

FIVE-YEAR-REVIEW REPORT
TITLE 7. EDUCATION
CHAPTER 5. STATE BOARD FOR CHARTER SCHOOLS
ARTICLES 1, 2 & 4

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ARTICLES 1, 2 & 4

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FIVE-YEAR-REVIEW SUMMARY

A.R.S. §15-181(E) and (F) set forth the duties of the State Board for Charter Schools (Board) which include granting charter status to qualifying applicants for charter schools and exercising general supervision over the charter schools it sponsors. A.R.S. §15-181(E)(5) requires the Board to adopt rules for its own government. The Board determines its policy and the work undertaken by it. A.R.S. §15-182(E)(6).

Arizona Administrative Code, Title 7, Chapter 5, Article 1 provides the definitions of undefined terms that appear in applicable statutes and terms that appear in rule, contracts and policies of the Board. Arizona Administrative Code, Title 7, Chapter 5, Article 2 provides required application components for obtaining a new charter, the process for review of an application package, and the requirements for the execution of a charter. Arizona Administrative Code, Title 7, Chapter 5, Article 4 provides the process and timeframes for the amendment of a charter. R7-5-101, R7-5-201, R7-5-203, R7-5-204, R7-5-205, and R7-5-401 were made as new rules and became effective March 2, 2004. R7-5-101 and R7-5-204 were amended, effective February 7, 2006. R7-5-101, R7-5-201, R7-5-203, R7-5-204, and R7-5-205 were amended, effective April 5, 2014. R7-5-202, R7-5-206, and R7-5-207, were made as new rules and became effective April 5, 2014.

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

1. Statutory authority

General: A.R.S. § 15-182

Specific: A.R.S. §§ 15-181 and 15-183

4. Analysis of consistency with state and federal statutes and rules

The following rules are consistent with A.R.S. Title 15, Chapter 1, Article 8, 7 A.A.C. 5 and A.R.S. §41-1072 et seq.

7. Written criticism of the rule received within the last five years

The Board has not received written criticism of any of the rules within the last five years.

As part of the rulemaking process, the Board did receive written comments on the proposed rulemaking in relation to rules R7-5-101, R7-5-201, and R7-5-202. These rules and comments are addressed individually.

8. Economic, small business, and consumer impact comparison

See Attachment A

9. Analysis regarding the rule's impact on this state's business competitiveness

The Board has not received any analysis regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

12. Analysis of the stringency of the rule as compared to corresponding federal law

There are no corresponding federal laws, thus the following rules are not more stringent than any corresponding federal laws.

13. Compliance with A.R.S. § 41-1037

The rules do not require issuance of a regulatory permit. Rather, the rules prescribe an application process intended to identify candidates who are sufficiently qualified to operate a charter school and provide public education services under a contract with the Board, and an application process to determine whether the Board is willing to amend a contract in effect. The statute specifically states that an applicant may submit an application and the sponsor may contract with applicants who are sufficiently qualified. It is the Board's belief that the term "charter" is a misnomer that does not accurately reflect legislative intent or the true nature of the function of the Board, which is to contract with public bodies, private persons, or private organizations not to grant privileges, rights, liberties, or powers.

Further, the Board believes the inclusion of certain provisions in the charter school statute

indicate that the legislature understood that the Board would not be issuing permits or licenses.

However, if the Council believes the Board's rules do require issuance of a regulatory permit, it is the Board's position that the Board is either issuing a general permit, or in the alternative issues an individual or traditional permit according to an exception under A.R.S. §§ 41-1037(A)(2) or (3).

ANALYSIS OF INDIVIDUAL RULES

R7-5-101. Definitions

2. **Objective**

The objective of the rule is to define terms and phrases used in 7 A.A.C. 5, to enable the reader to clearly understand the requirements in the Chapter and allow for the consistent interpretation of requirements in the Chapter.

3. **Analysis of effectiveness in achieving the objective**

The rule is effective.

5. **Status of enforcement of the rule**

The rule is enforced as written.

6. **Analysis of clarity, conciseness, and understandability**

The rule is clear, concise, and understandable.

7. **Written criticism of the rule received within the last five years**

As part of the rulemaking process, the Board received a written comment on the proposed rulemaking in relation to rule R7-5-101. Specifically, the Charter School Association asked whether “framework” should be pluralized in the definition of “Sufficiently qualified”. The word was pluralized in the final rulemaking.

10. **How the agency completed the course of action proposed in previous five-year review report**

In the Five-Year-Review Report approved on November 3, 2009, the Board proposed a reevaluation and if necessary a revision to the definition of the term “Technical Review Panel” (TRP). The Board conducted this reevaluation and through rulemaking, the agency revised the definition of the term TRP. On April 5, 2014, the rulemaking by the Board became effective. Through statutory changes the TRP now consists of paid contractors who evaluate both the preliminary and revised application packages. The Board has converted its application package from a paper submission to an electronic submission, saving sufficient resources that enable R7-5-203(6) to be enforced as amended through the April 2014 rulemaking.

11. **Analysis of the probable benefits, costs, and burdens of the rule within this state**

“R7-5-101. Definitions” provides clarity to individuals reading or referencing the agency’s rules. These definitions do not impose any costs or burdens. Thus, the probable benefits of this rule

outweigh the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule.

14. **Proposed course of action**

No action is necessary for the rule.

R7-5-201. Application for a New Charter

2. **Objective**

The objective of the rule is to establish the deadline for the Board to provide the public with an application, to establish the required components of an application package, and to establish the submission processes for an applicant to submit an application package to the Board.

3. **Analysis of effectiveness in achieving the objective**

The rule is effective.

5. **Status of enforcement of the rule**

The rule is enforced as written.

6. **Analysis of clarity, conciseness, and understandability**

The rule is clear, concise, and understandable.

7. **Written criticism of the rule received within the last five years**

As part of the rulemaking process, the Board received a written comment on the proposed rulemaking in relation to rule R7-5-201. Specifically, the Charter School Association requested that the date for releasing the application each year be earlier than March 31. In developing the application processes reflected in the rules, the Board sought to optimize the time for the Board to revise the application annually, the time given for applicants to create high quality applications, the time for the Board to evaluate the applications, and the time for those granted new charters to prepare and begin operating new schools so that all the processes would be completed with the highest quality of work. The Board believes the rules as written provide optimal time for all involved. Further, the Board is not prohibited by the rule from releasing the application early, if it is ready. The Board is continually improving its processes and hopes to release the application prior to the March 31st deadline.

10. **How the agency completed the course of action proposed in previous five-year review report**

In the Five-Year-Review Report approved on November 3, 2009, the Board proposed revisions to the application components incorporating general language that would allow flexibility going forward. The Board also proposed evaluating the need for revisions based on a planned conversion from a paper application to an electronic application and making revisions as needed. The Board conducted an evaluation and determined some changes were necessary based on the conversion to an electronic format and to allow flexibility in the application components. On April 5, 2014, rulemaking by the Board incorporating these changes became effective. Revisions to section R7-5-201 clarify that all application packages are now submitted online and not available in paper form,

provide an "alternate submission process" for individuals who are unable to submit an application package online, align the application package components to the statutory requirements in A.R.S. § 15-183(A), and provide the Board with flexibility to improve the application's format each year and eliminate unnecessary requests.

11. **Analysis of the probable benefits, costs, and burdens of the rule within this state**

This rule aligns the Board's rules to practices that have created substantial efficiency by implementing a paperless application system and enabling the Board to revise the new charter application annually, as needed. The rule makes the new charter application process less time consuming and costly for applicant by eliminating photocopying and mailing costs. The rule limits burdens that may be imposed on applicant without online access by providing an alternate submission process. The rule also enables the Board to efficiently distribute application packages to reviewers and save Board resources. The rule also enables the Board to eliminate unnecessary information and increase the quality of the information collected during the new charter application process. This rule ensures that the Board is able to collect only the information necessary to ensure that applicants granted a charter are prepared to operate a school and be responsible stewards of taxpayer money, amounting to anywhere from tens of thousands of dollars to millions of dollars annually. Ultimately, the probable benefits of this rule substantially outweigh the costs and burdens of the rule within this state.

14. **Proposed course of action**

No action is necessary for the rule.

R7-5-202. New Charter Application Processing Fee

2. **Objective**

The objective of the rule is to establish the new application processing fee authorized under A.R.S. § 15-183(CC) and procedures for paying the fee.

3. **Analysis of effectiveness in achieving the objective**

The rule is effective.

5. **Status of enforcement of the rule**

The rule is enforced as written.

6. **Analysis of clarity, conciseness, and understandability**

The rule is clear, concise, and understandable.

7. **Written criticism of the rule received within the last five years**

As part of the rulemaking process, the Board received a written comment on the proposed rulemaking in relation to rule R7-5-202. Specifically, the Charter School Association expressed concern that the rule required the name of the applicant to be “printed” on the check. The Charter School Association was specifically concerned that a personal check or cashier’s check may not have the applicant’s name, but the name of an individual principal, printed on it. The rule was revised prior to final rulemaking and requires the applicant’s name to be “clearly identified”.

10. **How the agency completed the course of action proposed in previous five-year review report**

In rulemaking by the Board that became effective on April 5, 2014, former rule R7-5-202 was renumbered to R7-5-203 and this rule was adopted as a new rule. Thus, this rule was not in effect when the previous five-year review report was written and no course of action was previously proposed.

11. **Analysis of the probable benefits, costs, and burdens of the rule within this state**

This rule implements a statutorily authorized application fee and the processes for paying the fee. The rule sets the fee at \$6,500, the minimum amount necessary to pay for external reviewers to evaluate application packages, facilitate new applicant interviews, and provide reports to the staff for inclusion in the materials provided for the Board's consideration. The implementation of the fee came about as part of discussions with the Governor's Office of Strategic Planning and Budgeting and legislators throughout the state, who felt it better to authorize the fee rather than provide additional funding to the Board to enable the Board to continue to adequately fulfill its statutory mandates. The fee has enabled the Board to decrease staff time spent managing volunteer reviewers, streamline the review process, and focus staff on reviewing application packages and compiling

materials to better inform the Board's decisions to ensure that charters are granted only to applicants who are prepared to operate a school and be responsible stewards of taxpayer money, amounting to anywhere from tens of thousands of dollars to millions of dollars annually. The processes for paying the fee are flexible and impose a minimal burden in the form of writing and mailing or hand delivering a check. The probable benefits outweigh the costs and burdens of the rule within this state.

14. **Proposed course of action**

No action is necessary for the rule.

R7-5-203. Time-frames for Granting or Denying a New Charter

2. **Objective**

The objective of the rule is to establish the time-frames for granting or denying a new charter and the requirements and notification for administrative and substantive review and the Board's decision.

3. **Analysis of effectiveness in achieving the objective**

The rule is effective.

5. **Status of enforcement of the rule**

The rule is enforced as written.

6. **Analysis of clarity, conciseness, and understandability**

The rule is clear, concise, and understandable.

10. **How the agency completed the course of action proposed in previous five-year review report**

In the Five-Year-Review Report approved on November 3, 2009, the Board proposed reviewing former rule R7-5-202 (renumbered to R7-5-203) to determine if revisions were necessary. The Board determined no changes were required to the review timeframes; however the Board did determine other changes were necessary. On April 5, 2014, rulemaking by the Board became effective.

Through this rulemaking, the agency implemented a statutorily authorized application fee to pay for external reviewers to evaluate application packages, facilitate new applicant interviews, and provide reports to the staff for inclusion in the materials provided for the Board's consideration. The fee has enabled the Board to decrease staff time spent managing volunteer reviewers, streamline the review process, and focus staff on reviewing application packages and compiling materials. Importantly, this has enabled the Board to implement the time-frames established in the rules for completing both the administrative and substantive reviews.

11. **Analysis of the probable benefits, costs, and burdens of the rule within this state**

The rule provides applicants with clarity concerning application package review time-frames and Board expectations for administrative completeness of application packages, which minimizes costs associated with the applicants making revisions at a later time and challenges to the Board's decisions. The rule also provides a process for applicants to request reconsideration of an application package that is rejected during administrative review which imposes minimal costs of staff time preparing the request while providing the benefits of a procedural safeguard. Specifically, the process provides a benefit that could save applicants the time and money associated with reapplying in a later application cycle if the reconsideration finds an application package should not have been

rejected and prevents legal challenges to the Board's actions. The benefits outweigh the costs and burdens of the rule within this state.

14. **Proposed course of action**

No action is necessary for the rule.

R7-5-204. Review of Administratively Complete Application Package, Technical Assistance, and In-Person Interview

2. **Objective**

The objective of the rule is to establish the requirements for the review of an administratively complete application package.

3. **Analysis of effectiveness in achieving the objective**

The rule is effective.

5. **Status of enforcement of the rule**

The rule is enforced as written.

6. **Analysis of clarity, conciseness, and understandability**

The rule is clear, concise, and understandable.

10. **How the agency completed the course of action proposed in the previous five-year review report**

In the Five-Year-Review Report approved on November 3, 2009, the Board proposed reviewing former rule R7-5-203 (renumbered to R7-5-204) to determine if revisions were necessary. The Board determined some changes were necessary. On April 5, 2014, rulemaking by the Board became effective. Through this rulemaking, the agency implemented a statutorily authorized application fee to pay for external reviewers to evaluate application packages and implemented an electronic submission process for the application package. These revisions conform the Board's rule to practices that include utilizing the Technical Review Panel (TRP) to evaluate revised application packages.

11. **Analysis of the probable benefits, costs, and burdens of the rule within this state**

This rule provides a benefit to the charter applicants by enabling them to better conform their application packages to the Board's standards, lessening the need for revisions at a later time and uncertainty about the Board's requirements. The rigorous standards in this rule are reasonable as they set fair but high expectations for applicants who are seeking to utilize public taxpayer money to provide educational services. The rule lessens the burden on applicants by providing a process for revising the application package with technical guidance from the Board. The rule implements a new review process that requires all applicants to appear for an in-person interview with the Board's TRP. The Board understands that these requirements can impose a minimal to moderate burden on applicants in the form of time and travel costs. However, the interview was implemented based on national best practices, and the need to ensure that the Board had high quality information when

evaluating applicants' qualifications to prudently manage taxpayer money and provide excellent educational services. The interviews provide valuable information to the Board when considering the qualifications of applicants who may be annually given tens of thousands to millions of dollars of taxpayer money. The benefits outweigh the costs and burdens of the rule within this state.

14. **Proposed course of action**

No action is necessary for the rule.

R7-5-205. Execution of a Charter

2. **Objective**

The objective of the rule is to establish the requirements for signing a charter contract and beginning the operation of a charter school.

3. **Analysis of effectiveness in achieving the objective**

The rule is mostly effective, but could be more effective for the reason stated in item #6.

5. **Status of enforcement of the rule**

The rule is enforced as written.

6. **Analysis of clarity, conciseness, and understandability**

The rule is mostly effective, but could be more effective for the following reasons. The name of the document I.R.S. Form W-9 is currently titled State of Arizona Substitute W-9 and Vendor Authorization Form. The forms which were previously provided by the Board are now available electronically from Grants Management at the Department.

10. **How the agency completed the course of action proposed in the previous five-year review report**

In the Five-Year-Review Report approved on November 3, 2009, the Board proposed revisions to former rule R7-5-204 (renumbered to R7-5-205) to incorporate changes regarding clarity on the certificate of occupancy requirements, funding contingencies, and the name of the W-9 form. The Board incorporated all of these changes except the changes concerning the W-9 form through rulemaking that became effective on April 5, 2014. Through this rulemaking, the agency amended the rule to state that the certificate of occupancy and fire marshal's report for each school site must show that the site is confirmed for educational use. The amended rule also includes information that receipt of funding is, in part, dependent upon the submission of the certificate of occupancy and fire marshal's report. The exclusion of the W-9 revision was inadvertent.

11. **Analysis of the probable benefits, costs, and burdens of the rule within this state**

The rule provides clarity concerning reporting requirements for persons granted a charter prior to executing the charter. These requirements consist of documents necessary to operate a school and obtain payment from ADE. These requirements thus impose a necessary burden. The rule also sets requirements for the timing of the execution of a charter after it is granted and timing for the provision of educational services under a charter. These time limits ensure that the charter is executed and provision of services under the charter begins in a timely manner. This also ensures that the information evaluated during the application process remains relevant to determining

whether the applicant is prepared to operate a school and be a responsible steward of taxpayer money, amounting to anywhere from tens of thousands of dollars to millions of dollars annually. The benefits outweigh the costs and burdens of the rule within this state.

14. **Proposed course of action**

The changes identified are of a technical nature and do not interfere with the ability to execute a charter. In addition to being detailed in rule, the list of required documents necessary to sign a contract, and the location of those documents, is also included in the written notice of the Board's decision to grant the charter. Further, the Board's website contains links to those documents. Board policy also incorporates the requirements for the submission of documents. However, the rule will be amended to incorporate the technical changes regarding the name of the W-9 form. The target date for completing the rulemaking, through GRRC submission, is June 2015.

R7-5-206. Good Cause Extension to Execute a Charter

2. **Objective**

The objective of the rule is to establish a process by which an applicant granted a charter may obtain an extension on the time allowed to execute the charter.

3. **Analysis of effectiveness in achieving the objective**

The rule is effective.

5. **Status of enforcement of the rule**

The rule is enforced as written.

6. **Analysis of clarity, conciseness, and understandability**

The rule is clear, concise, and understandable.

10. **How the agency completed the course of action proposed in the previous five-year review report**

This rule was not in effect when the previous five-year review report was written, thus no course of action was proposed.

11. **Analysis of the probable benefits, costs, and burdens of the rule within this state**

This rule provides a benefit to the charter applicants by enabling an applicant who was unable to meet the requirements for executing a charter within 12 months to obtain an extension of the time available to execute the charter rather than losing their charter. The rule will result in a limited amount of additional work for the Board staff, but ensures that staff is provided additional information to determine whether the applicant continues to be prepared to operate a school and be a responsible steward of taxpayer money, amounting to anywhere from tens of thousands of dollars to millions of dollars annually. The benefits outweigh the costs and burdens of the rule within this state.

14. **Proposed course of action**

No action is necessary for the rule.

R7-5-207. Good Cause Suspension of a Charter

2. **Objective**

The objective of the rule is to establish a process by which an applicant unable to begin providing services under the charter in a timely manner may obtain an extension on the time allowed to do so.

3. **Analysis of effectiveness in achieving the objective**

The rule is effective.

5. **Status of enforcement of the rule**

The rule is enforced as written.

6. **Analysis of clarity, conciseness, and understandability**

The rule is clear, concise, and understandable.

10. **How the agency completed the course of action proposed in the previous five-year review report**

This rule was not in effect when the previous five-year review report was written, thus no course of action was proposed.

11. **Analysis of the probable benefits, costs, and burdens of the rule within this state**

This rule provides a benefit to the charter applicants by enabling an applicant who was unable to begin providing services under the charter in a timely manner to obtain an extension of the time available to do so rather than losing their charter. The rule will result in a limited amount of additional work for the Board staff, but ensures that staff is provided additional information to determine whether the applicant continues to be prepared to operate a school and be a responsible steward of taxpayer money, amounting to anywhere from tens of thousands of dollars to millions of dollars annually. The benefits outweigh the costs and burdens of the rule within this state.

14. **Proposed course of action**

No action is necessary for the rule.

R7-5-401. Amendment to a Charter

2. **Objective**

The objective of the rule is to establish the requirements and time-frames for amending a charter.

3. **Analysis of effectiveness in achieving the objective**

The rule is mostly effective, but could be more effective for the reason stated in item # 5 and 7.

5. **Status of enforcement of the rule**

The rule is mostly enforced as written. The rule requires an amendment be supported with evidence of the school's governing body's approval. The governance of a charter holder may be such that the governing body may not be the approving body. Additionally, the rules could provide more clarity about the types of amendments, the differences between notifications and amendments, and the submission processes and requirements for notifications and amendments.

6. **Analysis of clarity, conciseness, and understandability**

The rule is mostly effective, but could be clearer if the administrative and substantive review processes provided additional detail concerning the eligibility requirements and submission requirements for different amendments and notifications.

10. **How the agency completed the course of action proposed in the previous five-year review report**

In the Five-Year-Review Report approved on November 3, 2009, the Board proposed further review of the rule and revisions as necessary. Due to limited staffing, the Board has been unable to complete rulemaking to amend R7-5-401.

11. **Analysis of the probable benefits, costs, and burdens of the rule within this state**

This rule provides a benefit to charter holders by enabling those who wish to expand beyond the terms of their original contract terms to seek an amendment to their contract. The rule results in additional work for Board staff, but ensures that staff is provided additional information to determine whether a charter holder is demonstrating capacity that supports expanding their contract terms. The rule is necessary for ensuring that the Board is able to ensure the charter holders it sponsors are responsible stewards of taxpayer money, amounting to anywhere from tens of thousands of dollars to millions of dollars annually. The benefits outweigh the costs and burdens of the rule within this state.

14. **Proposed course of action**

The Board is currently in the process of reviewing the rule and internally drafting proposed amendments to the rule. The target date for completing the rulemaking, through GRRC submission, is January 2016.

STATE BOARD FOR CHARTER SCHOOLS

Five-year-review Report: A.A.C. Title 7, Chapter 5, Articles 3 and 5

June 2016

Five-year-review Report

A.A.C. Title 7. Education

Chapter 5. State Board for Charter Schools

INTRODUCTION

Charter schools are public schools originally authorized by the legislature in 1994. Under A.R.S. § 15-181(A), charter schools provide academic choice for parents and pupils and a learning environment that improves pupil achievement. In exchange for greater accountability for improved student performance, charter holders are provided greater autonomy in operation. In the 2015-16 school year, more than 170,700 pupils attended 556 charter schools in Arizona. Approximately one in three of Arizona's public schools is a charter school and approximately 17 percent of pupils attend a charter school.

A person seeking to establish a charter school is required to have a sponsor (See A.R.S. § 15-183(A)). Almost all of Arizona's charter schools are sponsored by the State Board for Charter Schools (Board). An initial charter is issued for 15 years and can be renewed for 20 years. The sponsor of a charter school is required to review compliance with the charter every five years.

The Board's responsibilities include approving charter applications and renewals, overseeing charter school performance and accountability, and taking corrective action when necessary. The Board's oversight focuses on compliance with financial, legal, and contractual requirements, and academic performance and operational expectations.

In this report, the Board reviews its rules dealing with charter oversight and audit guidelines and contracts.

Statute that generally authorizes the agency to make rules: A.R.S. § 15-182(E)(5)

1. Specific statute authorizing the rule:

R7-5-301: A.R.S. § 15-183(R)

R7-5-302: A.R.S. § 15-183(R)

R7-5-303: A.R.S. § 15-183(R)

R7-5-304: A.R.S. §§ 15-183(I)(3) and (R) and 15-185

R7-5-501: A.R.S. §§ 15-183(E)(6) and 914 and Laws 1999, 1st S.S., Ch. 4, § 15

R7-5-502: A.R.S. §§ 15-183(E)(6) and 914 and Laws 1999, 1st S.S., Ch. 4, § 15

R7-5-503: A.R.S. §§ 15-183(E)(6) and 914 and Laws 1999, 1st S.S., Ch. 4, § 15

R7-5-504: A.R.S. §§ 15-183(E)(6) and 914 and Laws 1999, 1st S.S., Ch. 4, § 15

2. Objective of the rule including the purpose for the existence of the rule:

R7-5-301. General Supervision, Oversight, and Administrative Responsibility:

The objective of the rule is to provide notice to charter holders regarding the means by which the Board performs its administrative responsibilities and general supervision and oversight. This provides efficiency in the Board's ability to fulfill its statutory responsibilities.

R7-5-302. Corrective Action Plan:

The objective of the rule is to provide notice to charter holders of the factors considered when determining to require a corrective action plan (CAP), the requirements for preparing a CAP, and the consequences of failing to prepare or implement a CAP. This provides efficiency in the Board's supervision and oversight responsibilities.

R7-5-303. Site Visits; Records; Notice of Violation:

The objective of the rule is to provide notice to charter holders that the Board uses site visits to fulfill its supervision and oversight responsibilities, identify charter holders' responsibilities during a site visit, and possible consequences of a site visit. This provides efficiency in the Board's ability to fulfill its statutory responsibilities.

R7-5-304. Disciplinary Action:

The objective of the rule is to provide notice to charter holders regarding the factors considered by the Board when deciding on disciplinary action for a charter violation and the disciplinary options the Board may use. This provides efficiency in the Board's ability to fulfill its statutory responsibilities.

R7-5-501. Audit Guidelines:

The objective of the rule is to provide notice to charter holders of when and how the Board will make available audit guidelines. This provides efficiency in the Board’s supervision and oversight responsibilities by enabling charter holders to comply timely with the audit requirement.

R7-5-502. Approval of Audit Contracts:

The objective of the rule is to provide notice to charter holders that the Board is required to approve all audit contracts (See Laws 1999, 1st SS, Chap 4, § 15), the standards the Board uses to decide whether to approve an audit contract, and if an audit contract is disapproved, the audit firm’s ability to correct the issue causing disapproval. This provides efficiency in the Board’s ability to fulfill its statutory responsibilities by enabling charter holders to enter audit contract that meet Board standards.

R7-5-503. Audit Completeness Determinations:

The objective of the rule is to provide notice to charter holders regarding the standards the Board uses to determine whether an audit is complete and consequences of failing to submit a complete audit. This provides efficiency in the Board’s ability to fulfill its statutory responsibilities by enabling charter holders to submit complete audits.

R7-5-504. Review of Complete Audits:

The objective of the rule is to provide notice to charter holders regarding options the Board has for responding to a complete audit and expectations of charter holders following an audit. This provides efficiency in the Board’s ability to fulfill its statutory responsibilities.

3. Effectiveness of the rule in achieving the objective including a summary of any available data supporting the conclusion:

Although the rules are generally effective enabling the Board to fulfill its statutory responsibilities, the Board determined the rules could be more effective as follows:

R7-5-304(A): This subsection requires the Board to consider certain factors when determining an appropriate disciplinary action. However, all factors listed are not relevant to all disciplinary proceedings. The Board believes the rule would be more effective if the phrase “as applicable” is added to this subsection.

R7-4-502(B)(4): This standard for disapproval of an audit contract has changed. The Board will now disapprove an audit contract if the contracted audit firm receives a peer review rating of “fail” or if any auditor who will work on the audit has failed to meet required continuing education standards.

R7-5-503(B): This subsection indicates the Board will find an audit is incomplete if it does not include all items listed in the audit guidelines. The Board has determined the rule should also indicate an audit is incomplete if the audit is submitted by an audit firm that fails to meet the requirements of R7-5-502(B)(1) – (4).

R7-5-503(C): This subsection requires the Board to provide written notice to the charter holder when an audit is complete. The Board has determined the rule would be more effective if notice is also provided to the firm that prepared the complete audit.

R7-5-503(F): This subsection requires a charter holder whose audit is incomplete to appear before the Board for possible disciplinary action. However, the Board has found this is unnecessary when the charter holder is able to submit a complete audit before the Board meeting.

R7-5-504(C): This subsection requires a charter holder with a serious impact finding to appear before the Board for possible disciplinary action. However, the Board has found this is unnecessary when the charter holder is able to provide credible evidence that the charter holder will be in compliance at the time of the next audit.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency:

Except as indicated below, the rules reviewed are consistent with A.R.S. Title 15, Chapter 1, Article 8, A.R.S. § 15-914, and Laws 1999, 1st S.S., Ch. 4, § 15:

R7-5-304(B), which lists possible disciplinary actions against a charter holder, is not consistent with A.R.S. § 15-185(I), which authorizes the sponsor of a charter school to impose a civil penalty for failure to comply with the fingerprinting requirement in A.R.S. §§ 15-183(C) and 15-512.

5. Agency enforcement policy including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement:

The Board enforces all of the rules in a manner that is consistent with statute and in the best interest of the state. As authorized under A.R.S. § 15-185(I), the Board imposes a civil penalty for failure to comply with the fingerprinting requirement.

6. Clarity, conciseness, and understandability of the rule:

The rules are generally understandable but the conciseness and clarity of the rules could be improved. As indicated in item 7, there are important issues not addressed in the rules.

7. Summary of written criticisms of the rule received by the agency with the past five years, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and, written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute or beyond the authority of the agency to enact, and the result of the litigation of administrative proceedings:

On January 21, 2016, two attorneys submitted a petition to the Governor's Regulatory Review Council under the provisions of A.R.S. § 41-1033(C) asserting that the Board has adopted several policy statements as "guidance" for charter holders that are actually rules as defined at A.R.S. § 41-1001. The attorneys requested that the Council consider the policy statements and find that they are void because they were not enacted in accordance with the Arizona Administrative Procedure Act. The Council decided not to hear the petition after receiving assurances from the Board that it would begin a rulemaking immediately to address

this issue. The Board opened a docket for the needed rulemaking on March 24, 2016 (See 22 A.A.R. 823, April 15, 2016).

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule:

All of the rules reviewed were newly made in a rulemaking that went into effect on February 7, 2006. The economic, small business, and consumer impact statement prepared with the rulemaking is available. When the rules were made, the Board estimated the economic impact of the rules on charter holders would be minimal. This is because it is within the control of a charter holder to determine whether and to what extent the disciplinary oversight rules in Article 3 apply to the charter holder. If the disciplinary rules do apply to a charter holder, the cost of coming into compliance is minimal. Similarly, the rules in Article 5, which establish standards for statutorily required audits, impose minimal cost on qualified audit firms and charter holders. The Board believes it correctly estimated the rules would have minimal economic impact.

There are currently 556 charter schools in Arizona (443 charter holders) with an enrollment of 170,700 students. The Board sponsors 535 of the 556 charter schools. The remaining charter schools are sponsored by the Arizona State University and several school district governing boards. Beginning in FY2017, there will no longer be charter schools sponsored by school district governing boards because the authority of school district governing boards to sponsor charter schools is being phased out. In addition to the Board and ASU, the Department of Education and universities under the jurisdiction of the Arizona Board of Regents and community college districts are eligible to sponsor charter schools.

The Board fulfills its statutory responsibility to supervise charter holders by conducting site visits (76 were conducted in FY2016) and reviewing annual audit and Department of Education's performance data. As a result of supervising charter holders, the Board may determine a charter holder is not in compliance with its charter, other contractual agreements

with the Board, and statutory requirements or is not making sufficient progress towards performance expectations. When this happens, the Board may take several disciplinary steps.

The Board may require a charter holder to submit a correction action plan. During FY2016, 58 charter holders were required to submit a CAP. Issues giving rise to the need for a CAP are identified through the required audit or site visits. Frequent reasons for a CAP include failing to comply with the statutory fingerprinting requirement, failing to comply with federal or state payroll tax requirements, and failing to follow standard financial internal control procedures. A charter holder can generally prepare and complete a CAP within a month or two. However, for cases involving payroll taxes, for example, the time for completion may be longer because the charter holder's compliance cannot be determined until certain reports are submitted to taxing authorities.

Under A.R.S. § 15-185(H), the Board may ask the Department of Education to withhold funds from a charter holder. Funds were withheld from five charter holders in FY2016. The primary reason for withholding funds is failure to submit the required audit. When funds are withheld, the charter holder is required to prepare a CAP.

A charter holder that fails to meet academic performance expectations may be required to demonstrate it is making sufficient progress towards meeting the performance expectations. During FY2016, 144 charter schools (27 percent of those sponsored by the Board) were required to demonstrate sufficient progress.

A charter holder that has repeated issues of noncompliance may be required to enter a consent agreement that includes terms for compliance. During the last year, the Board determined three charter holders had serious impact findings due to repeat issues of noncompliance identified through audit. The Board has not, however, required them to enter into a consent agreement because it is continuing to gather data regarding compliance by two of the charter holders. The third charter will expire at the end of the fiscal year.

During FY2015, the Board entered consent agreements with two charter holders. If the charter holder fails to comply with a consent agreement, the Board can move to a hearing with the intent of revoking the charter. In FY2015, the Board voted to revoke two charters. One of the charter holders is still in process of appealing the revocation order.

The Board currently has 11 FTE positions filled but has 14 FTE authorized positions. During FY2016, the Board was appropriated \$990,200. Under A.R.S. § 15-183(CC), the Board charges applicants the full cost of application review and technical assistance.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states:

No analysis has been submitted.

10. How the agency completed the course of action indicated in the agency's previous 5YRR:

In a 5YRR approved by the Council on May 3, 2011, the Board indicated it would amend R7-5-303, R7-5-501, and R7-5-503. The Board did not complete the planned action because of staff shortages and a change in position for the individual who was working on revising the rules.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The Board believes the benefits of the rules reviewed outweigh their probable costs and impose the least burden and costs on charter holders. The rules in Article 3 are designed to protect the public by having the Board supervise charter holders to ensure they comply with their charters, other contractual agreements with the Board, and statutory requirements, and meet performance expectations. A charter holder that meets these expectations will incur no

costs. A charter holder that fails to meet the expectations will incur the cost of taking corrective actions.

The rules in Article 5 provide standards for the annual audit required by statute (See A.R.S. § 15-914). The rules impose minimal cost on charter holders. Charter holders are required by statute to submit the contract with an audit firm to the Board for approval before the audit is conducted. During FY2015, no audit contracts were disapproved by the Board.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law:

There are numerous federal laws applicable to all schools including charter schools. These include the Every Student Succeeds Act, Family Educational Rights and Privacy Act, Individuals with Disabilities Education Act, and various civil rights statutes. All charters require that the holder comply with federal law. However, no federal law is specifically applicable to the rules reviewed so the rules are not more stringent than federal law.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

None of the rules was made after July 29, 2010.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule or to make a new rule. If no issues are identified for a rule in the report, the agency may indicate that no action is necessary for the rule:

The Board intends to amend all the rules reviewed and make new rules to address the issue raised in the A.R.S. § 41-1033 petition submitted to the Governor's Regulatory Review Council in January 2016. The Board intends to complete the rulemaking by June 2017.