAL**

- Section
- R7-2-1001. Definitions

**PART XI. GUARANTEED ENERGY CONTRACTS**

- Section
- R7-2-1069. Guaranteed Energy Cost Savings Contracts
- R7-2-1070. Guaranteed Energy Production Contracts

**ARTICLE 11. SCHOOL DISTRICT PROCUREMENT (CONTINUED)**

**PART XVIII. BID PROTESTS**

- Section
- R7-2-1141. Resolution of Bid Protests

**ARTICLE 3. CURRICULUM REQUIREMENTS AND SPECIAL PROGRAMS**

**R7-2-300. Adoption of Assessments**

As required in A.R.S. § 15-741, the Board shall adopt ~~statewide assessments as Arizona instruments to measure standards~~ in order to measure pupil achievement of the state board adopted academic standards ~~in at least grades 3 through 10 as follows:~~

1. In English language arts and mathematics, annually in grades three through eight and at least once in high school.
2. In science, once in grades three through five and grades six through eight and at least once in high school.
3. In other subjects and for other students, at the direction of the Board.

**R7-2-310. Pupil Achievement Testing**

- A. ~~The nationally standardized norm-referenced achievement tests statewide assessments~~ adopted by the State Board shall be ~~given administered~~ annually during ~~a week in September or October~~ the testing windows established by the Department. By June 1 of each year, the ~~Board~~ Department shall designate the ~~week during the fall window~~ for testing for the next school year and all school districts and charter schools shall administer the test during the week windows designated.
- B. The superintendent or head of ~~district~~ the local education agency shall be responsible for:
  1. Reviewing, and attesting to have reviewed, the policies, procedures and guidance provided by the Department regarding administration of statewide assessments.
  - ~~2.~~ Providing school district enrollment data to the Department of Education annually for purposes of test material distribution.
  - ~~3.~~ Verifying the count of test materials received and distributing the test materials to each public school in the ~~district~~ local education agency.
  - ~~4.~~ Securing the test materials prior to distribution to pupils or persons administering the tests at the time of testing, as well as after the time of testing. Test materials shall be kept in locked storage.
  - ~~5.~~ Advising all district and school employees that the test materials are not to be reproduced in any manner.
  - ~~6.~~ Familiarizing each person who will administer the test with the test publishers' directions for administering the tests, the timing of the tests and the testing schedule. This is to be accomplished through meetings which shall not be held prior to one week before the first day of near the window for testing. ~~At the conclusion of each such meeting, all test materials are to be collected and returned to locked storage.~~
  - ~~7.~~ Distributing actual test materials to persons administering the tests on the day of testing and collecting test materials at the end of the day of testing.
  - ~~8.~~ Training persons administering the tests on how to properly complete the identification information on the test booklet/answer sheet and how to code the information required on the variables being collected pursuant to A.R.S. § 15-741, et seq.
  - ~~9.~~ Properly packaging all tests/answer sheets scorable and nonscorable materials which are to be scored by returned to the scoring contractor. Packaging shall comply with instructions furnished by the scoring contractor or the Department of Education.
  - ~~10.~~ Forwarding all tests/answer sheets scorable and nonscorable materials to be scored which are to be returned to the scoring contractor per instructions. Tests/answer sheets Materials for the entire ~~district~~ local education agency should be forwarded in one shipment.
  - ~~11.~~ Retaining all unused and reusable test materials, reporting them in the school's inventory and, storing them in a safe and secure manner and returning the test materials at the end of the testing window per instructions.
  - ~~12.~~ Immediately reporting to the Department of Education any losses of test materials or other irregularities.
  - ~~13.~~ The superintendent or head of ~~district~~ the local education agency may designate a testing coordinator to act on his their behalf.
- C. Persons designated by the superintendent or head of ~~district~~ the local education agency to administer the test shall:
  1. Keep all test materials in locked storage.
  2. Not reproduce any test materials in any manner.
  3. Not disclose any actual test items to pupils prior to testing.
  4. Not provide answers of any test items to any pupils.
  5. Administer only practice sample tests which are provided by the test publishers. Previous editions of the test series being used in the statewide testing program may not be used as practice sample tests.
  6. Strictly observe all timed ~~subtests~~ statewide assessments, if the assessments are timed. The test publishers' suggested time limits for untimed subtests shall be followed as closely as possible in order to maintain uniformity in test administration.



7. Follow directions for administering the test explicitly. No test item may be repeated unless otherwise indicated in the directions.
  8. Not change a pupil's answer.
  9. Return all test materials to the superintendent or head of ~~district~~ the local education agency immediately upon completion of testing.
- D.** Local education agencies shall administer the statewide assessment to all students in the grades designated by the Board. Failure to administer a statewide assessment to at least 95 percent of all students will be factored into the statewide accountability system.
- ~~D-E.~~** All violations of this ~~rule~~ Section shall be referred by the superintendent or head of ~~district~~ the local education agency to the State Superintendent of Public Instruction, for appropriate action.
- ~~E.~~** For purposes of determining if a student may be exempt from the norm-referenced achievement testing requirement pursuant to A.R.S. § 15-744(B), the local governing board shall:
1. ~~Verify that all students to be exempted have been assessed for language proficiency as required by R7-2-306 in the areas of listening, speaking, reading and writing in English and the primary language and have been determined to be limited-English proficient.~~
  2. ~~Verify that all limited-English proficient students considered for exemption are enrolled in one of the following programs as required by A.R.S. § 15-754:~~
    - a. ~~K-6 Transitional Bilingual Program;~~
    - b. ~~7-12 Structured Bilingual Program;~~
    - e. ~~K-12 Bilingual Bicultural Program;~~
    - d. ~~English as a Second Language Program; or~~
    - e. ~~Individualized Education Program (this program is only acceptable if there are fewer than 10 limited-English proficient students in a kindergarten program or a grade in a school).~~
  3. ~~Submit to the Arizona Department of Education, no later than September 30 of each year, a governing board resolution for the exemption of eligible students. This resolution shall contain the number, grade level, year of exemption status and primary language of all students to be exempted and an assurance signed by the governing board president and notarized that the requirements of subsections (E)(1) and (E)(2) have been met.~~
  4. ~~Submit to the Arizona Department of Education, no later than December 1 of each year, a final report describing the total number of actual students to be exempted.~~
- ~~F.~~** Limited-English students exempted from the norm-referenced achievement testing program shall be assessed annually with an alternative to the norm-referenced achievement test. If the exempted student is in grades 3, 8, or 12, the student shall be administered the assessments prescribed in subsection (F)(2)(c). Alternatives shall be as follows:
1. ~~In the first year a limited-English proficient student is enrolled within the district, the district may:~~
    - a. ~~Administer the language proficiency testing conducted pursuant to R7-2-306; or~~
    - b. ~~Administer the assessments prescribed in subsection (F)(2)(a) or (b) as the alternative assessment in the areas of reading and writing. In the area of mathematics, districts shall administer the district measurement that has been adopted to assess the essential skills in English or in the primary language to such students.~~
  2. ~~In the years following the first year of enrollment in the district, the alternative assessment shall be:~~
    - a. ~~The tests that have been adopted by the district in accordance with A.R.S. § 15-741 to assess the essential skills in reading, writing and mathematics in English; or~~
    - b. ~~The tests that have been adopted by the district in accordance with A.R.S. § 15-741 to assess the essential skills in the student's primary language in reading, writing and mathematics. In determining which primary language assessment to administer, the governing board shall consider the extent to which the exempted student has received recent schooling in the primary language;~~
    - e. ~~Beginning in the 1991-92 school year, the Arizona Student Assessment Program Essential Skills Tests in English or Spanish shall be administered to exempted students who are enrolled in grades 3, 8, or 12.~~
  3. ~~Alternative assessment instruments specified in subsection (F)(2)(a) or (b) shall be used at the instructional levels for which they were designed.~~
  4. ~~Alternative assessment administered as specified in subsection (F)(2)(a) or (b) shall be conducted at any time prior to April 30 of the school year.~~
  5. ~~The results of alternative assessments administered pursuant to subsections (F)(2)(a) and (b) of this subsection shall be submitted to the Department of Education prior to May 30 of the school year.~~
- ~~G.~~** The school district shall maintain cumulative files regarding exemptions.
- ~~H.~~** Beginning in the 1991-1992 school year, the District Assessment Plan filed pursuant to A.R.S. § 15-741(C)(3) shall include plans for the alternative assessment of limited-English proficient students.

#### **R7-2-311. Pupil Testing Variable Information**

Persons designated by the superintendent or head of ~~district~~ the local education agency to administer the State Board approved nationally standardized norm-referenced achievement tests statewide assessments shall assure that the following information requested by the Department is properly completed on the answer document for each pupil participating in the testing program that is administered a statewide assessment:

1. Sex
2. Primary language
3. Racial/ethnic background.
4. Limited-English proficient pupils participating in required programs by type pursuant to A.R.S. § 15-754, where applicable.



ARTICLE 10. SCHOOL DISTRICT PROCUREMENT

PART I. IN GENERAL

R7-2-1001. Definitions

In Articles 10 and 11, unless the context otherwise requires:

1. "Acceptance period" means the period of time specified in the solicitation that a bid or proposal is irrevocable, except as specified in R7-2-1030.
2. "Actual energy production" means the actual amount of energy that flows from the energy production measure on an annual basis as measured by a meter in kilowatt hours alternating current.
3. "Advantageous to the school district" means in the best interest of the school district, but does not necessarily mean lowest bid/cost.
4. "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-subsidary relationship between persons.
5. "Alternative project delivery methods for construction" means construction-manager-at-risk, design-build, and job-order-contracting construction services.
6. "Architect services," "engineer services," "land surveying services," "geologist services" and "landscape architect services" mean those professional services within the scope of the practice of those services as provided in A.R.S. Title 32, Chapter 1, Article 1.
7. "Award" means a determination by the school district that it is entering into a contract with one or more bidders or offerors.
8. "Bid" means a response to an invitation for bids and includes an offer to contract with the school district.
9. "Bidder" means a person submitting a bid in response to an invitation for bids.
10. "Brand name or equal specification" means a written description that uses one or more manufacturers' names or catalog numbers to describe the standard of quality, performance, and other characteristics needed to meet the school district's requirements, and that provides for the submission of equivalent products.
11. "Brand name specification" means a written description limited to one or more items by manufacturers' names or catalog numbers.
12. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.
13. "Change order" means a written order that is approved by the governing board and that directs the contractor to make changes that the changes clause of the contract authorizes the governing board to order.
14. "Clergy" means a minister of a religion.
15. "Coefficient" means the contractor's price adjustment to the unit price in a job order contract. Several coefficients may apply to the unit price book.
16. Construction:
  - a. Means the process of building, altering, repairing, improving or demolishing any school district structure or building, or other public improvements of any kind to any public real property.
  - b. Construction does not include:
    - i. The routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property.
    - ii. The investigation, characterization, restoration or remediation due to an environmental issue of existing facilities, structures, buildings or real property.
17. "Construction-manager-at-risk" means a project delivery method in which:
  - a. There is a separate contract for design services and a separate contract for construction services, except that instead of a single contract for construction services, the school district may elect separate contracts for preconstruction services during the design phase, for construction during the construction phase and for any other construction services.
  - b. The contract for construction services may be entered into at the same time as the contract for design services or at a later time.
  - c. Design and construction of the project may be either:
    - i. Sequential with the entire design complete before construction commences.
    - ii. Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.
  - d. Finance services, maintenance services, operations services, preconstruction services and other related services may be included.
18. "Construction services" means either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:
  - a. Construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods.
  - b. A combination of construction and, as elected by the school district, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definitions of construction-manager-at-risk, design-build or job-order-contracting in this Section.
19. "Contract" means all types of agreements, including purchase orders, regardless of what they may be called, for the procurement of materials, services, construction or construction services, or the disposal of materials.
20. "Contract modification" means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.
21. "Contractor" means any person who has a contract with a school district.



22. “Cooperative purchasing” means procurement conducted by, or on behalf of, more than one public procurement unit.
23. “Cost” means the aggregate cost of all materials and services, including labor performed by school district employees.
24. “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 offeror or contractor in performing the contract.
25. “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 cost of the work.
26. “Data” means documented information, regardless of form or characteristic.
27. “Days” means calendar days and shall be computed pursuant to A.R.S. § 1-243.
28. “Defective data” means data that is inaccurate, incomplete or outdated.
29. “Dentist” means a person licensed pursuant to A.R.S. Title 32, Chapter 11.
30. “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.
31. “Design-bid-build” means a project delivery method in which:
  - a. There is a sequential award of two separate contracts.
  - b. The first contract is for design services.
  - c. The second contract is for construction.
  - d. Design and construction of the project are in sequential phases.
  - e. Finance services, maintenance services and operations services are not included.
32. “Design-build” means a project delivery method in which:
  - a. There is a single contract for design services and construction services, except that instead of a single contract for design services and construction services, the school district may elect separate contracts for preconstruction services and design services during the design phase, for construction and design services during the construction phase and for any other construction services.
  - b. Design and construction of the project may be either:
    - i. Sequential with the entire design complete before construction commences.
    - ii. Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.
  - c. Finance services, maintenance services, operations services, preconstruction services and other related services may be included.
33. “Design professional” means an individual or firm that is registered by the state board of technical registration pursuant to A.R.S. Title 32, Chapter 1 to practice architecture, engineering, geology, landscape architecture or land surveying or any combination of those professions and any person employed by the registered individual or firm.
34. “Design professional service contract” means a written agreement relating to the planning, design, construction administration, study, evaluation, consulting, inspection, surveying, mapping, material sampling, testing or other professional, scientific or technical services furnished in connection with any actual or proposed study, planning, survey, environmental remediation, construction, improvement, alteration, repair, maintenance, relocation, moving, demolition or excavation of a structure, street or roadway, appurtenance, facility or development or other improvement to land.
35. “Design professional services” means architect services, engineer services, land surveying services, geologist services or landscape architect services or any combination of those services performed by or under the supervision of a design professional or an employee or subconsultant of the design professional.
36. “Design requirements” means at a minimum:
  - a. The school district’s written description of the project or service to be procured, including:
    - i. The required features, functions, characteristics, qualities and properties.
    - ii. The anticipated schedule, including start, duration and completion.
    - iii. The estimated budgets applicable to the specific procurement for design and construction and, if applicable, for operation and maintenance.
  - b. May include:
    - i. Drawings and other documents illustrating the scale and relationship of the features, functions and characteristics of the project, which shall all be prepared by a design professional who is registered pursuant to A.R.S. § 32-121.
    - ii. Additional design information or documents that the school district elects to include.
37. “Design services” means architect services, engineer services or landscape architect services.
38. “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.
39. “Detailed record” means minutes, that 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.
40. “Discussions” means an exchange or series of exchanges between the school district and a person who has submitted an unpriced technical offer or a proposal, resulting in an opportunity for the person to revise the unpriced technical offer or proposal prior to final evaluation by the school district.
41. “District representative” means a district employee or the governing board acting within the limits of the district representative’s authority. There may be more than one appointed for different purposes and different procurements.
42. “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.
43. “Effective utility rate” means the average price per kilowatt hour that a school district paid to its utility provider for electricity service to the facility that is the subject of the guaranteed energy production contract over the previous twelve months.
44. “Eligible procurement unit” means a public procurement unit, a nonprofit corporation, or an external procurement activity.



- 45. "Employee" means an individual drawing a salary from a school district and any noncompensated individual performing personal services for any school district.
- 46. "Energy baseline" means a calculation of the amount of energy used in an existing facility before the installation or implementation of the energy cost savings measures.
- 47. "Energy cost savings" means one or both of the following:
  - a. An estimated reduction in net fuel costs, energy costs, water costs, stormwater fees or other utility costs, or related net operating costs, including costs for anticipated equipment replacement and repair, from or as compared to an established baseline of those costs.
  - b. An estimated revenue increase associated with additional facility use or the use of improved meters or other measuring devices due to improvements included in the guaranteed energy cost savings contract.
- ~~47-48.~~ "Energy cost savings measure" means a training program or facility alteration designed to reduce energy consumption, which may include one or more of the measures authorized in A.R.S. § 15-213.01, and any related meters or other measuring devices.
- ~~48-49.~~ "Energy production measure" means renewable and alternative energy projects or renewable energy power service agreements.
- ~~49-50.~~ "Established catalog price" means the price included in a catalog, price list, schedule or other form that:
  - a. Is regularly maintained by a manufacturer, distributor or contractor.
  - b. Is either published or otherwise available for inspection by customers.
  - c. States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the materials or services involved.
- ~~50-51.~~ "Excess materials" means any materials which have a remaining useful life but which are no longer required by the using school district in possession of the materials.
- ~~51-52.~~ "External procurement activity" means any buying organization not located in this state that would qualify as a public procurement unit.
- ~~52-53.~~ "Fair market value" means the price at which sales have been consummated for materials of like type, quality, and quantity in a particular market at the time of acquisition.
- ~~53-54.~~ "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.
- ~~54-55.~~ "Finance services" means financing for a construction services project.
- ~~55-56.~~ "General Services Administration contract" means contracts awarded by the United States government General Services Administration.
- ~~56-57.~~ "Gift or benefit" means a payment, distribution, expenditure, advance, deposit or donation of monies, any intangible personal property or any kind of tangible personal or real property that is not of nominal value such as a greeting card, t-shirt, mug or pen. Gift or benefit does not include either:
  - a. Food or beverage.
  - b. Expenses or sponsorships relating to a special event or function to which individuals involved in procurement and purchasing are invited.
- ~~57-58.~~ "Governing board" has the meaning defined in A.R.S. § 15-101.
- ~~58-59.~~ "Governing instruments" means legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter, by-laws, or similar documents.
- ~~59-60.~~ "Guaranteed energy cost savings contract" means a contract for implementing one or more energy cost savings measures.
- ~~60-61.~~ "Guaranteed energy price" means the agreed on price to be charged to the school district for each kilowatt hour alternating current of actual energy production as such may change on an annual basis as set forth in the guaranteed energy production contract.
- ~~61-62.~~ "Guaranteed energy production" means the amount of energy, measured in kilowatt hours alternating current, that the qualified provider guarantees for each year of the guaranteed energy production contract.
- ~~62-63.~~ "Guaranteed energy production contract" means a contract for implementing one or more energy production measures between one or more qualified providers and a school district.
- ~~63-64.~~ "Guaranteed energy production shortfall" means the amount, if any, that the actual energy production is less than the guaranteed energy production in any given year.
- ~~64-65.~~ "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.
- ~~65-66.~~ "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.
- ~~66-67.~~ "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web.
- ~~67-68.~~ "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.
- ~~68-69.~~ "In writing" has the same meaning as "written" or "writing" in A.R.S. § 47-1201, which includes printing, typewriting, electronic transmission, facsimile, or any other intentional reduction to tangible form.
- ~~69-70.~~ "Job-order-contracting" means a project delivery method in which:
  - a. The contract is a requirements contract for indefinite quantities of construction.
  - b. The construction to be performed is specified in job orders issued during the contract.
  - c. Finance services, maintenance services, operations services, preconstruction services, design services and other related services may be included.
- ~~70-71.~~ "Legal counsel" means a person licensed as an attorney by the Arizona Supreme Court.
- ~~71-72.~~ "Life cycle" means the useful life of the earth-moving, material-handling, road maintenance and construction equipment to the original using school district.



- ~~72-73.~~“Local public procurement unit” means any political subdivision, any agency, board, department or other instrumentality of such political subdivision, and any nonprofit corporation created solely for the purpose of administering a cooperative purchase under Articles 10 and 11.
- ~~73-74.~~“Maintenance services” means routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.
- ~~74-75.~~“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.
- ~~75-76.~~“May” denotes the permissive.
- ~~76-77.~~“Minor” 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.
- ~~77-78.~~“Multiple award” means award of multiple contracts for identical or similar materials or services to more than one bidder or offeror.
- ~~78-79.~~“Multistep sealed bidding” means a 2-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.
- ~~79-80.~~“Negotiation” means an exchange or series of exchanges between the school district and a person with a goal of establishing the terms, conditions and prices in a contract between the school district and the person, where such negotiation is authorized in Articles 10 and 11.
- ~~80-81.~~“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.
- ~~81-82.~~“Nonprofit corporation” means any nonprofit corporation as designated by the Internal Revenue Service under section 501(c)(3) through 501(c)(6) or under section 115, if created by two or more local public procurement units, and includes certified nonprofit agencies that serve individuals with disabilities as defined in A.R.S. § 41-2636.
- ~~82-83.~~“Offeror” means a person submitting a proposal in response to a request for proposals.
- ~~83-84.~~“Operations services” means routine operation of existing facilities, structures, buildings or real property.
- ~~84-85.~~“Outright purchase” means the initial cost to the school district for the earth-moving, material-handling, road maintenance and construction equipment, including all vendor charges and financing costs.
- ~~85-86.~~“Owner” means the school district.
- ~~86-87.~~“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 ten percent by weight or volume of noncellulosic material such as laminates, binders, coatings or saturants.
- ~~87-88.~~“Paper product” means paper items or commodities, including paper napkins, towels, corrugated paper and related types of cellulosic products containing not more than ten percent by weight or volume of noncellulosic material such as laminates, binders, coatings or saturants.
- ~~88-89.~~“Person” means any corporation, business, individual, union, committee, club, other organization or group of individuals.
- ~~89-90.~~“Physician” means a person licensed pursuant to A.R.S. Title 32, Chapters 7, 8, 13, 14, 15.1, 16, or 17.
- ~~90-91.~~“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.
- ~~91-92.~~“Posted prices” means the sale price determined by the school district to be fair market value.
- ~~92-93.~~“Preconstruction services” means services and other activities during the design phase.
- ~~93-94.~~“Pricing 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 selling prices, historical selling prices or current selling prices of the items being purchased.
- ~~94-95.~~“Prime contractor” means a general contractor, who contracts with a property owner and, in turn, employs a subcontractor, or subcontractors, to perform some or all of the work.
- ~~95-96.~~“Procurement” means buying, purchasing, renting, leasing or otherwise acquiring any materials, services, construction or construction services. Procurement also includes all functions that pertain to the obtaining of any material, service, construction, or construction services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- ~~96-97.~~“Procurement file” means the official procurement records of the school district containing the following:
- a. List of notified vendors.
  - b. Procurement disclosure statements.
  - c. Final solicitation.
  - d. Solicitation amendments.
  - e. Bids and offers.
  - f. Offer revisions and best and final offers.
  - g. Discussions.
  - h. Clarifications.
  - i. Final evaluation reports.
  - j. Additional information, as necessary.
- ~~97-98.~~“Proposal” means a response to a request for proposals and includes an offer to contract with the school district.
- ~~98-99.~~“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.
- ~~99-100.~~“Public procurement unit” means either a local public procurement unit, the Arizona Department of Administration, any other state or an agency of the United States.



- ~~100-101.~~ “Public service corporation” means all corporations other than municipal engaged in furnishing gas, electricity, or water and subject to regulation as a utility by the Arizona Corporation Commission.
- ~~101-102.~~ “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.
- ~~102-103.~~ “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 Articles 10 and 11.
- ~~103-104.~~ “Qualified products list” means an approved list of materials or construction items described by model or catalog numbers that, prior to competitive solicitation, the governing board has determined will meet the applicable specification requirement.
- ~~104-105.~~ “Qualified select bidders list” means a selection process for establishing a list of best-qualified prime contractors or construction material suppliers for a specific, single project. The selection process is based upon listed evaluation criteria and conducted through a request for qualifications. Once the selection process is complete, the qualified bidders are invited to submit a sealed competitive bid based upon architectural/engineering plans and specifications or material specifications.
- ~~105-106.~~ “Reasonably susceptible of being awarded a contract” means those proposals that the school district determines are subject to award after the initial review of all original proposals.
- ~~106-107.~~ “Recycled paper” means paper products which have been manufactured from materials otherwise destined for the waste stream and which contain at least forty percent recovered wastepaper with ten percent of that being post-consumer material.
- ~~107-108.~~ “Regional award” means an award of portions of the total requirement by geographic region.
- ~~108-109.~~ “Request for information” means all documents issued to vendors for the sole purpose of seeking information about the availability in the commercial marketplace of materials or services.
- ~~109-110.~~ “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.
- ~~110-111.~~ “Request for qualifications” means all documents, whether attached or incorporated by reference, which are used for soliciting statements of qualifications in accordance with procedures prescribed in R7-2-1101, R7-2-1106, R7-2-1108 or R7-2-1117.
- ~~111-112.~~ “Residual value” means the guaranteed minimum market value of the earth-moving, material-handling, road maintenance and construction 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.
- ~~112-113.~~ “Responsible bidder or offeror” means a person who at the time of contract award has the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance.
- ~~113-114.~~ “Responsive bidder or offeror” means a person who submits a bid or proposal which conforms in all material respects to the invitation for bids or request for proposals.
- ~~114-115.~~ “Reverse auction” means a procurement method in which bidders are invited to bid on supplying specified materials over the Internet in a real-time competitive bidding event.
- ~~115-116.~~ “School district” has the meaning defined in A.R.S. § 15-101, whose authority is exercised by the governing board or its designee.
- ~~116-117.~~ “Services” means the furnishing of labor, time or effort by a contractor or subcontractor that 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.
- ~~117-118.~~ “Shall” denotes the imperative.
- ~~118-119.~~ “Solicitation” means an invitation for bids, an invitation to submit technical offers, a request for proposals, a request for qualification, or any other invitation or request by which the school district invites a person to participate in a procurement.
- ~~119-120.~~ “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.
- ~~120-121.~~ “Specified professional services” means services of an architect, engineer, land surveyor, assayer, geologist and landscape architect and any combination of those services.
- ~~121-122.~~ “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.
- ~~122-123.~~ “Statement of qualifications” means a response to a request for qualifications issued pursuant to R7-2-1101, R7-2-1106, R7-2-1108 or R7-2-1117, or unsolicited qualifications submitted pursuant to R7-2-1062 or R7-2-1122, and does not include an offer to contract with the school district.
- ~~123-124.~~ “Subcontractor” means a person who contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with a school district.
- ~~124-125.~~ “Subconsultant” means any person, firm, partnership, corporation, association or other organization or a combination of any of them, that has a direct contract with a design professional or another subconsultant to perform a portion of the work under a design professional service contract.
- ~~125-126.~~ “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.
- ~~126-127.~~ “Suspension” means an action taken by the governing board under R7-2-1168 temporarily disqualifying a person from participating in school district procurements.
- ~~127-128.~~ “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.
- ~~128-129.~~ “Total life cycle cost” means total school district costs and financing costs throughout the life cycle of the earth-moving, material-handling, road maintenance and construction equipment being purchased less residual value.



- ~~129-130.~~ “Total school district costs” means costs to the school district for the earth-moving, material-handling, road maintenance and construction equipment, including repair costs, present value of monies, vendor charges, and all other identifiable school district costs that may be incurred.
- ~~130-131.~~ “Unit price” means the price published in the unit price book for a specific construction or construction related task. Each unit price is comprised of labor, equipment, or material costs to accomplish a specific task, and shall be defined in the contract.
- ~~131-132.~~ “Unit price book” means a comprehensive listing of specific construction related tasks together with a specific unit of measurement and a unit price.
- ~~132-133.~~ “Vendor charges” means the costs of all vendor support, materials, transportation, and all other identifiable costs associated with the vendor’s proposal or bid.
- ~~133-134.~~ “Vendor support” means services provided by the vendor for items such as consulting, education and training.
- ~~134-135.~~ “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.

## PART XI. GUARANTEED ENERGY CONTRACTS

### R7-2-1069. Guaranteed Energy Cost Savings Contracts

- A. A school district may procure a guaranteed energy cost savings contract with a qualified provider through competitive sealed proposals in accordance with R7-2-1041 through R7-2-1050.
1. The request for proposal evaluation factors required by R7-2-1042(A)(1)(h) shall include objective criteria for selecting the qualified provider, including the cost of the contract, the energy cost savings, the net projected energy savings, the quality of the technical approach, the quality of the project management plan, the financial solvency of the qualified provider and the experience of the qualified provider with projects of similar size and scope.
  2. Notwithstanding R7-2-1042(A)(1)(h), the request for proposals shall set forth the respective numerical weighting for each evaluation criterion.
  3. At the qualified provider’s expense, the proposal shall include an independent third-party validation of cost savings calculations associated with each proposed energy cost savings measure by a licensed, registered professional engineer, with credentials from the national association of energy engineers, who has demonstrated experience in energy analysis. The school district shall approve the selection of the independent third party.
  4. A school district may enter into a guaranteed energy cost savings contract with a qualified provider if the school district determines that the energy savings project will pay for itself within the expected life of the energy cost savings measures implemented (according to the manufacturer’s equipment standards), the term of the financial agreement or 25 years, whichever is shortest, if the recommendations in the proposal are followed. Notwithstanding this subsection, a school district may elect to use a shorter capital cost repayment schedule than required pursuant to this subsection. The school district shall retain the cost savings achieved by a guaranteed energy cost savings contract, and these cost savings may be used to pay for the contract and project implementation.
  5. A qualified provider is a person that is experienced in designing, implementing or installing energy cost savings measures, that has a record of established projects or measures of similar size and scope, that has demonstrated technical, operational, financial and managerial capabilities to design and operate cost savings measures and projects and that has the financial ability to satisfy guarantees for energy cost savings.
- B. In selecting a contractor to perform any construction work related to performing the guaranteed energy cost savings contract, the qualified provider may:
1. Develop and use a prequalification process for contractors.
  2. Require the contractor to demonstrate that the contractor is adequately bonded to perform the work and that the contractor has not failed to perform on a prior job.
- C. ~~At the selected qualified provider’s expense,~~ A study shall be performed by the selected qualified provider in order to establish the exact scope of the guaranteed energy cost savings contract, the fixed cost savings guarantee amount and the methodology for determining actual savings. The selected qualified provider will provide the school district with a final study report which validates that the fixed cost savings guarantee amount will meet or exceed the cost savings calculations contained within the original proposal. The study report shall be reviewed and approved by the school district before the actual installation of any equipment. The qualified provider shall transmit a copy of the approved study report to the division of school facilities board within the department of administration and the governor’s office ~~of energy policy~~.
- D. The information to develop the energy baseline shall be derived from historical energy costs or actual energy measurements or shall be calculated from energy measurements at the facility where energy cost savings measures are to be installed or implemented. The baseline shall be established before the installation or implementation of energy cost savings measures.
- E. One or more school districts may enter into a financing agreement with a qualified provider or a financial institution, trustee or paying agent for the purchase and installation or implementation of energy cost savings measures. Any required financing may be obtained as part of the original competitive sealed proposal process from the qualified provider, or from a third-party financing institution that is procured separately in accordance with Articles 10 and 11.
- F. The selected qualified provider shall provide a performance bond in accordance with R7-2-1103(A)(1)(c).
- G. The selected qualified provider shall make public the information in the subcontractor’s bids.
- H. The guaranteed energy cost savings contract shall include the following:
1. A requirement that, in determining whether the projected energy savings calculations have been met, the energy savings shall be computed by comparing the energy baseline before installation or implementation of the energy cost savings measures with the energy consumed after installation or implementation of the energy cost savings measures. The qualified provider and the school district may agree to make modifications to the energy baseline only for any of the following:
    - a. Changes in utility rates.
    - b. Changes in the number of days in the utility billing cycle.



- c. Changes in the square footage of the facility.
- d. Changes in the operational schedule of the facility.
- e. Changes in facility temperature.
- f. Significant changes in the weather.
- g. Significant changes in the amount of equipment or lighting ~~utilized~~ used in the facility.
- h. Significant changes in the nature or intensity of energy use such as the change of classroom space to laboratory space.
- 2. A payment schedule, with payments over a period of not more than the expected life of the energy cost savings measures implemented (according to the manufacturer’s equipment standards), the term of the financial agreement or 25 years, whichever is shortest, except a school district may elect to use a shorter capital cost repayment schedule than required pursuant to this subsection.
- 3. A requirement that all payments, except obligations on termination of the contract before its expiration, be made pursuant to the terms of the financing agreement.
- 4. A written guarantee from the qualified provider that the energy savings will meet or exceed the costs of the energy cost savings measures over the expected life of the energy cost savings measures implemented (according to the manufacturer’s equipment standards), the term of the financial agreement or 25 years, whichever is shortest, except a school district may elect to use a shorter capital cost repayment schedule than required pursuant to this subsection. The school district shall ensure that the contractor:
  - a. For the term of the guaranteed energy cost savings contract, prepares a measurement and verification report on an annual basis in addition to an annual reconciliation of savings.
  - b. Reimburses the school district for any shortfall of guaranteed energy cost savings on an annual basis.
  - c. Uses the international performance and measurement and verification protocol standards or the federal energy management program standards to validate the savings guarantee.
- I. A school district may ~~utilize~~ use a simplified energy performance contract for projects that are less than \$500,000. Simplified energy performance contracts are not required to include an energy savings guarantee and shall comply with all requirements in this Section except for subsections (D), (H)(1)(a) through (h) and (H)(4)(a) through (c).
- J. This Section does not apply to the construction of new buildings.
- K. For all projects under this Section, the school district shall report to the division of school facilities within the department of administration and the governor’s office of energy policy:
  - 1. The name of the project.
  - 2. The name of the qualified provider.
  - 3. The total cost of the project.
  - 4. The expected energy cost savings and relevant escalators.
  - 5. The ~~agreed-on~~ agreed-on baseline in the measurement and verification agreement in both kilowatt hours and dollars.

**R7-2-1070. Guaranteed Energy Production Contracts**

- A. A school district may procure a guaranteed energy production contract with a qualified provider through competitive sealed proposals in accordance with R7-2-1041 through R7-2-1050.
  - 1. The request for proposals evaluation factors required by R7-2-1042(A)(1)(h) shall include objective criteria for selecting the qualified provider, including the guaranteed energy price, the guaranteed energy production, the quality of the technical approach, the quality of the project management plan, the financial solvency of the qualified provider and the experience of the qualified provider with projects of similar size and scope.
  - 2. Notwithstanding R7-2-1042(A)(1)(h), the request for proposals shall set forth the respective numerical weighting for each evaluation criterion.
  - 3. The school district may obtain any required financing as part of the original competitive sealed proposal process from the qualified provider, or from a third-party financing institution procured separately in accordance with Articles 10 and 11.
  - 4. When submitting a proposal for the installation of equipment, the qualified provider shall include information containing the guaranteed energy production associated with each proposed energy production measure. The school district shall review and approve this guarantee before the actual installation of any equipment. The qualified provider shall transmit a copy of the approved guarantee to the division of school facilities ~~board~~ within the department of administration and the governor’s office of energy policy.
  - 5. A qualified provider is a person that is experienced in designing, implementing or installing energy cost savings measures, that has demonstrated technical, operational, financial and managerial capabilities to design and operate cost savings measures and projects and that has the financial ability to satisfy guarantees for guaranteed energy production, financial solvency and experience for projects of similar size and scope.
- B. In selecting a contractor to perform any construction work related to performing the guaranteed energy production contract, the qualified provider may:
  - 1. Develop and use a prequalification process for contractors.
  - 2. Require the contractor to demonstrate that the contractor is adequately bonded to perform the work and that the contractor has not failed to perform on a prior job.
- C. A guaranteed energy production contract shall include a guaranteed energy price, and a written guaranteed energy production as measured on an annual basis over the expected life of the energy production measures implemented or within ~~twenty-five~~ 25 years, whichever is shorter. The school district shall ensure that the contractor:
  - 1. Prepares a measurement and verification report on an annual basis in addition to an annual reconciliation of any guaranteed energy production shortfall.
  - 2. Reimburses the school district for any guaranteed energy production shortfall on an annual basis by multiplying any energy production shortfall by either the difference between the guaranteed energy price and the effective utility rate, or an alternative method as mutually agreed on by the school district and the qualified provider.



- D. The selected qualified provider shall provide a performance bond in accordance with R7-2-1103(A)(1)(c).
- E. The selected qualified provider shall make public information in the subcontractor’s bids.
- F. For all projects under this Section, the school district shall report to the governor’s office of energy policy and the division of school facilities board within the department of administration:
  1. The name of the project.
  2. The name of the qualified provider.
  3. The total cost of the project.
  4. The expected guaranteed energy production and guaranteed energy price, including relevant escalators, if applicable, over the term of the guaranteed energy production contract.
- G. For all projects under this Section, the school district shall annually report the actual energy production and guaranteed energy price to the division of school facilities board within the department of administration no later than October 15.

**ARTICLE 11. SCHOOL DISTRICT PROCUREMENT (CONTINUED)**

**PART XVIII. BID PROTESTS**

**R7-2-1141. Resolution of Bid Protests**

- A. Informal resolution of bid protests. Nothing in Articles 10 and 11 are intended to eliminate the informal resolution of problems by school district personnel.
- B. Formal resolution of bid protests. The governing board pursuant to ~~R7-2-1007~~ R7-2-1007 shall designate a district representative, as defined in ~~R7-2-1001(39)~~ R7-2-1001, to resolve bid protests. All solicitations issued by the school district shall include the name of the district representative and shall indicate that any bid protest shall be filed with the district representative. Appeal from the decision of the district representative may be made to the hearing officer pursuant to R7-2-1147 and R7-2-1181.

**NOTICE OF FINAL EXEMPT RULEMAKING**

**TITLE 7. EDUCATION**

**CHAPTER 2. STATE BOARD OF EDUCATION**

[R21-175]

**PREAMBLE**

<b><u>1. Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
R7-2-205	Amend
R7-2-601	Amend
R7-2-607	Amend
R7-2-615	Amend
R7-2-701	Amend
R7-2-702	Amend
R7-2-703	Amend
R7-2-704	Amend
R7-2-705	Amend
R7-2-709	Amend
R7-2-710	Repeal
R7-2-711	Amend
R7-2-712	Amend
R7-2-713	Amend
R7-2-714	Amend
R7-2-715	Amend
R7-2-716	Amend
R7-2-717	Amend
R7-2-718	Amend
R7-2-1301	Amend
R7-2-1302	Amend
R7-2-1303	Amend
R7-2-1304	Amend
R7-2-1305	Amend
R7-2-1307	Amend
R7-2-1308	Amend
<b><u>2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific), and the statute or session law authorizing the exemption:</u></b>	
Authorizing statute: A.R.S. §§ 15-203(A)(14); 15-203(A)(20)	
Implementing statute: A.R.S. §§ 15-501.01; 15-505	
Exemption statute: A.R.S. § 41-1005(F)	
<b><u>3. The effective date of the rules and the agency’s reason it selected the effective date:</u></b>	
September 27, 2021	



- 4. A list of all notices published in the Register as specified in R1-1-409(A) that pertains to the record of the exempt rulemaking:**  
N/A
- 5. The agency’s contact person who can answer questions about the rulemaking:**  
Name: Alicia Williams, Executive Director  
Address: State Board of Education  
1700 W. Washington, Suite 300  
Phoenix, AZ 85007  
Telephone: (602) 542-5057  
Fax: (602) 542-3046  
Email: inbox@azsbe.az.gov
- 6. An agency’s justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:**  
Regarding changes to R7-2-601 and R7-2-607, several terms throughout the certification rules are referenced but not defined and changes are needed to conform to legislation that allows substitute teachers to count their teaching experience towards a standard certification. Additionally, the changes in R7-2-601 and R7-2-607 clarify how a certificate holder demonstrates being “appropriately certified” under federal and state law. This clarification is necessary due to changes in federal law that had previously provided direction. Finally, the rule provides a mechanism to reclaim certificates. This is necessary following several certificates that were issued based on fraudulent documents.  
  
Regarding changes to R7-2-615, investments in gifted education have highlighted the need to reduce barriers to obtaining the Gifted Education Endorsement while ensuring the pathways to obtaining the endorsement remain rigorous.  
  
Finally, regarding the remaining changes impacting educator discipline, the Board needs to make conforming changes to recent legislation, expand its advisory committee to be more representative, and provide the hearing officer clarity on their powers and duties.
- 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 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, if applicable:**  
The rules are not expected to have significant, if any, economic impact on small businesses.
- 10. A description of the changes between the proposed rules, including supplemental notices and final rules (if applicable):**  
Not applicable
- 11. A summary of the comments made regarding the rule and the agency response to them:**  
The Board considered the rules at three public meetings when public comments were accepted. A public hearing was also held pursuant to the Board’s rulemaking procedures and statute. The Board accepts written public comments at any point during the rulemaking process. No public comments were submitted at any of these opportunities.
- 12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**  
Not applicable
- 13. Incorporations by reference and their location in the rules:**  
Not applicable
- 14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:**  
Not applicable
- 15. The full text of the rule follows:**

**TITLE 7. EDUCATION**  
**CHAPTER 2. STATE BOARD OF EDUCATION**

**ARTICLE 2. STATE BOARD OF EDUCATION COMMITTEE**

Section  
R7-2-205. ~~Certification Review, Suspension, and Revocation~~ Professional Practices Advisory Committee

**ARTICLE 6. CERTIFICATION**

Section  
R7-2-601. Definitions



- R7-2-607. General Certification Provisions  
R7-2-615. Endorsements

### ARTICLE 7. ADJUDICATIONS

- Section  
R7-2-701. Definitions  
R7-2-702. Filing; Computation of Time; Extension of Time  
R7-2-703. Contested Cases; Notice; Hearing Records  
R7-2-704. Service; Proof of Service  
R7-2-705. Hearings and Evidence  
R7-2-709. Rehearing and Review of Decisions  
R7-2-710. ~~Intervention-Repealed~~  
R7-2-711. Consolidation and Severance  
R7-2-712. Subpoenas  
R7-2-713. Conduct of Hearing  
R7-2-714. Testimony of Pupils  
R7-2-715. Evidence  
R7-2-716. Stipulations  
R7-2-717. Recommended Decisions  
R7-2-718. Decisions and Orders

### ARTICLE 13. CONDUCT

- Section  
R7-2-1301. Definitions  
R7-2-1302. Statement of Allegations  
R7-2-1303. Complaint  
R7-2-1304. Notification; Investigation  
R7-2-1305. Investigation  
R7-2-1307. Criminal Offenses  
R7-2-1308. Unprofessional and Immoral Conduct

### ARTICLE 2. STATE BOARD OF EDUCATION COMMITTEE

#### ~~R7-2-205. Certification Review, Suspension, and Revocation-Professional Practices Advisory Committee~~

- A. Professional Practices Advisory Committees (“Committees”) shall act in an advisory capacity to the State Board of Education (“Board”) in regard to certification or recertification matters related to immoral conduct, unprofessional conduct, unfitness to teach, ~~and~~ revocation, suspension, censure, or surrender of certificates, ~~and matters related to immoral or unprofessional conduct, unfitness to teach and the discipline of noncertificated individuals.~~
- B. Committees shall each consist of ~~seven~~ nine members comprised of the following:
1. One elementary classroom teacher,
  2. One secondary classroom teacher,
  3. One principal,
  4. One superintendent or assistant/associate superintendent,
  5. ~~Two~~ Three lay members, one lay member who shall be a parent of a student currently attending public school in Arizona, ~~and~~
  6. One local Governing Board member, ~~and~~
  7. One charter school teacher, principal or administrator.
- C. Members appointed pursuant to subsections B(1), (2), (3) and (4) of this ~~rule~~ section shall meet at least the following requirements:
1. Certified to teach in Arizona.
  2. Currently employed in or retired from the education profession in the specific category of their appointment.
  3. ~~If currently employed, shall have been employed in this category for the three years immediately preceding their appointment.~~
- D. Terms of the members
1. All regular terms shall be for four years except as set forth in subsection (E) below.
  2. A member may be reappointed with Board approval.
- E. The Board may remove any member from the Committee. All vacancies shall be filled as prescribed in subsections (C) above, and those persons appointed to fill vacancies shall serve to complete the term of the person replaced.
- F. The Committee shall:
1. Select from its members a Chairman and Vice-Chairman,
  2. A quorum shall be a majority of members of the Committee. A quorum is necessary to conduct business. An affirmative vote of the majority of the members present is needed to take action.
  3. Hold meetings as needed to conduct hearings or other Committee business by call of the Chairman of the Committee. If the Chairman neglects or declines to call a meeting, then a majority of the Committee may call a meeting. The Board may call a meeting as required to conduct necessary business. Notice of any meeting shall be given to Committee members seven days prior to the meeting.
  4. Recommend the removal of any member who is absent from three consecutive meetings.
  5. Refer to R7-2-1308 to assist in determining whether the acts complained of constitute unprofessional conduct.
  6. Conduct its business pursuant to R7-2-1301 et seq. and hearings pursuant to R7-2-701 et seq.

#### R7-2-601. Definitions



In this Article, the following definitions apply unless the context otherwise requires:

1. “Accredited institution” means one which is listed as accredited in the current Higher Education Directory a postsecondary institution that has accreditation that is recognized by the U.S. Department of Education. An institution based outside the United States shall be considered accredited if an a Department-approved foreign document evaluation firm approved by the Department declares it to be comparable to an accredited American institution verifies that it has accreditation in the foreign country that is comparable to accreditation that is recognized by the U.S. Department of Education.
2. “Accredited training” means training provided by an organization that has accreditation from an association approved by the Board.
3. “Appropriately certified” means holding the certificate, endorsement and approved area that is required for a teaching assignment.
4. “Approved area” means a subject area denoted on a teaching certificate that is taught in Arizona public schools.
- 2-5. “Board” means the State Board of Education.
6. “Capstone experience” means a culminating professional experience in a preK through 12 setting that may include student teaching or internships in administration, counseling, or school psychology, or alternative path preK through 12 teaching.
- 3-7. “CTE” means Career and Technical Education.
- 4-8. “Department” means the Arizona Department of Education.
- 5-9. “Practicum” means a period of structured observation and practice of the skills being learned, supervised by an individual trained in that area. The commonly used terms “student teaching,” “internship,” “residency,” or “observation course” are included in this definition.
- 6-10. “Professional development” means training to increase skills related to the occupation of education.
11. “Self-contained classroom” means a classroom in which the teacher teaches multiple subjects to one class of students.
12. “Single subject classroom” means a classroom in which the teacher teaches one subject to one class of students.
- 7-13. “Teaching experience” means full-time employment which included full responsibility for the planning and delivery of instruction and evaluation of student learning. Except for meeting the capstone experience requirement when applying for a standard teaching certificate, substitute teaching is not considered full-time teaching experience.

**R7-2-607. General Certification Provisions**

- A. The evaluation to determine qualification for certification shall not begin until an institutional recommendation or application for certification and official transcripts, and the appropriate fees have been received by the Department. Course descriptions, verification of employment, and other documents may also be required for the evaluation.
- B. Unless otherwise specified, a standard certificate shall be issued for ~~twelve~~ 12 years and may be issued with deficiencies. Applicants may receive a standard certificate with the following deficiencies of requirements to be completed within three years: research-based phonics; reading instruction including for students with dyslexia; professionalism and ethics; and U.S. and Arizona Constitutions. If an applicant fails to meet these requirements within the prescribed time period, the Department of Education or the Board shall temporarily suspend the standard certificate, but the suspension is not considered a disciplinary action and the individual shall be allowed to correct the deficiency within the remaining time of the standard certification.
- C. The effective date of a new certificate shall be the date the evaluation is completed by the Department. The effective date of a renewed certificate shall be the date the evaluation for renewal is completed by the Department.
- D. Unless otherwise specified, all certificates and provisional endorsements issued for three years or less shall expire on the date of issuance in the year of expiration. All certificates issued for more than three years shall expire on the holder’s birth date in the year of expiration.
- E. Only those degrees awarded by an accredited institution shall be considered to satisfy the requirements for certification.
- F. Professional preparation programs, courses, practica, and examinations required for certification shall be taken at an accredited institution or a Board-approved teacher preparation program.
- G. Only those courses in which the applicant received a passing grade or credit shall be considered to satisfy the requirements for certification.
- H. All certificates issued by the ~~Board~~ Department before the effective date of this Article are considered to have been issued in conformance with these rules, except on a finding that an applicant submitted falsified or misrepresented documents, records, or facts in an application for certification or on a finding that a certificate was issued in error due to an error by the verifying authority or issuing authority. If the Department makes a finding pursuant to this subsection, the Department shall provide notice to the applicant of the finding. Within 60 days of the date of the notice, the applicant shall submit proof to the Department that the applicant meets the requirements for the certification. If the applicant is unable to provide proof they meet the requirements within 60 days of receipt of notice, the Department shall reclaim the certificate. Reclaiming a certificate pursuant to this subsection is not considered a disciplinary action but the Department shall refer the case for investigation pursuant to R7-2-1308 for findings that an applicant submitted falsified or misrepresented documents, records, or facts.
- I. ~~The Board shall issue a comparable Arizona certificate, if one has been established by R7-2-608, R7-2-609, R7-2-610, R7-2-611, R7-2-612, or R7-2-613, and shall waive the requirements for passing the comparable professional knowledge, subject knowledge, and performance portions of the Arizona Teacher Proficiency Assessment, to an applicant who holds current comparable certification from the National Board for Professional Teaching Standards. The Department shall issue a comparable standard Arizona certificate described in R7-2-608, R7-2-609, R7-2-610, R7-2-611, R7-2-612 or R7-2-613 to an applicant who holds a valid certification from the National Board for Professional Teaching Standards, possess a valid fingerprint clearance card issued by the Arizona Department of Public Safety, and holds a bachelor’s, master’s or doctoral degree from an accredited institution. These applicants are exempt from all portions of the Arizona Teacher Proficiency Assessment.~~
- J. An applicant is not required to take any portion of the Arizona Teacher Proficiency Assessment if the applicant has at least three years of full-time teaching experience in any state, including this state, in the comparable area of certification or endorsement in which the person is applying for certification, regardless of whether the applicant was certified or uncertified. An applicant is not required to



- take any portion of the Arizona Administrator Proficiency Assessment if the person has ~~been an~~ at least three years of full-time experience as a school administrator in any state, including this state, regardless of whether the applicant was certified or uncertified.
- K.** An applicant is exempt from the testing requirements for Arizona certificates if the applicant passed corresponding portions of a professional or subject knowledge examinations, or administrator examination adopted by a state agency in another state that are substantially similar to the Arizona Teacher Proficiency Assessments or the Arizona Administrator Proficiency Assessment.
- L.** An applicant is exempt from the subject knowledge portion of the Arizona Teacher Proficiency Assessment if:
1. The applicant provides verification of teaching courses relevant to a content area or subject matter for the last two consecutive years, and for a total of at least three years at one or more accredited postsecondary institutions; or
  2. The applicant obtained a bachelor's, master's or doctoral degree from an accredited institution in a relevant subject area; or
  3. The applicant provides verification of a minimum of five years of work experience that is relevant to a subject area of certification.
- M.** ~~Teachers in grades six through twelve whose primary assignment is in an academic subject required pursuant to R7-2-301 and R7-2-302, shall hold a certificate, endorsement, or approved area in the assigned subject or demonstrate proficiency. Unless otherwise specified, individuals who hold a valid Arizona elementary, middle grades or secondary certificate, or a special education certificate that includes grades six through 12, may add an approved area to their certificate by passing the appropriate subject area portion of the Arizona Teacher Proficiency Assessment or as provided in subsections (J) (K) and (L). The subject areas of demonstrated proficiency. Any approved area shall be specified on the certificate. If a proficiency assessment is not offered in a subject area, an approved area shall consist of a minimum of 24 semester hours of courses in the subject.~~
- N.** If a language assessment is not offered through the Arizona Teacher Proficiency Assessment, a passing score on a nationally accredited test of a foreign language approved by the Board may demonstrate proficiency of that foreign language in lieu of the 24 semester hours of courses in that subject.
- O.** A teacher's language proficiency in a Native American language shall be verified by a person, persons, or entity designated by the appropriate tribe in lieu of the 24 semester hours of courses in that subject.
- P.** Teachers of homebound students shall hold the same certificate that is required of a classroom teacher.
- Q.** Fingerprint clearance cards shall be issued by the Arizona Department of Public Safety.
- R.** A person who surrenders their teaching certificate for any reason shall not submit an application for certification with the Board for a period of five years. A person re-applying after the five-year ban must apply under the current rules at the time of re-application.
- S.** ~~A teacher with National Board Certification in the subject area(s) the applicant is seeking certification(s) is exempt from the professional knowledge and the subject knowledge portions of the Arizona Teacher Proficiency Assessments.~~
- T.S.** Notwithstanding any other provision, an individual with a deficiency in the Arizona and U.S. Constitutions who teaches an academic course that focuses primarily on history, government, social studies, citizenship, law or civics shall be issued a standard certificate subject to suspension in one year if that deficiency is not removed. The suspension is not considered a disciplinary action and the individual shall be allowed to correct that deficiency within the remaining time of the standard certification.
- U.T.** ~~As used in this article, unless otherwise provided, "work experience" means paid or unpaid work experience, including teaching experience as a certificated or noncertificated educator at a public or private school, identified in the submission of a resume verified by a hiring superintendent or personnel director at the public school or the Department of Education which demonstrates knowledge or skill relevant to a subject area. Work experience, and its relevance to a subject area, shall be verified with one of the following:~~
1. ~~A letter from a superintendent or personnel director that the applicant demonstrates knowledge or skill in the subject area that is comparable to holding a bachelor's degree, master's degree, or doctoral degree in that subject area, as identified in a resume;~~
  2. ~~A letter from a public or private school superintendent or personnel director, in this state or in another state, that the applicant has the requisite experience teaching the most advanced Arizona academic standards, or comparable out-of-state standards, in the subject area sought; or~~
  3. ~~If an applicant is unable to obtain a letter described in subsections (1) or (2), the applicant may submit a letter from a current or former supervisor verifying that the applicant demonstrates knowledge or skill in the subject area that is comparable to holding a bachelor's degree, master's degree, or doctoral degree in that subject area, as determined by the Department.~~
- U.** Single subject classroom teachers in grades six through 12 are required to be appropriately certified for the subject they teach for the greater part of their instructional schedule. If a teacher is assigned to two or more subjects for equal parts of their instructional schedule, the teacher is required to be appropriately certified in each subject.
- V.** The requirements to be considered appropriately certified for a self-contained, single subject, or other classroom shall be established in the Certification Guidelines for Teaching Assignments, which shall be approved by the Board and on file with the Department.

#### **R7-2-615. Endorsements**

- A.** An endorsement shall be automatically renewed with the certificate on which it is posted.
- B.** Except as noted, all endorsements are subject to the general certification provisions in R7-2-607.
- C.** Endorsements which are optional as specified herein may be required by local governing boards.
- D.** Special subject endorsements – grades Pre-K through 12
1. Special subject endorsements shall be issued in the area of art, computer science, dance, dramatic arts, music, or physical education.
  2. Special subject endorsements are optional.
  3. The requirements are:
    - a. An Arizona elementary, secondary, or special education certificate;
    - b. One course in the methods of teaching the subject at the elementary level and one course in the methods of teaching the subject at the secondary level; and
    - c. One of the following:
      - i. Thirty semester hours of courses in the subject area which may include the courses listed in subsection (D)(3)(b);



- ii. A passing score on the subject area portion of the Arizona Teacher Proficiency Assessment, if an assessment has been adopted by the Board; or
  - iii. A passing score on a comparable out-of-state subject area assessment.
- E. Mathematics Specialist Endorsement – grades K through eight. This subsection is valid until June 30, 2011.
  - 1. The mathematics specialist endorsement is optional.
  - 2. The requirements are:
    - a. An Arizona elementary or special education certificate,
    - b. Three semester hours of courses in the methods of teaching elementary school mathematics, and
    - c. Fifteen semester hours of courses in mathematics education for teachers of elementary or middle school mathematics.
- F. Mathematics Endorsement – grades K through eight. This subsection becomes effective on July 1, 2011.
  - 1. The mathematics endorsement is optional for all K through eight teachers, but recommended for an individual in the position of mathematics specialist, consultant, interventionist, or coach. Nothing in this Section prevents school districts from requiring certified staff to obtain a mathematics endorsement as a condition of employment. The mathematics endorsement does not waive the requirements set forth in ~~R7-2-607(J)~~ R7-2-607.
  - 2. The requirements are:
    - a. An Arizona elementary or special education certificate;
    - b. Three years of full-time teaching experience in grades K through eight; and
    - c. Eighteen semester hours to include:
      - i. Three semester hours of data analysis, probability, and discrete mathematics;
      - ii. Three semester hours of geometry and measurement;
      - iii. Six semester hours of patterns, algebra, and functions; and
      - iv. Six semester hours of number and operations.
    - d. Six semester hours to include:
      - i. Three semester hours of mathematics classroom assessment;
      - ii. Three semester hours of research-based practices, pedagogy, and instructional leadership in mathematics.
    - e. A passing score on the middle school mathematics knowledge portion of the Arizona Educator Proficiency Assessment may be substituted for the 18 semester hours described in subsection (F)(2)(c).
    - f. Completion of a comparable valid mathematics specialist certificate or endorsement from another state may be substituted for the requirements described in subsection (F)(2)(c) and (d).
- G. Reading Specialist Endorsement – grades K through 12. This subsection is valid until June 30, 2011.
  - 1. The reading specialist endorsement shall be required of an individual in the position of reading specialist, reading consultant, remedial reading teacher, special reading teacher, or in a similar position.
  - 2. The requirements are:
    - a. An Arizona elementary, secondary, or special education certificate; and
    - b. Fifteen semester hours of courses to include decoding, diagnosis and remediation of reading difficulties, and practicum in reading.
- H. Reading Endorsement. This subsection becomes effective on July 1, 2011.
  - 1. A reading endorsement shall be required of an individual in the position of reading or literacy specialist, reading or literacy coach, and reading or literacy interventionist.
  - 2. Reading Endorsement for grades K through eight. The requirements are:
    - a. A valid Arizona elementary special education or early childhood certificate,
    - b. Three years of full-time teaching experience,
    - c. Three semester hours of a supervised field experience or practicum in reading completed for the grades K through eight, and
    - d. One of the following:
      - i. Twenty-one semester hours beyond requirements of initial provisional or standard teaching certificate to include the following:
        - (1) Three semester hours in the theoretical and research foundations of language and literacy;
        - (2) Three semester hours in the essential elements of elementary reading and writing instruction (K through eight);
        - (3) Three semester hours in the elements of elementary content area reading and writing (K through eight);
        - (4) Six total semester hours in reading assessment systems;
        - (5) Three semester hours in leadership; and
        - (6) Three semester hours of elective courses in an area of focus that will deepen knowledge in the teaching of reading to elementary students, such as children’s literature, or teaching reading to English Language Learners.
      - ii. Proof of a comparable valid reading specialist certificate or endorsement from another state may be substituted for the requirements described in subsections (H)(2)(c) and (d)(i).
    - e. A passing score on the reading endorsement subject knowledge portion of the Arizona Educator Proficiency Assessment for grades K through eight may be substituted for 21 semester hours of reading endorsement coursework as described in subsection (H)(2)(d)(i).
  - 3. Reading Endorsement for grades six through 12. The requirements are:
    - a. A valid Arizona elementary, secondary, or special education certificate;
    - b. Three years of full-time teaching experience;
    - c. Three semester hours of supervised field experience or practicum in reading completed for the grades six through 12; and
    - d. One of the following:
      - i. Twenty-one semester hours beyond requirements of initial provisional or standard teaching certificate to include the following:



- (1) Three semester hours in the theoretical and research foundations of language and literacy;
- (2) Three semester hours in the essential elements of reading and writing instruction for adolescents (grades six through 12);
- (3) Three semester hours in the elements of content area reading and writing for adolescents (grades six through 12);
- (4) Six total semester hours in reading assessment systems;
- (5) Three semester hours in leadership; and
- (6) Three semester hours of elective courses in an area of focus that will deepen knowledge in the teaching of reading such as adolescent literature, or teaching reading to English Language Learners.
- ii. Proof of a comparable valid reading specialist certificate or endorsement from another state may be substituted for the requirements described in subsections (H)(3)(c) and (d)(i).
- e. A passing score on the reading endorsement subject knowledge portion of the Arizona Educator Proficiency Assessment for grades six through 12 may be substituted for 21 semester hours of reading endorsement coursework as described in subsection (H)(3)(d)(i).
4. Reading Endorsement – grades K through 12. The requirements are:
  - a. A valid Arizona elementary, secondary, special education certificate or early childhood certificate;
  - b. Three years of full-time teaching experience;
  - c. Three semester hours of a supervised field experience or practicum in reading completed for the grades K through five;
  - d. Three semester hours of a supervised field experience or practicum in reading completed for the grades six through 12; and
  - e. One of the following:
    - i. Twenty-four semester hours beyond requirements of initial provisional or standard teaching certificate to include the following:
      - (1) Three semester hours in the theoretical and research foundations of language and literacy,
      - (2) Three semester hours in the essential elements of elementary reading and writing instruction (grades K through eight),
      - (3) Three semester hours in the essential elements of reading and writing instruction for adolescents (grades six through 12),
      - (4) Three semester hours in the elements of elementary content area reading and writing (grades K through eight),
      - (5) Three semester hours in the elements of content area reading and writing for adolescents (grades six through 12),
      - (6) Six total semester hours in reading assessment systems, and
      - (7) Three semester hours in leadership,
    - ii. Proof of a comparable valid reading specialist certificate or endorsement from another state may be substituted for the requirements described in subsections (H)(4)(c), (d) and (e)(i).
  - f. A passing score on the reading endorsement subject knowledge portion of the Arizona Educator Proficiency Assessment for grades K through eight and a passing score on the reading endorsement professional knowledge portion of the Arizona Educator Proficiency Assessment for grades six through 12 may be substituted for 24 semester hours of reading endorsement coursework as described in subsection (H)(4)(e)(i).
- I. Elementary Foreign Language Endorsement – grades K through eight
  1. The elementary foreign language endorsement is optional.
  2. The requirements are:
    - a. An Arizona elementary, secondary or special education certificate.
    - b. Proficiency in speaking, reading, and writing a language other than English, verified by the appropriate language department of an accredited institution. American Indian language proficiency shall be verified by an official designated by the appropriate tribe.
    - c. Three semester hours of courses in the methods of teaching a foreign language at the elementary level.
- J. Bilingual Endorsements - PreK through 12
  1. A provisional bilingual endorsement or a bilingual endorsement is required of an individual who is a bilingual classroom teacher, bilingual resource teacher, bilingual specialist, or otherwise responsible for providing bilingual instruction.
  2. The provisional bilingual endorsement is valid for three years and is not renewable. The requirements are:
    - a. An Arizona elementary, secondary, supervisor, principal, superintendent, special education, early childhood, arts education or CTE certificate; and
    - b. Proficiency in a spoken language other than English, verified by one of the following:
      - i. A passing score on the Arizona Classroom Spanish Proficiency exam;
      - ii. A passing score on a foreign language subject knowledge portion of the Arizona Teacher Proficiency Assessment or a comparable foreign language subject knowledge exam from another state;
      - iii. If an exam in the language is not offered through the Arizona Teacher Proficiency Assessment or the American Council on the Teaching of Foreign Languages, proficiency may be verified by the language department of an accredited institution. A minimum passing score of “Advanced Low” is required on the American Council on the Teaching of Foreign Languages for Speaking and Writing Exams in the foreign language;
      - iv. Proficiency in American Indian languages shall be verified by an official designated by the appropriate tribe; or
    - c. Proficiency in sign language is verified through 24 hours of coursework from an accredited institution.
  3. The holder of the bilingual endorsement is also authorized to teach English as a Second Language.
  4. The requirements are:
    - a. An Arizona elementary, secondary, supervisor, principal, superintendent, special education, early childhood, arts education or CTE certificate;
    - b. Completion of a bilingual education program from an accredited institution or the following courses:
      - i. Three semester hours of foundations of instruction for non-English-language-background students;



- ii. Three semester hours of bilingual methods;
- iii. Three semester hours of English as a Second Language for bilingual settings;
- iv. Three semester hours of courses in bilingual materials and curriculum, assessment of limited-English-proficient students, teaching reading and writing in the native language, or English as a Second Language for bilingual settings;
- v. Three semester hours of linguistics to include psycholinguistics, sociolinguistics, first language acquisition, and second language acquisition for language minority students, or American Indian language linguistics;
- vi. Three semester hours of courses dealing with school, community, and family culture and parental involvement in programs of instruction for non-English-language-background students; and
- vii. Three semester hours of courses in methods of teaching and evaluating handicapped children from non-English-language backgrounds. These hours are only required for bilingual endorsements on special education certificates.
- c. A valid bilingual certificate or endorsement from another state may be substituted for the courses described in subsection (J)(4)(b);
- d. Practicum in a bilingual program or two years of verified bilingual teaching experience; and
- e. Proficiency in a spoken language other than English, verified by one of the following:
  - i. A passing score on the Arizona Classroom Spanish Proficiency exam;
  - ii. A passing score on a foreign language subject knowledge portion of the Arizona Teacher Proficiency Assessment or a comparable foreign language subject knowledge exam from another state;
  - iii. If an exam in the language is not offered through the Arizona Teacher Proficiency Assessment or the American Council on the Teaching of Foreign Languages, proficiency may be verified by the language department of an accredited institution. A minimum passing score of “Advanced Low” is required on the American Council on the Teaching of Foreign Languages for Speaking and Writing Exams in the foreign language;
  - iv. Proficiency in American Indian languages shall be verified by an official designated by the appropriate tribe; or
  - f. Proficiency in sign language is verified through 24 hours of coursework from an accredited institution.
- K. English as a Second Language (ESL) Endorsements – grades Pre-K through 12**
  - 1. An ESL or bilingual endorsement is required of an individual who is an ESL classroom teacher, ESL specialist, ESL resource teacher, or otherwise responsible for providing ESL instruction.
  - 2. The provisional ESL endorsement is valid for three years and is not renewable. The requirements are:
    - a. An Arizona elementary, secondary, supervisor, principal, superintendent, special education, early childhood, arts education or CTE certificate; and
    - b. Six semester hours of courses specified in subsection (K)(3)(b), including at least one course in methods of teaching ESL students.
  - 3. The requirements for the ESL endorsement are:
    - a. An Arizona elementary, secondary, supervisor, principal, superintendent, special education, early childhood, arts education or CTE certificate;
    - b. Completion of an ESL education program from an accredited institution or the following courses:
      - i. Three semester hours of courses in foundations of instruction for non-English-language-background students. Three semester hours of courses in the nature and grammar of the English language, taken before January 1, 1999, may be substituted for this requirement;
      - ii. Three semester hours of ESL methods;
      - iii. Three semester hours of teaching of reading and writing to limited-English-proficient students;
      - iv. Three semester hours of assessment of limited-English-proficient students;
      - v. Three semester hours of linguistics; and
      - vi. Three semester hours of courses dealing with school, community, and family culture and parental involvement in programs of instruction for non-English-language-background students.
      - vii. A passing score on a foreign language subject knowledge portion of the Arizona Teacher Proficiency Assessment or a comparable foreign language subject knowledge exam from another state; or
    - c. Three semester hours of a practicum or two years of verified ESL or bilingual teaching experience, verified by the district superintendent;
    - d. Second language learning experience, which may include sign language. Second language learning experience may be documented by any of the following:
      - i. Six semester hours of courses in a single second language, or the equivalent, verified by the department of language, education, or English at an accredited institution;
      - ii. Completion of intensive language training by the Peace Corps, the Foreign Service Institute, or the Defense Language Institute;
      - iii. Placement by the language department of an accredited institution in a third-semester level;
      - iv. Placement at level 1-intermediate/low or more advanced score on the Oral Proficiency Interview, verified by the American Council for the Teaching of Foreign Languages;
      - v. Passing score on the Arizona Classroom Spanish Proficiency Examination approved by the Board; or
      - vi. Proficiency in an American Indian language, verified by an official designated by the appropriate tribe.
      - vii. A passing score on a foreign language subject knowledge portion of the Arizona Teacher Proficiency Assessment or a comparable foreign language subject knowledge exam from another state; or
    - e. A valid ESL certificate or endorsement from another state may be substituted for the requirements described in subsection (K)(3)(b), (c) and (d).
- L. Structured English Immersion (SEI) Endorsement - Pre-K through 12.** A Provisional (SEI) or full Structured English Immersion (SEI) endorsement, or an English as a Second Language or Bilingual endorsement, shall be required of a teacher who is instructing students in a sheltered English immersion or structured English immersion model.



1. The provisional SEI endorsement is valid for three years and is not renewable. The requirements are:
    - a. An Arizona elementary, secondary, special education, CTE, early childhood, Pre-K through 12 teaching, supervisor, principal or superintendent certificate; and
    - b. One semester hour or 15 clock hours of professional development in Structured English Immersion methods of teaching English Language Learner (ELL) students, including but not limited to instruction in SEI strategies, teaching with the ELL Proficiency Standards adopted by the Board and monitoring ELL student academic progress using a variety of assessment tools through a training program that meets the requirements of A.R.S. § 15-756.09(B).
  2. The requirements for the SEI endorsement are: an Arizona elementary, secondary, special education, CTE, early childhood, Pre-K through 12 teaching, supervisor, principal, or superintendent certificate; and one of the following:
    - a. Three semester hours of courses related to the teaching of the English Language Learner Proficiency Standards adopted by the Board, including but not limited to instruction in SEI strategies, teaching with the ELL Proficiency Standards adopted by the Board and monitoring ELL student academic progress using a variety of assessment tools; or
    - b. Completion of 45 clock hours of professional development in the teaching of the English Language Learner Proficiency Standards adopted by the Board, including but not limited to instruction in SEI strategies, teaching with the ELL Proficiency Standards adopted by the Board and monitoring ELL student academic progress using a variety of assessment tools through a training program that meets the requirements of A.R.S. § 15-756.09(B).
    - c. A passing score on the Structured English Immersion portion of the Arizona Teacher Proficiency Assessment.
  3. Nothing in this Section prevents a school district or charter school from requiring certified staff to obtain an SEI, ESL or bilingual endorsement as a condition of employment.
- M. Gifted Endorsements – grades Pre-K through 12**
1. ~~A gifted endorsement is required of individuals whose primary responsibility is teaching gifted students.~~ The gifted endorsements authorize the holder to teach gifted students within the grade range and subject area of the prerequisite certificate. A gifted endorsement is required for all district teachers who have primary responsibility for teaching gifted pupils.
  2. The provisional gifted endorsement is valid for three years and is not renewable. The requirements are ~~an Arizona elementary, secondary, early childhood or special education certificate and one of the following:~~ A valid Arizona International or Standard Professional teaching certificate.
    - a. ~~Two years of verified teaching experience in which most students were gifted.~~ A valid Arizona International or Standard Professional teaching certificate.
    - b. ~~Ninety clock hours of verified in-service training in gifted education, or~~ One of the following:
      - i. ~~Six semester hours of courses in gifted education; or~~
      - ii. Verification from a public school superintendent or personnel director that the applicant completed a minimum of 90 clock hours of in-service training in gifted education, or the equivalent through competency-based credentials, that is aligned to the Teacher Preparation Standards in Gifted and Talented Education adopted by the National Association for Gifted Children and the Council for Exceptional Children.
  3. Requirements for the gifted endorsement are:
    - a. ~~An A valid Arizona elementary, secondary, early childhood or special education~~ International or Standard Professional teaching certificate;
    - b. ~~Completion of nine semester hours of upper division or graduate level courses in an academic discipline such as science, mathematics, language arts, foreign language, social studies, psychology, fine arts, or computer science; and~~
    - e. ~~Two~~ One of the following:
      - i. ~~Three years of verified teaching experience in gifted education as a teacher, resource teacher, specialist, or similar position, verified by the district; or~~
      - ii. ~~A minimum of 135 clock hours of verified in-service training in gifted education.~~ Verification from a public school superintendent or personnel director that the applicant completed a minimum of 180 clock hours of in-service training in gifted education, or the equivalent through competency-based credentials, that is aligned to the Teacher Preparation Standards in Gifted and Talented Education adopted by the National Association for Gifted Children and the Council for Exceptional Children; or
      - iii. ~~ii.~~ Completion of 12 semester hours of courses in gifted education. District in-service programs in gifted education may be substituted for up to six semester hours of gifted education courses. No more than six semester hours of courses in gifted education may be obtained through completion of in-service training that is aligned to the Teacher Preparation Standards in Gifted and Talented Education adopted by the National Association for Gifted Children and the Council for Exceptional Children. Fifteen clock hours of in-service is equivalent to one semester hour. In-service hours shall be verified by the district superintendent or personnel director. Practicum courses shall not be accepted toward this requirement; or
      - iv. ~~Completion of six semester hours of practicum or two years of verified teaching experience in which most students were gifted.~~
- N. Early Childhood Education Endorsements - birth through age 8**
1. When combined with an Arizona elementary education teaching certificate or an Arizona special education teaching certificate, the early childhood endorsement may be used in lieu of an early childhood education certificate as described in R7-2-608. When combined with an Arizona cross-categorical, specialized special education, or severe and profound teaching certificate as described in R7-2-611, the early childhood endorsement may be used in lieu of an Early Childhood Special Education certificate.
  2. The provisional early childhood endorsement is valid for three years and is not renewable. The requirements are:
    - a. A valid Arizona elementary teaching certificate as provided in R7-2-609 or a valid Arizona special education teaching certificate as provided in R7-2-611, and
    - b. A passing score on the early childhood subject knowledge portion of the Arizona Teacher Proficiency Assessment.
  3. The requirements for the early childhood endorsement are:



- a. A valid Arizona elementary education teaching certificate as provided in R7-2-609 or a valid Arizona special education teaching certificate as provided in R7-2-611, and
  - b. Early childhood education coursework and practicum experience which includes both of the following:
    - i. Twenty-one semester hours of early childhood education courses to include all of the following areas of study:
      - (1) Foundations of early childhood education;
      - (2) Child guidance and classroom management;
      - (3) Characteristics and quality practices for typical and atypical behaviors of young children;
      - (4) Child growth and development, including health, safety and nutrition;
      - (5) Child, family, cultural and community relationships;
      - (6) Developmentally appropriate instructional methodologies for teaching language, math, science, social studies and the arts;
      - (7) Early language and literacy development;
      - (8) Assessing, monitoring and reporting progress of young children; and
    - ii. A minimum of eight semester hours of practicum including:
      - (1) A minimum of four semester hours in a supervised field experience, practicum, internship or student teaching setting serving children birth through preschool. One year of full-time verified teaching experience with children in birth through preschool may substitute for this student teaching experience. This verification may come from a school-based education program or center-based program licensed by the Department of Health Services or regulated by tribal or military authorities; and
      - (2) A minimum of four semester hours in a supervised student teaching setting serving children in kindergarten through grade three. One year of full-time verified teaching experience with children in kindergarten through grade three in an accredited school may substitute for this student teaching experience;
  - c. A valid fingerprint clearance card issued by the Arizona Department of Public Safety, and
  - d. A passing score on the early childhood professional knowledge portion of the Arizona Educator Proficiency Assessment may be substituted for the 21 semester hours of early childhood education courses as described in subsection (N)(3)(b)(i); and
  - e. A passing score on the early childhood subject knowledge portion of the Arizona Educator Proficiency Assessment.
4. Teachers with a valid Arizona elementary education certificate or Arizona special education certificate meet the requirements of this Section with evidence of the following:
- a. A minimum of three years infant/toddler, preschool or kindergarten through grade three classroom teaching experience; and
  - b. A passing score on the early childhood subject knowledge portion of the Arizona Educator Proficiency Assessment.
- O. Library-Media Specialist Endorsement – grades Pre-K through 12**
- 1. The library-media specialist endorsement is optional.
  - 2. Requirements are:
    - a. An Arizona elementary, secondary, early childhood or special education certificate;
    - b. A passing score on the Library Media Specialist portion of the Arizona Teacher Proficiency Assessment. A master’s degree in Library Science may be substituted for a passing score on the assessment; and
    - c. One year of teaching experience.
- P. Middle Grade Endorsement – grades five through nine**
- 1. The middle grade endorsement is optional. The middle grade endorsement may expand the grades a teacher is authorized to teach on an elementary or secondary certificate.
  - 2. The requirements are:
    - a. An Arizona elementary or secondary certificate, and
    - b. Six semester hours of courses in middle grade education to include:
      - i. One course in early adolescent psychology;
      - ii. One course in middle grade curriculum; and
      - iii. A practicum or one year of verified teaching experience, in grades five through nine.
- Q. Drivers Education Endorsement**
- 1. The drivers education endorsement is optional.
  - 2. The requirements are:
    - a. An Arizona teaching certificate,
    - b. A valid Arizona driver’s license,
    - c. One course in each of the following:
      - i. Safety education,
      - ii. Driver and highway safety education, and
      - iii. Driver education laboratory experience, and
    - d. A driving record with less than seven violation points and no revocation or suspension of driver’s license within the two years preceding application.
  - 3. For the purposes of this Section, a course is defined as a three hour semester course offered by an accredited institution of higher learning or 45 clock hours of educational classes approved by the Department. Each semester hour of courses shall be equivalent to 15 clock hours of training. If semester hours are used, the required documentation for the semester hours shall be an official transcript.
- R. Cooperative Education Endorsement – grades K through 12**
- 1. The cooperative education endorsement is required for individuals who coordinate or teach CTE.
  - 2. The requirements are:



- a. A provisional or standard CTE certificate in the areas of agriculture, business, family and consumer sciences, health occupations, marketing, or industrial technology; and
  - b. One course in CTE.
- S. Computer Science, PreK through eight Endorsement
1. The computer science, PreK through eight endorsement authorizes the holder to teach computer science in prekindergarten through grade eight.
  2. The requirements are:
    - a. An Arizona Standard Professional Early Childhood, Elementary, Middle Grades, Secondary, Special Education, or PreK through 12 Teaching certificate;
    - b. Three semester hours in foundations for teaching computer science which addresses the following topics:
      - i. Introduction to computer science;
      - ii. Inclusive recruitment, retention, and pedagogical strategies in computing education;
      - iii. Computational thinking;
      - iv. Instructional planning based on the Arizona state standards for computer science, or comparable computer science standards.
    - c. Six semester hours in computer science to include the following:
      - i. Three semester hours in teaching and learning programming for educators; and
      - ii. Three semester hours in a computer science elective which may include, but is not limited to, physical computing or mobile computing.
  3. Completion of a training program through an Arizona public local education agency or an accredited institution may substitute for the semester hours required in subsection (S)(2)(b) (S)(2)(c). Fifteen clock hours of training, or the equivalent competency-based credential, is equivalent to one semester hour of college coursework. Training programs shall be verified by a superintendent or personnel director of the Arizona local education agency or the appropriate administrator of an accredited institution.
- T. Computer Science, grades six through 12 Endorsement
1. The computer science, grades six through 12 endorsement authorizes the holder to teach computer science in grades six through 12.
  2. The requirements are:
    - a. A valid Arizona Standard Professional Elementary, Middle Grades, Secondary, Hearing Impaired, Visually Impaired, Mild/Moderate Disabilities, Moderate/Severe Disabilities, or PreK through 12 Teaching certificate;
    - b. Three semester hours in foundations for teaching computer science which addresses the following topics:
      - i. Introduction to computer science;
      - ii. Inclusive recruitment, retention, and pedagogical strategies in computing education;
      - iii. Computational thinking;
      - iv. Instructional planning based on the Arizona state standards for computer science or comparable computer science standards.
    - c. Nine semester hours of courses in computer science to include the following:
      - i. Three semester hours in teaching and learning programming for educators; and
      - ii. Six semester hours in computer science electives which may include, but is not limited to, computer programming, cybersecurity, algorithms and data structures, operating systems, artificial intelligence, machine learning, database development and management, computer networks, and data mining and analytics.
  3. Completion of a training program through an Arizona public local education agency or an accredited institution may substitute for the semester hours required in subsections (T)(2)(b) and (c). Fifteen clock hours of training, or the equivalent competency-based credential, is equivalent to one semester hour of college coursework. Training programs shall be verified by a superintendent or personnel director of the Arizona local education agency or the appropriate administrator of an accredited institution.

#### R7-2-701. Definitions

In this Article, unless the context otherwise specifies:

1. "Board" means the State Board of Education.
2. "Chairman" means the chairperson of the Professional Practices Advisory Committee, established pursuant to R7-2-205.
3. "Contested case" means any proceeding in which the legal rights, duties or privileges of a party are required by law to be determined by the State Board of Education after an opportunity for hearing.
4. "Department" means the Department of Education.
5. "Document" includes papers such as complaints, petitions, motions, responses and notices.
- 5.6. "Hearing body" means the Board or the Professional Practices Advisory Committee.
- 6.7. "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.
7. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character, or another agency.
8. "PPAC" means the Professional Practices Advisory Committee, established pursuant to R7-2-205 to conduct hearings related to certification or recertification matters regarding immoral conduct, unprofessional conduct, unfitness to teach and revocation, suspension or surrender of certificates.
9. "Presiding officer" means a hearing officer, with either a minimum of three years of verified experience in the practice of law or a minimum of one year of verified experience in conducting hearings, who shall oversee hearings in regard to certification or recertification matters related to immoral conduct, unprofessional conduct, unfitness to teach, and revocation, suspension, or surrender of certificates pursuant to this Article.



- 10. "Pupil" means any student enrolled in an Arizona public or private school defined in A.R.S. § 15-101. "Pupil" also means any student who was enrolled in an Arizona public or private school at the time of the events which are the subject of a proceeding ~~and who is still of minor age~~.
- 11. "Victim" means any person who has been previously identified pursuant to state law as a victim in a criminal proceeding which is the basis for a contested case.

**R7-2-702. Filing; Computation of Time; Extension of Time**

- A. All ~~papers documents~~ concerning a contested case shall be filed within the time limit, if any, for such filing.
- B. All ~~papers documents~~ filed in any contested case shall be typewritten or legibly written on paper 8 1/2 by 11 inches in size, shall contain the name and address of the party or other correspondent, shall be properly captioned and designate the title and case number, shall state the name and address of each party served with a copy and how service was made, and shall be signed by the party or, if represented, by the party's attorney. The signature ~~certifies constitutes a certification~~ that the signer has read the paper document, ~~that to the best of the signer's knowledge, information, and belief there are good grounds to support its contents, and that it is not interposed for delay~~ has a good faith basis for submission of the document, and that it is not filed for the purpose or delay or harassment.
- C. In computing any period of time prescribed or allowed by this Article, or any notice or order concerning a contested case, the day of the act, event, or default from which the designated period of time begins to run shall not be included. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall not be included in the computation. When that period to time is 11 days or more, intermediate Saturdays, Sundays and legal holidays shall be included in the computation. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday.
- D. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other ~~paper document~~ upon the party by another party, and the notice or other ~~paper document~~ is served by mail, five days shall be added to the prescribed period. ~~This subsection has no application to notices, orders, or other papers issued by the hearing body.~~
- E. For good cause shown, the presiding officer may grant continuances and extensions of time for filing notices or other ~~papers documents~~.

**R7-2-703. Contested Cases; Notice; Hearing Records**

- A. In a contested case, the parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall be given at least 20 days prior to the date set for the hearing.
- B. The notice shall include:
  - 1. A statement of the time, place and nature of the hearing.
  - 2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
  - 3. A reference to the particular sections of the statutes and rules involved.
  - 4. A short and plain statement of the matters asserted. If a party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.
- ~~C. A reasonable effort shall be made to notify a victim of the time, place and nature of the hearing, and that the victim may submit a victim impact statement to be included as part of the record in a contested case.~~
- ~~D. C.~~ Opportunity shall be afforded all parties to respond and present evidence and argument on the issues involved.
- ~~E. D.~~ The Board may dispose of any contested case by decision or approved stipulation, agreed settlement, consent agreement or by default.
- ~~F. E.~~ A hearing before a hearing body in a contested case or any part thereof shall be recorded manually or by a recording device and shall be transcribed on request of any party, unless otherwise provided by law. The cost of such transcript shall be paid by the party making the request, unless otherwise provided by law or unless assessment of the cost is waived by the Board.
- ~~G. F.~~ The hearing body Board or the presiding officer may reschedule the hearing, maintaining due regard for the interests of justice and the orderly and prompt conduct of the proceedings.
- ~~H. G.~~ The record in a contested case shall include:
  - 1. All pleadings, motions and interlocutory rulings.
  - 2. Evidence received or considered, including confidential evidence received in executive session.
  - 3. A statement of matters officially noticed.
  - 4. Objections and offers of proof and rulings thereon.
  - 5. Proposed findings of fact, and conclusions of law and exceptions thereto and recommendations of the hearing body.
  - 6. ~~Any decision, opinion, recommendation or report of the hearing body.~~
  - 7. ~~6.~~ All staff memoranda, other than privileged communications, or data submitted to the hearing body in connection with its consideration of the case.
  - 8. ~~7.~~ A victim impact statement, if submitted by the victim.
- ~~I. H.~~ Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

**R7-2-704. Service; Proof of Service**

- A. The Board shall serve notices of hearing, findings of fact, conclusions of law, and recommendations of the hearing body, and decisions and final orders of the Board, either by personal service or by certified mail. All other ~~papers documents~~ required to be served by the Board may be served by regular or certified mail or may be personally served.
- B. After service of a notice of hearing in a contested case, a copy of every ~~paper document~~ filed by a party, or individual seeking to intervene, shall be served on all parties to the contested case, or their lawyers if represented, at the same time the ~~paper document~~ is filed. Filing with the Board and service shall be completed by personal delivery, first-class mail or email.
- C. The following evidences completed service:



1. If personally served, an affidavit of personal service, sworn to by the individual serving the paper document and stating the name of the individual upon whom it was served, where service was made, and the date of such service; or
  2. If served by certified mail, ~~the return receipt signed by the party served or someone authorized to act on behalf of the party served~~ proof of delivery; or
  3. If served by email or regular ~~or certified~~ mail, either a statement subscribed on the paper document filed, or an affidavit indicating the date mailed and listing those to whom it was mailed.
- D. When a party is represented by an attorney, service shall be made on the attorney. If a notice of hearing shows service on the Attorney General, all papers documents served thereafter shall be served on the Assistant Attorney General named on the notice of hearing or who later appears on behalf of the Attorney General, or if no Assistant Attorney General is named, then on the Attorney General, Education and Health Section, Education Unit.

#### R7-2-705. Hearings and Evidence

- A. Parties may participate in the hearing in person or through an attorney.
- B. ~~The presiding officer may schedule a prehearing conference. The purpose of a prehearing conference shall be to narrow issues, attempt settlement, address evidentiary issues or for any other purpose deemed necessary by the presiding officer. The parties may submit proposed findings of fact and conclusions of law prior to the hearing.~~ The presiding officer or hearing body may require that the parties submit proposed findings of fact and conclusions of law prior to the hearing or at the close of evidence.
- C. A hearing in a contested case shall be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. A party to such proceedings may be represented by counsel and shall have the right to submit evidence in open hearing and conduct cross examination. Hearings may be held in any location or manner determined by the ~~hearing body~~ Board.
- D. Copies of documentary evidence may be received in the discretion of the presiding officer. Upon request, the parties shall be given an opportunity to compare the copy with the original.
- E. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the hearing body. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The hearing body's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.
- F. If a party fails to appear at a hearing, the hearing body may proceed with the presentation of the evidence of the appearing party.

#### R7-2-709. Rehearing and Review of Decisions

- A. After a hearing is held, a party in a contested case who is aggrieved by a decision rendered by the Board may file with the Board, not later than 30 days after such decision has been made, a written motion for rehearing specifying the particular grounds therefor. ~~A motion for rehearing under this Section 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 by any other party. The Board may require the filing of written briefs on the issues raised in the motion or response and may provide for oral argument.
- B. A rehearing of a decision by the Board may be granted for any of the following causes materially affecting the moving party's rights:
  1. Irregularity in the administrative proceedings of the hearing body, or abuse of discretion, whereby the moving party was deprived of a fair hearing.
  2. Misconduct of the hearing body or the prevailing party.
  3. Accident or surprise which could not have been prevented by ordinary prudence.
  4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the hearing.
  5. Excessive or insufficient penalties.
  6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing.
  7. That the decision is not justified by the evidence or is contrary to the law.
- C. The Board may affirm or modify the decision or grant a rehearing before a hearing body to all or any of the parties, on all or part of the issues, for any of the reasons set forth in subsection B herein. An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
- D. 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 for a reason not stated in the motion. The order granting such a rehearing shall specify the grounds therefor.
- E. Not later than 20 days after a decision is rendered, the Board may, on its own initiative, order a rehearing of its decision for any reasons for which it might have granted a rehearing on motion of a party. The order granting such a rehearing shall specify the grounds therefor.
- F. When a motion for rehearing is based upon affidavits they shall be served with the motion. An opposing party may, within ten days after service of such motion, serve opposing affidavits and this period may be extended for an additional period not exceeding 20 days, by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
- G. After a hearing has been held and a final administrative decision has been entered, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.
- H. Any party in a contested case who is aggrieved by a decision rendered by the Board may file with the Board, not later than 20 days after such decision has been made, a written request for review of the decision. If a review of the decision is granted, the Board may affirm or modify the previous decision.

#### R7-2-710. ~~Intervention-Repealed~~

- ~~A. Any person seeking to intervene in any contested case shall file a written request to intervene. Intervention shall be granted only if the hearing body determines that:
 
  1. The legal interests of the person requesting to intervene may be substantially affected by the outcome of the contested case;~~



- 2. Intervention will not unduly delay or bias the hearing;
  - 3. The interest of the person requesting to intervene is not adequately represented by another party to the contested case; and
  - 4. The proposed intervention is in the interests of justice.
- ~~B.~~ The request shall state the claims or defenses for which intervention is sought, briefly describing the interests that may be affected by the outcome of the case and including such facts as demonstrate those interests.
  - ~~C.~~ The request shall be filed and served upon all parties at least 15 days prior to hearing.
  - ~~D.~~ Any party may file a response to the request to intervene within five days of service of the request upon the party.
  - ~~E.~~ The hearing body shall decide on the request to intervene at least five days prior to the hearing date and shall, prior to the end of the following business day, notify the persons requesting to intervene and all parties of the decision. The hearing body may reschedule a hearing or prehearing conference to provide sufficient time for the parties to respond to a request to intervene or to prepare for the hearing or prehearing conference.
  - ~~F.~~ The hearing body may limit the intervener's participation to issues in which the intervener has a particular interest.

**R7-2-711. Consolidation and Severance**

- A. When proceedings involving a common question of law or fact or common parties are pending before the hearing body, ~~it~~ the presiding officer may, upon ~~its~~ the presiding officer's own volition or upon request of any party, order a ~~joint~~ consolidated hearing on any or all the matters at issue.
- B. In furtherance of convenience, to avoid prejudice, or when separate hearings will be conducive to expedition and economy, the ~~hearing body~~ presiding officer may, upon ~~its~~ the presiding officer's own volition or upon request of any party, order any proceeding severed with respect to some or all issues or parties.
- C. The presiding officer shall send a written ruling granting or denying consolidation or severance to all parties, identifying the cases, and the reasons for the decision.

**R7-2-712. Subpoenas**

- A. The ~~Department Board~~ may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence on its own volition or at the request of a party. The subpoena shall be signed by a Board employee designated by the Board.
- B. A request for a hearing subpoena shall be in writing and served on each party at least seven days prior to the date set for hearing and shall state:
  - 1. The name of the contested case, the case number, and the time and place where the witness is expected to appear and testify;
  - 2. The name and address of the witness subpoenaed; ~~and~~
  - 3. The documents, if any, sought to be provided; ~~and~~
  - 4. A brief statement of the relevance of testimony or documents.
- C. On application of a party or the agency and for use as evidence, the ~~hearing body~~ presiding officer may permit a deposition to be taken, in the manner and upon the terms designated by the ~~hearing body~~ presiding officer, of a witness who cannot be subpoenaed or is unable to attend the hearing.
- D. The individual to whom a subpoena is directed shall comply with its provisions unless, prior to the date set for appearance, the ~~hearing body~~ presiding officer grants a written request to quash or modify the subpoena. The request shall be submitted to the Board and state the reasons why it should be granted. The ~~hearing body~~ presiding officer shall grant or deny such request by order.
- E. The party requesting the subpoena shall prepare it and cause it to be served upon the individual to whom it is directed and on all parties in the same manner as provided for service of subpoenas in civil matters before the superior court. The return of service shall be filed with the ~~hearing body~~ Board.
- F. A party, or the person served with a subpoena who objects to the subpoena, or any portion of it, may file an objection with the presiding officer. The objection shall be filed within five days after service of the subpoena, or at the outset of the hearing, if the subpoena is served fewer than five days before the hearing.
- G. If a subpoena issued for the Board is disobeyed, the Board may petition the superior court to enforce the subpoena pursuant to A.R.S. § 15-203.
- H. If a subpoena issued for a party other than the Board is disobeyed, the party may petition the superior court in the manner provided by law for the enforcement of subpoenas in a civil action.

**R7-2-713. Conduct of Hearing**

- A. The presiding officer may conduct all or part of the hearing by telephone, ~~television~~, or other electronic means, as long as each party has an opportunity to participate in the entire proceeding as it takes place.
- B. Except for those hearings which may involve presentation of evidence protected by A.R.S. § 15-350, or which are otherwise closed pursuant to an express provision of law, all hearings are open to public observation.
- C. Conduct at any hearing that is disruptive or shows contempt for the proceedings shall be grounds for exclusion from further participation or observation.

**R7-2-714. Testimony of Pupils**

- A. All individuals present at a hearing regarding an action against a certificate shall:
  - 1. Keep confidential the name and identifying information of any pupil involved in the hearing, unless disclosure is with the consent of the pupil's parent or guardian or the pupil if the pupil is at least 18 years of age at the time of the hearing, or by order of the superior court. This action does not prevent disclosure of the pupil's name to any party to the hearing.
  - 2. Keep confidential the testimony of any pupil, all of which shall be taken in executive session, except that the Board office shall be furnished a confidential copy of the pupil's testimony as part of the complete transcript of the hearing. The individuals present during the executive session shall be determined by the presiding officer in consultation with the Attorney General's office except that the respondent and counsel shall always be permitted to be present. The transcripts of testimony taken during executive session shall be maintained by the Board.



- B. The Board of Education or its designee shall:
1. Make available a consent form which requires the signature of the pupil's parent or guardian or the pupil if the pupil is at least 18 years of age at the time of the hearing, prior to disclosure of the pupil's name;
  2. Assign a fictitious name to all witnesses identified as pupils on the witness lists provided by the complainant and respondent if not in receipt of written parental or guardian consent for disclosure;
  3. Notify hearing participants, prior to and during the hearing, of any fictitious names to be used.
- C. The presiding officer shall instruct all individuals present at the hearing of the confidentiality requirements of A.R.S. § 15-551 and this Section.

**R7-2-715. Evidence**

- A. All witnesses shall testify under oath or affirmation. At the request of a party, or at the discretion of the presiding officer, the presiding officer may exclude witnesses who are not parties from the hearing room so that they cannot hear the testimony of other witnesses.
- B. ~~The hearing body presiding officer~~ shall have the power to administer oaths and affirmations.
- C. All parties shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and fair disclosure of the facts.
- D. ~~The hearing body presiding officer shall receive evidence, rule upon offers of proof, and exclude evidence the hearing body has determined to be irrelevant, immaterial, or unduly repetitious shall make rulings necessary to prevent argumentative, repetitive, or irrelevant questioning, to exclude evidence the presiding officer determines to be irrelevant, immaterial, or unduly repetitious, and to expedite the examination to the extent consistent with the disclosure of all relevant testimony and information.~~
- E. Unless otherwise ordered by the hearing body, documentary evidence shall be limited in size when folded to 8 1/2 by 11 inches. The submitting party shall identify documentary exhibits by number or letter and party and furnish a copy of each exhibit to each party present. One additional copy shall be furnished to the hearing body unless the hearing body otherwise directs. When evidence offered by any party appears in a larger work, containing other information, the party shall plainly designate the portion offered. If the evidence offered is so voluminous as would unnecessarily encumber the record, the book, paper, or document shall not be received in evidence but may be marked for identification and, if properly authenticated, the designated portion may be read into or photocopied for the record. All documentary evidence offered shall be subject to appropriate and timely objection.

**R7-2-716. Stipulations**

Parties to any contested case may stipulate, in writing, agreement upon any matter involved in the proceeding. If approved by the presiding officer, agreement on matters of procedure shall be binding upon the parties to the stipulation. ~~The hearing body may require presentation of evidence for proof of stipulated facts for the hearing body's consideration.~~ No substantive matter agreed to by the parties shall be binding upon the Board unless incorporated into the decision of the Board.

**R7-2-717. Recommended Decisions**

- A. A recommended decision, findings of fact and conclusions of law shall be prepared for the Board by the PPAC.
- B. A recommended decision, findings of fact and conclusions of law shall be delivered to the Board within ~~30~~ 90 days after the close of the hearing or the date ordered for submission of proposed findings or legal memoranda, whichever comes last, unless the Board extends the period for good cause.

**R7-2-718. Decisions and Orders**

- A. Any final decision or order adverse to a party in a contested case shall be in writing or stated in the record. Any final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by mail to their last known address of any decision or order. ~~Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to the party's attorney of record.~~
- B. When the Board is the hearing body, the decision shall be rendered within ~~60~~ 120 days following the final day of the hearing or the date ordered for submission of proposed findings of fact and conclusions of law or legal memoranda, whichever comes last.
- C. Within 30 days after receipt of any recommended decision from the PPAC, the Board shall render a decision to affirm, reverse, adopt, modify, supplement, amend or reject the findings of fact, conclusions of law and recommendations in whole or in part, may remand the matter to the hearing body with instructions, or may convene itself as the hearing body.
- D. If no request for rehearing or review has been timely filed by a party, a decision in a contested case is effective and final ten days from the date served on that party.

**R7-2-1301. Definitions**

In this Article, unless the context otherwise specifies:

1. "Alleging party" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or other agency who completes a statement alleging immoral or unprofessional conduct against a certificated individual.
2. "Applicant" means a noncertificated person who has been disciplined by the Board and who has submitted an application requesting reinstatement of the person's legal right to work in a public school, or a person who has submitted an application to the Department requesting an evaluation of the requirements set forth in R7-2-601 et seq., requesting issuance of a certificate pursuant to R7-2-601 et seq., requesting renewal of a certificate issued pursuant to R7-2-601 et seq. or requesting changes of coding to existing files or certificates pursuant to R7-2-601 et seq.
3. "Board" means the State Board of Education.
4. "Certificated individual" means an individual who holds or has held an Arizona certificate issued pursuant to R7-2-601 et seq.
5. "Complaint" means the filing of a charge by the Board against a certificated individual alleging immoral or unprofessional conduct.
6. "Department" means the Arizona Department of Education.



- 7. "Hearing" means an adjudicative proceeding held pursuant to Title 41, Chapter 6 and R7-2-701 et seq.
- 8. "Noncertificated individual" means a noncertificated person defined in A.R.S. § 15-505, as determined by the Board.
- 8-9. "PPAC" means the Professional Practices Advisory Committee established pursuant to R7-2-205.

**R7-2-1302. Statement of Allegations**

- A. Any person may file, with the ~~Department Board~~, a statement of allegations against a certificated or noncertificated individual on forms provided by the ~~Department Board~~.
- B. A statement of allegations shall state the facts under which a party is alleging immoral or unprofessional conduct and shall be signed and notarized.
- C. The facts in a statement of allegations shall clearly state the details of the alleged immoral or unprofessional conduct.
- D. A statement of allegations shall contain the names, addresses and telephone numbers of individuals who can be contacted to provide information regarding the allegations contained in the statement. The list of individuals shall also include a brief summary of the substance and extent of each individual's knowledge regarding the allegations contained in the statement.
- E. The alleging party may attach written or other evidence to a statement of allegations at the time that the statement is filed with the ~~Department Board~~.
- F. A statement of allegations may be returned to the alleging party if the statement is not complete or not legible.
- G. The ~~Department Board~~ shall conduct an investigation of all statements of allegations filed pursuant to this Article.

**R7-2-1303. Complaint**

- A. Upon completion of an investigation resulting from a statement of allegations, the Board may file a complaint against a certificated or noncertificated individual, ~~or~~ may issue or deny certification to an applicant, or may reinstate a noncertificated individual's legal right to work in a public school and matters related to immoral or unprofessional conduct, unfitness to teach, and the discipline of noncertificated individuals pursuant to A.R.S. § 15-505.
- B. The Board may, at its own discretion, investigate any matter and file a complaint against a certificated or noncertificated individual upon receiving any information, from any source, indicating immoral or unprofessional conduct has occurred.
- C. A hearing shall be held on a complaint before the PPAC.

**R7-2-1304. Notification; Investigation**

The certificated or noncertificated individual shall have 20 days from service by U.S. mail and email of the notice of investigation to file a written response with the ~~Department Board~~.

**R7-2-1305. Investigation**

- A. Applicants shall certify on forms that are provided by the Department whether the applicant:
  - 1. Has ever received any disciplinary action, including revocation, suspension or reprimand, involving any professional certification or license;
  - 2. Is currently under investigation or has ever been the subject of any investigation by the Department of Child Safety or a similar department in this state or another jurisdiction;
  - 3. Has ever been convicted of a felony offense;
  - 4. Has ever been arrested, cited and released, or received a criminal summons for any offense, regardless if eventually convicted of a crime or if a conviction was set aside or expunged; or
  - 5. Has ever been arrested, cited and released, or received a criminal summons for any offense involving a child, regardless if eventually convicted of a crime or if a conviction was set aside or expunged.
- B. Upon receipt of notification that an applicant, ~~or~~ certificated, or noncertificated individual has engaged in unprofessional or immoral conduct pursuant to R7-2-1308, conduct that would warrant disciplinary action if the person had been certified at the time that the alleged conduct occurred, or conduct listed in subsection A of this section, the ~~Department Board~~ shall initiate an investigation.
- C. Applicants, ~~and~~ certificated, and noncertificated individuals who are alleged to have engaged in unprofessional or immoral conduct pursuant to R7-2-1308, conduct that would warrant disciplinary action if the person had been certified at the time that the alleged conduct occurred, or conduct listed in subsection (A) of this section shall provide the Board with copies of court records and law enforcement reports pertaining to the offense.

**R7-2-1307. Criminal Offenses**

- A. The Board shall revoke, not issue, or not renew the certification of a person who has been convicted of committing or attempting, soliciting, facilitating or conspiring to commit any of the following criminal offenses in this state or similar offenses in another jurisdiction:
  - 1. Sexual abuse of a minor;
  - 2. Incest;
  - 3. First-degree murder;
  - 4. Second-degree murder;
  - 5. Manslaughter;
  - 6. Sexual assault;
  - 7. Sexual exploitation of a minor;
  - 8. Commercial sexual exploitation of a minor;
  - 9. A dangerous crime against children as defined in A.R.S. § 13-705;
  - 10. Armed robbery;
  - 11. Aggravated assault;
  - 12. Sexual conduct with a minor;
  - 13. Molestation of a child;
  - 14. Exploitation of minors involving drug offenses;



15. Sexual abuse of a vulnerable adult;
  16. Sexual exploitation of a vulnerable adult;
  17. Commercial sexual exploitation of a vulnerable adult;
  18. Child sex trafficking as prescribed in A.R.S. § 13-3212;
  19. Child abuse;
  20. Abuse of a vulnerable adult;
  21. Molestation of a vulnerable adult;
  22. Taking a child for the purpose of prostitution as prescribed in A.R.S. § 13-3206;
  23. Neglect or abuse of a vulnerable adult;
  24. Sex trafficking;
  25. Sexual abuse;
  26. Production, publication, sale, possession and presentation of obscene items as prescribed in A.R.S. § 13-3502;
  27. Furnishing harmful items to minors as prescribed in A.R.S. § 13-3506;
  28. Furnishing harmful items to minors by internet activity as prescribed in A.R.S. § 13-3506.01;
  29. Obscene or indecent telephone communications to minors for commercial purposes as prescribed in A.R.S. § 13-3512;
  30. Luring a minor for sexual exploitation;
  31. Enticement of persons for purposes of prostitution;
  32. Procurement by false pretenses of person for purposes of prostitution;
  33. Procuring or placing persons in a house of prostitution;
  34. Receiving earnings of a prostitute;
  35. Causing one's spouse to become a prostitute;
  36. Detention of persons in a house of prostitution for debt;
  37. Keeping or residing in a house of prostitution or employment in prostitution;
  38. Pandering;
  39. Transporting persons for the purpose of prostitution, polygamy and concubinage;
  40. Portraying adult as a minor as prescribed in A.R.S. § 13-3555;
  41. Admitting minors to public displays of sexual conduct as prescribed in A.R.S. § 13-3558;
  42. Unlawful sale or purchase of children;
  43. Child bigamy; or
  44. Trafficking of persons for forced labor or services.
- B.** Upon notification by the clerk of the court, magistrate or court of competent jurisdiction, the Board shall immediately and permanently revoke the certificate of a person who has been convicted of any of the following offenses:
1. A dangerous crime against children as defined in A.R.S. § 13-705;
  2. Sexual abuse as prescribed in A.R.S. § 13-1404 in which the victim was a minor;
  3. Sexual assault as prescribed in A.R.S. § 13-1406 in which the victim was a minor;
  4. Sexual conduct with a minor as prescribed A.R.S. § 13-1405;
  5. A preparatory offense as prescribed in A.R.S. § 13-1001 of any of the offenses prescribed in paragraphs one, two, three or four of this subsection;
  6. Any crime that requires the person to register as a sex offender; or
  7. An act committed in another state or territory that if committed in this state would have been one of the offenses listed in paragraphs one, two, three, or four of this subsection.
- C.** If the Board takes disciplinary action against a noncertificated individual, does not issue, does not renew, or revokes a certificate due to a person's conviction or admission of an offense listed in subsection (A), but which is not an offense listed in subsection (B), the notice of non-issuance, non-renewal or revocation shall inform the person of that person's right to request a hearing within 20 days of service of the notice.
- D.** The Board shall prohibit from employment at a public school a noncertificated individual who has been convicted of committing or attempting, soliciting, facilitating or conspiring to commit any of the criminal offenses in this state or similar offenses in another jurisdiction listed in subsection (A).
- E.** Upon notification by the clerk of the court, magistrate or court of competent jurisdiction, the Board shall immediately and permanently prohibit a noncertificated individual from employment at a public school if the individual has been convicted of any offense listed in subsection (B).

**R7-2-1308. Unprofessional and Immoral Conduct**

- A.** Noncertificated individuals and individuals holding certificates issued by the Board pursuant to R7-2-601 et seq. and individuals applying for certificates issued by the Board pursuant to R7-2-601 et seq. shall:
1. Make reasonable efforts to protect pupils from conditions harmful to learning, health, or safety;
  2. Account for all funds collected from pupils, parents, or school personnel;
  3. Adhere to provisions of the Uniform System of Financial Records related to use of school property, resources, or equipment; and
  4. Abide by copyright restrictions, security, or administration procedures for a test or assessment.
- B.** Noncertificated individuals and individuals holding certificates issued by the Board pursuant to R7-2-601 et seq. and individuals applying for certificates issued by the Board pursuant to R7-2-601 et seq. shall not:
1. Discriminate against or harass any pupil or school employee on the basis of race, national origin, religion, sex, including sexual orientation, disability, color or age;
  2. Deliberately suppress or distort information or facts relevant to a pupil's academic progress;
  3. Misrepresent or falsify pupil, classroom, school, or district-level data from the administration of a test or assessment;
  4. Engage in a pattern of conduct for the sole purpose or with the sole intent of embarrassing or disparaging a pupil;
  5. Use professional position or relationships with pupils, parents, or colleagues for improper personal gain or advantage;





As with prior rulemakings implementing the hospital assessment, it is the Administration's objective to assess only as much as is necessary to meet the estimated costs associated with the projected populations referenced in the statute. As such, it is necessary for the Administration to adjust the assessment from time to time as the Administration updates its estimate of the number of eligible persons and projected cost associated with coverage for those persons.

The amendments proposed by the Administration use more recent data to update the figures of the assessment for the period beginning October 1, 2021. Currently, the model uses data from the 2018 Medicare Cost Reports and 2018 Uniform Accounting Reports. The proposed rule will update these to the 2019 Medicare Cost Reports and 2019 Uniform Accounting Reports to reflect more timely information.

The amount of the assessment determined by the model will remain the same, approximately \$534 million, but the assessed amount for each category will decrease slightly to account for the updated number of discharges and outpatient net patient revenues. Additional date changes have been made to include hospitals in the assessment that opened FFY.

**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:**

No studies were conducted relevant to the rule.

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

Not applicable because the rulemaking will not diminish a previous grant of authority to a political subdivision.

**9. A preliminary summary of the economic, small business, and consumer impact:**

The monies collected from the assessment currently in rule reflects the amount needed in SFY 2021 (October 1, 2021 – September 30, 2022) to cover the estimated cost of care, approximately \$534 million. The rulemaking keeps the total amount to be assessed the same as the previous iteration of the rulemaking. This is because the estimated need of approximately \$534 million remains the same for SFY 2022. The data used to calculate these amounts are updated in the rulemaking from 2019 reports to 2020 reports, to reflect more recent data. The Administration does not intend to use 2020 or 2021 data to calculate the hospital assessment for SFY 2022 or going forward, due to the impact of the COVID-19 Public Health Emergency on the data.

The AHCCCS program is jointly funded by the State and the federal government through the Medicaid program. Depending on the eligibility category of the individual, the federal government provides between two-thirds and 100% of the cost of care for persons described in A.R.S. § 36.2901.08(A). The Administration will use the amounts collected from the assessment combined with the federal financial participation to fund the cost of health care coverage for an estimated 529,000 persons described in A.R.S. § 36.2901.08(A) through direct payments to health care providers and capitation payments to managed care organizations that, in turn, make payments to health care providers that render care to AHCCCS members. Many of these providers are small businesses located in Arizona. A.R.S. § 36-2901.08 prohibits the assessed hospitals from passing the cost of the assessment on to patients or third parties who pay for care in the hospital.

Along with a copy of this final exempt rule making, the Administration has posted to its website information regarding the fiscal impact of this amendment to hospitals: <https://azahcccs.gov/PlansProviders/CurrentProviders/State/proposedrules.html>

**10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**

There were no changes between the proposed and final rulemaking.

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

There were no public comments for this rulemaking.

**12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

No other matters have been prescribed.

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

The rule does not require a permit.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

The rulemaking must be established consistent with 42 CFR Part 433 Subpart B. The rule is not more stringent than federal law.

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

No analysis was submitted.

**13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:**

No material is incorporated by reference.

**14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

The rule was not made, amended or repealed as an emergency rule.



15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

ARTICLE 7. STANDARDS FOR PAYMENTS

Section R9-22-730. Hospital Assessment Fund - Hospital Assessment

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-22-730. Hospital Assessment Fund - Hospital Assessment

- A. For purposes of this Section, the following terms are defined as provided below unless the context specifically requires another meaning:
  1. “~~20182019~~ Medicare Cost Report” means: The Medicare Cost Report for the hospital fiscal year ending in calendar year ~~20182019~~ as reported in the CMS Healthcare Provider Cost Reporting Information System (HCRIS) release dated October 9, ~~20192020~~.
  2. “~~20182019~~ Uniform Accounting Report” means the Uniform Accounting Report submitted to the Arizona Department of Health Services as of ~~November 6, 2019~~ December 10, 2020 for the hospital’s fiscal year ending in calendar year ~~20182019~~.
  3. “Quarter” means the three month period beginning January 1, April 1, July 1, and October 1 of each year.
  4. A “new hospital” means a licensed hospital that did not hold a license from the Arizona Department of Health Services prior to January 2, ~~20202021~~.
  5. “Outpatient Net Patient Revenues” means an amount, calculated using data in the hospital’s ~~20182019~~ Uniform Accounting Report, that is equal to the hospital’s ~~20182019~~ total net patient revenue multiplied by the ratio of the hospital’s ~~20182019~~ gross outpatient revenue to the hospital’s ~~20182019~~ total gross patient revenue.
- B. Beginning January 1, 2014, for each Arizona licensed hospital not excluded under subsection (I) shall be subject to an assessment payable on a quarterly basis. The assessment shall be levied against the legal owner of each hospital as of the first day of the quarter, and except as otherwise required by subsections (D), (E) and (F). For the period beginning October 1, ~~20202021~~, the assessment for each hospital shall be amount equal to the sum of: (1) the number of discharges reported on the hospital’s ~~20182019~~ Medicare Cost Report, excluding discharges reported on the Medicare Cost Report as “Other Long Term Care Discharges,” multiplied by the following rates appropriate to the hospital’s peer group; and (2) the amount of outpatient net patient revenues multiplied by the following rate appropriate to the hospital’s peer group:
  1. ~~\$757.25\$748.50~~ per discharge and ~~1.4466%1.3700%~~ of outpatient net patient revenues for hospitals located in a county with a population less than 500,000 that are designated as type: hospital, subtype: short-term.
  2. ~~\$757.25\$748.50~~ per discharge and ~~0.6028%0.5708%~~ of outpatient net patient revenues for hospitals designated as type: hospital, subtype: critical access hospital.
  3. ~~\$189.50\$187.25~~ per discharge and ~~0.6028%0.5708%~~ of outpatient net patient revenues for hospitals designated as type: hospital, subtype: long term.
  4. ~~\$189.50\$187.25~~ per discharge and ~~0.6028%0.5708%~~ of outpatient net patient revenues for hospitals designated as type: hospital, subtype: psychiatric, that reported 2,500 or more discharges on the ~~20182019~~ Medicare Cost Report.
  5. ~~\$605.75\$598.75~~ per discharge and ~~1.5672%1.4842%~~ of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital’s ~~20182019~~ Uniform Accounting Report.
  6. ~~\$681.50\$673.50~~ per discharge and ~~1.8083%1.7125%~~ of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with at least 10% but less than 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital’s ~~20182019~~ Uniform Accounting Report.
  7. ~~\$151.50\$149.75~~ per discharge and ~~0.4822%0.4567%~~ of outpatient net patient revenues for hospitals designated as type: hospital, subtype: children’s.
  8. ~~\$757.25\$748.50~~ per discharge and ~~2.4111%2.2834%~~ of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term not included in another peer group.
- C. Peer groups for the four quarters beginning October 1 of each year are established based on hospital license type and subtype designated in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website January 2, ~~20202021~~.
- D. Notwithstanding subsection (B), psychiatric discharges from a hospital that reported having a psychiatric sub-provider in the hospital’s ~~20182019~~ Medicare Cost Report, are assessed a rate of ~~\$189.50\$187.25~~ for each discharge from the psychiatric sub-provider as reported in the ~~20182019~~ Medicare Cost Report. All discharges other than those reported as discharges from the psychiatric sub-provider are assessed at the rate required by subsection (B).
- E. Notwithstanding subsection (B), rehabilitative discharges from a hospital that reported having a rehabilitative sub-provider in the hospital’s ~~20182019~~ Medicare Cost Report, are assessed a rate of \$0 for each discharge from the rehabilitative sub-provider as reported in the ~~20182019~~ Medicare Cost Report. All discharges other than those reported as discharges from the rehabilitative sub-provider are assessed at the rate required by subsection (B).
- F. Notwithstanding subsection (B), for any hospital that reported more than ~~24,00023,000~~ discharges on the hospital’s ~~20182019~~ Medicare Cost Report, discharges in excess of ~~24,00023,000~~ are assessed a rate of ~~\$75.75\$75.00~~ for each discharge in excess of ~~24,00023,000~~. The initial ~~24,00023,000~~ discharges are assessed at the rate required by subsection (B).



- G.** Assessment notice. On or before the 15th day of the first month of the quarter or upon CMS approval, whichever is later, the Administration shall send to each hospital a notification that the Hospital Assessment Fund assessment invoice is available to be viewed on a secure website. The invoice shall include the hospital's peer group assignment and the assessment due for the quarter.
- H.** Assessment due date. The Hospital Assessment Fund assessment must be received by the Administration no later than:
1. The 15th day of the second month of the quarter or
  2. In the event CMS approves the assessment after the 15th day of the first month of the quarter, 30 days after notification by the Administration that the assessment invoice is available.
- I.** Excluded hospitals. The following hospitals are excluded from the assessment based on the hospital's ~~2018~~2019 Medicare Cost Report and Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for January 2, ~~2020~~2021:
1. Hospitals owned and operated by the state, the United States, or an Indian tribe.
  2. Hospitals designated as type: hospital, subtype: short-term that have a license number beginning "SH".
  3. Hospitals designated as type: hospital, subtype: psychiatric that reported fewer than 2,500 discharges on the ~~2018~~2019 Medicare Cost Report.
  4. Hospitals designated as type: hospital, subtype: rehabilitation.
  5. Hospitals designated as type: med-hospital, subtype: special hospitals.
  6. Hospitals designated as type: hospital, subtype: short-term located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the ~~2018~~2019 Medicare Cost Report are reimbursed by Medicare.
  7. Hospitals designated as type: hospital, subtype: short-term that have at least 25 percent Medicare swing beds as percentage of total Medicare days, per the ~~2018~~2019 Medicare Cost Report.
- J.** New hospitals. For hospitals that did not file a ~~2018~~2019 Medicare Cost Report because of the date the hospital began operations:
1. If the hospital was open on the January 2 preceding the October assessment start date, the hospital assessment will begin on October 1 following the date the hospital began operating.
  2. If the hospital began operating between January 3 and June 30, the assessment will begin on October 1 of the following calendar year.
  3. A hospital is not considered a new hospital based on a change in ownership.
  4. The assessment will be based on the discharges reported in the hospital's first Medicare Cost Report and Uniform Accounting Report, which includes 12 months-worth of data, except when any of the following apply:
    - a. If there is not a complete 12 months-worth of data available, the assessment will be based on the annualized number of discharges from the date hospital operations began through December 31 preceding the October assessment start date. The hospital shall self-report the discharge data and all other data requested by the Administration necessary to determine the appropriate assessment to the Administration no later than January preceding the assessment start date for the new hospitals. "Annualized" means divided by a ratio equal to the number of months of data divided by 12 months.
    - b. If more than 12 months of data is available, the assessment will be based on the most recent 12 months of self-reported data, as of December 31;
  5. For purposes of calculating subpart 4, if a new hospital shares a Medicare Identification Number with an existing hospital, the assessment amount will be based on self-reported data from the new hospital instead of the Medicare Cost Report. The data shall include the number of discharges and all other data requested by the Administration necessary to determine the appropriate assessment.
  6. For hospitals providing self-reported data, described in subpart 4 and 5:
    - a. Psychiatric discharges will be annualized to determine if subsections (B)(4) or (I)(3) apply to the assessment amount.
    - b. Discharges will be annualized to determine if subsection (F) applies to the assessment amount.
- K.** Changes of ownership. The parties to a change of ownership shall promptly provide written notice to the Administration of a change of ownership and any agreement regarding the payment of the assessment. The assessed amount will continue at the same amount applied to the prior owner. Assessments are the responsibility of the owner of record as of the first day of the quarter; however, this rule is not intended to prohibit the parties to a change of ownership from entering into an agreement for a new owner to assume the assessment responsibility of the owner of record as of the first day of the prior quarter.
- L.** Hospital closures. Hospitals that close shall pay a proportion of the quarterly assessment equal to that portion of the quarter during which the hospital operated.
- M.** Required information for the inpatient assessment. For any hospital that has not filed a ~~2018~~2019 Medicare Cost report, or if the ~~2018~~2019 Medicare Cost report does not include the reliable information sufficient for the Administration to calculate the inpatient assessment, the Administration shall use data reported on the ~~2018~~2019 Uniform Accounting Report filed by the hospital in place of the ~~2018~~2019 Medicare Cost report to calculate the assessment. If the ~~2018~~2019 Uniform Accounting Report filed by the hospital does not include reliable information sufficient for the Administration to calculate the inpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the ~~2018~~2019 Medicare Cost report to calculate the assessment.
- N.** Required information for the outpatient assessment. For any hospital that has not filed a ~~2018~~2019 Uniform Accounting Report, or if the ~~2018~~2019 Uniform Accounting Report does not reconcile to ~~2018~~2019 Audited Financial Statements, the Administration shall use the data reported on ~~2018~~2019 Audited Financial Statements to calculate the outpatient assessment. If the ~~2018~~2019 Audited Financial Statements do not include the reliable information sufficient for the Administration to calculate the outpatient assessment, the Administration all use data reported on the ~~2018~~2019 Medicare Cost report. If the Medicare Cost report does not include reliable information sufficient for the Administration to calculate the outpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the ~~2018~~2019 Medicare Cost report to calculate the outpatient assessment.



- O.** The Administration will review and update as necessary rates and peer groups periodically to ensure the assessment is sufficient to fund the state match obligation to cover the cost of the populations as specified in 36-2901.08.
- P.** Enforcement. If a hospital does not comply with this section, the director may suspend or revoke the hospital's provider agreement. If the hospital does not comply within 180 days after the hospital's provider agreement is suspended or revoked, the director shall notify the director of the Department of Health Services who shall suspend or revoke the hospital's license.



**NOTICES OF RULEMAKING DOCKET OPENING**

This section of the *Arizona Administrative Register* contains Notices of Rulemaking Docket Opening.

A docket opening is the first part of the administrative rulemaking process. It is an “announcement” that the agency intends to work on its rules.

When an agency opens a rulemaking docket to consider rulemaking, the Administrative Procedure Act (APA) requires the publication of the Notice of Rulemaking Docket Opening.

Under the APA effective January 1, 1995, agencies must submit a Notice of Rulemaking Docket Opening before beginning the formal rulemaking process. Many times an agency may file the Notice of Rulemaking Docket Opening with the Notice of Proposed Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these notices. Questions about the interpretation of this information should be directed to the agency contact person listed in item #4 of this notice.

**NOTICE OF RULEMAKING DOCKET OPENING  
AGRICULTURAL EMPLOYMENT RELATIONS BOARD**

[R21-177]

1. **Title and its heading:** 4, Professions and Occupations  
**Chapter and its heading:** 2, Agricultural Employment Relations Board  
**Article and its heading:** 1, General Provisions  
 2, Elections  
 3, Unfair Labor Practices  
 4, Hearings  
  
**Section numbers:** R4-2-101 through R4-2-105; R4-2-201 through R4-2-218; R4-2-301 through R4-2-305; R4-2-401 and R4-2-407 (*Sections may be added, deleted or modified as necessary*)
  
2. **Subject matter of the proposed rule:**  
 This rulemaking is the result of suggested changes made by Governor's Regulatory Review Council during the Board's 5-year rule review in 2016, as well as an extensive review to update the rules for consistency and accuracy as necessary.
  
3. **A citation to all published notices relating to the proceeding:**  
 Notice of Proposed Rulemaking: 27 A.A.R. 2331, October 22, 2021 (*in this issue*)
  
4. **The name and address of agency personnel with whom persons may communicate regarding the rule:**  
 Name: Lisa James  
 Address: Arizona Department of Agriculture  
 1688 W. Adams St.  
 Phoenix, AZ 85007  
  
 Telephone: (602) 542-1164  
 Fax: (602) 364-0830  
 Email: [ljames@azda.gov](mailto:ljames@azda.gov)
  
5. **The time during which the agency will accept written comments and the time and place where oral comments may be made:**  
 The Agricultural Employment Relations Board will accept written comments until close of business on Friday, December 3, 2021. Written comments can be sent to agency personnel listed in item 4.  
  
 Oral comments may be made at the oral hearing scheduled for Wednesday, December 1, 2021 at 10:00 a.m., at the Arizona Department of Agriculture, 1688 W. Adams Street, Phoenix, AZ 85007, Room 206.
  
6. **A timetable for agency decisions or other action on the proceeding, if known:**  
 A timetable is not known at this time.

**NOTICE OF RULEMAKING DOCKET OPENING  
DEPARTMENT OF TRANSPORTATION  
OVERSIZE AND OVERWEIGHT SPECIAL PERMITS**

[R21-178]

1. **Title and its heading:** 17, Transportation  
**Chapter and its heading:** 6, Department of Transportation - Oversize and Overweight Special Permits  
  
**Article and its heading:** 1, General Provisions  
 2, Special Permit Classes and Fees  
 3, Safety Requirements



- 4, Transport Provisions
- 5, Envelope Permit Special Provisions

**Section numbers:**

R17-6-101, R17-6-102, Table 1, R17-6-103 through R17-6-113, R17-6-201 through R17-6-206, Table 2, R17-6-207 through R17-6-212, Table 6, Table 7, R17-6-301, R17-6-302, Ill. 1, R17-6-303, Ill. 2, R17-6-304, Ill. 4, R17-6-305 through R17-6-308, R17-6-401 through R17-6-411, Tables 3.01 through 3.09, Ill. 3, R17-6-412, Table 4, R17-6-413, Table 5, R17-6-414, and R17-6-501 through R17-6-511 (Other Sections may be added, deleted, or modified as necessary.)

**2. The subject matter of the proposed rules:**

The Arizona Department of Transportation and Overdimensional Permit Council in coordination with a broad coalition of public and private transportation stakeholder groups including the Arizona Department of Public Safety, local law enforcement personnel, Arizona’s business community, the Arizona Trucking Association, the Specialized Carriers & Rigging Association and other members of Arizona’s trucking, heavy-haul transport, crane, utility, and escort vehicle industries will engage in this rulemaking effort to update the Department’s oversize and overweight envelope and special permit rules, provide additional regulatory relief for industry partners, and ensure effectiveness in achieving statutory objectives under A.R.S. Title 28, Chapter 3, Articles 18 and 19. The Department and the Overdimensional Permit Council intend to correct outdated information and statutory references, provide further clarification on existing processes as necessary to promote the public safety, and ensure the rules are clear, concise, and understandable. This rulemaking will expand the current weight allowances provided for non-reducible vehicle and load combinations using tridem axle group configurations and expand the Class A special permit allowances to encompass several other permit types. Additionally, the rulemaking will outline the continuous travel allowance criteria negotiated between the Department and representatives of the Specialized Carriers & Rigging Association as specifically applicable to the movement of self-propelled mobile cranes, drilling rigs, and similar specialty equipment. The Department and the Overdimensional Permit Council will be publishing additional notices to ensure that all interested parties are provided sufficient opportunity to participate in this rulemaking effort.

**3. A citation to all published notices relating to the proceeding:**

None

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

Name: John Lindley, Senior Rules Analyst  
 Address: Arizona Department of Transportation  
 Administrative Rules and Policy Development  
 206 S. 17th Ave., Mail Drop 180A  
 Phoenix, AZ 85007  
 Telephone: (480) 267-6543  
 Email: jlindley@azdot.gov  
 Website: Please visit the ADOT website to track progress of this rule and any other agency rulemaking matters at <https://azdot.gov/about/government-relations>.

**5. The time during which the agency will accept written comments and the time and place where oral comments may be made:**

Written comments may be submitted at any time. Oral comments may be made during regular business hours. All comments should be directed to the agency representative listed under item 4. The date, time, and location of an oral proceeding on the rulemaking will be included in the Notice of Proposed Rulemaking.

**6. A timetable for agency decisions or other action on the proceeding, if known:**

To be determined



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## NOTICES OF SUBSTANTIVE POLICY STATEMENT

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The *Administrative Procedure Act* (APA) requires the publication of Notices of Substantive Policy Statement issued by agencies (A.R.S. § 41-1013(B)(9)).

Substantive policy statements are written expressions which inform the general public of an agency's current approach to rule or regulation practice.

Substantive policy statements are advisory only. A substantive policy statement does not include internal procedural documents that only affect an agency's

internal procedures and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the APA.

If you believe that a substantive policy statement does impose additional requirements or penalties on regulated parties, you may petition the agency under A.R.S. § 41-1033 for a review of the statement.

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### NOTICE OF SUBSTANTIVE POLICY STATEMENT DEPARTMENT OF REAL ESTATE

[M21-66]

**1. Title of the substantive policy statement and the number by which the substantive policy statement is referenced:**

Unlicensed Assistants: No. 2017.01

**2. Date the substantive policy statement was issued and the effective date of the policy statement if different from the issuance date:**

Revised April 3, 2000; Revised and Renumbered 5/28/2004; Renumbered 4/01/2005; Revised and Renumbered 6/9/2017; Revised 9/29/2021.

**3. Summary of the contents of the substantive policy statement:**

The Arizona Department of Real Estate (Department) revised and renumbering SPS 2005.04 Unlicensed Assistants, effective June 9, 2017. This revision to SPS 2017.01 provides an update based on legislation that was enacted in the 55th Legislature, 1st Regular Session in HB 2085 (Chapter 10). The SPS conforms to the legislation by adding language that a person who works for a real estate broker or a real estate salesperson may collect in-person rent and related fees on behalf of the real estate broker or real estate salesperson for the use of real estate as part of the person's clerical duties and who provides a receipt when rent is paid.

**4. Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:**

A.R.S. §§ 32-2101(46), 32-2122, 32-2121, 32-2124, 32-2151.01(B), 32-2174(C) and A.A.C. R4-28-1103

**5. A statement as to whether the substantive policy statement is a new statement or a revision:**

This is a revision of an existing policy statement on the same subject (SPS 2017.01 Unlicensed Assistants).

**6. The agency contact person who can answer questions about the substantive policy statement:**

Name: Louis Dettorre  
Address: 100 N. 15th Ave, Suite 201  
Phoenix, AZ 85007  
Telephone: (602) 771-7769  
Email: ldettorre@azre.gov  
Website: www.azre.gov

**7. Information about where a person may obtain a copy of the substantive policy statement and the costs for obtaining the policy statement:**

Copies of this policy statement may be obtained at no cost via e-mail to the person listed above or on the Department web site: [www.azre.gov](http://www.azre.gov). Hard copies may be obtained by contacting the person listed above for \$0.25 per page.



**GOVERNOR EXECUTIVE ORDER**

Executive Order 2020-02 is being reproduced in each issue of the *Administrative Register* as a notice to the public regarding state agencies' rulemaking activities.

This order has been reproduced in its entirety as submitted.

**EXECUTIVE ORDER 2021-02**

**Moratorium on Rulemaking to Promote Job Creation and Economic Development; Internal Review of Administrative Rules**

[M21-11]

**WHEREAS**, government regulations should be as limited as possible; and

**WHEREAS**, burdensome regulations inhibit job growth and economic development; and

**WHEREAS**, in 2015 the State of Arizona implemented a moratorium on all new regulatory rulemaking by State agencies through executive order, and renewed the moratorium in 2016, 2017, 2018, 2019 and 2020; and

**WHEREAS**, the State of Arizona eliminated or improved 462 burdensome regulations in 2020 and for a total of 2,751 needless regulations eliminated or improved since 2015; and

**WHEREAS**, estimates show these eliminations saved job creators \$14.7 million in operating costs in 2020 and for a total of over \$148.9 million in savings since 2015; and

**WHEREAS**, in 2020, for every one new necessary rule added to the Administrative Code, four have been repealed or improved; and

**WHEREAS**, COVID-19 has been hard on small businesses and the economy, and administrative barriers should be removed for their sake; and

**WHEREAS**, all government agencies of the State of Arizona should continue to promote customer service oriented principles for the people that it serves; and

**WHEREAS**, each State agency shall continue to conduct a critical and comprehensive review of its administrative rules and take action to reduce the regulatory burden, administrative delay and legal uncertainty associated with government regulation while protecting the health, peace and safety of residents; and

**WHEREAS**, each State agency should continue to evaluate its administrative rules using any available and reliable data and performance metrics; and

**WHEREAS**, Article 5, Section 4 of the Arizona Constitution and Title 41, Chapter 1, Article 1 of the Arizona Revised Statutes vests the executive power of the State of Arizona in the Governor.

**NOW, THEREFORE**, I, Douglas A. Ducey, by virtue of the authority vested in me by the Constitution and laws of the State of Arizona hereby declare the following:

1. A State agency subject to this Order shall not conduct any rulemaking, including regular, expedited, emergency and exempt, whether informal or formal, without the prior written approval of the Office of the Governor. In seeking approval, a State agency shall address one or more of the following as justifications for the rulemaking:
  - a. To fulfill an objective related to job creation, economic development or economic expansion in this State.
  - b. To reduce or ameliorate a regulatory burden on the public, while achieving the same regulatory objective.
  - c. To prevent a significant threat to public health, peace or safety.
  - d. To avoid violating a court order or federal law that would result in sanctions by a federal court for failure to conduct the rulemaking action.
  - e. To comply with a federal statutory or regulatory requirement if such compliance is related to a condition for the receipt of federal funds or participation in any federal program.
  - f. To comply with a new state statutory requirement.
  - g. To fulfill an obligation related to fees or any other action necessary to implement the State budget that is certified by the Governor's Office of Strategic Planning and Budgeting.
  - h. To promulgate a rule or other item that is exempt from Title 41, Chapter 6, Arizona Revised Statutes, pursuant to section 41-1005, Arizona Revised Statutes.
  - i. To address matters pertaining to the control, mitigation, or eradication of waste, fraud, or abuse within an agency or wasteful, fraudulent or abusive activities perpetrated against an agency.
  - j. To eliminate rules which are antiquated, redundant or otherwise no longer necessary for the operation of state government.
2. After the public comment period and the close of the rulemaking record, a State agency subject to this Order shall not submit the proposed rules to the Governor's Regulatory Review Council without a written final approval from the Office of the Governor.



- Before considering the rules submitted by a State agency, the Governor's Regulatory Review Council must obtain from the State agency the initial approval, referenced in Section 1, and the final approval from the Office of the Governor.
3. A State agency that submits a rulemaking request pursuant to this Order shall recommend for consideration by the Governor's Office at least *three* existing rules to eliminate for every *one* additional rule requested by the agency.
  4. All State agencies shall conduct a comprehensive review of any rules that were suspended during the Public Health State of Emergency for COVID-19 to determine if those rules should be permanently suspended and send a report on their findings no later than June 1, 2021.
  5. A State agency subject to this Order shall not publicize any directives, policy statements, documents or forms on its website unless such are explicitly authorized by the Arizona Revised Statutes or Arizona Administrative Code. Any material that is not specifically authorized must be removed immediately.
  6. A State agency that issues occupational or professional licenses shall prominently post on the agency's website landing page all current state policies that ease licensing burdens and the exact steps applicants must complete to receive their license using these policies. State agencies should provide information that applies to all applicants, but have a designated area on the landing page that includes licensing information specifically for military spouses, active duty service members and veterans and all policies that make it easier for these applicant groups to receive their license. Examples of reduced licensing burdens include "universal recognition" of out-of-state licenses, availability of temporary licenses, fee waivers, exam exemptions and/or allowing an applicant to substitute military education or experience for licensing requirements. A landing page feature may link to an internal agency web page with more information, if necessary. All information must be easy to locate and written in clear and concise language.
  7. A State agency that issues occupational or professional licenses must track veteran and military spouse status of applicants immediately and report that information to the Governor's Office on an annual basis, starting July 1, 2021.
  8. All State agencies that are required to issue occupational or professional licenses by "universal recognition" (established by A.R.S. § 32-4302) must track all applications received for this license type immediately and report that information to the Governor's Office on an annual basis, starting July 1, 2021. Before any agency denies a professional or occupational license applied for under A.R.S. § 32-4302, the agency shall submit the application and justification for denial to the Office of the Governor for review before any official action is taken by the agency. The Governor's Office should be notified of any required timeframes, whether in statute or rule, for approval or denial of the license by the agency.
  9. For the purposes of this Order, the term "State agencies" includes, without limitation, all executive departments, agencies, offices, and all state boards and commissions, except for: (a) any State agency that is headed by a single elected State official; (b) the Corporation Commission; and (c) any board or commission established by ballot measure during or after the November 1998 general election. Those state agencies, boards and commissions excluded from this Order are strongly encouraged to voluntarily comply with this Order in the context of their own rulemaking processes.
  10. This Order does not confer any legal rights upon any persons and shall not be used as a basis for legal challenges to rules, approvals, permits, licenses or other actions or to any inaction of a State agency. For the purposes of this Order, "person," "rule" and "rulemaking" have the same meanings prescribed in section 41-1001, Arizona Revised Statutes.
  11. This Executive Order supersedes Executive Order 2019-01 and Executive Order 2020-02.

**IN WITNESS THEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

**Douglas A. Ducey**  
**GOVERNOR**

**DONE** at the Capitol in Phoenix on this twelfth day of February in the Year Two Thousand and Twenty-One and of the Independence of the United States of America the Year Two Hundred and Forty-Fifth.

**ATTEST:**

**Katie Hobbs**  
**SECRETARY OF STATE**

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**REGISTER INDEXES**

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The *Register* is published by volume in a calendar year (See “General Information” in the front of each issue for more information).

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Abbreviations for rulemaking activity in this Index include:

**PROPOSED RULEMAKING**

PN = Proposed new Section  
PM = Proposed amended Section  
PR = Proposed repealed Section  
P# = Proposed renumbered Section

**SUPPLEMENTAL PROPOSED RULEMAKING**

SPN = Supplemental proposed new Section  
SPM = Supplemental proposed amended Section  
SPR = Supplemental proposed repealed Section  
SP# = Supplemental proposed renumbered Section

**FINAL RULEMAKING**

FN = Final new Section  
FM = Final amended Section  
FR = Final repealed Section  
F# = Final renumbered Section

**SUMMARY RULEMAKING****PROPOSED SUMMARY**

PSMN = Proposed Summary new Section  
PSMM = Proposed Summary amended Section  
PSMR = Proposed Summary repealed Section  
PSM# = Proposed Summary renumbered Section

**FINAL SUMMARY**

FSMN = Final Summary new Section  
FSMM = Final Summary amended Section  
FSMR = Final Summary repealed Section  
FSM# = Final Summary renumbered Section

**EXPEDITED RULEMAKING****PROPOSED EXPEDITED**

PEN = Proposed Expedited new Section  
PEM = Proposed Expedited amended Section  
PER = Proposed Expedited repealed Section  
PE# = Proposed Expedited renumbered Section

**SUPPLEMENTAL EXPEDITED**

SPEN = Supplemental Proposed Expedited new Section  
SPEM = Supplemental Proposed Expedited amended Section  
SPER = Supplemental Proposed Expedited repealed Section  
SPE# = Supplemental Proposed Expedited renumbered Section

**FINAL EXPEDITED**

FEN = Final Expedited new Section  
FEM = Final Expedited amended Section  
FER = Final Expedited repealed Section  
FE# = Final Expedited renumbered Section

**EXEMPT RULEMAKING****EXEMPT**

XN = Exempt new Section  
XM = Exempt amended Section  
XR = Exempt repealed Section  
X# = Exempt renumbered Section

**EXEMPT PROPOSED**

PXN = Proposed Exempt new Section  
PXM = Proposed Exempt amended Section  
PXR = Proposed Exempt repealed Section  
PX# = Proposed Exempt renumbered Section

**EXEMPT SUPPLEMENTAL PROPOSED**

SPXN = Supplemental Proposed Exempt new Section  
SPXR = Supplemental Proposed Exempt repealed Section  
SPXM = Supplemental Proposed Exempt amended Section  
SPX# = Supplemental Proposed Exempt renumbered Section

**FINAL EXEMPT RULEMAKING**

FXN = Final Exempt new Section  
FXM = Final Exempt amended Section  
FXR = Final Exempt repealed Section  
FX# = Final Exempt renumbered Section

**EMERGENCY RULEMAKING**

EN = Emergency new Section  
EM = Emergency amended Section  
ER = Emergency repealed Section  
E# = Emergency renumbered Section  
EEXP = Emergency expired

**RECODIFICATION OF RULES**

RC = Recodified

**REJECTION OF RULES**

RJ = Rejected by the Attorney General

**TERMINATION OF RULES**

TN = Terminated proposed new Sections  
TM = Terminated proposed amended Section  
TR = Terminated proposed repealed Section  
T# = Terminated proposed renumbered Section

**RULE EXPIRATIONS**

EXP = Rules have expired

See also “emergency expired” under emergency rulemaking

**CORRECTIONS**

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## RULES EFFECTIVE DATES CALENDAR

A.R.S. § 41-1032(A), as amended by Laws 2002, Ch. 334, § 8 (effective August 22, 2002), states that a rule generally becomes effective 60 days after the day it is filed with the Secretary of State's Office. The following table lists filing dates and effective dates for rules that follow this provision. Please also check the rulemaking Preamble for effective dates.

January		February		March		April		May		June	
Date Filed	Effective Date										
1/1	3/2	2/1	4/2	3/1	4/30	4/1	5/31	5/1	6/30	6/1	7/31
1/2	3/3	2/2	4/3	3/2	5/1	4/2	6/1	5/2	7/1	6/2	8/1
1/3	3/4	2/3	4/4	3/3	5/2	4/3	6/2	5/3	7/2	6/3	8/2
1/4	3/5	2/4	4/5	3/4	5/3	4/4	6/3	5/4	7/3	6/4	8/3
1/5	3/6	2/5	4/6	3/5	5/4	4/5	6/4	5/5	7/4	6/5	8/4
1/6	3/7	2/6	4/7	3/6	5/5	4/6	6/5	5/6	7/5	6/6	8/5
1/7	3/8	2/7	4/8	3/7	5/6	4/7	6/6	5/7	7/6	6/7	8/6
1/8	3/9	2/8	4/9	3/8	5/7	4/8	6/7	5/8	7/7	6/8	8/7
1/9	3/10	2/9	4/10	3/9	5/8	4/9	6/8	5/9	7/8	6/9	8/8
1/10	3/11	2/10	4/11	3/10	5/9	4/10	6/9	5/10	7/9	6/10	8/9
1/11	3/12	2/11	4/12	3/11	5/10	4/11	6/10	5/11	7/10	6/11	8/10
1/12	3/13	2/12	4/13	3/12	5/11	4/12	6/11	5/12	7/11	6/12	8/11
1/13	3/14	2/13	4/14	3/13	5/12	4/13	6/12	5/13	7/12	6/13	8/12
1/14	3/15	2/14	4/15	3/14	5/13	4/14	6/13	5/14	7/13	6/14	8/13
1/15	3/16	2/15	4/16	3/15	5/14	4/15	6/14	5/15	7/14	6/15	8/14
1/16	3/17	2/16	4/17	3/16	5/15	4/16	6/15	5/16	7/15	6/16	8/15
1/17	3/18	2/17	4/18	3/17	5/16	4/17	6/16	5/17	7/16	6/17	8/16
1/18	3/19	2/18	4/19	3/18	5/17	4/18	6/17	5/18	7/17	6/18	8/17
1/19	3/20	2/19	4/20	3/19	5/18	4/19	6/18	5/19	7/18	6/19	8/18
1/20	3/21	2/20	4/21	3/20	5/19	4/20	6/19	5/20	7/19	6/20	8/19
1/21	3/22	2/21	4/22	3/21	5/20	4/21	6/20	5/21	7/20	6/21	8/20
1/22	3/23	2/22	4/23	3/22	5/21	4/22	6/21	5/22	7/21	6/22	8/21
1/23	3/24	2/23	4/24	3/23	5/22	4/23	6/22	5/23	7/22	6/23	8/22
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1/26	3/27	2/26	4/27	3/26	5/25	4/26	6/25	5/26	7/25	6/26	8/25
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1/30	3/31			3/30	5/29	4/30	6/29	5/30	7/29	6/30	8/29
1/31	4/1			3/31	5/30			5/31	7/30		



July		August		September		October		November		December	
Date Filed	Effective Date										
7/1	8/30	8/1	9/30	9/1	10/31	10/1	11/30	11/1	12/31	12/1	1/30
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7/3	9/1	8/3	10/2	9/3	11/2	10/3	12/2	11/3	1/2	12/3	2/1
7/4	9/2	8/4	10/3	9/4	11/3	10/4	12/3	11/4	1/3	12/4	2/2
7/5	9/3	8/5	10/4	9/5	11/4	10/5	12/4	11/5	1/4	12/5	2/3
7/6	9/4	8/6	10/5	9/6	11/5	10/6	12/5	11/6	1/5	12/6	2/4
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7/9	9/7	8/9	10/8	9/9	11/8	10/9	12/8	11/9	1/8	12/9	2/7
7/10	9/8	8/10	10/9	9/10	11/9	10/10	12/9	11/10	1/9	12/10	2/8
7/11	9/9	8/11	10/10	9/11	11/10	10/11	12/10	11/11	1/10	12/11	2/9
7/12	9/10	8/12	10/11	9/12	11/11	10/12	12/11	11/12	1/11	12/12	2/10
7/13	9/11	8/13	10/12	9/13	11/12	10/13	12/12	11/13	1/12	12/13	2/11
7/14	9/12	8/14	10/13	9/14	11/13	10/14	12/13	11/14	1/13	12/14	2/12
7/15	9/13	8/15	10/14	9/15	11/14	10/15	12/14	11/15	1/14	12/15	2/13
7/16	9/14	8/16	10/15	9/16	11/15	10/16	12/15	11/16	1/15	12/16	2/14
7/17	9/15	8/17	10/16	9/17	11/16	10/17	12/16	11/17	1/16	12/17	2/15
7/18	9/16	8/18	10/17	9/18	11/17	10/18	12/17	11/18	1/17	12/18	2/16
7/19	9/17	8/19	10/18	9/19	11/18	10/19	12/18	11/19	1/18	12/19	2/17
7/20	9/18	8/20	10/19	9/20	11/19	10/20	12/19	11/20	1/19	12/20	2/18
7/21	9/19	8/21	10/20	9/21	11/20	10/21	12/20	11/21	1/20	12/21	2/19
7/22	9/20	8/22	10/21	9/22	11/21	10/22	12/21	11/22	1/21	12/22	2/20
7/23	9/21	8/23	10/22	9/23	11/22	10/23	12/22	11/23	1/22	12/23	2/21
7/24	9/22	8/24	10/23	9/24	11/23	10/24	12/23	11/24	1/23	12/24	2/22
7/25	9/23	8/25	10/24	9/25	11/24	10/25	12/24	11/25	1/24	12/25	2/23
7/26	9/24	8/26	10/25	9/26	11/25	10/26	12/25	11/26	1/25	12/26	2/24
7/27	9/25	8/27	10/26	9/27	11/26	10/27	12/26	11/27	1/26	12/27	2/25
7/28	9/26	8/28	10/27	9/28	11/27	10/28	12/27	11/28	1/27	12/28	2/26
7/29	9/27	8/29	10/28	9/29	11/28	10/29	12/28	11/29	1/28	12/29	2/27
7/30	9/28	8/30	10/29	9/30	11/29	10/30	12/29	11/30	1/29	12/30	2/28
7/31	9/29	8/31	10/30			10/31	12/30			12/31	3/1



**REGISTER PUBLISHING DEADLINES**

The Secretary of State's Office publishes the Register weekly. There is a three-week turnaround period between a deadline date and the publication date of the Register. The weekly deadline dates and issue dates are shown below. Council meetings and Register deadlines do not correlate. Also listed are the earliest dates on which an oral proceeding can be held on proposed rulemakings or proposed delegation agreements following publication of the notice in the Register.

<b>Deadline Date</b> <b>Friday, 5:00 p.m.</b> <i>(*earlier date due to holiday)</i>	<b>Register</b> <b>Publication Date</b>	<b>Oral Proceeding may be</b> <b>scheduled on or after</b>
August 20, 2021	September 10, 2021	October 12, 2021
August 27, 2021	September 17, 2021	October 18, 2021
September 3, 2021	September 24, 2021	October 25, 2021
September 10, 2021	October 1, 2021	November 1, 2021
September 17, 2021	October 8, 2021	November 8, 2021
September 24, 2021	October 15, 2021	November 15, 2021
October 1, 2021	October 22, 2021	November 22, 2021
October 8, 2021	October 29, 2021	November 29, 2021
October 15, 2021	November 5, 2021	December 6, 2021
October 22, 2021	November 12, 2021	December 13, 2021
October 29, 2021	November 19, 2021	December 20, 2021
November 5, 2021	November 26, 2021	December 27, 2021
November 12, 2021	December 3, 2021	January 3, 2022
November 19, 2021	December 10, 2021	January 10, 2022
November 26, 2021	December 17, 2021	January 18, 2022
December 3, 2021	<i>Thursday</i> December 23, 2021*	January 24, 2022
December 10, 2021	<i>Thursday</i> December 30, 2021*	January 31, 2022
December 17, 2021	January 7, 2022	February 7, 2022
<i>Thursday</i> December 23, 2021*	January 14, 2022	February 14, 2022
<i>Thursday</i> December 30, 2021*	January 21, 2022	February 22, 2022
January 7, 2022	January 28, 2022	February 28, 2022
January 14, 2022	February 4, 2022	March 7, 2022
January 21, 2022	February 11, 2022	March 14, 2022
January 28, 2022	February 18, 2022	March 21, 2022
February 4, 2022	February 25, 2022	March 28, 2022
February 11, 2022	March 4, 2022	April 4, 2022
February 18, 2022	March 11, 2022	April 11, 2022



### GOVERNOR’S REGULATORY REVIEW COUNCIL DEADLINES

The following deadlines apply to all Five-Year Review Reports and any adopted rule submitted to the Governor’s Regulatory Review Council. Council meetings and Register deadlines do not correlate. We publish these deadlines under A.R.S. § 41-1013(B)(15).

All rules and Five-Year Review Reports are due in the Council office by 5 p.m. of the deadline date. The Council’s office is located at 100 N. 15th Ave., Suite 305, Phoenix, AZ 85007. For more information, call (602) 542-2058 or visit <http://grrc.az.gov>.

#### GOVERNOR’S REGULATORY REVIEW COUNCIL DEADLINES FOR 2021/2021

(MEETING DATES ARE SUBJECT TO CHANGE)

[M20-42]/[M21-61]

DEADLINE FOR PLACEMENT ON AGENDA*	FINAL MATERIALS SUBMITTED TO COUNCIL	DATE OF COUNCIL STUDY SESSION	DATE OF COUNCIL MEETING
<i>Tuesday</i> September 21, 2021	<i>Tuesday</i> October 19, 2021	<i>Tuesday</i> October 26, 2021	<i>Tuesday</i> November 2, 2021
<i>Tuesday</i> October 19, 2021	<i>Tuesday</i> November 23, 2021	<i>Tuesday</i> November 30, 2021	<i>Tuesday</i> December 7, 2021
<i>Tuesday</i> November 23, 2021	<i>Tuesday</i> December 21, 2021	<i>Tuesday</i> December 28, 2021	<i>Tuesday</i> January 4, 2022
<i>Tuesday</i> December 21, 2021	<i>Tuesday</i> January 18, 2022	<i>Tuesday</i> January 25, 2022	<i>Tuesday</i> February 1, 2022
<i>Tuesday</i> January 18, 2022	<i>Tuesday</i> February 15, 2022	<i>Tuesday</i> February 22, 2022	<i>Tuesday</i> March 1, 2022
<i>Tuesday</i> February 15, 2022	<i>Tuesday</i> March 22, 2022	<i>Tuesday</i> March 29, 2022	<i>Tuesday</i> April 5, 2022
<i>Tuesday</i> March 22, 2022	<i>Tuesday</i> April 19, 2022	<i>Tuesday</i> April 26, 2022	<i>Tuesday</i> May 3, 2022
<i>Tuesday</i> April 19, 2022	<i>Tuesday</i> May 17, 2022	<i>Tuesday</i> May 24, 2022	<b>Wednesday</b> June 1, 2022
<i>Tuesday</i> May 17, 2022	<i>Tuesday</i> June 21, 2022	<i>Tuesday</i> June 28, 2022	<b>Wednesday</b> July 6, 2022
<i>Tuesday</i> June 21, 2022	<i>Tuesday</i> July 19, 2022	<i>Tuesday</i> July 26, 2022	<i>Tuesday</i> August 2, 2022
<i>Tuesday</i> July 19, 2022	<i>Tuesday</i> August 23, 2022	<i>Tuesday</i> August 30, 2022	<b>Wednesday</b> September 7, 2022
<i>Tuesday</i> August 23, 2022	<i>Tuesday</i> September 20, 2022	<i>Tuesday</i> September 27, 2022	<i>Tuesday</i> October 4, 2022
<i>Tuesday</i> September 20, 2022	<i>Tuesday</i> October 18, 2022	<i>Tuesday</i> October 25, 2022	<i>Tuesday</i> November 1, 2022
<i>Tuesday</i> October 18, 2022	<i>Tuesday</i> November 22, 2022	<i>Tuesday</i> November 29, 2022	<i>Tuesday</i> December 6, 2022

\* Materials must be submitted by 5 PM on dates listed as a deadline for placement on a particular agenda. Placement on a particular agenda is not guaranteed.