

**DEPARTMENT OF PUBLIC SAFETY
LOCAL RETIREMENT BOARD**

FIVE YEAR RULE REVIEW REPORT

FOR

**GOVERNOR'S REGULATORY
REVIEW COUNCIL**

**SEPTEMBER 30, 2013
Revised December 18, 2013**

Economic Issues: These rules address the procedures used by the Department of Public Safety Local Retirement Board in its administration of the Public Safety Personnel Retirement System for the sworn officers ("members") who are employed by the Department of Public Safety. The rules do not affect small business or consumers nor regulate industry or professions. The main economic impact of the rules is the cost to the local board, paid by the Department of Public Safety pursuant to statute, to the local board's independent counsel to perform rulemaking and five year reviews. The rules recognize certain costs that are imposed on members who are applying for or who have received disability pensions, such as the costs of procuring the member's own medical records and the costs of transcripts in the case of an appeal to the courts.

The Department of Public Safety employs approximately 1100 sworn officers, all of whom are members of the Public Safety Personnel Retirement System. For the year 2013, there were approximately 114 new hires, 19 members entering DROP and 38 member retirements, all of whom required administrative action of the local board.

NB: Analysis under A.R.S. § 41-1056(A)(11): None of the rules were adopted after July 29, 2010 and none require the issuance of a regulatory permit, license or agency authorization; accordingly, the report will have no analysis pursuant to A.R.S. § 41-1056(A)(11) regarding compliance with A.R.S. § 41-1037.

R13-8-101

1. General and Specific Statutes Authorizing the Rule

A.R.S. § 38-847(F); A.R.S. § 38-847(A), (D) and (M); A.R.S. § 38-842; A.R.S. § 38-844.02.

2. Objective of the Rule

The objectives of this rule are to define and reference terms used in the rules and to refer the reader to the statute containing the definition of terms and concepts utilized by the local board and in Article 4 of Chapter 5 of Title 38, A.R.S. §§ 38-841 to 38-860 (the statutes which created the Public Safety Personnel Retirement System and by which this local board performs its statutory duties for the Department of Public Safety).

3. Effectiveness of the Rule in Achieving the Objective

The rule is effective in achieving its objectives because it defines and references terms used in the rule and refers the reader to the statutory definitions for the Public Safety Personnel Retirement System.

4. Consistency of the Rule with State and Federal Statutes and Rules

The definitions in the rule are consistent with Article 4 of Chapter 5 of Title 38. More specifically, for R13-8-101(A), refer to A.R.S. § 38-842(46); for R13-8-101(B), refer to A.R.S. §§ 38-842(30) and 38-847; for R13-8-101(C), refer to A.R.S. § 38-847(M); for R13-8-101(D), refer to A.R.S. § 38-844.02; and for R13-8-101(E), refer to A.R.S. § 38-842.

There are no relevant federal statutes and rules.

5. Agency Enforcement Policy

The local board utilizes the definitions in this rule and in A.R.S. § 38-842.

6. Current Wisdom of the Rule

The rule is beneficial to the board and its public because it assists the reader by defining terms and concepts. The local board should retain the rule.

7. Clarity, Conciseness and Understandability of the Rule

The rule is understandable to the public. The rule defines terminology. All citations and cross-references are accurate. The rule does not contain unnecessary verbiage. The rule is organized and follows a logical order. The rule fully addresses its subject matter.

8. Written Criticisms of the Rule Received Within the Last Five Years

None.

9. Comparative Economic, Small Business and Consumer Impact of the Rule

The actual-to-date and future estimated economic, small business and consumer impact was and is consistent with the impacts identified at the time of the rule promulgation and rule amendment.

10. Any Analysis Submitted to the Agency by Another Person Regarding the Rule's Impact on this State's Business Competitiveness

None.

11. Completion of Action Indicated in Previous Five Year Review Report

No action relative to this rule indicated in previous five year review report.

12. Determination that the Rule Imposes the Least Burden and Costs to Persons Regulated by Rule

This rule imposes no burden or cost to persons regulated by the rule.

13. Proposed Course of Action.

The local board intends to take no new action regarding this rule at this time.

R13-8-102

1. Authorization of Rule by Existing Statutes.

A.R.S. § 38-847(D)(2)&(5), (F) and (M).

2. Objectives.

The objectives of the rule are to notify the relevant public of the manner in which the local board distributes information explaining the system received from the board of trustees pursuant to its statutory duties in A.R.S. § 38-847(D)(5) and of the source of the retirement forms and applications in conjunction with section 38-847(D)(2).

3. Analysis of Effectiveness in Achieving the Objective.

The rule is effective in achieving its objectives because it notifies the relevant public by whom the information, forms and applications are distributed and that the information, forms and applications are available through the local board's secretary.

4. Analysis of Consistency with State and Federal Statutes and Rules.

The rule is consistent with A.R.S. § 38-847(D)(2)&(5) and A.R.S. § 38-848, except that the entity who manages the System changed from the "fund manager" to the "board of trustees."

There are no relevant federal statutes and rules.

5. Status of Enforcement of Rule.

The local board and its secretary comply with this rule.

6. Wisdom of Rule.

The rule is beneficial because it notifies the relevant public of the manner in which the local board distributes information, forms and applications for the Public Safety Personnel Retirement System, as created and distributed by the board of trustees for the System.

Since the initial adoption of this rule, the Public Safety Personnel Retirement System has created an internet site; information regarding the System and System forms, including retirement applications, are on-line. The System's internet site is linked to the internet site of the Arizona Department of Public Safety. The fact that certain information and forms are online, however, does not negate the need for the local board's secretary to maintain and distribute the forms. The secretary is the day-to-day contact person for the members, and the secretary e-files the applications of the members to the System; accordingly, direction of the members to the secretary is important.

7. Analysis of Clarity, Conciseness and Understandability.

The rule is understandable to the public. The terminology is defined in or through R13-8-101. There are no citations or cross-references. The rule does not contain unnecessary verbiage. The rule is organized and follows a logical order. The rule fully addresses its subject matter.

8. Written Criticisms of the Rule Received Within the Last Five Years.

None.

9. Comparative Estimated Economic, Small Business and Consumer Impact of the Rule.

The actual-to-date and future estimated economic, small business and consumer impact was and is consistent with the impacts identified at the time of rule promulgation.

10. Any Analysis Submitted to the Agency by Another Person Regarding the Rule's Impact on this State's Business Competitiveness

None.

11. Completion of Action Indicated in Previous Five Year Review Report

No action relative to this rule indicated in previous five year review report.

12. Determination that the Rule Imposes the Least Burden and Costs to Persons Regulated by Rule

This rule imposes no burden or cost to persons regulated by the rule.

13. Proposed Course of Action.

The local board needs to amend the rule to accommodate changes in the structure of the System; the term "fund manager" in subsections A and B needs to be changed to "board of trustees." The local board anticipates commencing rulemaking on this rule amendment within six months of the end of any moratorium on rulemaking.

R13-8-103

1. Authorization of Rule by Existing Statutes.

A.R.S. §§ 38-847(D)(1)&(4), (F), (K); 38-842(31); 38-844(D)(3); and 38-859(A) and (B).

2. Objectives.

The objective of the rule is to notify the relevant public of the manner in which the local board addresses questions of membership and eligibility, including the determination of pre-existing physical and mental conditions or prior injuries.

3. Analysis of Effectiveness in Achieving the Objective.

The rule is effective in achieving its objective, particularly with regard to the procedures involved for the

determination of pre-existing physical and mental conditions or prior injuries. A.R.S. § 38-844(D)(3) precludes a member from qualifying for an accidental, catastrophic or ordinary disability pension if the local board determines that the member's disability resulted from a physical or mental condition or injury that existed or occurred prior to the member's date of membership in the system. When a member enters the system, the local board identifies at that time whether an applicant has any documented pre-existing conditions and so notifies the applying member of any exclusion relating to the pre-existing condition.

4. Analysis of Consistency with State and Federal Statutes and Rules.

The rule is consistent with the statutes listed under "1" above.

In addition, the rule is consistent with A.R.S. § 41-1822(A)(3) and A.A.C. R13-4-105 and R13-4-107 in that the local board is cognizant of the Arizona Peace Officer Standards and Training Board ("AZPOST") medical requirements in addressing pre-existing conditions.

There is no corresponding federal law. The rule is consistent with the Americans with Disabilities Act.

5. Status of Enforcement of Rule.

The local board and its secretary act in compliance with this rule.

6. Wisdom of Rule.

The rule is beneficial because it sets forth the local board's procedures in addressing and resolving membership in the system for new members, including exclusions based on pre-existing conditions.

7. Analysis of Clarity, Conciseness and Understandability.

The rule is understandable to the public. The terminology is defined in or through R13-8-101. There are no citations. The rule does not contain unnecessary verbiage. The rule is organized and follows a logical order. The rule addresses the local board's procedure for new hires of the employer relative to membership in the System with this employer. The local board plans to amend this rule to require lateral hires to provide to the local board the medical reports from each prior employment with an employer within the system.

8. Written Criticisms of the Rule Received Within the Last Five Years.

None

9. Comparative Estimated Economic, Small Business and Consumer Impact of the Rule.

The actual-to-date and future estimated economic, small business and consumer impact was and is consistent with the impacts identified at the time of rule promulgation and rule amendment.

10. Any Analysis Submitted to the Agency by Another Person Regarding the Rule's Impact on this State's Business Competitiveness

None.

11. Completion of Action Indicated in Previous Five Year Review Report

No action relative to this rule indicated in previous five year review report.

12. Determination that the Rule Imposes the Least Burden and Costs to Persons Regulated by Rule

This rule imposes no burden or cost to persons regulated by the rule.

13. Proposed Course of Action.

The local board intends to amend this rule to require lateral hires to provide to the local board the medical reports from each prior employment with an employer within the system. The local board anticipates commencing rulemaking on this rule amendment within six months of the end of any moratorium on rulemaking.

R13-8-104

1. Authorization of Rule by Existing Statutes.

A.R.S. § 38-847(D) and (F).

2. Objectives.

The objective of the rule is to set forth the local board's procedures when a member applies for normal retirement, deferred retirement, DROP or reverse DROP.

3. Analysis of Effectiveness in Achieving the Objective.

The rule is effective in achieving its objective because it sets forth the local board's procedure for retirement and DROP applications.

4. Analysis of Consistency with State and Federal Statutes and Rules.

The rule is consistent with the sections referenced in "1" above.

There are no relevant federal statutes and rules.

5. Status of Enforcement of Rule.

The local board and its secretary act in compliance with this rule.

6. Wisdom of Rule.

The rule is beneficial because it explains the local board's procedure and timeline for processing retirement and DROP applications.

7. Analysis of Clarity, Conciseness and Understandability.

The rule is understandable to the public. The terminology is defined in or through R13-8-101. There are no citations or cross references. The rule does not contain unnecessary verbiage. The rule is organized and follows a logical order. The rule fully addresses its subject matter.

8. Written Criticisms of the Rule Received Within the Last Five Years.

None.

9. Comparative Estimated Economic, Small Business and Consumer Impact of the Rule.

The actual-to-date and future estimated economic, small business and consumer impact was and is consistent with the impacts identified at the time of rule promulgation and rule amendment.

10. Any Analysis Submitted to the Agency by Another Person Regarding the Rule's Impact on this State's Business Competitiveness

None.

11. Completion of Action Indicated in Previous Five Year Review Report

No action relative to this rule indicated in previous five year review report.

12. Determination that the Rule Imposes the Least Burden and Costs to Persons Regulated by Rule

This rule imposes no burden or cost to persons regulated by the rule.

13. Proposed Course of Action.

The local board intends to take no new action regarding this rule at this time.

R13-8-105

1. Authorization of Rule by Existing Statutes.

A.R.S. §§ 38-842(1), (9), (34) and (47); 38-847(D) and (F); 38-844; and 38-859.

2. Objectives.

The objective of the rule is to set forth the local board's procedures when a member is applying for any of the disability pensions, including the scheduling and requests made of the Medical Board for each type of disability pension.

3. Analysis of Effectiveness in Achieving the Objective.

The rule is effective in achieving its objectives because it sets forth the local board's procedures for disability applications. The rule will be more effective if the local board adds information on the local board's procedures to address the initial hearing on a disability application.

4. Analysis of Consistency with State and Federal Statutes and Rules.

The rule is consistent with the sections referenced in "1" above.

There are no relevant federal statues and rules.

5. Status of Enforcement of Rule.

The local board and its secretary act in compliance with this rule.

6. Wisdom of Rule.

The rule is beneficial because it notifies the relevant public of the local board's procedure for disability applications and the requests made of the Medical Board for each type of disability.

7. Analysis of Clarity, Conciseness and Understandability.

The rule is understandable to the public. The terminology is defined in or through R13-8-101. There are currently no citations or cross-references. The rule does not contain unnecessary verbiage. The rule is organized and follows a logical order. The rule will more fully address its subject matter after it is amended as noted below.

8. Written Criticisms of the Rule Received Within the Last Five Years.

None.

9. Comparative Estimated Economic, Small Business and Consumer Impact of the Rule.

The actual-to-date and future estimated economic, small business and consumer impact was and is consistent with the impacts identified at the time of the rule promulgation and rule amendment.

10. Any Analysis Submitted to the Agency by Another Person Regarding the Rule's Impact on this State's Business Competitiveness

None.

11. Completion of Action Indicated in Previous Five Year Review Report

No action relative to this rule indicated in previous five year review report.

12. Determination that the Rule Imposes the Least Burden and Costs to Persons Regulated by Rule

This rule imposes no burden or cost to persons regulated by the rule. If the local board amends this rule to clarify that the local board requires the member to gather and submit the member's medical records, such a codified requirement will establish a cost to the persons regulated by the rule.

13. Proposed Course of Action.

The local board intends to amend this rule to address in subsection A that the member/claimant is required to acquire and submit to the local board the member's medical records and in subsection H a description of the initial hearing. The local board anticipates commencing rulemaking on this rule amendment within six months of the end of any moratorium on rulemaking.

R13-8-106

1. Authorization of Rule by Existing Statutes.

A.R.S. §§ 38-844(E) and (G); 38-847(D) and (F); and 38-859.

2. Objectives.

The objective of this rule is to describe the procedures the local board will follow in administering the provision of A.R.S. § 38-844(E), which allows the local board to monitor accidental and ordinary disability pensioners and to terminate the pension upon certain conditions.

3. Analysis of Effectiveness in Achieving the Objective.

The rule is effective in achieving its objective because it sets forth the local board's procedures to administer section 38-844(E).

4. Analysis of Consistency with State and Federal Statutes and Rules.

The rule is consistent with the sections referenced in "1" above.

There are no relevant federal statutes and rules.

5. Status of Enforcement of Rule.

The local board and its secretary act in compliance with this rule. The local board, beginning in 1996, established a schedule for medical examinations of appropriate pensioners.

6. Wisdom of Rule.

The rule is beneficial because it notifies the disability pensioners and the relevant public of the local board's procedures in scheduling and reviewing medical examinations of accidental and ordinary disability pensioners.

7. Analysis of Clarity, Conciseness and Understandability.

The rule is understandable to the public. The terminology is defined in or through R13-8-101. All citations and cross-references are accurate. The rule does not contain unnecessary verbiage. The rule is organized and follows a logical order. The rule fully addresses its subject matter.

8. Written Criticisms of the Rule Received Within the Last Five Years.

None.

9. Comparative Estimated Economic, Small Business and Consumer Impact of the Rule.

The actual-to-date and future estimated economic, small business and consumer impact was and is consistent with the impacts identified at the time of rule promulgation and rule amendment.

10. Any Analysis Submitted to the Agency by Another Person Regarding the Rule's Impact on this State's Business Competitiveness

None.

11. Completion of Action Indicated in Previous Five Year Review Report

No action relative to this rule indicated in previous five year review report.

12. Determination that the Rule Imposes the Least Burden and Costs to Persons Regulated by Rule

This rule imposes no burden or cost to persons regulated by the rule. If the local board amends this rule to add that the local board requires the member to gather and submit the member's medical records, such a codified requirement will establish a cost to the persons regulated by the rule.

13. Proposed Course of Action.

The local board intends to amend this rule in subsection B to address that the member is responsible to provide an updated list of health care providers (since the date of retirement or last medical review) and to obtain and submit updated medical records to the local board. The local board may also need to amend this rule to coordinate this rule with the new version of A.R.S. § 38-849(I), which will be effective on 9/13/2013. The local board anticipates commencing rulemaking on this rule amendment within six months of the end of any moratorium on rulemaking.

R13-8-107

1. Authorization of Rule by Existing Statutes.

A.R.S. §§ 38-847(D) and (F); 38-846 and 38-846.03.

2. Objectives.

The objective of this rule is to describe the procedure of the local board for applications for death benefits for surviving spouses, guardians/custodians of eligible children, and eligible children.

3. Analysis of Effectiveness in Achieving the Objective.

The rule is effective in achieving its objective because it sets forth the local board's procedure with respect to applications for survivor's benefits.

4. Analysis of Consistency with State and Federal Statutes and Rules.

The rule is consistent with the sections referenced in "1" above.

There are no relevant federal statutes and rules.

5. Status of Enforcement of Rule.

The local board and its secretary act in compliance with this rule.

6. Wisdom of Rule.

The rule is beneficial because it explains the local board's procedure and timeline for processing applications for survivor's benefits. The local board should retain the rule.

7. Analysis of Clarity, Conciseness and Understandability.

The rule is understandable to the public. The terminology is defined in or through R13-8-101. There are no citations or cross-references. The rule does not contain unnecessary verbiage. The rule is organized and follows a logical order. The rule fully addressed its subject matter, but will need to add eligible children applying for survivor benefits in subsection A due to the change in A.R.S. § 38-846(F), which will be effective 9/13/2013.

8. Written Criticisms of the Rule Received Within the Last Five Years.

None.

9. Comparative Estimated Economic, Small Business and Consumer Impact of the Rule.

The actual-to-date and future estimated economic, small business and consumer impact was and is consistent with the impacts identified at the time of rule promulgation.

10. Any Analysis Submitted to the Agency by Another Person Regarding the Rule's Impact on this State's Business Competitiveness

None.

11. Completion of Action Indicated in Previous Five Year Review Report

No action relative to this rule indicated in previous five year review report.

12. Determination that the Rule Imposes the Least Burden and Costs to Persons Regulated by Rule

This rule imposes no burden or cost to persons regulated by the rule.

13. Proposed Course of Action.

The local board may need to amend this rule in subsection A to add eligible children applying for survivor benefits due to the change in A.R.S. § 38-846(F), which will be effective 9/13/2013. The local board anticipates commencing rulemaking on this rule amendment within six months of the end of any moratorium on rulemaking.

R13-8-108

1. Authorization of Rule by Existing Statutes.

A.R.S. § 38-847(D), (F) and (H).

2. Objectives.

The objective of this rule is to notify the relevant public of the procedure of the local board in notifying a claimant when the board approves or denies applications for retirement, disability pensions and survivor's benefits.

3. Analysis of Effectiveness in Achieving the Objective.

The rule is effective in achieving its objective because it indeed sets forth the local board's procedure for notifying claimants of the board's decisions.

4. Analysis of Consistency with State and Federal Statutes and Rules.

The rule is consistent with the sections referenced in "1" above.

There are no relevant federal statutes and rules.

5. Status of Enforcement of Rule.

The local board and its secretary act in compliance with this rule.

6. Wisdom of Rule.

The rule is beneficial because it explains the local board's procedure for notifying claimants of the board's decisions. The local board should retain the rule.

7. Analysis of Clarity, Conciseness and Understandability.

The rule is understandable to the public. The terminology is defined in or through R13-8-101. There are no citations or cross-references. The rule does not contain unnecessary verbiage. The rule is organized and follows a logical order. The rule fully addresses its subject matter. For the sake of grammar, the word "either" should be deleted from subsection A.

8. Written Criticisms of the Rule Received Within the Last Five Years.

None.

9. Comparative Estimated Economic, Small Business and Consumer Impact of the Rule.

The actual-to-date and future estimated economic, small business and consumer impact was and is consistent with the impacts identified at the time of rule promulgation.

10. Any Analysis Submitted to the Agency by Another Person Regarding the Rule's Impact on this State's Business Competitiveness

None.

11. Completion of Action Indicated in Previous Five Year Review Report

No action relative to this rule indicated in previous five year review report.

12. Determination that the Rule Imposes the Least Burden and Costs to Persons Regulated by Rule

This rule imposes no burden or cost to persons regulated by the rule.

13. Proposed Course of Action.

The local board intends to amend the rule to delete the word "either" from subsection A. The local board anticipates commencing rulemaking on this rule amendment within six months of the end of any moratorium on rulemaking.

R13-8-109

1. Authorization of Rule by Existing Statutes.

A.R.S. § 38-847(D) and (F).

2. Objectives.

The objectives of this rule are to explain to the relevant public that the board delegates to its secretary the actual calculations of benefits and pensions, the sequence or timing of the actual calculations, and the method of notification of the amount of the benefit or pension.

3. Analysis of Effectiveness in Achieving the Objective.

The rule is effective in achieving its objectives because it clearly informs the relevant public that the board's secretary calculates the amount of the benefits/pensions and of the timing and notification of the benefits/pensions calculations.

4. Analysis of Consistency with State and Federal Statutes and Rules.

The rule is consistent with the sections referenced in "1" above.

There are no relevant federal statutes and rules.

5. Status of Enforcement of Rule.

The local board and its secretary act in compliance with this rule.

6. Wisdom of Rule.

The rule is beneficial because it explains the board's procedure for benefits/pensions calculation.

7. Analysis of Clarity, Conciseness and Understandability.

The rule is understandable to the public. The terminology is defined in or through R13-8-101. There are no citations or cross-references. The rule does not contain unnecessary verbiage. The rule is organized and follows a logical order. The rule fully addresses its subject matter.

8. Written Criticisms of the Rule Received Within the Last Five Years.

None.

9. Comparative Estimated Economic, Small Business and Consumer Impact of the Rule.

The actual-to-date and future estimated economic, small business and consumer impact was and is consistent with the impacts identified at the time of rule promulgation and rule amendment.

10. Any Analysis Submitted to the Agency by Another Person Regarding the Rule's Impact on this State's Business Competitiveness

None.

11. Completion of Action Indicated in Previous Five Year Review Report

No action relative to this rule indicated in previous five year review report.

12. Determination that the Rule Imposes the Least Burden and Costs to Persons Regulated by Rule

This rule imposes no burden or cost to persons regulated by the rule.

13. Proposed Course of Action.

The local board intends to take no new action regarding this rule at this time.

R13-8-110

1. Authorization of Rule by Existing Statutes.

A.R.S. §§ 38-844(A) and (B); 38-847(D) and (F); A.R.S. § 38-842(23).

2. Objectives.

The objective of this rule is to address the procedures of the local board upon events which trigger the termination of certain benefits.

3. Analysis of Effectiveness in Achieving the Objective.

The rule is effective in achieving its objective because it sets forth the local board's procedure under the identified circumstances.

4. Analysis of Consistency with State and Federal Statutes and Rules.

The rule is consistent with the sections reference in "1" above.

There are no relevant federal statutes and rules.

5. Status of Enforcement of Rule.

The local board and its secretary act in compliance with this rule and the relevant statutes.

6. Wisdom of Rule.

The rule is beneficial because it notifies the relevant public of the local board's procedures in regards to termination of certain benefits.

7. Analysis of Clarity, Conciseness and Understandability.

The rule is understandable to the public. The terminology is defined in or through R13-8-101. There are no citations or cross-references. The rule does not contain unnecessary verbiage. The rule is organized and follows a logical order.

8. Written Criticisms of the Rule Received Within the Last Five Years.

None.

9. Comparative Estimated Economic, Small Business and Consumer Impact of the Rule.

The actual-to-date and future estimated economic, small business and consumer impact was and is consistent with the impacts identified at the time of rule promulgation and rule amendment.

10. Any Analysis Submitted to the Agency by Another Person Regarding the Rule's Impact on this State's Business Competitiveness

None.

11. Completion of Action Indicated in Previous Five Year Review Report

No action relative to this rule indicated in previous five year review report.

12. Determination that the Rule Imposes the Least Burden and Costs to Persons Regulated by Rule

This rule imposes no burden or cost to persons regulated by the rule.

13. Proposed Course of Action.

The local board intends to take no new action regarding this rule at this time.

R13-8-111

1. Authorization of Rule by Existing Statutes.

The PSPRS statutes were amended to delete the provisions of then-A.R.S. §§ 38-844(H), which had mandated the reduction of an ordinary disability pension upon any employment if the income from the employment exceeded a stated level. This rule, which described the procedures the local board followed in administrating the provisions of then-A.R.S. § 38-844(H), needs to be repealed.

2. Objectives.

The objectives of this rule were to describe the procedures the local board followed in administrating the provisions of then-A.R.S. § 38-844(H), which has been amended out of existence.

3. Analysis of Effectiveness in Achieving the Objective.

The rule was effective in achieving its objectives because it established a procedure to ensure compliance with the relevant statute. Since the relevant statute no longer exists, the rule needs to be repealed.

4. Analysis of Consistency with State and Federal Statutes and Rules.

This rule is no longer consistent with state law.

There are no relevant federal statutes and rules.

5. Status of Enforcement of Rule.

The local board stopped enforcing the rule when the legislature amended section 38-844 to delete then-subsection H.

6. Wisdom of Rule.

The rule is no longer needed.

7. Analysis of Clarity, Conciseness and Understandability.

The rule is no longer needed.

8. Written Criticisms of the Rule Received Within the Last Five Years.

None.

9. Comparative Estimated Economic, Small Business and Consumer Impact of the Rule.

The actual-to-date and future estimated economic, small business and consumer impact was and is consistent with the impacts identified at the time of rule promulgation and rule amendment.

10. Any Analysis Submitted to the Agency by Another Person Regarding the Rule's Impact on this State's Business Competitiveness

None.

11. Completion of Action Indicated in Previous Five Year Review Report

No action relative to this rule indicated in previous five year review report.

12. Determination that the Rule Imposes the Least Burden and Costs to Persons Regulated by Rule

This rule imposes no burden or cost to persons regulated by the rule since the local board stopped enforcing rule when the underlying statutory authority was amended to remove the object of the rule.

13. Proposed Course of Action.

The local board intends to repeal this rule. The local board anticipates commencing rulemaking on this rule

amendment/pepeal within six months of the end of any moratorium on rulemaking.

R13-8-112

1. Authorization of Rule by Existing Statutes.

A.R.S. §§ 38-844.01; 38-847(D), (F), (H); 41-1061 and 41-1062(A).

2. Objectives.

The objective of this rule is to prescribe the local board's procedures when a claimant or the fund manager applies for a rehearing before the local board pursuant to A.R.S. §§ 38-847(H).

3. Analysis of Effectiveness in Achieving the Objective.

The rule is effective in achieving its objectives. Subsection A clarifies that the local board will handle the rehearing as if it were an adjudicative proceeding under Article 6, Chapter 6 of Title 41. Subsection B, for due process reasons, provides that if the fund manager applies for a rehearing, the claimant whose benefits may be affected shall be a party to the proceeding. Subsection C requires the submission to the board ten days prior to a rehearing a list of witnesses and exhibits as well as a copy of all of the exhibits. This requirement allows the board and board members to prepare adequately for the hearing. Subsection D allows written statements to be submitted to the board ten days prior to the rehearing. Subsections E and F give direction in the event subpoenas or depositions are desired in connection with a rehearing. Subsection H notifies the claimant, consistent with Arizona law (A.R.S. § 38-844.01), that the burden of proof of establishing a disability is with the claimant.

4. Analysis of Consistency with State and Federal Statutes and Rules.

This rule is consistent with the sections referenced in "1" above. Pursuant to Arizona statutes, the system is administered at the local level by the local board. The decisions of the local board are then subject directly to judicial review. A.R.S. § 38-847(J). Article 10 of Chapter 6 of Title 41 does not apply to the System.

There is no corresponding federal law.

5. Status of Enforcement of Rule.

The local board and its secretary have acted in compliance with the rule.

6. Wisdom of Rule.

The rule is beneficial because it informs the relevant public of the local board's procedures on rehearings, which procedures utilize the Arizona administrative law contested case procedures. A.R.S. § 38-847(H) specifically states that the rehearing is before the local board. Article 10 of Chapter 6 of Title 41 does not apply.

7. Analysis of Clarity, Conciseness and Understandability.

The rule is understandable to the public. The terminology is defined on or through R13-8-101. All citations and cross-references are accurate. The rule does not contain unnecessary verbiage. The rule is organized and follows a logical order. The rule fully addresses its subject matter.

8. Written Criticisms of the Rule Received Within the Last Five Years.

None.

9. Comparative Estimated Economic, Small Business and Consumer Impact of the Rule.

The actual-to-date and future estimated economic, small business and consumer impact was and is consistent with the impacts identified at the time of rule promulgation and rule amendment.

10. Any Analysis Submitted to the Agency by Another Person Regarding the Rule's Impact on this State's Business Competitiveness

None.

11. Completion of Action Indicated in Previous Five Year Review Report

No action relative to this rule indicated in previous five year review report.

12. Determination that the Rule Imposes the Least Burden and Costs to Persons Regulated by Rule

This rule imposes no burden or cost to persons regulated by the rule.

13. Proposed Course of Action.

The local board intends to amend subsection A to restrict the reference to A.R.S. §§ 41-1061 and 41-1062(A), and not the entire article. The local board anticipates commencing rulemaking on this rule amendment within six months of the end of any moratorium on rulemaking.

R13-8-113

1. Authorization of Rule by Existing Statutes.

A.R.S. §§ 38-847(D) and (F); A.R.S. § 41-1062(B).

2. Objectives.

The objective of this rule was to establish a procedure of the local board for a review of the board's decision on rehearing of an original determination in a situation where there might have been a problem materially affecting a party's rights, consistent with the philosophy of A.R.S. § 41-1062(B). The local board intends to repeal this rule. Since the rule was adopted in 1994, it has never been utilized by the local board or a claimant or the system. This rule was adopted in 1994 to acknowledge A.R.S. § 41-1062(B); it was not a step in the process set forth by the Public Safety Personnel Retirement System statutes.

3. Analysis of Effectiveness in Achieving the Objective.

The rule was effective in achieving its objective of providing for a review of the board's decision on rehearing of an original determination in a situation where there might have been a problem materially affecting a party's rights, consistent with the philosophy of A.R.S. § 41-1062(B).

4. Analysis of Consistency with State and Federal Statutes and Rules.

The rule is not inconsistent with any state statutes or rules. Pursuant to the Public Safety Personnel Retirement System statutes, the system is administered at the local level by the local board. The decisions of the local board are then subject directly to judicial review. A.R.S. § 38-847(J). This rule was adopted in 1994 to acknowledge A.R.S. § 41-1062(B); it was not a

step in the process set forth by the Public Safety Personnel Retirement System statutes.

Article 10 of Chapter 6 of Title 41 does not apply to the system.

There are no relevant federal statutes and rules.

5. Status of Enforcement of Rule.

Since the adoption of this rule, there have been no requests for a review of the board's decision on rehearing of an original determination under this rule.

6. Wisdom of Rule.

The local board originally adopted this rule to acknowledge A.R.S. § 41-1062(B); it was not a step in the process set forth by the Public Safety Personnel Retirement System statutes.

The level of review in the rule has never been used and most likely will never be used for two reasons. One being that this level of review is not in the Public Safety Personnel Retirement System statutes. The second being that the time frame in which to appeal (seek judicial review of) the decisions of the local board is 35 days. Since the local board meets on a monthly basis, a motion under this rule would not be ruled upon in 35 days or less.

The local board intends to repeal this rule.

7. Analysis of Clarity, Conciseness and Understandability.

The rule is understandable to the public. The terminology is defined in or through R13-8-101. There are no citations or cross-references. The rule does not contain unnecessary verbiage. The rule is organized and follows a logical order.

8. Written Criticisms of the Rule Received Within the Last Five Years.

None.

9. Comparative Estimated Economic, Small Business and Consumer Impact of the Rule.

The actual-to-date and future estimated economic, small business and consumer impact was and is consistent with the impacts identified at the time of rule promulgation.

10. Any Analysis Submitted to the Agency by Another Person Regarding the Rule's Impact on this State's Business Competitiveness

None.

11. Completion of Action Indicated in Previous Five Year Review Report

No action relative to this rule indicated in previous five year review report.

12. Determination that the Rule Imposes the Least Burden and Costs to Persons Regulated by Rule

This rule imposes no burden or cost to persons regulated by the rule.

13. Proposed Course of Action.

The local board intends to repeal this rule. The local board anticipates commencing rulemaking on this rule amendment/repeal within six months of the end of any moratorium on rulemaking.

R13-8-114

1. Authorization of Rule by Existing Statutes.

A.R.S. §§ 12-904 and 12-909; A.R.S. § 38-847(F) and (J); and A.R.S. § 41-1061(F).

2. Objectives.

The objectives of this rule are to prescribe that any party who designates a portion of the oral proceeding before the board as part of the record on review in the superior court must pay for the cost of the transcript unless waived by the board, as well as prescribe the manner in which to request such a waiver.

3. Analysis of Effectiveness in Achieving the Objective.

The rule is effective in achieving its objective because it clearly communicates responsibilities in regards to transcripts from proceedings before the local board.

4. Analysis of Consistency with State and Federal Statutes and Rules.

The rule is consistent with the sections referenced in "1" above.

There are no relevant federal statutes and rules.

5. Status of Enforcement of Rule.

The local board acts in accordance with this rule.

6. Wisdom of Rule.

The rule is beneficial because it notifies the relevant public regarding the financial responsibilities of ordering transcripts.

7. Analysis of Clarity, Conciseness and Understandability.

The rule is understandable to the public. The terminology is defined in or through R13-8-101. There are no citations or cross-references. The rule does not contain unnecessary verbiage. The rule is organized and follows a logical order. The rule fully addresses its subject matter.

8. Written Criticisms of the Rule Received Within the Last Five Years.

None.

9. Comparative Estimated Economic, Small Business and Consumer Impact of the Rule.

The actual-to-date and future estimated economic, small business and consumer impact was and is consistent with the impacts identified at the time of rule promulgation.

10. Any Analysis Submitted to the Agency by Another Person Regarding the Rule's Impact on this State's Business Competitiveness

None.

11. Completion of Action Indicated in Previous Five Year Review Report

No action relative to this rule indicated in previous five year review report.

12. Determination that the Rule Imposes the Least Burden and Costs to Persons Regulated by Rule

This rule imposes no burden or cost to persons in excess of costs otherwise imposed by state law.

13. Proposed Course of Action.

The local board intends to leave the rule unchanged.

R13-8-115

1. Authorization of Rule by Existing Statutes.

A.R.S. § 38-847(D) and (F); A.R.S. § 12-2292; and A.R.S. § 38-431.03.

2. Objectives.

The objectives of this rule are to clarify that medical records and data maintain their confidential nature despite their use in administrative proceedings held by this local board and to address the confidentiality issue relative to open meeting laws.

3. Analysis of Effectiveness in Achieving the Objectives.

The rule is effective in achieving its objectives because it clearly informs the relevant public that medical records and data of members are confidential and exempt from public inspection and copying and that the member may either waive confidentiality and consent to discussion of said medical records and data in open meeting or participate appropriately in executive session to maintain confidentiality.

4. Analysis of Consistency with State and Federal Statutes and Rules.

The rule is consistent with the sections referenced in "1" above.

The rule is consistent with, and not more stringent than, federal laws on confidentiality of medical records in the Health Insurance Portability and Accountability Act of 1996.

5. Status of Enforcement of Rule.

The local board and its secretary act in compliance with this rule.

6. Wisdom of Rule.

The rule is necessary and beneficial because it maintains the confidentiality of medical records during administrative proceedings and accommodates the Arizona open meeting laws.

7. Analysis of Clarity, Conciseness and Understandability.

The rule is understandable to the public. The terminology is defined in or through R13-8-101. The citations are accurate. The rule does not contain unnecessary verbiage. The rule is organized and follows a logical order. The rule fully addresses its subject matter.

8. Written Criticism of the Rule Received Within the Last Five Years.

None.

9. Comparative Estimated Economic, Small Business and Consumer Impact of the Rule.

The actual-to-date and future estimated economic, small business and consumer impact was and is consistent with the impacts identified at the time of rule promulgation.

10. Any Analysis Submitted to the Agency by Another Person Regarding the Rule's Impact on this State's Business Competitiveness

None.

11. Completion of Action Indicated in Previous Five Year Review Report

No action relative to this rule indicated in previous five year review report.

12. Determination that the Rule Imposes the Least Burden and Costs to Persons Regulated by Rule

This rule imposes no burden or cost to persons regulated by the rule.

13. Proposed Course of Action.

The local board intends to take no new action regarding this rule.

Certification of Compliance with A.R.S. § 41-1091

The Arizona Department of Public Safety Local Retirement Board is in compliance with A.R.S. § 41-1091. The local board currently does not have any substantive policy statements, but the local board does have a directory of local board rules. Copies of the rules are kept at the Arizona Department of Public Safety, in the Benefits Office, at 2101 W. Encanto Blvd., Phoenix, Arizona, and are available for public inspection through the local board's secretary, Leanne Lunsford.



ARIZONA DEPARTMENT OF PUBLIC SAFETY

ARIZONA ADMINISTRATIVE CODE FIVE YEAR REVIEW REPORT

TITLE 13 – PUBLIC SAFETY

CHAPTER 13 – SCHOOL BUSES

ARTICLES 1 – SCHOOL BUS MINIMUM STANDARDS
 2 – MINIMUM STANDARDS FOR SCHOOL BUSES OPERATED ON
 ALTERNATIVE FUEL

September 23, 2014
Version D

TABLE OF CONTENTS

1.	Introduction	Page 1
2.	Information Identical for a Group of Rules	Page 3
3.	Analysis of Individual Rules	Page 8

INTRODUCTION

Under House Bill 2362, Fifty-first Legislature Second Regular Session 2014, which became law on July 24, 2014, A.R.S. §§ 28-900, 28-984, and 28-3228 were amended to remove responsibility from the Department of Administration for oversight and rulemaking authority related to the School Bus Rules. In its place, the Department of Public Safety is now responsible for oversight and rulemaking authority in consultation with the School Bus Advisory Council. Prior to July 2014, state law required that the Department of Administration to establish and maintain rules to improve the safety and welfare of school bus passengers (school bus rules) by minimizing the probability of accidents. Prior to July 2014, The Department of Public Safety only enforced the rules. The rules formerly existed under A.A.C. Title 17 Transportation, Chapter 9 Department of Administration – School Buses and were recodified by the Secretary of State in 20 A.A.R. 2083 on August 8, 2014 to A.A.C. Title 13 Public Safety, Chapter 13 Department of Public Safety – School Buses.

Under the Department of Administration’s rulemaking authority, most of the rules in Article 1 were initially made in 1996 and substantially revised in 2001, 2005, and 2008 with a new economic impact statement in May 2008. The rules in Article 2, which deal with minimum standards for school buses operated on compressed natural gas, were last amended with a new economic impact statement in 2000 and last reviewed in 2005. The Department of Public Safety plans to add new rules dealing with other alternative fuels and modify existing rules by December 2016.

Included in this report is a review of the following fourteen rules:

- R13-13-101 Definitions
- R13-13-102 Certification of School Bus Drivers
- R13-13-103 Qualification of Classroom and Behind-the-wheel Instructors
- R13-13-104 Minimum Standards for School Bus Operation

- R13-13-105 Special Needs Standards
- R13-13-106 Minimum Standards for School Bus Chassis
- R13-13-107 Minimum Standards for School Bus Body
- R13-13-108 Inspection, Maintenance, and Alterations
- R13-13-109 Timeframes for Making Certification Determinations
- R13-13-110 First-aid Equipment
- R13-13-111 Rehearing or Review of Decision
- R13-13-112 Enforcement Audits
- R13-13-201 Minimum Standards for Compressed Natural Gas Fuel Systems
- R13-13-202 Inspection and Maintenance of Compressed Natural Gas Fuel Systems

INFORMATION IDENTICAL FOR A GROUP OF RULES

The following information is provided only once because it is identical for all articles and rules for which the information on a particular issue is the same in accordance with A.A.C. R1-6-301(B).

1. Effectiveness in Achieving Objectives

All of the rules are effective in achieving their objectives, with the exception of R13-13-102, and R13-13-106, which are addressed individually. The effectiveness of R13-13-201, which deals with converting a school bus manufactured to use only gasoline or diesel fuel to use compressed natural gas, and inspection of same, is not known because compressed natural gas conversions no longer occur and there are no businesses performing conversions.

2. Written Criticisms of the Rule Received in the Last Five Years

The Department received no written criticism of the rules during the last five years with the exception of R13-13-102, R13-13-104, R13-13-105, and R13-13-107.

3. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. §41-1713(A)(4) states the Department may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 28-900(A) states that the Department in consultation with the School Bus Advisory Council shall adopt rules to improve the safety and welfare of passengers by minimizing accidents.
- A.R.S. § 28-3228(B)(1) states that a person shall be certified in accordance with rules adopted by the Department in consultation with the School Bus Advisory Council.

4. Consistency with State Law or Other Rules

The Department determined that the rules are consistent with state law and existing rules with the exception of R13-13-112.

5. Clarity, Conciseness, and Understandability of the Rule

The rules are generally clear, concise, and understandable.

6. Estimated Economic, Small Business and Consumer Impact of the Rule

In the time period of January 2013 to September 2014, the Department certified 1855 active drivers, inspected 13,284 school buses, from a total of 559 school districts/private bus companies. The rules in Article 2, which establish standards for school buses operated on alternative fuels, were made in 2000 in response to A.R.S. § 15-349, which requires most school districts to develop and implement a fleet plan to progressively increase the use of alternative or clean burning fuels in school buses. The economic, small business and consumer impact statement prepared with the rulemaking predicted that the rules would have minimal economic impact. R13-13-201 established standards for a business that converts a school bus from the use of gasoline or diesel to use of compressed natural gas. At the time of the rulemaking, there were no businesses doing these conversions. Although the rule has the potential to have a minimal economic impact, especially on insurance companies, it does not as the rules include insurance requirements for engaging in compressed natural gas conversions and most likely the insurance requirements would have already been met. R13-13-202 deals with inspection and maintenance of school buses operated on a compressed natural gas fuel system. Because the Department is required to inspect all school buses annually, this rule had no additional economic impact. School districts have chosen to comply with A.R.S. § 15-349 by purchasing new school buses that operate on diesel fuel; which is

listed as a clean burning fuel under A.R.S. § 1-215(7). The Department believes the anticipated economic impact has occurred.

The economic, small business and consumer impact statement prepared in 2001 addressed changes made to the following rules reviewed for this report: R13-13-111. The primary economic impact anticipated related to:

Establishing a rehearing and review of decision process for parties aggrieved by Department decisions.

The Department believes the anticipated economic impact has occurred.

The economic small business and consumer impact statement prepared in 2005 addressed changes made to the following rules reviewed for this report: R13-13-109 and R13-13-112. The primary economic impacts anticipated related to:

- Changes in recordkeeping and time-frame compliance tracking for classroom and behind-the-wheel training for employers of school bus drivers; and
- Establishing records audit procedures to ensure compliance.

The Department believes the anticipated economic impact has occurred.

The economic small business and consumer impact statement prepared in 2008 addressed changes made to the following rules reviewed for this report: R13-13-101 through R13-13-108, and R13-13-110. The primary economic impacts anticipated related to:

- Updating definitions to reflect industry standards and correct typographical errors;

- Including additional basis for denial, cancellation or suspension of a school bus driver's certificate;
- Incorporating school bus driver responsibilities for operating noise suppression switches;
- Clarifying requirements for passengers and non-passengers regarding school bus driver's instructions;
- Clarifying the limitations on a school bus driver's use of a cell phone, Bluetooth™ devices, and interactive wireless devices while operating a school bus.
- Requiring a school bus driver to complete all child alert notifications if a school bus is equipped with system;
- Clarifying provisions relating to belt cutters, special service entrance doors, and wheelchair sacrament systems;
- Clarifying provisions regarding school bus chassis, brake systems, electrical systems, frame components, instruments and instrument panels, suspension systems;
- Clarifying provisions relating to school bus body, including auxiliary fans, batteries, belt cutters, emergency exits, locking devices, fire extinguishers, heating systems, school bus lengths, stop signal arms, and tail pipes; and
- Clarifying provisions regarding inspection and maintenance of school buses and out-of-service criteria.

The Department believes the anticipated economic impact has occurred.

7. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis by any person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of business in other states.

8. Course of Action Proposed for Each Rule

The Department in consultation with the School Bus Advisory Council intends to amend only R13-13-102, R13-13-105 through R13-13-106, and R13-13-112 by submitting the rules to the Council on or before December 2016.

9. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined that the benefits of the rules will outweigh the costs to the State and impose the least burden and cost to the regulated public once the changes identified in this report are made.

10. Determination of the Rule's Stringency Against Federal Law

The Department determined that the rules are not more stringent than corresponding federal law. School bus drivers¹ are subject to much of the federal law regarding the safe transportation of passengers on school buses. Through the federal motor vehicle safety standards at 49 CFR 571, the federal government controls the manufacturing of school buses to ensure that they are built to maximize safety. Additionally, a school bus designed to transport disabled passengers must conform to the accessibility guidelines at 49 CFR 38. State statutes do not specifically address the standards; therefore, the standards are incorporated in the A.A.C. in order for a state peace officer to enforce any violations that arise during inspection.

11. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010.

None of the rules reviewed were adopted or amended after July 29, 2010; therefore, this analysis is not required for these rules.

¹ School bus drivers are subject to federal law dealing with commercial driver license standards (49 CFR 383), qualifications of drivers (49 CFR 391), driving of commercial motor vehicles (49 CFR 392), and hours of services (49 CFR 395).

12. Rule Enforcement

The rules are currently being enforced as written. There are currently no issues with the enforcement of the rules.

13. Proposed Action from the Previous Five-Year Report

With the exception of R13-13-105 through 108 and R13-13-110 there was no course of action proposed in the previous five-year review report for the rules reviewed. Rules R13-13-105 through 108 and R13-13-110 were updated through a final rulemaking at 14 A.A.R. 2110, effective May 8, 2008.

ANALYSIS OF INDIVIDUAL RULES

ARTICLE 1

R13-13-101 DEFINITIONS

1. Objective

The objective of this rule is to clarify the rules by defining words that are used in a manner specific to the rules.

R13-13-102 CERTIFICATION OF SCHOOL BUS DRIVERS

1. Objective and Effectiveness

The objective of the rule is to set forth the requirements and procedures for certification of a school bus driver and maintenance of certification, conditions under which certification may be refused or canceled, and maintenance of application and certification records, in order to ensure the safety and welfare of students and others who may be passengers.

The Department determined that the rule is partially effective. The effectiveness of the rule could be increased if the following changes were made (A.R.S. § 28-3228 is the authorizing statute):

- Allow the Department to suspend, deny, or cancel the certification of any applicant or driver for an arrest that directly affects the person's status as a school bus driver;
- Allow the Department to suspend, deny, or cancel the certification of any applicant or driver for an arrest involving a crime against children; and
- Add a provision that the Department may require at any time a physical performance test for a school bus driver.

2. Written Criticisms of the Rule

Several school districts criticized subsection (A) because:

- It does not address an arrest that might affect the ability of an applicant or driver to safely drive a school bus; and
- No provision exists for the denial, suspension, or cancellation of the certification of an applicant or driver for an arrest involving a crime against a child.

Several school districts criticized subsection (K) because it does not allow a physical performance test of a school bus driver at any time.

R13-13-103 QUALIFICATION OF CLASSROOM and BEHIND-THE-WHEEL INSTRUCTORS

1. Objective

The objective of the rule is to set forth the requirements and procedures for certification of a classroom or behind-the-wheel instructor of school bus drivers applicants and drivers, requirements for maintaining certification, conditions under which certification may be refused or canceled, maintenance of qualification and training records, in order to ensure the safety and welfare of students and others who may be passengers.

R13-13-104 MINIMUM STANDARDS FOR SCHOOL BUS OPERATIONS

1. Objective

The objective of the rule is to set forth the requirements for safely operating a school bus and transporting passengers, including pre-trip and post-trip inspections, procedures for loading and unloading passengers, maximum on-duty and off-duty hours for a school bus driver, procedures for conducting evacuation drills, and other conditions in order to reduce the probability of an accident or serious harm to a passenger.

2. Written Criticisms of the Rule

Several school districts have criticized subsection (B) because the subsection does not prohibit a school bus driver from stopping at a location where students must cross multiple (5-6) lanes of traffic.

A school district administrator criticized subsection (D)(31), stating that the rule should be more specific and state that every student who is in attendance at school on the day of an evacuation drill should be included in the drill.

In response to the criticisms, the Department believes that roadways with 4 or more lanes are extremely rare. Typically loading/unloading locations will occur where students may only need to cross a 2 to 4 lane roadway. Ultimately it is up to the districts to determine the specific locations for loading/unloading as the district sets the routes. While the Department understands the sentiment of the evacuation drills and encourages the practice. However, such a requirement deprives the individual districts of being able to address/accommodate their specific needs. Nothing would prevent a district from adopting this practice as their own policy.

R13-13-105 SPECIAL NEEDS STANDARDS

1. Objective

The objective of this rule is to establish the minimum standards for the body of a school bus used to transport disabled passengers, including those who use a wheelchair, in order to reduce the probability of serious injury to passengers.

2. Written Criticisms of the Rule

A manufacturer criticized the rule as follows:

- Subsection (D)(5) could be clarified by changing “prevent the wheelchair lift from falling” to “prevent the wheelchair lift from unfolding;”
- Language should be added that addresses a shoulder-belt height-adjuster that would extend the wheelchair passenger restraint that may be required for some passengers;
- Subsection D(10) does not address the minimum battery size and how to properly secure the battery;
- Subsection D(11) fails to state an appropriate size circuit breaker that should be installed between the battery and the wheelchair-lift motor;
- Subsection (E)(5) should be amended to add the word “shoulder” to the phrase “wheelchair-passenger restraint anchorage” to result in “wheelchair-passenger shoulder restraint anchorage.”

R13-13-106 MINIMUM STANDARDS for SCHOOL BUS CHASSIS

1. Objective and Effectiveness

The objective of this rule is to establish the minimum standards for the chassis of a school bus in order to minimize the probability of accidents and the risk of serious injury to passengers in the event of an accident.

The Department determined that the rule is partially effective. The effectiveness of the rule could be increased if the Department:

- Set the minimum thickness allowed on school bus brake pads to the specifications provided in Title 29 U.S.C. Part 393 and the Commercial Vehicle Safety Alliance *North American Standard Out of Service Criteria*; and
- Allow a bus to be equipped with an odometer that accrues mileage in other than tenths of a mile if the bus has a trip meter. R13-13-106(18)(ii) allows for only a seven digit odometer including tenths of a mile.

R13-13-107 MINIMUM STANDARDS for SCHOOL BUS BODY

1. Objective

The objective of this rule is to establish the minimum standards for the body of a school bus in order to update the rules to comply with industry standards and to ensure passenger safety.

2. Written Criticisms of the Rule

A manufacturer states that the rule should be changed to allow for a polymer backing for stair treads. Currently, it is only a metal backing.

The Department reviewed rules in other states and found that other states have generally adopted the standards in the *2010 National School Transportation Specifications and Procedures* (NSTSP). The NSTSP standard states that a step covering

shall be permanently bonded to any durable backing material that is resistant to corrosion. The Department intends to adopt this new standard with the condition the material also meet the standards in The National Highway Traffic Safety Administration *FMVSS 302 Flammability of Interior Materials* which specifies the burn resistance requirements for materials used in the compartment of motor vehicles. If during the rulemaking process the Department discovers a federal rule prohibiting the practice or safety issue the Department will not adopt the new standard.

R13-13-108 INSPECTION, MAINTENANCE, and ALTERATIONS

1. Objective

The objective of this rule is to establish minimum standards for the initial and annual inspections of school bus and to define the defects that require a school bus to be removed from operation. The rule also establishes minimum standards for daily operations checks of a school bus, maintenance records, and the procedures to follow before altering a school bus, in order to minimize the probability of accidents and to minimize the risk to school bus passengers.

R13-13-109 TIME-FRAMES for MAKING CERTIFICATION DETERMINATIONS

1. Objective

The objective of this rule is to establish time-frames within which the Department will either grant or deny each type of license issued, including overall time-frame, administrative completeness review time-frame, and substantive review time-frame in order to ensure that each type of license issued by the Department is within the specified time frame.

R13-13-110 FIRST-aid EQUIPMENT

1. Objective

The objective of this rule is to establish the minimum supplies that must be in first-aid and body-fluid cleanup kits on a school bus in order to ensure the safety and welfare of school bus passengers.

R13-13-111 REHEARING or REVIEW of DECISION

1. Objective

The objective of this rule is to inform a party of the right to request a rehearing or review of a decision made by the Department and rehearing or review procedures in order to ensure the affected party a fair hearing.

R13-13-112 ENFORCEMENT AUDITS

1. Objective

The objective of the rule is to set forth a provision allowing the Department, with permission, to conduct audits of any of the records required to be maintained under this Chapter in order to ensure compliance with regulatory laws, to remedy violations, and to impose sanctions for violations.

4. Consistency with State Law or Other Rules

The Department does not have statutory authority to enter an employer's place of business to conduct an audit without permission. The Attorney General's Agency Handbook Section 12.3.3.2 states that an agency cannot enter a business and inspect its premises and books without the business's consent unless the Department has statutory authority. Subsection (B) will be amended to read "The Department may enter an employer's or owner's place of business upon receiving written consent to conduct an audit."

ARTICLE 2

R13-13-201 MINIMUM STANDARDS for COMPRESSED NATURAL GAS FUEL SYSTEMS

1. Objective

The objective of this rule is to define words used in Article 2 and to establish requirements for retrofitting a school bus manufactured to use only gasoline or diesel fuel to use of compressed natural gas in order to comply with A.R.S. § 15-349.

The Department is unable to determine if the rule is fully effective. The effectiveness of the rule which deals with converting a school bus manufactured to use only gasoline or diesel fuel to use compressed natural gas is not known because compressed natural gas conversions no longer occur. While the Department believes the rule sets forth the necessary requirements and correctly defines terms; however, the Department has not had the opportunity to evaluate the rule through actual enforcement.

R13-1-202 INSPECTION and MAINTENANCE of COMPRESSED NATURAL GAS FUEL SYSTEMS

1. Objective

The objective of this rule is to establish requirements for inspecting and maintaining a school bus powered, in whole or in part, by compressed natural gas in order to minimize the probability of accidents and to minimize the risk to school bus passengers.



ARIZONA DEPARTMENT OF PUBLIC SAFETY

ARIZONA ADMINISTRATIVE CODE FIVE YEAR REVIEW REPORT

TITLE 13 – PUBLIC SAFETY

CHAPTER 2 – PRIVATE INVESTIGATORS

ARTICLES

- 1 – GENERAL PROVISIONS
- 2 – AGENCY LICENSES
- 3 – REGISTRATION CERTIFICATES
- 4 – REGULATION

February 12, 2015
Version E

TABLE OF CONTENTS

	Page
Introduction	1
Information Identical for a Group of Rules	3
Analysis of Individual Rules	9
R13-2-101.....	9
R13-2-102.....	9
R13-2-103.....	10
R13-2-104.....	10
R13-2-105.....	10
R13-2-201.....	11
R13-2-202.....	11
R13-2-203.....	11
R13-2-204.....	11
R13-2-205.....	12
R13-2-206.....	12
R13-2-207.....	13
R13-2-208.....	13
R13-2-301.....	14
R13-2-302.....	14
R13-2-303.....	15
R13-2-304.....	16
R13-2-305.....	16
R13-2-306.....	16
R13-2-401.....	17
R13-2-402.....	17
R13-2-403.....	17
R13-2-404.....	17

INTRODUCTION

The Department of Public Safety Licensing Unit regulates the private investigator and security guard industry. The Licensing Unit's primary responsibility is to process applications for private investigator licenses. The unit also conducts administrative and criminal investigations involving violations of state private investigator statutes and rules.

Every person performing private investigator (PI) services in Arizona shall be licensed by the Department's Licensing Unit. The state requires no prior experience for a person to become a PI and only three years of investigative experience to establish a PI agency. PI agency licenses and employee registrations are required to be renewed every two years. As of November 2014 there are 1,044 licensed agencies, 753 employees registered, and 374 associates registered. Refer to Item 8 Review of Economic Impact Statement for additional statistics.

Included in this report is a review of the following twenty-three rules:

- R13-2-101 Definitions
- R13-2-102 Application and Processing Fees
- R13-2-103 Application Forms
- R13-2-104 Identification Cards
- R13-2-105 Time-frames for Making Licensing and Registration Determinations
- R13-2-201 Agency License Eligibility
- R13-2-202 Submission of Application for an Agency License
- R13-2-203 Issuance of Agency License
- R13-2-204 Agency License Renewal
- R13-2-205 Branch Office Certificate
- R13-2-206 Change of Qualifying Party
- R13-2-207 Restructure of Agency

- R13-2-208 Business and Employee Names
- R13-2-301 Employee Associate Registration Certificate Eligibility
- R13-2-302 Application for Registration Certificate
- R13-2-303 Renewal of Registration Certificate
- R13-2-304 Lost or Stolen Registration Certificate or Identification Card
- R13-2-305 Change of Address
- R13-2-306 Change in Name of Registrant
- R13-2-401 Denial of Agency License or Registration Certificate
- R13-2-402 Probation of Agency License or Registration Certificate
- R13-2-403 Employee and Business Records
- R13-2-404 Complaints

INFORMATION IDENTICAL FOR A GROUP OF RULES

The following information is provided only once because it is identical for all articles and rules for which the information on a particular issue is the same in accordance with A.A.C. R1-6-301(B).

1. Authorization of the Rule by Existing Statutes

The Department's general authority is authorized under:

- A.R.S. §41-1713(A)(4) states the Department may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 32-2402(D) states the director shall adopt and enforce rules that are not in conflict with the laws of this state and that are necessary to enforce this chapter.

3. Effectiveness of the Rule in Achieving the Objective

The rules are effective in achieving their objective with the exception of rules R13-2-102, R13-2-302 and R13-2-303.

4. Consistency of the Rule with State and Federal Statutes or other Rules

The Department determined that the rules are consistent with state law and existing rules with the exception of R13-2-203 and 205. There are no applicable federal statutes.

5. Agency Enforcement Policy

With the exception of the rules identified in the individual analysis, the Department is enforcing the rules as written. The Department is enforcing the rules as written. The Department is having difficulty enforcing R13-2-203(G), R13-2-205(E) and R13-2-305

which require the licensee/registrant to report a change of address within a defined period of days. The Department is typically unaware that the licensee/registrant did not report an address change until the licensee/registrant attempts to renew the license. When the Department becomes aware, the Department allows the licensee/registrant to provide the correct information.

6. Clarity, Conciseness and Understandability of the Rule

The rules are clear, concise, and understandable with the exception of R13-2-205.

7. Summary of Written Criticisms of the Rules Received in the Last Five Years

The Department has received no written criticisms of the rules in the last five years.

8. A Review of the Economic Impact Statement (EIS) Prepared on the Last Making of the Rule

The last rulemaking was in February 2005 where the Department repealed outdated or ineffective rules and instituted new rules for private investigators. The new rules provide detail about qualifications to operate a private investigation agency or work as a private investigator; procedures for obtaining a license or registration; and regulatory expectations of the licensees.

The most significant change made in 2005 was a fee increase to enable the Department's Licensing Unit to become self-supporting as required under A.R.S. §32-2407(A). The economic impact of the fee increase therefore results from statute rather than rule. The economic impact of the rules are minimal and is offset by the economic benefits from persons being able to work as private investigators, operate private investigation businesses, and the safety of the general public by the Department regulating the qualifications and checking the criminal history of the investigators and investigation businesses.

	FY 2012	FY 2013	FY 2014
PI Active Employee Registrations	2,138	2,113	2,074
PI Employee Applications Processed	321	355	285
PI Employee Renewals Processed	307	388	315
PI Active Agency Licenses	1,029	1,026	996
PI Agency Applications Processed	129	111	98
PI Agency Licenses Renewed	322	480	345

In calendar year 2009, 111 new agency applications were received and new registration applications were received from 338 employees and 90 associates.

In calendar year 2010, there were 1,044 licensed private investigator agencies and 765 employee registrants and 392 associate registrants. The figures are less than the 2005 EIS estimates resulting in reduced revenue to the Licensing Unit.

In calendar year 2013, 103 new agency applications were received of which seven were denied. New registration applications were received from 270 employees and 74 new associates.

As of November 2014 there are 1,044 licensed agencies, 753 employees registered, and 374 associates registered. These figures are also less than the 2005 EIS estimates resulting in reduced revenue to the Licensing Unit.

The Licensing Unit is experiencing moderately increasing costs in several areas. First, the Department has made a decision to relocate the unit from the current Department of Public Safety headquarters building to a new facility that consolidates the fingerprint units, clearance card units, and licensing to improve customer service by easing access.

This move scheduled for 2015 will triple the cost of annual rent the unit pays. The unit is using outdated technology equipment. Some systems have reached the end-of-life cycle; for example, the license card printer. Other computer systems were designed with outdated programming that is no longer supported or too slow for the current environment; for example, the current computer system by its design takes a records clerk 30 to 45 minutes to enter a single application. Additionally, state employee related expenses (ERE) is increasing each year. Due to those factors, the unit intends to increase fees moderately.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis by any person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of business in other states.

10. Agency Stated Course of Action from the Previous Five-Year Report

The Department stated that it would amend R13-2-203, R13-2-205, R13-2-301, R13-2-303 and R13-2-401 to correct issues identified in rules by July 2012 if the rulemaking moratorium was lifted. The Department went on to state in the previous report that if the rulemaking moratorium was still in effect, the Department would amend the rules within one year after the end of the moratorium. The moratorium was not lifted and continued through January 2015 preventing the Department from pursuing a rulemaking.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined that the benefits of the rules will outweigh the costs to the State and impose the least burden and cost to the regulated public once the changes identified in this report are made.

12. Determination of the Rules' Stringency Against Federal Law

The Department determined that the rules are not more stringent than corresponding federal law as there are no applicable federal laws.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010 in Compliance with A.R.S. §41-1037.

None of the rules reviewed were adopted or amended after July 29, 2010; therefore, this analysis is not required for these rules.

14. Course of Action for the Rule

The Department intends to modify only rules R13-2-102, R13-2-203, R13-2-205, R13-2-302 and R13-2-303 and intends to petition the Governor's Office for a rulemaking waiver in accordance with Executive Order 2015-01 upon the council's approval of this five year review. The Department upon successful receipt of a rulemaking waiver intends to submit a rulemaking package to the Governor's Regulatory Review Council by March 2016 assuming a rulemaking waiver from the Governor's Office is received within a reasonable period of time.

ANALYSIS OF INDIVIDUAL RULES
ARTICLE 1 – GENERAL PROVISIONS

R13-2-101 DEFINITIONS

2. Objective

The objective of this rule is to clarify the rules by defining words that are used in a manner specific to the rules.

R13-2-102 APPLICATION AND PROCESSING FEES

2. Objective

The objective of this rule is specify the fees charged by the Department for the activities associated with regulating the private investigator industry.

3. Effectiveness of the Rule in Achieving the Objective

The rule is partially effective. The effectiveness of the rule could be improved by removing the fees for fingerprints and digital photographs of the licensee as the Department no longer provides those services. Licensees would instead be responsible for obtaining and supplying the required passport-sized photograph and fingerprint card using any service available.

14. Course of Action for the Rule

The Department to petition the Governor's Office for a rulemaking waiver in accordance with Executive Order 2015-01 upon the council's approval of this five year review. The Department upon successful receipt of a rulemaking waiver intends to submit a rulemaking package to the Governor's Regulatory Review Council by March 2016 assuming a rulemaking waiver from the Governor's Office is received within a reasonable period of time.

R13-2-103 APPLICATION FORMS

2. Objective

The objective of this rule is to specify the application forms that the Department uses to fulfill its statutory responsibility to regulate the private investigator industry.

R13-2-104 IDENTIFICATION CARDS

2. Objective

The objective of this rule is to specify to whom the Department will issue, the information included on, and information regarding proper use of an identification card.

R13-2-105 TIME-FRAMES FOR MAKING LICENSING AND REGISTRATION DETERMINATIONS

2. Objective

The objective of this rule is to specify the time-frames within and manner in which the Department will act on applications regarding the private investigator industry.

ARTICLE 2 – AGENCY LICENSES

R13-2-201 AGENCY LICENSE ELIGIBILITY

2. Objective

The objective of this rule is to reiterate that only the qualifying party of an agency is eligible to apply for and receive an agency license. Other partners or corporate officers must register as associates of the agency.

R13-2-202 SUBMISSION OF APPLICATION FOR AN AGENCY LICENSE

2. Objective

The objective of this rule is to specify the information required with an application for an agency license.

R13-2-203 ISSUANCE OF AGENCY LICENSE

2. Objective

The objective of this rule is to provide information regarding the final steps leading to issuance of an agency license and requirements regarding use of the license.

4. Consistency of the Rule with State and Federal Statutes or other Rules

R13-2-203(G) requires the private investigations business to notify the Department within fifteen days of a change in address. The fifteen day notice is inconsistent with A.R.S. §32-2425(D) which requires the notice be provided within thirty days.

5. Agency Enforcement Policy

The Department is having difficulty enforcing R13-2-203(G) which requires the licensee to report a change of address within a defined period of days. The Department is typically unaware that the licensee did not report an address change until the licensee attempts to renew the license. When the Department becomes aware, the Department allows the licensee to provide the correct information.

14. Course of Action for the Rule

The Department intends to petition the Governor's Office for a rulemaking waiver in accordance with Executive Order 2015-01 upon the council's approval of this five year review. The Department upon successful receipt of a rulemaking waiver intends to submit a rulemaking package to the Governor's Regulatory Review Council by March 2016 assuming a rulemaking waiver from the Governor's Office is received within a reasonable period of time.

R13-2-204 AGENCY LICENSE RENEWAL

2. Objective

The objective of this rule is to provide information about the procedure for renewing an agency license and consequences of failing to renew timely.

R13-2-205 BRANCH OFFICE CERTIFICATE

2. Objective

The objective of this rule is to emphasize that a branch office certificate is required to conduct business from an office other than the principle office and to provide information regarding handling a branch office certificate.

4. Consistency of the Rule with State and Federal Statutes or other Rules

R13-2-205(E) requires the private investigations business to notify the Department within fifteen days of a change in address. The fifteen day notice is inconsistent with A.R.S. §32-2425(D) which requires the notice be provided within thirty days.

5. Agency Enforcement Policy

The Department is having difficulty enforcing R13-2-205(E) which requires the licensee to report a change of address within a defined period of days. The Department is typically unaware that the licensee did not report an address change until the licensee

attempts to renew the license. When the Department becomes aware, the Department allows the licensee to provide the correct information.

6. Clarity, Conciseness and Understandability of the Rule

The rule can be made more clear and understandable by replacing the word *agency* with the words *agency licensee* in Paragraphs (D) and (E) to refer to the party who holds the business license.

14. Course of Action for the Rule

The Department intends to petition the Governor's Office for a rulemaking waiver in accordance with Executive Order 2015-01 upon the council's approval of this five year review. The Department upon successful receipt of a rulemaking waiver intends to submit a rulemaking package to the Governor's Regulatory Review Council by March 2016 assuming a rulemaking waiver from the Governor's Office is received within a reasonable period of time.

R13-2-206 CHANGE OF QUALIFYING PARTY

2. Objective

The objective of this rule is to emphasize it is the qualifying party who is authorized by an agency license to conduct the business of private investigations, if the qualifying party leaves the agency, the agency cannot engage in the business of private investigations until a new qualifying party obtains a new license.

R13-2-207 RESTRUCTURE OF AN AGENCY

2. Objective

The objective of this rule is to clarify the procedure for obtaining a new agency license when the legal status of the agency changes.

R13-2-208 BUSINESS AND EMPLOYEE NAMES

2. Objective

The objective of this rule is to avoid public confusion by requiring that an agency licensee and the licensee's associates and employees do business under the name used on the licensee's application and the associate's or employee's identification card.

ARTICLE 3 – REGISTRATION CERTIFICATES

R13-2-301 AGENCY LICENSE RENEWAL

2. Objective

The objective of this rule is to refer to the statutory qualifications for obtaining a registration certificate.

10. Agency Stated Course of Action from the Previous Five-Year Report

The Department no longer believes that a reference to A.R.S. §32-2401(4) is required as the rule already references A.R.S. §32-2441. Section 2401 is the definitions for Section 2441 and would therefore be redundant.

R13-2-302 APPLICATION FOR REGISTRATION CERTIFICATE

2. Objective

The objective of this rule is to specify the information to be included with an application for registration and how to register with multiple employers.

3. Effectiveness of the Rule in Achieving the Objective

The rule is partially effective. The effectiveness of the rule could be improved by removing the fees in reference to R13-2-102 and 302(D) for fingerprints and digital photographs of the licensee as the Department no longer provides those services. Licensees would instead be responsible for obtaining and supplying the required passport-sized photograph and fingerprint card using any service available.

14. Course of Action for the Rule

The Department intends to petition the Governor's Office for a rulemaking waiver in accordance with Executive Order 2015-01 upon the council's approval of this five year review. The Department upon successful receipt of a rulemaking waiver intends to submit a rulemaking package to the Governor's Regulatory Review Council by March 2016 assuming a rulemaking waiver from the Governor's Office is received within a reasonable period of time.

R13-2-303 RENEWAL OF REGISTRATION CERTIFICATE

2. Objective

The objective of this rule is to clarify that a registration certificate expires at the same time as the agency license with which the registration is associated and must be renewed as part of the agency license renewal.

3. Effectiveness of the Rule in Achieving the Objective

The rule is partially effective. The effectiveness of the rule could be improved by removing the fees in reference to R13-2-102 and 303(C) for fingerprints and digital photographs of the licensee as the Department no longer provides those services. Licensees would instead be responsible for obtaining and supplying the required passport-sized photograph and fingerprint card using any service available. The rule will also be amended to include the language used in the Objective statement above.

14. Course of Action for the Rule

The Department intends to petition the Governor's Office for a rulemaking waiver in accordance with Executive Order 2015-01 upon the council's approval of this five year review. The Department upon successful receipt of a rulemaking waiver intends to submit a rulemaking package to the Governor's Regulatory Review Council by March 2016 assuming a rulemaking waiver from the Governor's Office is received within a reasonable period of time.

R13-2-304 LOST OR STOLEN REGISTRATION CERTIFICATE OR IDENTIFICATION CARD

2. Objective

The objective of this rule is to provide instructions for obtaining a replacement registration certificate or identification card when the original certificate or card is lost or stolen.

R13-2-305 CHANGE OF ADDRESS

2. Objective

The objective of this rule is to enable the Department to communicate timely with a registrant by requiring the registrant to provide notice of a change of address.

5. Agency Enforcement Policy

The Department is having difficulty enforcing R13-2-305 which requires the registrant to report a change of address within a defined period of days. The Department is typically unaware that the registrant did not report an address change until the registrant attempts to renew the registration. When the Department becomes aware, the Department allows the registrant to provide the correct information.

R13-2-306 CHANGE OF NAME OF REGISTRANT

2. Objective

The objective of this rule is to ensure that a registrant has an identification card issued in the registrant's legal name.

ARTICLE 4 – REGULATION

R13-2-401 DENIAL OF AGENCY LICENSE OR REGISTRATION CERTIFICATE

2. Objective

The objective of this rule is to specify the procedure the Department uses to handle complaints made against an entity or person engaged in the business of private investigation.

R13-2-402 PROBATION OF AGENCY LICENSE OR REGISTRATION CERTIFICATE

2. Objective

The objective of this rule is to specify the consequences of having an agency license or registration certificate placed on probation.

R13-2-403 EMPLOYEE AND BUSINESS RECORDS

2. Objective

The objective of this rule is to specify the procedures the Department uses to handle complaints made against an entity or person engaged in the business of private investigation.

R13-2-404 COMPLAINTS

2. Objective

The objective of this rule is to specify the procedure the Department uses to handle complaints made against an entity or person engaged in the business of private investigation.

DEPARTMENT OF PUBLIC SAFETY
CONCEALED WEAPONS PERMITS

FIVE-YEAR-REVIEW REPORT

13 A.A.C. 9, Articles 1, 2, and 4 through 6

March 2015

INTRODUCTION

In 1994, the Legislature enacted A.R.S. § 13-3112, which requires the Department of Public Safety to issue a permit to carry a concealed weapon to qualified individuals. The Department is required to make rules to implement and administer the concealed weapons permit program including establishing a reasonable fee for a permit.

Rules regarding the concealed weapons permit program were initially made in 1996. In 2007, the Department amended all of the rules to conform to statutory changes and agency practice. Specifically, the Department removed the requirement that a two-hour refresher training course be completed before renewing a permit and established standards to implement the federal Law Enforcement Officers Safety Act of 2004. In 2008 the rules were amended again to conform to additional statutory changes. Specifically, the rules allow a convicted felon to obtain a permit if the individual's felony conviction was expunged, set aside, or vacated or the individual's civil rights were restored unless the individual is a prohibited possessor under state or federal law, documentation of completing an authorized firearms-safety training program may be five years old rather than only 12 months old, and an individual may become a firearms-safety training instructor if the individual has only NRA certifications in pistol and personal protection.

Since the rules were last amended, the legislature has amended A.R.S. § 13-3112 three times (See Laws 2010, Chapter 59; Laws 2011, Chapter 85; and Laws 2014, Chapter 12). Key legislative changes include no longer requiring a permit applicant to complete a firearms safety training program authorized by the Department, eliminating the Department's authority to authorize organizations to provide firearms-safety training, and eliminating the Department's authority to conduct background checks of firearms-safety instructors. The legislature also established the Concealed Weapons Permit Fund into which the Department is required to deposit initial and renewal application fees.

The legislature also amended A.R.S. § 13-3102 in 2010 (See Laws 2010, Chapter 59) to allow an individual to carry a concealed weapon without a permit. The only time an individual is required

to carry a permit issued by the Department is when the individual is in actual possession of a concealed weapon and on the premises of an on-sale liquor retailer that has not posted a sign prohibiting possession of a concealed weapon (See A.R.S. § 4-229 and 4-244(29)).

Because the legislature withdrew the Department's authority to conduct background checks of firearms-safety instructors, the Department no longer approves firearms-safety instructors. It also no longer has authority to approve firearms-safety training organizations. As a result, the Department has not reviewed the rules in Article 3, which deal with firearms-safety training organizations and instructors, with the intent that the rules expire under the provisions of A.R.S. § 41-1056(J).

Statute that generally authorizes the agency to make rules: A.R.S. §13-3112(P).

1. Specific statute authorizing the rule:

R13-9-101. A.R.S. §13-3112

R13-9-102. A.R.S. §13-3112(F), (K), and (L)

R13-9-103. A.R.S. §13-3112(F)

R13-9-104. A.R.S. §41-1073

Table 1. A.R.S. §41-1073

R13-9-201. A.R.S. §13-3112(E)

R13-9-202. A.R.S. §13-3112(E) and 41-1030(B)

R13-9-203. A.R.S. § 13-3112

R13-9-204. A.R.S. §13-3112(K) and (L)

R13-9-205. A.R.S. §13-3112(A) and (C)

R13-9-206. A.R.S. §13-3112(A) and (C)

R13-9-208. A.R.S. §13-3112(A) and (C)

R13-9-401. A.R.S. §13-3112(T)

R13-9-402. A.R.S. §13-3112(T)

R13-9-403. A.R.S. §13-3112(T)

R13-9-404. A.R.S. §13-3112(T)

R13-9-405. A.R.S. §13-3112(T)

R13-9-501. A.R.S. §13-3112(T)

R13-9-502. A.R.S. §13-3112(T)

R13-9-601. A.R.S. §13-3112(B), (C), and (M)

R13-9-602. A.R.S. §13-3112(H)

R13-9-603. A.R.S. §13-3112(H)

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

R13-9-101. Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition. The definitions are designed to facilitate understanding by those who use the rules.

R13-9-102. Application and Processing Fees: The objective of the rule is to specify the fees the Department charges for various activities associated with implementing the concealed weapons permit program. This increases efficiency in the permitting process by enabling an applicant to submit the correct amount and helps the Department meet its statutory obligation to self-fund the concealed weapons permit program.

R13-9-103. Application Forms: The objective of this rule is to specify the application forms the Department uses to fulfill its statutory responsibility to implement the concealed weapons program and how to obtain the forms. This increases efficiency in the permitting process by enabling a potential applicant to obtain an application form without contacting the Department. Detail regarding the information required by each application form is specified in other rules.

R13-9-104. Time-frames for Department Action on Applications: The objective of this rule is to specify the time-frames within which the Department will act on an application for a concealed weapons permit. This enables an applicant to anticipate when the Department-approval process will be completed.

Table 1. Time-frames for Department Action on Applications (in days): The objective of this rule is to specify in table form the time-frames within which the Department will act on

an application for a concealed weapons permit. This enables an applicant to anticipate when the Department-approval process will be completed.

R13-9-201. Concealed Weapons Permit Eligibility: The objective of this rule is to provide detail regarding eligibility for a concealed weapons permit. This increases efficiency in the permitting process by enabling a potential applicant to tell whether the potential applicant is eligible for a concealed weapons permit.

R13-9-202. Application of Concealed Weapons Permit: The objective of this rule is to specify the information required on an application for a concealed weapons permit. This increases efficiency in the permitting process by enabling a potential applicant to know the information on which the Department will base a decision regarding issuance of a concealed weapons permit.

R13-9-203. Issuance of Concealed Weapons Permit: The objective of this rule is to specify the information the Department will ensure is on a concealed weapons permit. This assists with enforcement by enabling law enforcement officers to evaluate whether a concealed weapons permit has actually been issued by the Department.

R13-9-204. Renewal of Concealed Weapons Permit: The objective of this rule is to specify the requirements for renewal of a concealed weapons permit, the manner in which renewal application is made, and consequences of failing to renew. This increases efficiency in the permitting process by enabling permit holders to submit a timely and administratively complete renewal application and avoid having the permit expire.

R13-9-205. Permit Holder Responsibilities: The objective of this rule is to provide information regarding a permit holder's responsibilities in addition to those specified in statute. The responsibilities specified protect the integrity of the concealed weapons program by enabling a law enforcement officer to determine whether the individual holding a permit is the individual to whom the permit was issued and requiring the permit holder to provide notice if the permit holder becomes unqualified to have the permit.

R13-9-206. Lost, Stolen, or Damaged Concealed Weapons Permit: The objective of this rule is to provide information regarding the procedure for obtaining a replacement permit when a concealed weapons permit is lost, stolen, or damaged. This increases efficiency in the permitting process by enabling the holder of a lost, stolen, or damaged permit to know how to obtain a replacement.

R13-9-208. Change in Name of Permit Holder: The objective of this rule is to prescribe the procedure for obtaining a revised concealed weapons permit when the permit holder's name changes. This increases efficiency in the permitting process by enabling a permit holder whose name is changed to know how to obtain a revised permit.

The Department did not review Article 3 with the intent that it expire under the provision of A.R.S. § 41-1056(J).

R13-9-401. Certificate of Firearms Proficiency Eligibility: The objective of this rule is to list the eligibility requirements for an individual to obtain a LEOSA-authorized certificate of firearms proficiency. This increases efficiency in the certification process by enabling a potential applicant to know whether qualifications are met and facilitates the decision to make application.

R13-9-402. Application for a Certificate of Firearms Proficiency: The objective of this rule is to list the information an applicant is required to provide with an application for a certificate of firearms proficiency. This increases efficiency in the certification process by enabling a potential applicant to know the information on which the Department will base a decision regarding issuance of a LEOSA-authorized certificate of firearms proficiency.

R13-9-403. Issuance of a Certificate of Firearms Proficiency: The objective of this rule is to list the information the Department will put on a certificate of firearms proficiency. This assists with enforcement by enabling law enforcement officers to evaluate whether a certificate of firearms proficiency has actually been issued by the Department.

R13-9-404. Renewal of Certificate of Firearms Proficiency: The objective of this rule is to establish when a certificate of firearms proficiency expires, the procedure for renewing the certificate, and the consequence of failing to renew timely. This increases efficiency in the certification process by enabling certificate holders to submit a timely and administratively complete renewal application and avoid having the certificate expire.

R13-9-405. Certificate Holder Responsibilities: The objective of this rule is to inform a certificate holder of the responsibility to carry the certificate when in actual possession of a concealed weapon and to show the certificate and photographic identification upon request of a peace officer. The responsibilities specified protect the integrity of the LEOSA certificate of firearms proficiency program and enable a certificate holder to comply with the law.

R13-9-501. Application for Recognition as a LEOSA Instructor: The objective of this rule is to establish the procedure by which a POST-certified firearms instructor can become recognized by the Department as an instructor of applicants for a LEOSA certificate of firearms proficiency. This increases efficiency in the recognition process by enabling a POST-certified firearms instructor to submit an administratively complete application.

R13-9-502. LEOSA Instructor Responsibilities: The objective of this rule is to list the responsibilities of an individual recognized by the Department as a LEOSA instructor. The responsibilities specified protect the integrity of the LEOSA instructor program and enable a recognized LEOSA instructor to comply with the law.

R13-9-601. Suspension and Revocation: The objective of this rule is to prescribe the circumstances under which and the procedure by which the Department will suspend or revoke a concealed weapons permit or authorization as a firearms-safety training organization or instructor. This increases efficiency in the permitting process by enabling permit holders to avoid being subject to discipline.

R13-9-602. Hearing Procedures: The objective of this rule is to prescribe the hearing procedure used by the Department. This enables a permit holder to prepare for a disciplinary hearing.

R13-9-603. Rehearing or Review of Decision: The objective of this rule is to specify the procedures and standards for requesting a rehearing or review of a Department decision. This enables a permit or certificate holder to know about an administrative alternative to judicial review under A.R.S. § 12-901.

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

The rules in Articles 1, 2, and 6 contain numerous references to authorization as a firearms-safety training organization or instructor. All of these references are inconsistent with statute or the Department's manner of exercising its authority. The rules also contain provisions regarding required training to obtain or maintain a concealed weapons permit. These provisions are inconsistent with statute. Having rules that are so inconsistent with statute is potentially confusing to potential applicants and permit holders and impairs the effectiveness of the rules.

The rules in Articles 4 and 5 are consistent with statute and are effective in achieving their objectives.

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:

There are numerous federal laws that regulate firearms. In addition to the second amendment to the U.S. Constitution, these include the Gun Control Act of 1968, which makes it unlawful to transfer a firearm to an individual defined as a prohibited possessor; the Brady Handgun Violence Prevention Act of 1993, which requires federal firearms licensees to conduct background checks on potential firearms transferees and required the federal government to establish the National Instant Criminal Background Check System; and LEOSA, which provides with a few exceptions that qualified individuals may carry a concealed weapon

regardless of state law. The rules reviewed are consistent with federal law and, except as described in item 3, with state law including other rules made by the Department.

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

Because of the inconsistencies with statute or the Department's decision regarding the manner in which it exercises its authority, some of the rules are not enforced as written. The provisions that are inconsistent with statute or the Department's decision regarding exercise of its authority are not enforced. This includes portions of R13-9-101, R13-9-103, R13-9-104, Table 1, R13-9-201, and R13-9-202. For reasons specified in item 8, the Department also fails to enforce the time frames listed in Table 1. The remainder of the rules is enforced.

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

The rules are generally clear, concise, and understandable and consistent with current rule writing standards. The statutory citation in R13-9-101(24) and the web site referenced in R13-9-103(B) are incorrect.

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:

The Department received no written criticisms of the rules during the last five years, including analyses regarding whether the rules are based on valid scientific or reliable principles or methods.

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:

There are currently 222,397 concealed weapons permits issued in Arizona. During FY14, there were 31,565 applications for new permits, of which 394 were denied because the applicant was not qualified.

During FY14, the Department suspended 253 permits because the permit holder was no longer qualified to have the permit. Thirteen permits were revoked, generally because the permit holder became a prohibited possessor.

During FY014, the Department collected \$2,546,599 in concealed weapons permit fees. Of this amount, \$466,494 was forwarded to the FBI for criminal background checks of applicants. The remainder was deposited in the state's general fund. The most recent legislative appropriation for the concealed weapons permit program is \$1,244,600. Because of personnel turnover and an increase in the number of applications, the Department failed to comply with its time-frames for acting on applications. Its current processing time slightly exceeds the time-frame of 75 days.

2007 EIS

R13-9-205, R13-9-401, R13-9-405, R13-9-502, R13-9-602, and R13-9-603 are the only rules that have not been amended since 2007. Relevant to this report is the 2007 addition of rules implementing the Department's authorization to issue a certificate of firearms proficiency to implement the federal Law Enforcement Officers Safety Act of 2004 and defining the responsibilities of a LEOSA instructor. There are currently 978 LEOSA certificate holders and 61 recognized LEOSA instructors.

2008 EIS

The 2008 rulemaking amended the rules to conform to statutory changes. As a result, the economic impact of the rulemaking was minimal. Important changes made to the rules in 2008, such as requiring firearms training within the five years before the date of application, have become inconsistent with statutory changes made since 2008.

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

The Department indicated in its 2010 5YRR that it would amend R13-9-101, R13-9-103, and R13-9-201. It did not complete the rulemaking because of the rulemaking moratorium contained in Executive Order 2012-03 and because the frequency with which the legislature amended the statutes regarding the concealed weapons program made it difficult to ensure that amended rules would be consistent with statute when the rules became effective.

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:

From FY09 to FY14, the number of concealed-weapons-permit holders increased more than 50 percent, from 147,830 to 222,397. This suggests those regulated by the rules believe the benefits outweigh the costs and do not perceive the costs of compliance, which are minimal, to be a burden.

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:

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:

Based on its review of the rules, the Department determined the following rules need to be amended to make them consistent with statute and the Department's decision regarding exercise of its authority: R13-9-101, R13-9-103, R13-9-104, Table 1, R13-9-201, R13-9-202, R13-9-205, R13-9-601, and R13-9-603. The Department is subject to the rulemaking moratorium contained in Executive Order 2015-01. The Department has not decided whether to pursue an exception to the order because it is not clear that making the identified amendments is consistent with the justifications listed in paragraph (2) of the order. If it

becomes possible under the order, the Department will complete the needed rulemaking by December 2016.

**LAW ENFORCEMENT MERIT SYSTEM
COUNCIL**

FIVE YEAR REVIEW REPORT

A.A.C. Title 13, Chapter 5, Articles 1 through 8

September 2015

**FIVE-YEAR REVIEW REPORT
TITLE 41. STATE GOVERNMENT
CHAPTER 12. PUBLIC SAFETY
ARTICLE 10 MERIT SYSTEM COUNCIL**

1.	FIVE-YEAR REVIEW SUMMARY.....	1
2.	INFORMATION THAT IS IDENTICAL FOR ALL THE RULES	4
3.	ANALYSIS OF INDIVIDUAL RULES	6
4.	CURRENT RULES	Exhibit 1
5.	ENABLING AND RELATED STATUTES	Exhibit 2
6.	2010 ECONOMIC IMPACT STATEMENT	Exhibit 3
7.	2015 ECONOMIC IMPACT STATEMENT	Exhibit 4
8.	RULE MAKING EXEMPTION LETTER FROM GRRC	Exhibit 5

**TITLE 41, STATE GOVERNMENT
CHAPTER 12, PUBLIC SAFETY
ARTICLE 10 MERIT SYSTEM COUNCIL**

FIVE-YEAR-REVIEW SUMMARY

Arizona revised Statutes (A.R.S.) § 41-1830.12 through § 41-1830.16 requires the Arizona Law Enforcement Merit System Council (LEMSC) to make rules defining the merit principles and operating guidelines prescribed by the Council. The Council has adopted rules to implement these statutes in Arizona Administrative Code (A.A.C.) Title 13, Chapter 5, Articles 1 through 8.

In 2012, Governor Brewer implemented Personnel Reform which added § 41-1830.16. The new governing statutes made it necessary to revise the current rules to include the necessary changes to the current rules. Additional statutory changes were made to the governing statutes last legislative session that will require additional changes to the current rules. An analysis of the rules in Articles 1 through 8, has determined that, with the exceptions noted, the rules are effective, enforced as written, consistent with state and federal statutes and rules, and clear, concise, and understandable. The LEMSC has received no written criticisms of the rules in the past five years. The LEMSC plans to amend R13-5-101, 102, 311, 701, 702, 703, 704, 804, and add new rule R13-5-706 in order to comply with the statutory changes implemented by legislative mandate. The Merit System Council anticipates submitting a Notice of Final Rulemaking to the Governor's Regulatory Review Council by December 2017. The Council asked for and received an exemption from the rule writing moratorium in 2013 with the intent to revise the rules to conform to mandated personnel reform. The rule making docket was allowed to expire because of additional changes were made to the governing statutes in 2015 which would require additional rules revisions. This timetable is subject to change based on the Merit System Council's priorities, the length of the moratorium, and staffing.

**FIVE-YEAR REVIEW REPORT
A.A.C TITLE 13. PUBLIC SAFETY
CHAPTER 5. LAW MERIT SYSTEM COUNCIL**

ARTICLE 1. GENERAL PROVISIONS

SECTION

- R13-5-101. Definitions
- R13-5-102. Law Enforcement Merit System Council
- R13-5-103. Personnel Administration
- R13-5-104. General Information

ARTICLE 2. CLASSIFICATION AND COMPENSATION

SECTION

- R13-5-201. Classification
- R13-5-202. Compensation
- R13-5-203. Pay Administration
- R13-5-204. Work Hours and Work Options

ARTICLE 3. EMPLOYMENT

SECTION

- R13-5-301. Recruitment
- R13-5-302. Examination
- R13-5-303. Applicant Preference Points
- R13-5-304. Employment
- R13-5-305. Promotion
- R13-5-306. Reassignment
- R13-5-307. Reinstatement
- R13-5-308. Hiring Preference
- R13-5-309. Selection
- R13-5-310. Pre-Employment Processing
- R13-5-311. Appointments
- R13-5-312. Limited-Term Appointments
- R13-5-313. Provisional Appointments
- R13-5-314. Intermittent Appointments
- R13-5-315. Employee Conduct
- R13-5-316. Probation
- R13-5-317. Performance Evaluations

ARTICLE 4. ASSIGNMENTS

SECTION

- R13-5-401. Special Duty Assignments
- R13-5-402. Uncovered Appointments
- R13-5-403. Transfer of External Functions

ARTICLE 5. EMPLOYEE LEAVE

SECTION

- R13-5-501. Employee Leave Guidelines
- R13-5-502. Administrative Leave
- R13-5-503. Annual Leave
- R13-5-504. Civic Duty
- R13-5-505. Compensatory Leave
- R13-5-506. Donated Annual Leave
- R13-5-507. Holiday Leave
- R13-5-508. Industrial Leave
- R13-5-509. Leave Amortization
- R13-5-510. Leave Without Pay
- R13-5-511. Military Leave of Absence
- R13-5-512. Recognition Leave
- R13-5-513. Sick Leave

ARTICLE 6. GRIEVANCES

SECTION

- R13-5-601. Agency Grievance System
- R13-5-602. Council Review

ARTICLE 7. DISCIPLINE AND APPEALS

SECTION

- R13-5-701. Causes for Discipline
- R20-5-702. Disciplinary Procedures
- R20-5-703. Appeal to the Council
- R20-5-704. Rehearing of Council Decisions
- R20-5-705. Time Limits

ARTICLE 8. SEPARATION FROM EMPLOYMENT; RETIREMENT SYSTEM

ELIGIBILITY

SECTION

- R13-5-801. Reassignment or Retirement
- R13-5-802. Reduction-in-Force
- R13-5-803. Disability
- R13-5-804. Public Safety Personnel Retirement System Eligibility

INFORMATION THAT IS IDENTICAL FOR ALL RULES

1. Authorization of the rule by existing statutes

Specific authority: A.R.S. § 41-1830.12(A) and § 41-1830.16(A).

2. Objective of the rule

See individual rules.

3. Effectiveness in achieving the objective

The rules reviewed are effective in achieving their respective objectives. Proposed course of action currently exists to further revise the rules so as to incorporate amendments made by additional statutory requirements.

4. Consistency with state and federal statutes and rules

The rules reviewed are not consistent with state statutes. The rules are being rewritten to incorporate the requirements of the governing statutes implemented by recent legislative actions.

The listing of the statutes and rules used in determining consistency is as follows: A.R.S. § 41-1830.12 through § 41-1830.16 and A.A.C. Title 13, Ch. 5, Articles 1 through 8. The reviewed rules are consistent with federal statutes and rules.

5. Enforcement policy

The rules reviewed are enforced as written and by use of governing statutes as interpreted by the Business Manager for the Council. If further clarification is necessary, the Council will meet and decide the proper course of action.

6. Clarity, conciseness, and understandability

The rules reviewed are generally clear, concise, and understandable. Specific interpretation of rules that may appear to be unclear is made by the Business Manager with assistance of the Assistant Attorney General assigned to the Council.

7. Written criticisms of the rules received within the last five years

None received for the rules reviewed.

8. Estimated economic, small business, and consumer impact

See attached 2015 Economic Impact Statement and individual rules. The most recent Economic Impact Statement is from 2010 when the rules were reviewed pursuant to the Five Year Review schedule. The economic impact has not differed from that statement submitted in May of 2010. The Council estimates that the rules have a minimal impact on state revenues and public employment and no impact on consumers and businesses.

9. Business competitiveness analysis

No person has submitted an analysis to the Council regarding the reviewed rules' impact on this state's business competitiveness.

10. Completion of previous five-year-review report process

The Council has actively pursued rule changes since the last rule revision made in July of 2006. Additional rule revisions were proposed with plans to submit the proposed changes to GRRC in August of 2011. This was not done because of the continuing moratorium on rule making.

11. Costs vs. benefits/least burden

The rules reviewed do not impose probable costs that exceed the probable benefits within this state.

12. Stringency compared to federal law

There is no corresponding federal law specific to the law enforcement merit system.

13. General permit compliance, A.R.S. § 41-1037

This analysis applies only to rules adopted or amended after July 29, 2010. Of the rules reviewed, none was adopted or amended after July 29, 2010.

14. Proposed course of action

The Council will actively pursue mandatory changes to its rules pursuant to recent personnel reform and additional mandated statutory changes by amending Articles R13-5-101 through 102 and R13-5-701 through 704, R13-5-804 and adding Article R13-5-706. These revisions and addition of the new Article will update the rules and align them with the governing statutes. The Council will then begin to address additional revisions to its rules it deems necessary in order to make interpretation more clear and concise for stakeholders.

R13-5-101. Definitions

2. Objective

The objective of this rule is to inform the public of the meaning of various language, words and phrases used in the rules. There are no definitions in this rule that are not used in the rules. A few definitions are found elsewhere in the rules when they pertain to a specific part of the rules, such as those found in R13-5-506 and R13-5-513.

8. Estimated economic, small business, and consumer impact comparison

This rule is definitional and has no economic impact other than those associated with rulemaking. There is no economic impact on consumers as a result of the definitions contained in this rule.

10. Proposed Course of Action

The following revisions will be made to these definitions:

“Agency head” means the chief executive officer of ~~any agency~~ the Department of Public Safety or the Arizona Peace Officer Standards and Training Board. ~~placed under the rules of the Law Enforcement Merit System Council~~

“Business day” means the hours between 8:00 a.m. and 5:00 p.m. Monday through Friday, excluding observed state holidays.

“Covered-employee” means a full authority peace officer as certified by the Arizona Peace Officer Standards and Training Board and is appointed to a position that requires such a certification in the covered service, as defined in A.R.S. § 41-741 (5)(e) and who have completed their original probation.

“Covered position” means any position within ~~an agency~~ Department of Public Safety and Arizona Police Officers Standards and Training Board that is not appointed by the Governor or by the agency head with the concurrence of the Governor and is subject to the rules of the Council.

“Covered service” means that employment status conferring rights of appeal as prescribed in sections 41-782 and 41-783 or section 41-1830.16, as applicable, as defined in A.R.S. § 41-741 (6).

“Director of employing agency” means chief executive officer of a state agency or designee other than the Department of Public Safety or the Arizona Peace Officer Standards and Training Board.

~~“Disabled person”~~ “Individual with a disability” means anyone who has a physical or mental impairment that substantially limits one more major life activities, or who has a record of impairment, or is regarded as having impairment.

“Employee” means a person who is appointed to a position, subject to the terms and conditions of the appointment within the Department of Public Safety or the Arizona Peace Officers Standards and Training Board.

“Employing agency” means the agency in the state personnel system where the covered-employee is or, in the case of dismissal, was employed. A.R.S. § 41-1830.16(H)(3)

“Full authority peace officer” means a peace officer whose authority to enforce the laws of this state is not limited by the rules adopted by the Arizona Peace Officer Standards and Training Board. A.R.S. § 41-1830.16(H)(4)

“Full-time employee” means an employee appointed to work 40 hours a week or 160 hour in a 28 day cycle.

“Just Cause” means the all four criteria in A.R.S. § 38-1101(7) have been met.

“Original probation” means the specified period following initial appointment to covered service, as defined in A.R.S. § 41-741 (10).

“Personnel Rules” means the rules adopted by the Arizona Department of Administration, human resources division. A.R.S. § 41-1830.16(H)(7)

“Promotional Probation” means a period of 12 months established for evaluating an employee’s performance to determine if the employee should be retained in a classification.

“State Agency Head” means the chief executive officer or designee of the employing agency other than the Department of Public Safety or the Arizona Peace Officer Standards and Training Board.

“State Personnel System” means all state agencies and employees of those agencies that are not exempted by this article. A.R.S. § 41-741 (17).

“Working day” means the same as business day.

R13-5-102. Law Enforcement Merit System Council

2. Objective

The objective of the rule is to outline and describe the administrative and operating procedures of the Council.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

The following revisions will be made to this Article:

A. Authority. The statutory authority of the Law Enforcement Merit System Council is found in A.R.S. § 41-1830.11 through 41-1830.45~~16~~.

E. Quorum. ~~Two~~**Three** members are required for a quorum, and concurring members must equal a majority of those voting in order to take action.

R13-5-103. Personnel Administration

1. Objective

The objective of this rule is to make clear that the Council has jurisdictional authority over the personnel administration requirements maintained by a human resources function.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-104. General Information

1. Objective

The objective of this rule is to clarify additional Council duties that pertain to the entire Chapter that were not listed in R13-5-102.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-201. Classification

1. Objective

The objective of this rule is to provide procedures for employees classification, position allocation, assignment and if necessary modification.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule as any new positions authorized by law are subject to budgetary authorization and availability of funding.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-202. Compensation

1. Objective

The objective of this rule is to determine compensation plans for all classifications which are adopted, revised and overseen by the Council.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to the rate of movement to a classification with a higher pay range as provided by this Article.

R13-5-203. Pay Administration.

1. Objective

The objective of this rule is to authorize and allow the agency head to make special pay adjustments and to determine procedures for other pay incentives.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-204. Work Hours and Work Options

1. Objective

The objective of this rule is to provide for work hours for employees of the agency.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-301. Recruitment

1. Objective

The objective of this rule is to provide guidelines for recruiting qualified new employees.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-302. Examinations

1. Objective

The objective of this rule is to provide a consistent policy in administering all employment or promotional examinations.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-303. Applicant Preference Points

1. Objective

The objective of this rule is to provide requirements for applying preference points to an applicant's qualifying score when applicable authorized by A.R.S § 38-492.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-304. Employment

1. Objective

The objective of this rule is to provide requirements for the Human Resources function of an agency which will allow the agency to administer fair and impartial employment processes.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-305. Promotion

1. Objective

The objective of this rule is to provide requirements for the Human Resources function of an agency which will allow the agency to administer fair and impartial promotional processes and provide for promotional opportunities.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-306. Reassignment

1. Objective

The objective of this rule is to provide requirements for the Human Resources function of an agency which will allow the agency to provide for movement of an employee from one classification to another of equal or lower pay.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-307. Reinstatement

1. Objective

The objective of this rule is to provide requirements for the Human Resources function of an agency which will allow the agency to provide for reinstatement of an employee or former employee to a classification previously held by that employee or former employee.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-308. Hiring Preference

1. Objective

The objective of this rule is to provide requirements for the Human Resources function of an agency which will allow the agency to provide for fair and impartial processes for filling vacant positions.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-309. Selection

1. Objective

The objective of this rule is to provide requirements for the Human Resources function of an agency which will allow the agency to provide for fair and impartial processes for selection of qualified candidates.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-310. Pre-employment Processing

1. Objective

The objective of this rule is to provide requirements for the Human Resources function of an agency which will allow the agency to provide proper pre-employment processes for qualified candidates.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-311. Appointments

1. Objective

The objective of this rule is to provide requirements for the Human Resources function of an agency which will allow an agency to administer oaths of office.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

The following revisions will be made to this Article:

- A. Required oath of office. An appointee shall read the oath described A.R.S § 38-231(G) (E) and agree in writing to uphold the office before the agency head, or a designee authorized to administer the oath.

R13-5-312. Limited-Term Appointments

1. Objective

The objective of this rule is to provide requirements and procedures for an agency to employ limited-term employees or employees employed for specific periods of time.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-313. Provisional Appointments

1. Objective

The objective of this rule is to provide requirements and procedures allowing an agency to hire employees when there is no existing employment list and the agency has an immediate need.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-314. Intermittent Appointment

1. Objective

The objective of this rule is to provide requirements and procedures allowing an agency to hire employees that will work on an intermittent or irregular basis.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-315. Employee Conduct

1. Objective

The objective of this rule is to provide requirements for applying standards of conduct for employees and procedures for the agency to follow to ensure the employee performs the duties and responsibilities of their assigned classification.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-316. Probation

1. Objective

The objective of this rule is to provide requirements and procedures to ensure that probationary categories and probationary periods are properly administered and followed.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-317. Performance Evaluations

1. Objective

The objective of this rule is to provide requirements for an agency to adopt and administer an employee performance evaluation system.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-401. Special Duty Assignment

1. Objective

The objective of this rule is to provide requirements to allow an agency head to make special duty assignments and ensure proper payment of employees serving in that capacity.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-402. Uncovered Appointment

1. Objective

The objective of this rule is to provide requirements and procedures for an agency head to authorize temporary employee appointments to uncovered positions and outlines employee rights while serving in this capacity.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-403. Transfer of and External Function

1. Objective

The objective of this rule is to provide requirements for the orderly transition of state programs from one agency to an agency under the jurisdiction of the Council when transferred by Arizona legislative mandate.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-501. Employee Leave Guidelines

1. Objective

The objective of this rule is to provide requirements and procedures for employee leave accrual, usage and accounting.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time.

R13-5-502. Administrative Leave

1. Objective

The objective of this rule is to provide procedural requirements for administrative leave with pay when authorized by an agency head.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-503. Annual Leave

1. Objective

The objective of this rule is to provide requirements for computing length of service for determining annual leave accrual and administration of employee annual leave.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-504. Civic Duty

1. Objective

The objective of this rule is to provide requirements and procedures for the administration of Civic Duties for employees of the agency.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-505. Compensatory Leave

1. Objective

The objective of this rule is to provide requirements and procedures for the accrual, use of and payment for compensatory leave.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-506. Donated Annual Leave

1. Objective

The objective of this rule is to provide requirements and procedures for the transfer of annual leave from one employee into the sick leave balance of another employee and for the use of that sick leave by the recipient.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-507. Holiday Leave

1. Objective

The objective of this rule is to provide requirements and procedures for agency recognition of holidays provided for by statute and for the accrual and use of paid holiday leave.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-508. Industrial leave

1. Objective

The objective of this rule is to require an agency to establish policies and procedures to comply with statutes regulating industrial leave.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-509. Leave Amortization

1. Objective

The objective of this rule is to allow an agency to provide for a leave amortization plan for retiring employees.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-510. Leave Without Pay

1. Objective

The objective of this rule is to provide requirements and procedures for short-term and extended leave without pay and for the disposition of accrued leave.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-511. Military Leave of Absence

1. Objective

The objective of this rule is to provide requirements for privileges of military service provided for by statutes for employees and administration of military leave of absence by an agency.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-512. Recognition Leave

1. Objective

The objective of this rule is to provide requirements and procedures for awarding worthy employees with recognition leave.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-513. Sick Leave

1. Objective

The objective of this rule is to provide specific definitions of sick leave and provide requirements and procedures for accrual and use of sick leave under the established agency leave policy in compliance with the provisions of the Family and Medical Leave Act.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-601. Agency Grievance System

1. Objective

The objective of this rule is to provide requirements and procedures for an agency to consider and respond to employee grievances regarding classification, compensation, performance evaluation, and application of Council rules.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-602. Council Review

1. Objective

The objective of this rule is to provide requirements and procedures for the Council to review employee grievances that have been denied by the agency regarding classification, compensation, performance evaluation, and application of Council rules.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-701. Causes for Discipline

1. Objective

The objective of this rule is to provide references where the causes for discipline for employees and covered employees can be found.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

The following revisions will be made to this Article:

- A. The causes for discipline for employees are found in A.R.S. § 41-1830.15.
- B. The causes for discipline for covered-employees are found in A.R.S. § 41-773.

R13-5-702. Disciplinary Procedures

1. Objective

The objective of this rule is to provide requirements and procedures for the administration of disciplinary action by an agency head.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

The following revisions will be made to this Article:

- C. Interview of an employee. In conducting an interview of an employee being investigated for possible disciplinary action, an agency shall comply with A.R.S. ' 38-1101(A) and (B)-38-1110.

D. Time limit for filing a disciplinary action. ~~An agency shall not file a disciplinary action later than 120 180 calendar days after the date the agency discovers or should have discovered that the employee engaged in alleged activity constituting cause for discipline. The disciplinary action is deemed to be filed when the notice is filed with the Council.~~ An employer shall make a good faith effort to complete any investigation of employee misconduct within one hundred eighty calendar days after the employer receives notice of the allegation by a person authorized by the employer to initiate an investigation of the misconduct. The investigation is considered complete on the date the employee is served with the notice of discipline or the notice of findings. If the employer exceeds the one hundred eighty calendar day limit, the employer shall provide the employee with a written explanation containing the reasons the investigation continued beyond the one hundred eighty calendar days. A.R.S. ' 38-1110.A

- E. Exceptions to the ~~120~~ 180-day rule.

- 1. The time limit in subSection (D) does not run:
 - a. ~~During a criminal investigation by a law enforcement or prosecutorial agency;~~ the time that any criminal investigation or

prosecution is pending in connection with the act, omission or other allegation of misconduct; or

b. ~~During any period of time the employee who is the subject of an investigation is absent from the agency on leave, if the absence prevents the agency from proceeding with the normal investigation and disciplinary review process. the period of time in which a law enforcement officer who is involved in the investigation is incapacitated or otherwise unavailable; or~~

c. During the period prescribed in a written waiver of the limitation by the law enforcement officer; or

d. During emergencies or natural disasters during the time period in which the governor has declared a state of emergency within the jurisdictional boundaries of the concerned employer; or

e. During a multijurisdictional investigation, the time limit may be extended for a period of time reasonably necessary to facilitate the coordination of the employers involved.

2. At the request of an agency, the Council may, upon a showing of good cause, extend the time for an agency to file a disciplinary action up to a maximum of 90 days beyond the original ~~120~~ 180-day period.
3. If a manager or supervisor is aware of an employee's alleged actions that constitute a criminal offense but fails to act, the time limit does not run during the period of the manager or supervisor's inaction if the supervisor or manager is disciplined for failure to act and:
 - a. The offense is a misdemeanor involving theft or moral turpitude and is discovered within ~~120~~ 180-day after the ~~120~~ 180-day period for taking disciplinary action, or
 - b. The offense is a felony.
4. The agency shall maintain documentation to support any exception to the ~~120~~ 180-day time limit, including the dates during which the time limit does not run.

R13-5-703. Appeal to the Council

1. Objective

The objective of this rule is to provide requirements for the conduct of hearings on appeals from employees as a result of disciplinary action taken by the agency head. The rule outlines requirements for providing information and requirements to provide a fair hearing for the employee.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

The following revisions will be made to this Article:

The Article title will be changed to Appeal to the Council by Employees

A. Appealable actions by Employees. An employee may appeal any disciplinary action that results in the employee's dismissal, demotion, suspension without pay, forfeiture of accrued leave time, or reduction of pay.

B. Form of appeal. To initiate an appeal, an employee shall submit a signed written appeal to the business manager and the Agency Director. The appeal must state specific facts relating directly to the charges on which the appeal is based.

D. Agency responsibility. An agency shall have the burden of going forward with the case once an appeal has been filed. An employing agency must prove the cause for disciplinary action by a preponderance of the evidence that the employing agency had just cause to discipline the employee.

E. Effect of appeal. ~~The Council shall determine whether the cause for the disciplinary action is supported by law and the evidence. The Council may sustain, modify or rescind the disciplinary action. If the disciplinary action is rescinded, the Council shall order the agency head to reinstate the employee and to pay the employee accumulated back pay.~~ The Council shall determine whether the employing agency has proven by a preponderance of the evidence that the employing agency had just cause to discipline the employee. The Council may recommend modification of a disciplinary action if the director of the employing agency has not proven by a preponderance of the evidence that the employing agency had just cause to discipline the employee. The Council shall reverse the decision of the director of the employing agency if it finds that just cause did not exist for any discipline to be imposed and, in the case of dismissal or demotion, return the employee to the same position the employee held before the dismissal or demotion with or without back pay. On a finding that the director of the employing agency has not proven just cause to discipline the employee by the preponderance of the evidence, the council may recommend a proposed disciplinary action in light of the facts proven. Within forty-five days after the conclusion of the hearing, the council shall enter its decision or recommendation and at the same time shall send a copy of the decision or recommendation by certified mail to the employing agency and to the employee at the employee's address as given at the hearing or to a representative designated by the employee to receive a copy of the decision or recommendation.

L. Discovery.

2. Within 20 days after receiving the investigative file, the employee shall provide all material relating to the defense of the employee to the agency head.

6. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal was filed, no later than 10

business days before the hearing, the agency and the employee shall provide all documents that will be used at the hearing and a list of intended witnesses to the office of the Council.

R13-5-704. Rehearing of Council Decision

1. Objective

The objective of this rule is to provide requirements and procedures for filing requests for a rehearing of a Council decision.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

The following revisions will be made to this Article:

The Article title will be changed to Rehearing of Council Decision Regarding Employees

A. Motion for rehearing.

1. Except as provided in ~~sub~~Section (C), any party in a contested case or appealable agency action may file a written motion for rehearing within 30 days after service of the decision. The requesting party shall specify the grounds for a rehearing, as provided in ~~sub~~Section (B). A respondent may file a response to the motion within 15 days after service.

R13-5-705. Time Limits

1. Objective

The objective of this rule is to provide requirements for determining and computing time limits that are specified in the rules.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

***THE FOLLOWING ARTICLE WILL BE ADDED TO THE RULES AS A RESULT OF PERSONNEL REFORM AND MANDATED STATUTORY CHANGES.**

R13-5-706. Appeal to the Council by Covered-employees

1. Objective

The objective of this rule is to provide requirements for the conduct of hearings on appeals from covered-employees as a result of disciplinary action taken by the agency head. The rule outlines requirements for providing information and requirements to provide a fair hearing for the covered-employee.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

The following revisions to the rules will be made by adding of this new Article:

R13-5-706 Appeal to the Council by Covered-employees

A. Appealable actions by covered-employees. A covered-employee may appeal dismissal from covered service, suspension for more than 40 working hours, or involuntary demotion resulting from disciplinary action.

B. Form of appeal. To initiate an appeal, a covered-employee shall submit a signed written appeal to the business manager and the Agency Director. The appeal must state specific facts relating directly to the charges on which the appeal is based.

C. Time for appeal. A covered-employee shall file an appeal within 10 working days after the effective date of the action.

D. Agency responsibility.

1. When a covered-employee is dismissed, involuntarily demoted, or suspended for more than 40 working hours, the employing agency shall notify the Business Manager in writing of this action and provide related documentation within 5 business days. The employing agency shall furnish the covered employee with specified charges in writing when the action is taken.

2. An employing agency shall have the burden of going forward with the

case once an appeal has been filed.

3. An employing agency must prove by a preponderance of the evidence that the employing agency had just cause to discipline the employee.

E. Effect of appeal. The Council shall determine whether the employing agency has proven by a preponderance of the evidence that the employing agency had just cause to discipline the employee. The Council may recommend modification of a disciplinary action if the state agency head has not proven by a preponderance of the evidence that the employing agency had just cause to discipline the employee. The Council shall reverse the decision of the state agency head if it finds that just cause did not exist for any discipline to be imposed and, in the case of dismissal or demotion, return the employee to the same position the employee held before the dismissal or demotion with or without back pay.

F. Council amended notice of disciplinary action. On a finding that the state agency head has not proven just cause to discipline the employee by a preponderance of the evidence, the Council may recommend a proposed disciplinary action in light of the facts proven. Within forty-five days after the conclusion of the hearing, the Council shall enter its decision or recommendation by certified mail and shall at the same time send a copy of the decision or recommendation by certified mail to the employing agency and to the employee at the employee's address as given at the hearing or to a representative designated by the employee to receive a copy of the decision or recommendation.

G. Agency action after receiving decision or recommendation. The state agency head or the agency head's designee shall accept, modify or reverse the Council's decision or accept, modify or reject the Council's recommendation within fourteen days of receipt of the findings or recommendation from the Council. The state agency head or the agency head's designee shall accept the Council's recommendation unless the recommendation is arbitrary or without reasonable justification. If the state agency head or the agency head's designee does not accept the Council's recommendation, the state agency head or agency head's designee shall state the reasons for rejecting the recommendation. The decision of the agency head or agency head's designee is final and binding. The agency head shall send a copy of the agency's final determination to the covered employee.

H. Failure to appear. If a party, without good cause, fails to appear at the time and place set for a hearing, the Council may find in favor of the appearing party.

I. Conduct of hearings. The Council shall hear the appeal within 30 days of the receipt of the appeal. The Council shall sit as a whole at a hearing, unless a Council member declares a conflict or is unable to attend. Only a Council member who was present at a hearing may participate in making the decision. Council members may administer oaths, issue subpoenas for the attendance of witnesses and the production of books or papers, and cause the depositions of witnesses residing within or outside the state to be taken in the manner prescribed by law for depositions in civil cases in the Superior Court of this state.

J. Witness fees. Witnesses at a hearing, other than covered-employees, are entitled to the fees allowed witnesses under A.R.S. ' 12-303.

K. Payment of witness fees. If the Council subpoenas a witness on its own initiative, the Council shall pay the witness' fees and mileage. The requesting party shall

pay the fees for subpoenaed witnesses. A covered-employee appearing as a witness on duty shall receive travel expenses from the agency and shall not be entitled to witness fees.

L. Discovery.

1. Within three business days after receiving a written request from the covered-employee, the agency shall provide a complete copy of the investigative file, as well as the names and home or work mailing addresses of all persons interviewed during the course of the investigation, to the covered-employee. For the purpose of this subsection, hand-written notes substantially incorporated within a report are not considered part of the investigation file.

2. Within 20 days after receiving the investigative file, the covered-employee shall provide all material relating to the defense of the covered-employee to the Director of employing agency.

3. After initial discovery, each party shall provide all new material relating to the case to the other party within 10 days after receipt.

4. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal was filed, no later than 10 business days before the hearing, the agency and the covered-employee shall exchange copies of any documents that may be introduced at the hearing and that have not been previously disclosed.

5. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal is filed, no later than 10 business days before the hearing, the agency and the covered-employee shall exchange the names of all witnesses who may be called to testify. A witness may be interviewed at the discretion of the witness. The parties shall not interfere with any decision of a witness regarding whether to be interviewed. An agency shall not discipline, retaliate against, or threaten to retaliate against, any witness for agreeing or not agreeing to be interviewed or for testifying or providing evidence in the hearing.

6. No later than five business days before the hearing, or if the hearing is scheduled more than 20 days after the notice of appeal is filed, no later than 10 business days before the hearing, the agency and the covered-employee shall provide all documents that will be used at the hearing and a list of intended witnesses to the office of the Council.

7. If a party fails to provide material as required, the Council may preclude its use at the hearing.

M. Motions. All motions shall be in writing and filed no later than 20 days prior to the hearing. A response shall be filed in writing within 10 days after service of the motion. The chair may designate one or more members of the Council to hear and rule on a motion, except a motion to dispose of the case requires a vote of a majority of the Council.

N. Pleadings. The Council may strike a pleading not filed in accordance with this Section.

O. Depositions:

1. On the motion of a party, the Council may order the deposition of a witness under the following circumstances:

- a. The witness does not reside within the State or is out of state,
- b. The witness is too ill to attend the action before the Council, or
- c. The deposition is for the purpose of discovery in preparing a case before the Council.

2. The requesting party shall pay the expense of any deposition. An covered-employee of the agency is not entitled to a witness fee for giving a deposition.

3. The deposition of a witness who is unavailable to appear at a hearing may be used in evidence by either party or the Council.

P. Open hearings. The Council’s hearings shall be open to the public. The Council may, upon request of a party, exclude non-testifying witnesses from the hearing. The Council may keep excluded witnesses separated and prevent them from communicating with each other until all are examined.

Q. Legal counsel or representative. Before the hearing of any appeal, each party shall designate its legal counsel or representative for the record. The Council shall advise each party without legal counsel that the party may obtain and be represented by counsel at the hearing. At the request of a party, the Council may postpone the hearing for a reasonable length of time to allow a party to obtain legal counsel.

R. Presentation of evidence. Both parties may present evidence and witnesses either personally or through a representative. The Council shall exclude evidence irrelevant to the causes set forth in the notice of disciplinary action.

R13-5-801. Resignation or Retirement

1. Objective

The objective of this rule is to provide requirements and procedures for the processing of employees retiring or resigning from the agency.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-802. Reduction in Force

1. Objective

The objective of this rule is to provide requirements and procedures for conducting a reduction in force by an agency.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-803. Disability

1. Objective

The objective of this rule is to provide requirements for establishing policies and procedures for discontinuing the employment of an employee that becomes disabled and is unable to perform the essential functions of the job.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

No revisions will be made to this Article at this time. After the mandated revision are completed, the Rules Revision Committee will reconvene to identify and draft revisions to this Article if necessary.

R13-5-804. Public Safety Personnel Retirement System Eligibility

1. Objective

The objective of this rule is to designate classifications that are eligible for membership in the Public Safety Personnel Retirement System.

8. Estimated economic, small business, and consumer impact comparison

There is no economic impact on consumers as a result of the provisions contained in this rule.

10. Proposed Course of Action

The following revisions will be made to this Article:

- A. Membership in the Arizona Public Safety Personnel Retirement System is designated by the Council under A.R.S. ' 38-842 ~~(20)(a)~~ (31)(a).



ARIZONA DEPARTMENT OF PUBLIC SAFETY

ARIZONA ADMINISTRATIVE CODE FIVE YEAR REVIEW REPORT

TITLE 13 – PUBLIC SAFETY

CHAPTER 6 – SECURITY GUARD

ARTICLES

- 1 – GENERAL PROVISIONS**
- 2 – AGENCY LICENSES**
- 3 – REGISTRATION CERTIFICATES**
- 4 – APPEALS; COMPLAINTS; RECORDS**
- 5 – UNIFORMS AND VEHICLES**
- 6 – TRAINING**
- 7 – FIREARMS-SAFETY TRAINING INSTRUCTORS**

Issued: November 16, 2015

Revised: December 29, 2015

TABLE OF CONTENTS

	Page
Introduction	1
Information Identical for a Group of Rules	3
Analysis of Individual Rules	8
R13-6-101.....	8
R13-6-102.....	8
R13-6-103.....	9
R13-6-104.....	10
R13-6-105.....	10
R13-6-201.....	11
R13-6-202.....	11
R13-6-203.....	12
R13-6-204.....	13
R13-6-205.....	14
R13-6-206.....	14
R13-6-207.....	14
R13-6-301.....	15
R13-6-302.....	16
R13-6-303.....	16
R13-6-304.....	17
R13-6-401.....	18
R13-6-402.....	18

R13-6-403.....	19
R13-6-404.....	20
R13-6-501.....	21
R13-6-502.....	21
R13-6-503.....	22
R13-6-601.....	23
R13-6-602.....	23
R13-6-603.....	24
R13-6-701.....	25
R13-6-702.....	25
R13-6-703.....	26
R13-6-704.....	26

INTRODUCTION

The Department of Public Safety, which is created by A.R.S. § 41-1711, is charged with, among other things, preventing crime and protecting the public. This is accomplished, in part, by enforcing statutes relating to security guards.

Included in this report is a review of the following thirty rules:

- R13-6-101 Definitions
- R13-6-102 General License Requirements
- R13-6-103 Fees
- R13-6-104 Identification Cards
- R13-6-105 Time-frames for Making Licensing and Registration Determinations
- R13-6-201 Application for an Agency License
- R13-6-202 Issuance of an Agency License
- R13-6-203 Agency License Renewal
- R13-6-204 Branch Office Certificate
- R13-6-205 Change of Qualifying Party
- R13-6-206 Restructure of an Agency
- R13-6-207 Business Name
- R13-6-301 Application for Registration Certificate
- R13-6-302 Renewal of Registration Certificate
- R13-6-303 Lost or Stolen Registration Certificate or Identification Card
- R13-6-304 Change in Name of Registrant
- R13-6-401 Denial of Agency License or Registration Certificate
- R13-6-402 Probation of Agency Licensee or Registrant
- R13-6-403 Employee and Business Records
- R13-6-404 Complaints

- R13-6-501 Uniforms, Badges, and Insignia
- R13-6-502 Business Attire and Plain Clothes
- R13-6-503 Vehicle Markings, Emblems, and Insignia
- R13-6-601 Security Guard Pre-assignment Training
- R13-6-602 Security Guard Refresher Training
- R13-6-603 Armed Security Guard Pre-assignment and Refresher Training
- R13-6-701 Qualifications of a Firearms-safety Instructor
- R13-6-702 Application for Certification as a Firearms-safety Instructor
- R13-6-703 Firearms-safety Instructor Certification Renewal
- R13-6-704 Requirements of a Firearms-safety Instructor

INFORMATION IDENTICAL FOR A GROUP OF RULES

Under A.A.C. R1-6-301(B), the following information is provided only once because it is identical for a group of rules:

1. Authorization of the rule by existing statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Department may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 32-2602(D) which provides that the Department shall adopt and enforce rules that are not in conflict with the laws of the state and that are necessary to enforce the statutes relating to security guards.

The Department has additional statutory authority listed under Item 1 in the individual rule analysis section.

3. Effectiveness of the Rule in Achieving the Objective

The Department believes the rules are generally effective in accomplishing their objectives. However, as indicated in the Analysis of Individual Rules, the Department believes the effectiveness of the following rules could be improved: R13-6-102, R13-6-103 (impacts R13-5-104, R13-6-201, R13-6-301, R13-6-302, R13-6-303, R13-6-304, R13-6-702, and R13-6-703), R13-6-202 through R13-6-204, R13-6-301, R13-6-403, R13-6-501 and R13-6-704.

4. Consistency of the Rule with State and Federal Statutes or Other Rules

The Department determined that the rules are consistent with statutes and other rules with the exception of R13-6-101, R13-6-104, R13-6-201, R13-6-202, R13-6-204, R13-6-301, R13-6-302, R13-6-303, R13-6-304, R13-6-401, R13-6-403, R13-6-702 and R13-6-703. There are no applicable federal statutes.

5. Agency Enforcement Policy

The Department enforces the rules to the extent that they are consistent with statute. Rules that are inconsistent with statute are enforced according to statute.

6. Clarity, Conciseness, and Understandability of the Rule

The rules are clear, concise, and understandable with the exception of R13-6-101, R13-6-105, R13-6-202, and R13-6-403.

7. Summary of Written Criticisms of the Rules Received in the Last Five Years

The Department has received no written criticisms of the rules in the last five years.

8. A Review of the Economic Impact Statement (EIS) Prepared on the Last Making of the Rule.

As indicated in the economic, small business, and consumer impact statement prepared with the 2006 rulemaking, most of the economic impact on the security guard business results from Statutes rather than rule. The Department believes that the statement prepared in 2006 was accurate for the time period but not for today's economy.

The Department currently licenses 308 security guard agencies. This represents a 5.84% increase in the number of licensed agencies since 2011. The Department currently certifies 32,442 security guards, 3,024 of whom are certified to be armed while on the job. The number of certified security guards has increased by 6,780, or 26.42%, and the percentage of certified security guards authorized to be armed while on the job has

decreased by 1,285, or 29.82%. There are currently 84 registered resident managers of security guard agencies, 182 registered associates, and 312 certified firearms-safety training instructors.

During FY 2015, the Department received 16,787 applications related to the security guard industry. The Department believes it acted within its time frames on all the applications. To determine its compliance with the timeframes, a random manual sampling was used because the current computerized system could not provide usable results. Records were manually evaluated and the required time frame was met for each application. The Department collected \$1,045,725 in fees related to regulating the security guard industry. It collected an additional \$356,774, which was forwarded to the FBI for criminal background checks of applicants. As required by A.R.S. § 32-2607(A) regulation of the security guard industry is self-supporting.

During FY 2015, the Department received 383 complaints related to the security guard industry. Results of the complaints generated 260 license suspensions, three letters of concern, two citations, one for compliance, and eight cease-and-desist orders.

The Licensing Unit continues to experience an increase in the costs of doing business. The unit is using outdated technology software that negatively impacts the efficiency of processing applications. Employee-related expenses (ERE) continue to moderately increase annually. The Unit is currently using volunteers and intermittent employees as well as overtime for full-time employees to meet its licensing timeframes. Without these stopgaps, licensing timeframes are likely to increase by upwards of four weeks over the existing 15-day timeframe. The last fee increase was in 2006 and with expenses increasing by the time of the rulemaking (a period of 11 years), the Unit is anticipating a need for a fee increase.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis by any person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of business in other states.

10. Agency Stated Course of Action from the Previous Five-Year Report

The Department's previous report was approved by the Council in 2011. In the report, the Department indicated it intended to amend rules R13-6-103, R13-6-105, R13-6-202, R13-6-204, R13-6-401, R13-6-403, R13-6-501, and R13-6-503 upon the expiration of the Governor's rulemaking moratorium. As the Council is aware, Governor Brewer's moratorium did not expire in 2011 as anticipated and was later renewed by Governor Ducey. The Department still intends to amend these rules with the exception of R13-6-503 upon expiration of the rulemaking moratorium; refer to Item 14 Planned Course of Action. Upon further review of R13-6-503, the Department will not amend the rule as the Department believes the issue of red/blue flashing lights is sufficiently covered by A.R.S. §§ 28-101(4), 28-624 and 28-947(B),(D).

11. Determination of Probably Benefits Outweighing the Probably Costs

The Department determined that the public safety benefits of the rules will outweigh the costs to the State and impose the least burden and cost to the regulated public once the changes identified in this report are made. Most of the economic impact on security guard agencies and security guards results from statutory requirements rather than rule. The Arizona Revised Statutes under Item 1 require that security guard agencies be licensed and security guards and associates be registered. Additionally, the statutes establish the requirements for licensure and registration; require the Department to set fees at an amount that fully recovers the cost of implementing the statutes; designate the information that must be on an identification card; require pre-assignment and refresher training for security guards; require initial and annual continuing firearms-safety instruction for armed security guards; require the Department to establish a firearms-

safety training curriculum; require that firearms-safety instructors be certified by the Department; require that security guard uniforms, badges, and insignia be approved by the Department; and designate 27 separate grounds for discipline.

The economic impact of the rules results from:

- Prescribing a form for initial and renewal applications and the procedure for submitting them,
- Requiring that a denied applicant wait one year before applying again,
- Requiring that an agency maintain personnel records for five years after an individual is no longer employed by the agency, and
- Specifying requirements for uniforms, badges, and insignia.

12. Determination of the Rules' Stringency Against Federal Law

The Department determined that the rules are not more stringent than corresponding federal law as there are no applicable federal laws.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010, in Compliance with A.R.S. § 41-1037

None of the rules reviewed were adopted or amended after July 29, 2010; therefore, this analysis is not required for these rules.

14. Course of Action for the Rules

The Department intends to amend the following rules: R13-6-101 through R13-6-105, R13-6-201 through R13-6-204, R13-6-301 through R13-6-304, R13-6-401, R13-6-403, R13-6-501 and R13-6-702 through R13-6-704. A rulemaking waiver will be sought, as necessary. The rulemaking will be submitted to Council within one and a half years after the current rulemaking moratorium ends. Because Executive Order 2015-01 is currently scheduled to expire on December 31, 2015, the Department anticipates submitting a rulemaking before July 1, 2017.

ANALYSIS OF INDIVIDUAL RULES
ARTICLE 1 – GENERAL PROVISIONS

R13-6-101. Definitions

2. Objective

The objective of this rule is to clarify the rules by defining words that are used in a manner specific to the rules.

4. Consistency of the Rule with State and Federal Statutes or Other Rules

In the *prohibited possessor* definition the correct A.R.S. reference should be § 13-3101(A)(7).

6. Clarity, Conciseness, and Understandability of the Rule

The rule can be made more clear and understandable by amending *classifiable fingerprints* by removing the date reference to Form FD-258 (5-11-99) and replacing it with *issued on or after 5-11-1999*.

R13-6-102. General License Requirements

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. §§ 32-2608, 32-2611, 32-2612, 32-2621, 32-2622, and 32-2632(C).

2. Objective

The objective of this rule is to establish the general requirements for the various licenses relating to security guards and to point applicants for the various licenses to the rule that provides more detailed application information for a specific license.

3. Effectiveness of the Rule in Achieving the Objective

The rule is partially effective. The effectiveness of the rule could be improved by amending Section F to allow for applications and fees to be submitted electronically through DPS-approved vendors. Section G could be improved by not allowing signatures to be photocopied.

R13-6-103. Fees

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. § 32-2607(A).

2. Objective

The objective of this rule is to establish the fees that the Department collects for its various licensing activities relating to security guards.

3. Effectiveness of the Rule in Achieving the Objective

The rule is partially effective. The effectiveness of the rule could be improved by specifying a penalty for a late application to renew a security guard registration. This amendment makes the renewal of a security guard registration consistent with renewal of an agency license and resident manager license. The rule will be improved by removing Paragraph C as the Department no longer performs fingerprinting and digital photo services. The rule will be improved by amending Section D to remove cash payment and to allow for electronic payment and electronic application options. R13-6-202(H) should be moved to this rule to consolidate information on fees.

R13-6-104. Identification Cards

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. §§ 32-2614, 32-2624, and 32-2633.

2. Objective

The objective of this rule is to identify the licensees and certificate holders to whom the Department issues an identification card, the information the Department places on an identification card, and the manner in which a licensee or certification holder is required to treat the identification card.

4. Consistency of the Rule with State and Federal Statutes or Other Rules

If the rule is amended to remove the fees in Sections D and E (See R13-6-103 Analysis Item #3), then the references to R13-6-103(A)(15) and R13-6-103(A)(14) will need to be removed.

R13-6-105. Time-frames for Making Licensing and Registration Determinations

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. § 41-1072 et seq.

2. Objective

The objective of this rule is to describe the manner and time in which the Department reviews and acts upon a license or registration application.

6. Clarity, Conciseness, and Understandability of the Rule:

The rule can be made more clear and understandable by specifying that the number of days in the rule is defined as business days.

ARTICLE 2 – AGENCY LICENSES

R13-6-201. Application for an Agency License

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. §§ 32-2613 and 32-2635.

2. Objective

The objective of this rule is to provide detail regarding the information required to be submitted by the qualifying party of a security guard agency for which an agency license is sought. If the security guard agency will have a resident manager, information is also provided regarding the information required from the resident manager.

4. Consistency of the Rule with State and Federal Statutes or Other Rules

If the rule is amended to remove the fees (See R13-6-103 Analysis Item #3), then the reference to R13-6-103 will need to be removed. The Secretary of State has a technical error listing this rule as R13-2-201 in the A.A.C.

R13-6-202. Issuance of an Agency License

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. § 32-2614.

2. Objective

The objective of this rule is to describe the steps that must be taken by an applicant after the Department provides notice that the applicant's agency license is ready for issuance. The rule also provides information regarding posting, transferring, or surrendering a license.

3. Effectiveness of the Rule in Achieving the Objective

The rule is partially effective. The effectiveness of the rule could be improved for both the liability and workers' compensation insurance required under Section A by indicating that a licensee that has an out-of-state address on an insurance certificate shall provide a certificate that indicates in the *description of operations* that the insurance is for security guard operations in Arizona.

4. Consistency of the Rule with State and Federal Statutes or other Rules

Section G, which requires the qualifying party to notify the Department within 15 days of a change of address of the principal office, is inconsistent with A.R.S. § 32-2614(D) which allows 30 days to provide the notice.

6. Clarity, Conciseness, and Understandability of the Rule

The rule can be made clearer by removing the word *renewal* from Section C as R13-6-203 deals with renewals. The rule can further be made more concise by removing the information in Section H and moving it to R13-6-103.

R13-6-203. Agency License Renewal

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. § 32-2607.

2. Objective

The objective of this rule is to provide information regarding when, how, and by whom an agency license is required to be renewed and the consequences of failing to renew timely.

3. Effectiveness of the Rule in Achieving the Objective

The rule is partially effective. The effectiveness of the rule could be improved if language was added that allowed for the applicant to request to pick up the license at the Department's office in Phoenix and if no request is made, the Department shall send the license to the applicant's mailing address; refer to R13-6-202(C).

R13-6-204. Branch Office Certificate

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. § 32-2617.

2. Objective:

The objective of this rule is to describe the procedure for the qualifying party of a licensed agency to obtain a certificate to operate a branch office and the manner in which a branch office certificate is to be handled.

3. Effectiveness of the Rule in Achieving the Objective

The rule is partially effective. The effectiveness of the rule could be improved if the notice regarding operation of a branch office included the telephone number for the branch office.

4. Consistency of the Rule with State and Federal Statutes or other Rules

Section E, which requires the qualifying party to notify the Department within 15 days of a change of address of a branch office, is inconsistent with A.R.S. § 32-2614(D), which allows 30 days to provide the notice.

R13-6-205. Change of Qualifying Party

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. §§ 32-2601(18), 32-2612(B), and 32-2616.

2. Objective

The objective of this rule is to describe the consequence for a licensed agency if the qualifying party leaves as well as the procedure for obtaining a new qualifying party.

R13-5-206. Restructure of an Agency

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. § 32-2601(21).

2. Objective

The objective of this rule is to describe the information that must be submitted to the Department when a licensed agency changes the form in which it does business.

R13-6-207. Business Name

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. §§ 32-2613(A)(2) and 32-2636(A)(2).

2. Objective

The objective of this rule is to protect the public by establishing standards for the name of a licensed agency that minimize confusion or deceit.

ARTICLE 3 – REGISTRATION CERTIFICATES

R13-6-301. Application for Registration Certificate

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. §§ 32-2607, 32-2608, 32-2621, 32-2622, and 32-2623.

2. Objective

The objective of this rule is to establish the procedure and information required to apply for a registration certificate as an associate, security guard, or armed security guard.

3. Effectiveness in the Rule in Achieving the Objective

The rule is partially effective. The effectiveness of the rule will be improved for armed applications by requiring military members to provide any and all discharge documents with the application to verify the person's eligibility under A.R.S. § 32-2622(B)(4).

4. Consistency of the Rule with State and Federal Statutes or other Rules

If the rule is amended to remove the fees in Sections A and C (See R13-6-103 Analysis Item 3), then the references to R13-6-103 will need to be removed.

R13-6-302. Renewal of Registration Certificate

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. §§ 32-2607, 32-2608, 32-2621, and 32-2623.

2. Objective

The objective of this rule is to provide information regarding when and how a registration certificate is required to be renewed and the consequences of failing to renew timely.

4. Consistency of the Rule with State and Federal Statutes or other Rules

If the rule is amended to remove the fees in Section B (See R13-6-103 Analysis Item #3), then the references to R13-6-103 will need to be removed.

R13-6-303. Lost or Stolen Registration Certificate or Identification Card

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. §§ 32-2614, 32-2624, and 32-2633.

2. Objective

The objective of this rule is to describe the procedure for obtaining a new registration certificate or identification card when a previous one is lost or stolen.

4. Consistency of the Rule with State and Federal Statutes or other Rules

If the rule is amended to remove the fees (See R13-6-103 Analysis Item #3), then the reference to R13-6-103(A)(14) will need to be removed.

R13-6-304. Change in Name of Registrant

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. § 32-2624.

2. Objective

The objective of this rule is to describe the procedure for notifying the Department that a registrant's name has changed.

4. Consistency of the Rule with State and Federal Statutes or other Rules

If the rule is amended to remove the fees in Section B (See R13-6-103 Analysis Item #3), then the references to R13-6-103 will need to be removed.

ARTICLE 4 – APPEALS; COMPLAINTS; RECORDS

R13-6-401. Denial of Agency License or Registration Certificate

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. §§ 32-2612, 32-2622, 32-2640, and 32-2641.

2. Objective

The objective of this rule is to establish the standards used by the Department to decide whether to deny a license or registration certificate to an applicant, the procedure for appealing a denial, and the manner in which the Department handles an appeal.

4. Consistency with statutes and other rules:

The Department does not have statutory authority for Section G which requires an applicant who is denied a license or certification to wait one year before reapplying. The authorizing statutes only refer to revoking a license or certification and does not specifically use the term *denied*. The Department intends to amend the rule to delete the one-year waiting period for denied licenses and certifications.

R13-6-402. Probation of Agency Licensee or Registrant

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. § 32-2636.

2. Objective

The objective of this rule is to describe the circumstances under which the Director may fix a period and terms of probation for a licensee or registrant and the consequences of being on probation.

R13-6-403. Employee and Business Records

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. §§ 32-2601, 32-2632, and 32-2639.

2. Objective

The objective of this rule is to establish that it is the responsibility of the qualifying party to maintain employee and business records, the term for which the records must be maintained, and to whom the records must be disclosed.

3. Effectiveness of the Rule in Achieving the Objective

The rule is partially effective. The effectiveness of the rule could be improved if it included the requirement for the qualifying party to maintain documentation of all DPS-required training received by the individuals specified.

4. Consistency of the Rule with State and Federal Statutes or other Rules

The qualifying party shall maintain adequate records on a client containing at least sufficient information to identify the client, the dates of service, the fee for service and the payments for service in accordance with A.R.S. § 32-2601(23)(D).

6. Clarity, Conciseness, and Understandability of the Rule

The rule can be made clearer by adding a new paragraph that states the qualifying party shall maintain adequate records on a client containing at least sufficient information to identify the client, the dates of service, the fee for the service and the payments for service.

R13-6-404. Complaints

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. §§ 32-2602, 32-2636, and 32-2639.

2. Objective

The objective of this rule is to establish against whom an individual may submit a written complaint and the manner in which the Department handles a submitted complaint.

ARTICLE 5 – UNIFORMS AND VEHICLES

R13-6-501. Uniforms, Badges, and Insignia

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. §§ 32-2635 and 32-2636.

2. Objective

The objective of this rule is to describe the requirements and limitations for the uniform worn by security guards and to establish standards to ensure that a reasonable person does not mistake a security guard for a law enforcement officer.

3. Effectiveness of the Rule in Achieving the Objective

The rule is partially effective. The effectiveness of the rule could be improved by providing a procedure for requesting an exemption from some of the uniform requirements. The exemption would be available only in offices or businesses that generally are not open to the public.

R13-6-502. Business Attire and Plain Clothes

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. §§ 32-2635 and 32-2636.

2. Objective

The objective of this rule is to indicate that a security guard wearing business attire or plain clothes is forbidden to display a badge.

R13-6-503. Vehicle Markings, Emblems, and Insignia

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. § 32-2602(D) and is justified as being relevant to language in A.R.S. § 32-2635 regarding insignia that shall not deceive or confuse the public or be identical with that of any law enforcement officer and the language in A.R.S. § 32-2634 that a security guard shall not possess the authority of a peace officer and A.R.S. § 32-2636(A)(4) and A.R.S. § 28-101(4).

2. Objective

The objective of this rule is to establish standards for markings, emblems, and insignias on a vehicle under the control of a security guard to ensure that a reasonable person does not mistake the vehicle for that of a law enforcement agency or peace officer.

ARTICLE 6 – TRAINING

R13-6-601. Security Guard Pre-assignment Training

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. §§ 32-2607, 32-2613, 32-2622, and 32-2632.

2. Objective

The objective of this rule is to establish minimum standards for the training required before an individual may submit an application for a security guard registration certificate.

R13-6-602. Security Guard Refresher Training

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. § 32-2632.

2. Objective

The objective of this rule is to establish minimum standards for the training required before a security guard may submit an application for renewal of the security guard registration certificate.

R13-6-603. Armed Security Guard Pre-assignment and Refresher Training

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. §§ 32-2607, 32-2613, 32-2622, and 32-2632.

2. Objective

The objective of this rule is to establish minimum standards for the training required of a security guard who uses a firearm within the scope of the security guard's employment.

ARTICLE 7 – FIREARMS-SAFETY TRAINING INSTRUCTORS

R13-6-701. Qualifications of a Firearms-safety Instructor

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. § 32-2632.

2. Objective

The objective of this rule is to establish the minimum qualifications for an individual to be certified by the Department as a firearms-safety instructor.

R13-6-702. Application for Certification as a Firearms-safety Instructor

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. § 32-2632.

2. Objective

The objective of this rule is to list the information that is required to be submitted to the Department before the Department will certify an individual as a firearms-safety instructor.

4. Consistency of the Rule with State and Federal Statutes or other Rules

If the rule is amended to remove the fees in Section A (See R13-6-103 Analysis Item 3), then the reference to R13-6-103 will need to be removed.

R13-6-703. Firearms-safety Instructor Certification Renewal

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. § 32-2632.

2. Objective

The objective of this rule is to establish standards for obtaining renewal of certification as a firearms-safety instructor.

4. Consistency of the Rule with State and Federal Statutes or other Rules

If the rule is amended to remove the fees in Section A (See R13-6-103 Analysis Item 3), then the reference to R13-6-103 will need to be removed.

R13-6-704. Requirements of a Firearms-safety Instructor

1. Authorization of the Rule by Existing Statutes

This rule is authorized by A.R.S. § 32-2632.

2. Objective

The objective of this rule is to provide limitations on the program provided by a certified firearms-safety instructor and to establish recordkeeping requirements.

3. Effectiveness of the Rule in Achieving the Objective

The rule is partially effective. The effectiveness of the rule could be improved by adding to Section 3 the make, model, and serial number of each weapon the firearms-safety instructor is successfully trained in using.



ARIZONA DEPARTMENT OF PUBLIC SAFETY

ARIZONA ADMINISTRATIVE CODE FIVE YEAR REVIEW REPORT

TITLE 13 – PUBLIC SAFETY

CHAPTER 10 – ALCOHOL TESTING

ARTICLE 1 – DETERMINATION OF ALCOHOL CONCENTRATION

February 19, 2016

TABLE OF CONTENTS

	Page
Introduction	1
Information Identical for a Group of Rules	3
Analysis of Individual Rules	8
R13-10-101	8
R13-10-102	8
R13-10-103	8
R13-10-104	9
R13-10-105	10
R13-10-106	10
R13-10-107	10
R13-10-108	11
R13-10-109	11
Exhibit E-1	11
Exhibit E-2	11
Exhibit E-3	12
Exhibit E-4	12
Exhibit E-5	12
Exhibit E-6	12
Exhibit F-1	13
Exhibit F-2	13
Exhibit F-3	13

Exhibit F-4	13
Exhibit F-5	14

INTRODUCTION

The Department of Public Safety, which is created by A.R.S. § 41-1711, is charged with, among other things, preventing crime and protecting the public. The Department's Technical Services Division, Scientific Analysis Bureau is statutorily responsible for providing guidance and standards in alcohol testing for Arizona law enforcement agencies, forensic laboratories and related personnel.

Included in this report is a review of the following nine rules and twenty-five exhibits:

- R13-10-101 Definitions
- R13-10-102 Analyst Methods; Approval of Additional Methods
- R13-10-103 Breath-testing Devices
- R13-10-104 Testing Procedures
- R13-10-105 Permits and Certificates
- R13-10-106 Qualifications
- R13-10-107 Application Process
- R13-10-108 Examination and Quality Assurance Requirements for Analysts
- R13-10-109 Revocation or Suspension of Permits; Appeals
- Exhibit A Application for Blood Alcohol Analyst Permit
- Exhibit B Application for Breath Alcohol Operator Permit
- Exhibit C Application for Breath Alcohol Quality Assurance Specialist Permit
- Exhibit D Application for Breath Testing Instructor
- Exhibit E-1 Standard Operational Procedure Intoxilyzer Model 5000
- Exhibit E-2 Standard Calibration Check Procedure Intoxilyzer Model 5000
- Exhibit E-3 Standard Calibration Check Procedure Intoxilyzer Model 5000 (Option P)
- Exhibit E-4 Standard Quality Assurance Procedure Intoxilyzer Model 5000
- Exhibit E-5 Standard Quality Assurance Procedure Intoxilyzer Model 5000 (Option P)

- Exhibit E-6 Standard Operational Procedure Intoxilyzer Model 5000 – Without Vapor Recirculation and Without Keyboard
- Exhibit F-1 Standard Operational Procedure Intoxilyzer Model 5000EN
- Exhibit F-2 Standard Calibration Check Procedure Intoxilyzer Model 5000EN
- Exhibit F-3 Standard Calibration Check Procedure Intoxilyzer Model 5000EN (Option P)
- Exhibit F-4 Standard Quality Assurance Procedure Intoxilyzer Model 5000EN
- Exhibit F-5 Standard Quality Assurance Procedure Intoxilyzer Model 5000EN (Option P)
- Exhibit G-1 Standard Operational Procedure Intoxilyzer Model 8000
- Exhibit G-2 Standard Calibration Check Procedure Intoxilyzer Model 8000
- Exhibit G-3 Standard Calibration Check Procedure Intoxilyzer Model 8000 (Option P)
- Exhibit G-4 Standard Quality Assurance Procedure Intoxilyzer Model 8000
- Exhibit G-5 Standard Quality Assurance Procedure Intoxilyzer Model 8000 (Option P)
- Exhibit G-6 Standard Operational and Quality Assurance Procedure Intoxilyzer Model 8000
- Exhibit H-1 Standard Operational Procedure Alco Sensor RBT AZ
- Exhibit H-2 Standard Calibration Check Procedure Alco Sensor RBT AZ
- Exhibit H-3 Standard Quality Assurance Procedure Alco Sensor RBT AZ
- Exhibit H-4 Standard Calibration Procedure Alco Sensor RBT AZ

INFORMATION IDENTICAL FOR A GROUP OF RULES

Under Arizona Administrative Code (A.A.C.) R1-6-301(B), the following information is provided only once because it is identical for a group of rules:

1. Authorization of the rule by existing statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Department may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 28-1322(C) authorizes the Department to adopt rules prescribing the approval of quantitative preliminary breath-testing devices.
- A.R.S. § 28-1324 authorizes the Department to adopt rules prescribing the methods and procedures for the administration of breath tests to determine alcohol concentration.
- A.R.S. § 28-1326(A) authorizes the Department to adopt rules prescribing the approval of methods for the analysis of blood or other substances to determine blood-alcohol concentration.

Additional relevant statutes:

- A.R.S. § 28-1323 which addresses breath-test admissibility for court trial.
- A.R.S. § 28-1325 which references issuance and revocation of breath-test operator permits.

2. Objective

The objective of Rules 101 through 109 are listed in the individual analysis.

- Exhibits A through D: The objective of the exhibits is to provide standardized applications for the different types of permits and certificates issued by the Department under the rules.
- Exhibits E-1 through H-4: The objective of the exhibits is to provide standardized operational, calibration check and quality assurance procedure record forms for the different types of evidential breath-test devices approved by the Department.

3. Effectiveness of the Rule in Achieving the Objective

The Department believes the rules are generally effective in accomplishing their objectives. However, as indicated in the individual analysis, the Department believes the effectiveness of the following rules could be improved: R13-10-103, R13-10-104 and R13-10-107. The Department intends for Exhibits E-1 through F-5 to expire pursuant to A.R.S. § 41-1056(J).

4. Consistency of the Rule with State and Federal Statues or Other Rules

The Department determined that the rules are consistent with state and federal statutes and other rules.

5. Agency Enforcement Policy

The Department enforces the current rules with the exception of R13-10-107(A-D).

6. Clarity, Conciseness, and Understandability of the Rule

The rules are clear, concise, and understandable with the exception of R13-10-103 and R13-10-104.

7. Summary of Written Criticisms of the Rules Received in the Last Five Years

The Department has received no written criticisms of the rules in the last five years.

8. A Review of the Economic Impact Statement (EIS) Prepared on the Last Making of the Rule.

The Department believes that the statement prepared in 2006 was accurate for the time period and is still accurate for today's economy. There have been no unanticipated cost or revenue effects associated with the rulemaking.

This determination performed via a comparison of the current 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 (May 18, 2006).

The Legislature transferred regulatory authority for the rules from the Department of Health Services (DHS) to the Department of Public Safety (DPS) through Arizona Session Laws, 2003, Chapter 213, which directed that the rules adopted by DHS continue in effect and be administered and enforced by DPS until superseded by rules adopted by DPS. The final rulemaking for the rules adopted by DPS went into effect May 18, 2006. The first 5-year review occurred in May, 2011 and this is the second 5-year review submitted by the Department regarding the rules.

The Department has determined that the rules impose minimal burden and costs to persons regulated by the rules. There are no fees associated with these rules and there are only minimal travel-related costs for persons attending mandatory training conducted by the Department. The majority of training is provided locally or available in an existing web-based format generating little or no travel-related expenses. The rules did not require anyone conducting alcohol testing to purchase new equipment. The number of applicants able to pass the examinations for an individual to operate,

maintain and instruct others on the use of breath-testing equipment have remained the same.

There are currently approximately 7,000 valid breath alcohol Operator permits, 420 breath-alcohol Quality Assurance Specialist permits, and 20 breath-testing Instructor permits issued in Arizona. The Department maintains approximately 266 Intoxilyzer 8000 breath-test devices for Arizona law enforcement agencies. There are currently approximately 67 blood alcohol analyst permits in effect in Arizona.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis by any person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of business in other states.

10. Agency Stated Course of Action from the Previous Five-Year Report

The 2011 Five-Year Review Report indicated that the Department did not enforce R13-10-107 as written. This is identified and detailed in the section on the analysis of the individual rules. The last review indicated that it was no longer necessary to specify a timeframe for the submission of recertification applications and that rulemaking would address this as indicated. The rule making did not occur and remains a current rule making requirement.

The Department will amend R13-10-107, to address the issues identified in the individual analysis section. The Department intends to submit a final rulemaking to the council by May 31, 2017 or, within one year of the council's approval of this current review report pending the outcome of a rulemaking waiver request under Executive Order 2016-03.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined that the public safety benefits of the rules will outweigh the costs to the State and impose the least burden and cost to the regulated industry.

12. Determination of the Rules' Stringency Against Federal Law

There are no applicable federal laws.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010, in Compliance with A.R.S. § 41-1037

None of the rules reviewed were adopted or amended after July 29, 2010; therefore, this analysis is not required for these rules.

14. Course of Action for the Rules

The Department intends to amend the following rules: R13-10-103, R13-10-104 and R13-10-107. The Department intends to expire Exhibits E-1 through F-5 pursuant to A.R.S. § 41-1056(J).

The Department intends to submit a final rulemaking to the council by May 31, 2017 or, within one year of the council's approval of this current review report pending the outcome of a rulemaking waiver request under Executive Order 2016-03.

ANALYSIS OF INDIVIDUAL RULES
ARTICLE 1 – DETERMINATION OF ALCOHOL CONCENTRATION

R13-10-101 Definitions

2. Objective

The objective of this rule is to clarify the rules by defining words that are used in a manner specific to the rules.

R13-10-102 Analyst Methods; Approval of Additional Methods

2. Objective

The objective of this rule is to specify performance criteria for blood-alcohol analysis methods; to specify existing approved blood-alcohol analysis methods; and to describe the procedure by which an applicant for an analyst permit may submit a request for the approval of a new method of blood-alcohol analysis.

R13-10-103 Breath-testing Devices

2. Objective

The objective of this rule is to specify performance criteria for breath-testing devices; to specify those breath-testing devices which are currently approved by the Department; and to describe the conditions under which an approved breath-testing device can be disapproved by the Department.

3. Effectiveness of the Rule in Achieving the Objective

The rule can be made more effective by removing the Intoxilyzer 5000 and Intoxilyzer 5000EN as they are no longer utilized as evidentiary breath-tests (EBT) in Arizona. The National Highway Traffic Safety Administration (NHTSA) Conforming Product List of

EBT devices will be incorporated by reference replacing the 2004 version with 77 FR 35747-35751 dated June 14, 2012.

6. Clarity, Conciseness, and Understandability of the Rule

A number of simple clarifications; grammatical changes; minor updates; renaming; device and related exhibit modifications; and addition of NHTSA products list is required.

R13-10-104 Testing Procedures

2. Objective

The objective of this rule is to specify testing procedures and the quality assurance requirements for breath testing; to specify records which must be generated as the standard operating procedure for breath testing; and to describe the procedure for conducting duplicate breath tests.

3. Effectiveness of the Rule in Achieving the Objective

The rule can be made more effective by deleting the listed exhibits for the EBT devices no longer in use; specifically, all E and F exhibits in subsections A2, A3 and B.

6. Clarity, Conciseness, and Understandability of the Rule

A number of simple clarifications; grammatical changes; minor updates; renaming; and deletion of references to exhibits no longer in use is required.

R13-10-105 Permits and Certificates

2. Objective

The objective of this rule is to describe the types of permits and certificates issued by the Department; to specify the terms and conditions of those permits and certificates; and to specify the action a permit or certificate holder is authorized to conduct.

R13-10-106 Qualifications

2. Objective

The objective of this rule is to specify the qualifications an individual must meet to be issued an analyst or breath-testing permit or certificate by the Department; and to describe the procedure by which the very first breath test permits and certificate are issued for a newly approved breath-test device.

R13-10-107 Application Processes

2. Objective

The objective of this rules is to specify the processes by which initial applications and renewals for analyst breath testing permits and certificates are made.

3. Effectiveness of the Rule in Achieving the Objective

The rule can be made more effective by removing the thirty-day notice for the renewal periods as this is not being enforced by the Department.

5. Agency Enforcement Policy

The Department does not enforce the thirty-day notice requirement in the rule. It is the responsibility of the holder of the permit or certificate to renew in a timely fashion. If

the permit or certificate has expired, the holder must complete proper certification materials in order to renew the permit or certificate.

R13-10-108 Examination and Quality Assurance Requirements for Analysts

2. Objective

The objective of this rule is to specify the requirements of the analyst proficiency testing program administered by the Department and the criteria for the quality assurance programs which must be maintained by the analysts.

R13-10-109 Revocation or Suspension of Permits; Appeals

2. Objective

The objective of this rule is to specify the conditions under which an analyst or breath-test permit may be revoked or suspended.

Exhibit E-1 Standard Operational Procedure Intoxilyzer Model 5000

3. Effectiveness of the Rule in Achieving the Objective

The rule is no longer effective as the device is no longer used. The exhibit is intended to expire under A.R.S. § 41-1056(J).

Exhibit E-2 Standard Calibration Check Procedure Intoxilyzer Model 5000

3. Effectiveness of the Rule in Achieving the Objective

The rule is no longer effective as the device is no longer used. The exhibit is intended to expire under A.R.S. § 41-1056(J).

Exhibit E-3 Standard Calibration Check Procedure Intoxilyzer Model 5000 (Option P)

3. Effectiveness of the Rule in Achieving the Objective

The rule is no longer effective as the device is no longer used. The exhibit is intended to expire under A.R.S. § 41-1056(J).

Exhibit E-4 Standard Quality Assurance Procedure Intoxilyzer Model 5000

3. Effectiveness of the Rule in Achieving the Objective

The rule is no longer effective as the device is no longer used. The exhibit is intended to expire under A.R.S. § 41-1056(J).

Exhibit E-5 Standard Quality Assurance Procedure Intoxilyzer Model 5000 (Option P)

3. Effectiveness of the Rule in Achieving the Objective

The rule is no longer effective as the device is no longer used. The exhibit is intended to expire under A.R.S. § 41-1056(J).

Exhibit E-6 Standard Operational Procedure Intoxilyzer Model 5000 – Without Vapor Recirculation and Without Keyboard

3. Effectiveness of the Rule in Achieving the Objective

The rule is no longer effective as the device is no longer used. The exhibit is intended to expire under A.R.S. § 41-1056(J).

Exhibit F-1 Standard Operational Procedure Intoxilyzer Model 5000EN

3. Effectiveness of the Rule in Achieving the Objective

The rule is no longer effective as the device is no longer used. The exhibit is intended to expire under A.R.S. § 41-1056(J).

Exhibit F-2 Standard Calibration Check Procedure Intoxilyzer Model 5000EN

3. Effectiveness of the Rule in Achieving the Objective

The rule is no longer effective as the device is no longer used. The exhibit is intended to expire under A.R.S. § 41-1056(J).

Exhibit F-3 Standard Calibration Check Procedure Intoxilyzer Model 5000EN (Option P)

3. Effectiveness of the Rule in Achieving the Objective

The rule is no longer effective as the device is no longer used. The exhibit is intended to expire under A.R.S. § 41-1056(J).

Exhibit F-4 Standard Quality Assurance Procedure Intoxilyzer Model 5000EN

3. Effectiveness of the Rule in Achieving the Objective

The rule is no longer effective as the device is no longer used. The exhibit is intended to expire under A.R.S. § 41-1056(J).

Exhibit F-5 Standard Quality Assurance Procedure Intoxilyzer Model 5000EN (Option P)

3. Effectiveness of the Rule in Achieving the Objective

The rule is no longer effective as the device is no longer used. The exhibit is intended to expire under A.R.S. § 41-1056(J).



ARIZONA DEPARTMENT OF PUBLIC SAFETY

ARIZONA ADMINISTRATIVE CODE FIVE YEAR REVIEW REPORT

TITLE 13 – PUBLIC SAFETY

CHAPTER 3 – TOW TRUCKS

ARTICLES

- 7 – DEFINITIONS, SCOPE, AND ENFORCEMENT DATES**
- 8 – TOW TRUCK COMPANY REGISTRATION**
- 9 – TOW TRUCK REGISTRATION AND COMPLIANCE INSPECTION**
- 10 – TOW TRUCK SPECIFICATIONS BY CLASS**
- 11 – TOW TRUCK EQUIPMENT REQUIREMENTS**
- 12 – REQUIREMENTS FOR TOW TRUCK AGENTS AND COMPANIES**
- 13 – ENFORCEMENT**

June 2, 2016

TABLE OF CONTENTS

	Page
Introduction	1
Information Identical for a Group of Rules	3
Analysis of Individual Rules	7
R13-3-701	7
R13-3-702	7
R13-3-703	7
R13-3-801	8
R13-3-901	9
R13-3-902	9
R13-3-903	9
R13-3-1001	10
R13-3-1002	10
R13-3-1003	10
R13-3-1004	10
R13-3-1005	11
R13-3-1006	11
R13-3-1007	11
R13-3-1008	11
R13-3-1009	12
R13-3-1010	12
R13-3-1011	12

R13-3-1012	12
R13-3-1101	13
R13-3-1102	13
R13-3-1103	13
R13-3-1104	13
R13-3-1105	14
R13-3-1106	14
R13-3-1107	14
R13-3-1201	15
R13-3-1301	16
R13-3-1302	16
R13-3-1303	17

INTRODUCTION

The Department of Public Safety, which is created by A.R.S. § 41-1711, is charged with, among other things, preventing crime and protecting the public. The State Regulated Vehicle Unit, a section of the Highway Patrol Division, manages the regulatory function. The Department promotes consistency in tow truck equipment, standards for the tow truck operators, and safety for the motoring public using towing services. This mission is accomplished through administrative rulemaking supported by inspections and enforcement action. The State Regulated Vehicle Unit:

- Inspects tow trucks for safety upon submittal of an application for tow truck registration.
- Issues identification decals for tow trucks in compliance with tow truck rules.
- Registers tow trucks operating in Arizona.
- Maintains a database on towing companies.
- Handles complaints regarding compliance with tow truck rules.
- Takes enforcement action on violations of tow truck rules and applicable state statutes.
- Handles appeals of sanctions and enforcement action.

Included in this report is a review of the following thirty rules:

- R13-3-701 Definitions
- R13-3-702 Scope of Chapter
- R13-3-703 Enforcement Dates
- R13-3-801 Tow Truck Company Registration
- R13-3-901 Tow Truck Registration
- R13-3-902 Inspection by the Department
- R13-3-903 Changes in Ownership
- R13-3-1001 Light-duty Tow Truck
- R13-3-1002 Light-duty Tow Truck with Collision Recovery Capabilities
- R13-3-1003 Light-duty Flatbed Tow Truck

- R13-3-1004 Light-duty Flatbed Tow Truck with Collision Recovery Capabilities
- R13-3-1005 Light-duty Tow Truck-tractor and Semi-trailer Combination
- R13-3-1006 Medium-duty Tow Truck with Collision Recovery Capabilities
- R13-3-1007 Medium-duty Flatbed Tow Truck with Collision Recovery Capabilities
- R13-3-1008 Medium-duty Tow Truck-tractor and Semi-trailer Combination
- R13-3-1009 Heavy-duty Tow Truck
- R13-3-1010 Heavy-duty Tow Truck with Collision Recovery Capabilities
- R13-3-1011 Heavy-duty Flatbed Tow Truck with Collision Recovery Capabilities
- R13-3-1012 Heavy-duty Tow Truck-tractor and Semi-trailer Combination
- R13-3-1101 Compliance with Chapter and Identification Requirements
- R13-3-1102 Axle, Wheel and Tire Requirements
- R13-3-1103 Brake Requirements
- R13-3-1104 Required Equipment
- R13-3-1105 Collision Recovery Equipment Requirements
- R13-3-1106 Wire Rope Restrictions
- R13-3-1107 Wire Rope End Specifications and Installment
- R13-3-1201 Tow Truck Agent and Company Requirements
- R13-3-1301 Waiver
- R13-3-1302 Suspension or Denial of Tow Truck Permit Decal
- R13-3-1303 Appeals

INFORMATION IDENTICAL FOR A GROUP OF RULES

Under A.A.C. R1-6-301(B), the following information is provided only once because it is identical for a group of rules:

1. Authorization of the rule by existing statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Department may make rules necessary for the operation of the Department.

The Department's specific authority is authorized under:

- A.R.S. § 41-1830.51(C) which authorizes the Department to adopt and enforce rules regarding the design and operation of all tow trucks.

3. Effectiveness of the Rule in Achieving the Objective

The Department believes the rules are generally effective in accomplishing their objectives. However, as indicated in the Analysis of Individual Rules, the Department believes the effectiveness of the following rules could be improved: R13-3-703, R13-3-902, R13-3-1201, R13-3-1301 and R13-3-1303.

4. Consistency of the Rule with State and Federal Statues or Other Rules

The Department determined that the rules are consistent with A.R.S. § 41-1830.51 and state requirements specified in A.A.C. R17-5-202 with the exception of R13-3-701 and R13-3-1201.

5. Agency Enforcement Policy

The Department enforces the current rules.

6. Clarity, Conciseness, and Understandability of the Rule

The rules are clear, concise, and understandable.

7. Summary of Written Criticisms of the Rules Received in the Last Five Years

The Department has received no written criticisms of the rules in the last five years.

8. A Review of the Economic Impact Statement (EIS) Prepared on the Last Making of the Rule.

The Department believes that the statement prepared in 2006 was accurate for the time period and is still accurate for today's economy.

There are 4,528 tow trucks permitted by the Department. The Department does not permit drivers. The Department annually conducts over 800 tow truck safety inspections. Those annual inspections account for 1,100 work hours.

On July 1, 2006, new Articles 7 through 13 were codified. To accommodate the tow truck industry and lessen any negative economic impact, a four-year grace period was put into effect keeping Articles 1 through 6 active. On June 1, 2010 Articles 1 through 6 expired. During the grace period, tow trucks that were regulated by Articles 1 through 6 had nearly four years to spread the cost of making modifications or replacing equipment to comply with Articles 7 through 13.

Various municipalities and jurisdictions throughout the state can set additional standards above the minimum compliance level for tow trucks under contract or on service rotation for that jurisdiction. In addition, responsible members of the tow truck industry, by necessity, have adopted new technology and replaced equipment through attrition with tow trucks that feature manufacturer's specifications which exceeds guidelines in existing rules.

The minimum equipment and tow truck operation requirements in the current rules promote safety, which benefits the public and insurance industry. The cost of meeting or exceeding current requirements is passed along to the consumer in terms of fees and towing charges.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis by any person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of business in other states.

10. Agency Stated Course of Action from the Previous Five-Year Report

The Department's previous Five-Year Review Report was approved by the Council in 2011. The analysis of R13-3-801 stated that the rule should be amended to address the bond issue in A.R.S. § 28-1108(D). However legislative action later repealed the statute, shifted its contents to A.R.S. § 41-1830.51(D) and removed the bond requirement. With the bond requirement removed by the Legislature, no action was necessary by the Department. The Department still intends to amend R13-3-1301 and R13-3-1303 but was not able to do so under the rulemaking moratoriums in effect.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined that the public safety benefits of the rules will outweigh the costs to the State and impose the least burden and cost to the regulated industry.

12. Determination of the Rules' Stringency Against Federal Law

There are no applicable federal laws.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010, in Compliance with A.R.S. § 41-1037

None of the rules reviewed were adopted or amended after July 29, 2010; therefore, this analysis is not required for these rules.

14. Course of Action for the Rules

The Department intends to amend the following rules: R13-3-701, R13-3-703, R13-3-902, R13-3-1201, R13-3-1301 and R13-3-1303. The State Regulated Vehicle Unit has estimated that the final rulemaking will be submitted to Council within one and a half years after the Council's approval of this Five-Year Review Report under the assumption that a rulemaking waiver submitted after the approval of the report by the council is approved. The statute reference in rules R13-3-701(B) and R13-3-1201(B) will be amended by sending a request to the Secretary of State for a technical fix.

ANALYSIS OF INDIVIDUAL RULES

ARTICLE 7 – DEFINITIONS, SCOPE, AND ENFORCEMENT DATES

R13-3-701. Definitions

2. Objective

The objective of this rule is to clarify the rules by defining words that are used in a manner specific to the rules.

4. Consistency of the Rule with State and Federal Statutes or Other Rules

The statutory reference of A.R.S. § 28-1108 has changed to A.R.S. § 41-1830.51. The Department will make a request to the Secretary of State to conduct a technical fix.

R13-3-702. Scope of Chapter

2. Objective

The objective of this rule is to ensure a clear understanding is achieved on who and what this chapter applies to.

R13-3-703. Enforcement Duties

2. Objective

The objective of this rule is to clearly convey the dates on which the old rules were repealed and the new rules became effective and enforced.

3. Effectiveness of the Rule in Achieving the Objective

The Department believes the rule is generally effective in accomplishing its objectives; however, Paragraph 2 can be amended as there are no tow truck companies operating under Articles 1 through 6 and the grandfather date has passed.

ARTICLE 8 – TOW TRUCK COMPANY REGISTRATION

R13-3-801. Tow Truck Company Registration

2. Objective

The objective of this rule is to set forth procedures for a tow truck company to properly register with the Department.

ARTICLE 9 – TOW TRUCK REGISTRATION AND COMPLAINT INSPECTION

R13-3-901. Tow Truck Registration

2. Objective

The objective of this rule is to ensure that a tow truck in operation has been inspected for safety and compliance purposes.

R13-3-902. Inspection by the Department

2. Objective

The objective of this rule is to inform the public of the duties of the Department regarding inspection of tow trucks.

3. Effectiveness of the Rule in Achieving the Objective

The Department believes the rule is generally effective in accomplishing its objectives; however, the rule can be made more effective by adding a telephone number and email address to notify the Department in lieu of mailing in a notice.

R13-3-903. Changes in Ownership

2. Objective

The objective of this rule is to set forth the procedures on what a tow truck company should do when a change in ownership occurs.

ARTICLE 10 – TOW TRUCK SPECIFICATIONS BY CLASS

R13-3-1001. Light-duty Tow Truck

2. Objective

The objective of this rule is to set forth the requirements and specifications to operate a light-duty tow truck.

R13-3-1002. Light-duty Tow Truck with Collision Recovery Capabilities

2. Objective

The objective of this rule is to set forth the requirements and specifications to operate a light-duty tow truck that recovers vehicles from collisions.

R13-3-1003. Light-duty Flatbed Tow Truck

2. Objective

The objective of this rule is to set forth the requirements and specifications to operate a light-duty flatbed tow truck.

R13-3-1004. Light-duty Flatbed Tow Truck with Collision Recovery Capabilities

2. Objective:

The objective of this rule is to set forth the requirements and specifications to operate a light-duty flatbed tow truck that recovers vehicles involved in collisions.

R13-3-1005. Light-duty Tow Truck-tractor and Semi-trailer Combination

2. Objective

The objective of this rule is to set forth the requirements and specifications to operate a light-duty tow truck-tractor and semi-trailer combination.

R13-3-1006. Medium-duty Tow Truck with Collision Recovery Capabilities

2. Objective

The objective of this rule is to set forth the requirements and specifications to operate a medium-duty tow truck that recovers vehicles involved in a collision.

R13-3-1007. Medium-duty Flatbed Tow Truck with Collision Recovery Capabilities

2. Objective

The objective of this rule is to set forth the requirements and specifications to operate a medium-duty flatbed tow truck that recovers vehicles involved in a collision.

R13-3-1008. Medium-duty Tow Truck-tractor and Semi-trailer Combination

2. Objective

The objective of this rule is to set forth the requirements and specifications to operate a medium-duty truck-tractor and semi-trailer combination.

R13-3-1009. Heavy-duty Tow Truck

2. Objective

The objective of this rule is to set forth the requirements and specifications to operate a heavy-duty tow truck.

R13-3-1010. Heavy-duty Tow Truck with Collision Recovery Capabilities

2. Objective

The objective of this rule is to set forth the requirements and specifications to operate a heavy-duty tow truck that recovers vehicles involved in collisions.

R13-3-1011. Heavy-duty Flatbed Tow Truck with Collision Recovery Capabilities

2. Objective

The objective of this rule is to set forth the requirements and specifications to operate a heavy-duty flatbed tow truck that recovers vehicles involved in collisions.

R13-3-1012. Heavy-duty Tow Truck-tractor and Semi-trailer Combination

2. Objective

The objective of this rule is to set forth the requirements and specifications to operate a heavy-duty tow truck-tractor and semi-trailer combination.

ARTICLE 11 – TOW TRUCK EQUIPMENT REQUIREMENTS

R13-3-1101. Compliance with Chapter and Identification Requirements

2. Objective

The objective of this rule is to set forth the requirements on markings required for tow trucks.

R13-3-1102. Axle, Wheel and Tire Requirements

2. Objective

The objective of this rule is to set forth requirements on tow truck wheels and tires.

R13-3-1103. Brake Requirements

2. Objective

The objective of this rule is to set forth the requirements for tow truck brakes.

R13-3-1104. Required Equipment

2. Objective

The objective of this rule is to set forth the equipment requirements for tow trucks in the categories of strapping and anchors, warning lights, load securement devices, working lights, mirrors, backup light sources, fire extinguishers, steering wheel locking mechanisms.

R13-3-1105. Collision Recovery Equipment Requirements

2. Objective

The objective of this rule is to set forth the equipment requirements for a tow truck to operate as a collision-recovery tow truck.

R13-3-1106. Wire Rope Restrictions

2. Objective

The objective of this rule is to set forth the conditions that a wire rope would be prohibited from being used in conjunction with a tow truck.

R13-3-1107. Wire Rope End Specifications and Installation

2. Objective

The objective of this rule is to set forth the conditions, specifications, and installation of a wire rope end.

ARTICLE 12 – REQUIREMENTS FOR TOW TRUCK AGENTS AND COMPANIES

R13-3-1201. Tow Truck Agent and Company Requirements

2. Objective

The objective of this rule is to set forth operating practices for a tow truck agent and company.

3. Effectiveness of the Rule in Achieving the Objective

The Department believes the rule is generally effective in accomplishing its objectives; however, the incorporated by reference date for 49 CFR 391.45 could be updated from October 2003 to October 2015. The update reads the same as the older version and is acceptable with the tow truck industry.

4. Consistency of the Rule with State and Federal Statutes or Other Rules

The statutory reference of A.R.S. § 28-1108 has changed to A.R.S. § 41-1830.51. The Department will make a request to the Secretary of State to conduct a technical fix.

ARTICLE 13 – ENFORCEMENT

R13-3-1301. Waiver

2. Objective

The objective of this rule is to set forth the procedures to request a waiver of enforcement of the rules in writing to the Director of the Department of Public Safety if there is a compelling public necessity.

3. Effectiveness of the Rule in Achieving the Objective

The effectiveness of the rule could be improved. There is no record of a request for a waiver but the Department believes the rule would be effective if a waiver request were submitted. This waiver request is for new or improved design technology for a tow truck which has not been specified in the rules. The waiver request is only for the registered tow truck company making the request.

R13-3-1302. Suspension or Denial of Tow Truck Permit Decal

2. Objective

The objective of this rule is to set forth the conditions under which an owner or agent in violation may have their permit denied or suspended.

R13-3-1303. Appeals

2. Objective

The objective of this rule is to set forth the conditions under which an appeal or hearing would be set for persons with denied or suspended permits.

3. Effectiveness of the Rule in Achieving the Objective

The effectiveness of the rule could be improved. There is no record of a request for a waiver but the Department believes the rule would be effective if a waiver request were submitted. This appeal is for the tow truck company, as opposed to the individual person as currently specified in the rule, that has been issued tow permits and those permits have been denied or suspended per violations in R13-3-1201. There is no appeal if the Department denied the tow truck company waiver request for new technology items in R13-3-1301.



ARIZONA DEPARTMENT OF PUBLIC SAFETY

ARIZONA ADMINISTRATIVE CODE FIVE YEAR REVIEW REPORT

TITLE 13 – PUBLIC SAFETY

**CHAPTER 12 – PRIVATE INVESTIGATOR AND SECURITY GUARD
HEARING BOARD**

ARTICLE

**1 – PRIVATE INVESTIGATOR AND SECURITY GUARD HEARING
BOARD**

May 18, 2016

TABLE OF CONTENTS

	Page
Introduction	1
Information Identical for a Group of Rules	2
Analysis of Individual Rules	7
R13-12-101	7
R13-12-102	7
R13-12-103	8
R13-12-104	8
R13-12-105	9
R13-12-106	9
R13-12-107	10
R13-12-108	10

INTRODUCTION

The Department of Public Safety, which is created by A.R.S. § 41-1711, is charged with, among other things, preventing crime and protecting the public. The Private Investigator and Security Guard Hearing Board is established by A.R.S. § 32-2404 within the Department of Public Safety. The Board conducts disciplinary hearings and makes recommendations regarding discipline to the Director. The Board also conducts hearings regarding denial of a license and recommends to the Director that the denial be upheld or overturned. If certain specific criteria are met, an individual who is denied a license may request a hearing regarding a good-cause exception. The Board makes the decision to grant or deny a good-cause exception.

Included in this report is a review of the following eight rules:

- R13-12-101 Definitions
- R13-12-102 Good-cause Exception Prerequisites
- R13-12-103 Application for a Good-cause Exception
- R13-12-104 Hearing on Good-cause Exception
- R13-12-105 Vacating, Rescheduling, or Continuing a Hearing
- R13-12-106 Telephonic Testimony
- R13-12-107 Failure to Appear
- R13-12-108 Notice of Decision

INFORMATION IDENTICAL FOR A GROUP OF RULES

Under A.A.C. R1-6-301(B), the following information is provided only once because it is identical for a group of rules:

1. Authorization of the rule by existing statutes

The Department's general authority is authorized under:

- A.R.S. § 41-1713(A)(4) states the Department may make rules necessary for the operation of the Department.

The Hearing Board's specific authority is authorized under:

- A.R.S. § 32-2405(A)(4) which authorizes the Board to adopt and enforce rules regarding the establishment of good-cause exceptions for the issuance of licenses or registrations of security guards and private investigators.

Supporting statutes:

- A.R.S. § 32-2404 Hearing Board Qualifications and Appointments
- A.R.S. § 32-2406 Hearings and Special Meetings
- A.R.S. § 32-2412 Good-cause Exceptions for Misdemeanor and Felony Offenses
- A.R.S. § 32-2422 Qualification of Applicant for Agency License
- A.R.S. § 32-2441 Qualification of Applicant for Associate or Employee Registration
- A.R.S. § 32-2459 Grounds for Refusal to Issue License
- A.R.S. § 32-2609 Good-cause Exceptions
- A.R.S. § 32-2612 Qualification of Applicant for Agency License
- A.R.S. § 32-2622 Qualification of Applicant for License
- A.R.S. § 32-2640 Grounds for Refusal to Issue or Renew an Agency License
- A.R.S. § 32-2641 Grounds for Refusal to Issue Individual License
- A.R.S. § 41-1758.03 Fingerprint Clearance Card Issuance

3. Effectiveness of the Rule in Achieving the Objective

The Department believes the rules are effective in accomplishing their objectives.

4. Consistency of the Rule with State and Federal Statutes or Other Rules

The Department determined that the rules are consistent with statutes and other rules with the exception of R13-12-102(2).

6. Clarity, Conciseness, and Understandability of the Rule

The rules are clear, concise, and understandable.

7. Summary of Written Criticisms of the Rules Received in the Last Five Years

The Department has received no written criticisms of the rules in the last five years.

8. A Review of the Economic Impact Statement (EIS) Prepared on the Last Making of the Rule.

The Department believes that the statement prepared in 2006 was accurate for the time period and is still accurate for today's economy.

In FY2012, the Board held 41 hearings regarding license denial. It recommended that 24 of the denials be upheld and granted 17 felony good-cause exceptions. It held six disciplinary hearings that resulted in four license revocations, one license suspension, and one period of probation.

In FY2013, the Board held 55 hearings regarding license denial. It recommended that 21 of the denials be upheld and one be overturned, and granted 20 felony and 13 misdemeanor good-cause exceptions. It held 30 disciplinary hearings that resulted in 12 license revocations, 16 license suspensions, and two periods of probation.

In FY2014, the Board held 75 hearings regarding license denial. It recommended that 29 of the denials be upheld and one overturned, and granted 15 felony and 30 misdemeanor good-cause exceptions. It held 28 disciplinary hearings that resulted in 21 license revocations, five license suspensions, and two periods of probation.

In FY2015, the Board held 69 hearings regarding license denial. It recommended that 27 of the denials be upheld and granted 29 felony and 13 misdemeanor good-cause exceptions. It held 34 disciplinary hearings that resulted in 23 license revocations, nine license suspensions, and two periods of probation.

For partial FY2016, the Board has held 48 hearings regarding license denial. It recommended that 16 of the denials be upheld and granted 15 felony and 17 misdemeanor good-cause exceptions. It has held 37 disciplinary hearings that resulted in 15 license revocations, 13 license suspensions, and nine periods of probation.

9. Analysis of the State's Business Competitiveness as Compared to Other States

The Department has not received any business comparative analysis by any person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of business in other states.

10. Agency Stated Course of Action from the Previous Five-Year Report

The previous five-year report was approved by the Council in 2011. In the report, the Department indicated it intended to amend rules R13-12-103, R13-12-104, R13-12-105, R13-12-106 and R13-12-108 upon expiration of the Governor's rulemaking moratorium. The current Board does not intend to amend R13-12-103 through R13-12-106 and R13-12-108. The current Board determined that maintaining the current timeframes in those rules is the more appropriate decision to provide guidance to the public and to allow the Board the ability to effectively manage its cases. The Board, in an effort to relieve regulatory burden on the public when possible, often does not enforce the public's

submission timeframes rigidly. However, the Board intends to enforce the timeframes should the Board require the time to effectively manage its current or future cases. Also refer to Item 5, Agency Enforcement Policy in the individual rule analysis.

11. Determination of Probable Benefits Outweighing the Probable Costs

The Department determined that the public safety benefits of the rules will outweigh the costs to the State and impose the least burden and cost to the regulated industry. The primary economic burden results from the statutes creating the Board and requiring the Board to hold hearings regarding an application for a good-cause exception. The only economic burden imposed by the rules results from the information an applicant is required to submit for consideration for a good-cause exception. However, as indicated in the report, the Board does not enforce this requirement. Additionally, an applicant chooses to submit information voluntarily in hope of reaping the economic benefit of being licensed and employed as a private investigator or security guard.

12. Determination of the Rules' Stringency Against Federal Law

There are no applicable federal laws.

13. Issuance of a Regulatory Permit for Rules Adopted After July 29, 2010, in Compliance with A.R.S. § 41-1037

None of the rules reviewed were adopted or amended after July 29, 2010; therefore, this analysis is not required for these rules.

14. Course of Action for the Rules

The Department intends to amend R13-12-102 to comply with the statutory requirements outlined in the individual rule analysis. The Department intends on seeking a rulemaking waiver and beginning the rulemaking process approximately 90 days following the Council's approval of this report. The rulemaking will be submitted to the Governor's

Regulatory Review Council within one and a half years after the approval of a waiver, or if the waiver is denied, when the current rulemaking moratorium ends. As the Executive Order 2016-03 is scheduled to expire on December 31, 2016, the Department anticipates submitting a rulemaking before July 1, 2018.

ANALYSIS OF INDIVIDUAL RULES
ARTICLE 1 – PRIVATE INVESTIGATOR AND SECURITY GUARD HEARING
BOARD

R13-12-101. Definitions

2. Objective

The objective of this rule is to clarify the rules by defining words that are used in a manner specific to the rules.

5. Agency Enforcement Policy

The Department enforces this rule in whole.

R13-12-102. Good-cause Exception Prerequisites

2. Objective

The objective of this rule is to specify the minimum requirements an individual must meet before being eligible to apply for a good-cause exception.

4. Consistency of the Rule with State and Federal Statutes and Other Rules

During the Fiftieth Legislature-Second Regular Session in 2012, then Governor Brewer signed House Bill 2430 into law. This bill added language to A.R.S. §§ 32-2412 and 32-2609 to allow the Board to make good-cause exception decisions on denials for misdemeanor cases, which formerly had been only available for felony cases.

5. Agency Enforcement Policy

The Department enforces this rule in whole.

R13-12-103. Application for a Good-cause Exception

2. Objective

The objective of this rule is to specify the information an individual must submit to the Board if the individual wishes to apply for a good-cause exception.

5. Agency Enforcement Policy

The Board does not enforce the timeframe and form requirement in subsection (A) of this rule in the interest of facilitating the application process and imposing the least burden on the public when possible. The Board includes information on the criteria of good-cause exception in the letter of denial and instructs the individual of the opportunity to request a good-cause exception hearing. An applicant need only inform the Board that a good-cause exception hearing is wanted.

R13-12-104. Hearing on Good-cause Exception

2. Objective

The objective of this rule is to specify the procedures the Board uses to conduct a hearing on a good-cause exception including the factors the Board considers when making its decision.

5. Agency Enforcement Policy

The Board does not enforce the timeframe in subsection (D) of this rule in the interest of facilitating the hearing process. The Board allows an applicant to bring written materials to the hearing without having submitted them before the hearing in most cases. The Board recognizes that A.R.S. §§ 32-2412(C) and 32-2609(C) require the applicant to submit to the Board any evidence the applicant will be presenting at the hearing at least

five days before the hearing; however, the Board feels that timeframe can hamper the procedure and does not want the hearing to be adversarial.

R13-12-105. Vacating, Rescheduling, or Continuing a Hearing

2. Objective

The objective of this rule is to inform an applicant of the Board's standards for vacating, rescheduling, or continuing a hearing.

5. Agency Enforcement Policy

The Board does not enforce the timeframe in subsection (B) of this rule in the interest of facilitating the hearing process. The Board allows an applicant to make an oral request that a hearing be rescheduled as late as the day of the scheduled hearing when possible.

R13-12-106. Telephonic Testimony

2. Objective

The objective of this rule is to inform an applicant of the procedure for requesting that the applicant or a witness for the applicant appear at a hearing by telephone.

5. Agency Enforcement Policy

The Board does not enforce the timeframe and cost repayment in this rule in the interest of facilitating the hearing process. The Board allows an oral request to appear by telephone to be made the day of the scheduled hearing when possible. The Board also does not charge the applicant for the costs resulting from a telephonic appearance when possible.

R13-12-107. Failure to Appear

2. Objective

The objective of this rule is to inform an applicant of the actions the Board may take if the applicant or the applicant's representative fails to appear at a scheduled hearing.

5. Agency Enforcement Policy

The Department enforces this rule in whole.

R13-12-108. Notice of Decision

2. Objective

The objective of this rule is to inform an applicant of the Board's procedure for issuing a decision following a hearing.

5. Agency Enforcement Policy

The Board enforces this rule in whole. While the rule allows for a seven business day timeframe for the Board to provide written notice to the applicant, the Board usually or routinely makes the decision at the conclusion of the hearing allowing the applicant to leave the hearing knowing whether the good-cause exception is granted or denied well in advance of the seven day timeframe.