

NOTICES OF EMERGENCY RULEMAKING

Under the Administrative Procedure Act, an agency may determine that adoption, amendment, or repeal of a rule is necessary for immediate preservation of the public health, safety or welfare and the notice and public participation requirements are impracticable. Under this determination, the agency may adopt the rule as an emergency and submit it to the Attorney General for review. The Attorney General approves the rule and then files it with the Secretary of State. The rule takes effect upon filing with the Secretary of State and remains in effect for 180 days. An emergency rule may be renewed for 1 or 2 180-day periods if the requirements of A.R.S. § 41-1026 are met. If the emergency rule is not renewed or the rule is not permanently adopted by the end of the 180-day period, the emergency rule expires and the text of the rule returns to its former language, if any.

NOTICE OF EMERGENCY RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

PREAMBLE

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|-----------|---------------------------------|---------------------------------|
| 1. | <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| | R4-30-101 | Amend |
| | R4-30-102 | New Section |
| | R4-30-106 | Amend |
| | R4-30-107 | Amend |
| | R4-30-120 | Amend |
| | R4-30-209 | Amend |
| | R4-30-247 | New Section |
| | R4-30-301.01 | New Section |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 32-106(A)(1), (5), (6), (9); 32-106(F)
Implementing statute: A.R.S. § 32-122.02
- 3. The effective date of the rules:**
February 19, 2002
- 4. Is this rulemaking a renewal of a previous emergency rulemaking? If yes, the Register citation to previous notices of emergency rulemaking.**
No
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Nan Mitchell
Address: 1990 W. Camelback Road, #406
Telephone: (602) 255-4053, ext. 240
Fax: (602) 255-4051
- 6. An explanation of the rules, including the agency's reasons for initiating the rules:**
The agency is complying with statutory enactment of provisions regulating the certification of home inspectors. This process may also include updating other rules to make them consistent with the recent statutory changes, agency practice, and current rule writing standards.
- 7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable

8. A summary of the economic, small business, and consumer impact:

The Agency is prepared for any administrative burden that may result due to the enactment of these rules. Consumers can immediately benefit from the rules because the Board will also have jurisdiction to receive and investigate citizen complaints against home inspectors, who are previously unregulated. It is anticipated that there will be minimal economic impact on other state agencies. The rules may impose a burden on those businesses currently conducting home inspections only until such time as all meet the necessary certification criteria. The cost of meeting certification criteria may also force an increase in the price of a home inspection that is passed on to the consumer.

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

None

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

R4-30-301.01(A) references the Standards of Professional Practice adopted by the Arizona Chapter of the American Society of Home Inspectors, Inc. on September 30, 2001.

11. An explanation of the situation justifying the rule adoption as an emergency rule:

A.R.S. § 32-123 requires the Board to issue appropriate licensure or certification to persons desiring to practice a profession regulated by the Board. There is no mechanism in place at this time for certification of home inspectors, including those who meet the requirements set out in 2000 Ariz. Sess. Laws, Chapter 86, Sec. 17. The package also would allow those persons who meet the training, examination and education prerequisites set out in the package to apply for certification. The Board is charged with protecting the health, safety and welfare of the public and is experiencing numerous requests from the public to accept complaints against currently unregulated home inspectors. Enactment of the emergency would give the Board jurisdiction to investigate those issues, as well as preventing the home inspection industry from establishing a monopoly by those meeting statutory criteria, based upon the use of the title "Certified Home Inspector".

12. The date of the Attorney General's approval of the emergency rule:

February 15, 2002

13. Full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

ARTICLE 1. GENERAL PROVISIONS

Section

R4-30-101. Definitions
R4-30-102. ~~Repealed~~ Home Inspector Definitions
R4-30-106. Fees
R4-30-107. Registration expiration dates; Mandatory issuance of codes and rules
R4-30-120. Complaint Review Process

ARTICLE 2. REGISTRATION PROVISIONS

Section

R4-30-209. ~~Timeframes~~ Time-frames For Professional Registration, Home Inspector Certification, or In-training Designation
R4-30-247. ~~Reserved~~ Home Inspector Certification

ARTICLE 3. REGULATORY PROVISIONS

Section

R4-30-301.01 Home Inspector Rules of Professional Conduct

ARTICLE 1. GENERAL PROVISIONS

R4-30-101. Definitions

The following definitions shall apply in this Chapter unless the context otherwise requires:

1. No change
2. No change
3. No change

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4. No change
5. “Category” means the registration ~~categories~~ professions of architecture, assaying, geology, engineering, landscape architecture and land surveying.
6. No change
7. No change
8. No change
9. No change
10. “Good moral character and repute” shall be established if the registration candidate meets the following criteria:
 - a. Has not been convicted of a class 1 felony as defined in A.R.S. § 13-601(A), except for home inspectors who can show documentation of absolute discharge from sentence at least five years prior to the application; and
 - b. Has not been convicted of a felony or misdemeanor if the offense has a reasonable relationship to the functions of the employment or category for which the registration or designation is sought, except for home inspectors who can show documentation of absolute discharge from sentence at least five years prior to the application; and
 - c. Has not, within 5 years of application for registration, committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, gross negligence or incompetence reasonably related to the candidate’s proposed area of practice; and
 - d. Is not currently incarcerated in a penal institution; and
 - e. Has not engaged in fraud or misrepresentation in connection with the application for registration or related examination; and
 - f. Has not had a registration revoked or suspended for cause by this state or by any other jurisdiction, or surrendered a professional license in lieu of disciplinary action; and
 - g. Has not practiced without the required technical registration in this state or in another jurisdiction within the 2 years immediately preceding the filing of the application for registration; or
 - h. Has not, within 5 years of application for registration, committed an act that would constitute unprofessional conduct, as set forth in R4-30-301.
11. No change
12. No change
13. “Other misconduct” means the registrant:
 - a. Has been convicted of a class 1 felony; or
 - b. Has been convicted of a felony or misdemeanor, if such offense has a reasonable relationship to the functions of the registration; or
 - c. Is presently incarcerated in a penal institution; or
 - d. Has had a professional license or registration suspended or revoked for cause by this state or by any other jurisdiction or has surrendered a professional license in lieu of disciplinary action; or
 - e. Has knowingly acted in violation or knowingly failed to act in compliance with any provisions of the Act, or rules of the Board or any state, municipal or county law, code, ordinance, or regulation, pertaining to the practice of the registrant’s professional practice; or
 - f. Has refused to respond fully to a Board inquiry relating to an applicant’s qualifying experience, or provided the Board with false information relating to an applicant’s qualifying experience
14. No change
15. No change
16. No change
17. No change
18. No change
19. “Registrant” means a person who has been granted registration or certification to practice any profession authorized to be ~~registered~~ regulated pursuant to the Act.
20. No change
21. No change
22. No change

R4-30-102. ~~Repealed~~ Home Inspector Definitions

The following definitions shall apply only to home inspections under this Chapter:

1. “Automatic Safety Controls” means devices designated and installed to protect systems and components from high or low pressures and temperatures, electrical current, loss of water, loss of ignition, fuel leaks, fire, freezing, or other unsafe conditions.
2. “Central Air Conditioning” means a system that uses ducts to distribute cooled and/or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room, and that is not plugged into an electrical convenience outlet.

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3. “Component” means a readily accessible and observable aspect of a system, such as a floor or wall, but not individual pieces such as boards or nails where many similar pieces make up the system.
4. “Cross Connection” means any physical connection or arrangement between potable water and any source of contamination.
5. “Dangerous or Adverse Situations” means situations that pose a threat of injury to the inspector, and those situations that require the use of special protective clothing or safety equipment.
6. “Dismantle” means to take apart or remove any component, device or piece of equipment that is bolted, screwed, or fastened by other means and that would not be taken apart or removed by a homeowner in the course of normal household maintenance.
7. “Observe” means the act of making a visual examination of a system or component and reporting on its condition.
8. “Onsite Water Supply Quality” means water quality based on the bacterial, chemical, mineral, and solids content of the water.
9. “Parallel Inspection” means a home inspection by an in-training candidate supervised by a certified home inspector, in the presence of no more than one other in-training candidate, that includes a written report prepared by the in-training candidate and reviewed by the supervising certified home inspector.
10. “Primary Windows and Doors” means windows and/or exterior doors which are designed to remain in their respective openings year round.
11. “Readily Openable Access Panel” means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person, and its edges and fasteners are not painted in place. Limited to those panels within normal reach or from a 4-foot stepladder, and that are not blocked by stored items, furniture, or building components.
12. “Recreational Facilities” means spas, saunas, steam baths, swimming pools, tennis courts, play-ground equipment, and other exercise, entertainment, or athletic facilities.
13. “Representative Number” means for multiple identical components such as windows and electrical outlets, the inspection of one such component per room. For multiple identical exterior components, the inspection of one such component on each side of the building.
14. “Safety Glazing” means tempered glass, laminated glass, or rigid plastic.
15. “Shut Down” means a piece of equipment whose switch or circuit breaker is in the “off” position, or its fuse is missing or blown, or a system cannot be operated by the device or control which a home owner should normally use to operate it.
16. “Solid Fuel Heating Device” means any wood, coal, or other similar organic fuel burning device, including but not limited to fireplaces whether masonry or factory built, fireplace inserts and stoves, wood stoves (room heaters), central furnaces, and combinations of these devices.
17. “Structural Component” means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads). For purposes of this definition, a dead load is the fixed weight of a structure or piece of equipment, such as a roof structure on bearing walls; and a live load is a moving variable weight added to the dead load or intrinsic weight of a structure.
18. “System” means a combination of interacting or interdependent components, assembled to carry out one or more functions.
19. “Technically Exhaustive” means an inspection involving measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.
20. “Major Defect” means a system or component that is unsafe or not functioning.

R4-30-106. Fees

A. The Board shall charge the following fees:

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change

11. The annual renewal fee for certification as a home inspector is \$400.00.

B. A person paying fees shall remit them in United States dollars in the form of cash, check or money order; ~~however, if a check is returned for insufficient funds, repayment, including payment of the returned check charge, the person paying fees shall remit them~~ be made in the form of cash, money order or certified check.

C. No change

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D. No change

R4-30-107. Registration expiration dates; Mandatory issuance of codes and rules

A. ~~With the exception of Certified Home Inspectors, registrants'~~ Registrants' triennial registration expiration dates are based upon the date of initial registration. The following table indicates registration renewal periods:

Initial Registration Granted Date	Initial Triennial Renewal Expiration Date
Jan. 1 thru Mar. 31	3 years from Mar. 31
Apr. 1 thru Jun. 30	3 years from Jun. 30
Jul. 1 thru Sep. 30	3 years from Sep. 30
Oct. 1 thru Dec. 31	3 years from Dec. 31

B. No change

C. No change

D. Home Inspector Certifications shall expire one year from the date of issuance.

R4-30-120. Complaint Review Process

A. The Board shall select a pool of volunteers who have submitted resumes and letters of interest to ~~voluntarily~~ serve on enforcement advisory committees. The Executive Director shall select registrants and public members from the pool of volunteers to serve on the committees as needed. Each committee shall ~~have~~ be comprised of one public member and a minimum of 4 registrants, at least 1 of whom is registered in the same category or branch as the respondent, and 1 public member. The committee members shall ~~be volunteers who~~ provide technical assistance to Board staff in the evaluation and investigation of complaints. A quorum of three committee members shall be required for each committee meeting.

B. No change

C. No change

D. No change

E. No change

F. No change

G. No change

ARTICLE 2. REGISTRATION PROVISIONS

R4-30-209. ~~Timeframes~~ Time-frames for Professional Registration, Home Inspector Certification, or In-training Designation

A. Within 60 days of receiving the initial application package for professional registration or in-training designation, the Board shall finish an administrative completeness review.

1. If the application package is complete, the Board shall notify the candidate that the package is complete and that the administrative review is finished.
2. If the application package is incomplete, the Board shall notify the candidate that the package is deficient and specify the information or documentation that is missing. All ~~timeframes~~ time-frames are suspended from the date the notice is mailed to the candidate until the Board receives all missing information or documentation.
3. A candidate with an incomplete application package shall supply the missing information or documentation within 90 days from the date of the notice of deficiencies. If the candidate fails to supply the missing information or documentation, the Board may close the candidate's application file. Any fee paid by the candidate is non-refundable. A candidate whose file has been closed and who later wishes to apply for professional registration or in-training designation shall submit a new application package and pay the applicable fee.
4. If a candidate requests to sit for the professional or in-training examination, the ~~timeframes~~ time-frames in R4-30-210 apply until the Board grants or denies the candidate's request to sit for the examination.
5. If a candidate requests a waiver of examination under R4-30-203, the ~~timeframes~~ time-frames in R4-30-211 apply until the Board grants or denies the waiver of examination.
6. If a candidate is applying for certification as a home inspector, the time-frames in this Section apply until the Board grants or denies certification.
7. If a candidate is applying as a home inspector in-training, the time-frames in R4-30-247(B)(5) apply.

B. No change

C. No change

D. For purposes of A.R.S. § 41-1073, the Board establishes the following ~~timeframes~~ time-frames for a candidate applying for professional registration or in-training designation:

1. Administrative completeness review ~~timeframe~~ time-frame: 60 days;
2. Substantive review ~~timeframe~~ time-frame: 60 days; and

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3. Overall ~~timeframe~~ time-frame: 120 days, plus any additional time allowed in accordance with subsection (A)(2) of this section.

R4-30-247. ~~Reserved~~ Home Inspector Certification

A. An applicant for certification as a home inspector shall submit the following application package to the Board:

1. An original and one copy of a completed application.
2. Evidence of successful completion, within 2 years of the date of application, of the National Home Inspector Examination as administered by the EXAMINATION BOARD OF PROFESSIONAL HOME INSPECTORS.
3. The information set forth in subsection (B)(1) through (11) below.
4. A completed fingerprint card.
5. The applicable fees.
6. Evidence of successful completion of 80 hours of classroom training or an equivalent course conducted by an educational facility having been licensed by the appropriate post-secondary education regulatory agency in the home state of the facility, or accredited by the Accrediting Commission of the Distance Education and Training Council, or by an accrediting agency approved by the United States Department of Education. The course of study shall encompass the following major content areas:
 - a. Structural Components
 - b. Exterior
 - c. Roofing
 - d. Plumbing
 - e. Heating
 - f. Cooling
 - g. Electrical
 - h. Insulation and Ventilation
 - i. Interiors
 - j. Fireplaces and Solid Fuel-Burning Devices
 - k. Professional Practice
7. If applying pursuant to 2000 Ariz. Sess. Laws, Chapter 86, Sec. 17, copies of 5 reports that meet the standards set forth in R4-30-301.01, and certification of having completed 250 home inspections for compensation on a form provided by the Board.
8. An applicant who has lawfully conducted home inspections as part of a business practice must provide evidence of successful completion of 100 home inspections that meet the standards referenced in R4-30-301.01 on a form provided by the Board. An applicant under this Section must meet all other requirements for certification as set out in R4-30-248.

B. Home Inspector In Training Certification

1. Candidates who otherwise qualify for certification as a home inspector, except for being able to meet the qualifications in subsections (A)(7) or (8) of this Section, must present evidence of successful completion of 100 home inspections.
2. All candidates applying pursuant to this subsection must request in-training status. Home inspections shall not be conducted without receipt by the candidate, of in-training certification showing the candidate as a home inspector in-training.
3. The 100 home inspections shall meet the standards referenced in R4-30-301.01. These inspections shall be conducted on separate residential dwelling units and shall be listed on a log provided by the Board. The log shall include, with respect to each inspection, the address of the property, the date of the inspection, and the name and certification number of the attesting home inspector. A minimum of 10 of the 100 home inspections shall be parallel inspections, conducted as part of an approved education program or conducted under contract to or as a employee of an Arizona certified home inspector. The remainder of the home inspections shall be conducted either under contract to or as an employee of an Arizona certified home inspector.
4. A home inspector in-training shall be directly supervised by a certified home inspector while conducting home inspections for compensation.
 - a. The supervising certified home inspector shall sign the home inspection reports prepared as a result of the inspections conducted by the home inspector in-training and shall accept liability for the inspections.
 - b. The supervising certified home inspector shall provide a list of all home inspections performed by the home inspector in-training and shall provide the home inspector in-training copies of five home inspection reports prepared by the home inspector in-training.
5. The home inspector in-training's application package for certification as a home inspector shall be held in abeyance for a period of one year to allow for completion of the requisite number of home inspections.
6. In-training certification shall expire one year from the date of issuance and must be renewed by the in-training candidate if the number of home inspections for compensation required in order to obtain certification have not been completed.

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7. An in-training certificate holder who renews in-training certification must supply evidence of successful completion of the approved examination as specified in this Section within two years of the renewal date.
- C.** The application shall contain the following information:
1. Name, residence address, mailing address, e-mail address (if applicable), residence telephone number, and residence facsimile number (if applicable);
 2. Date of birth and social security number of the candidate;
 3. Citizenship or legal residence;
 4. A detailed explanatory statement regarding:
 - a. Any disciplinary action, including suspension and revocation, taken by another state or jurisdiction on any license or certification held by the applicant in any other state or jurisdiction;
 - b. Refusal of any license or certification by any other state or jurisdiction;
 - c. Any pending disciplinary action in any other state or jurisdiction on any license or certification held by the candidate;
 - d. Any alias or other name used by the candidate;
 - e. Any conviction for a felony or misdemeanor, other than a minor traffic violation.
 5. Documentation of absolute discharge from sentence at least five years prior to the application if an applicant has been convicted of 1 or more felonies
 6. Jurisdiction in which any other license or certification is held; type of license or certification, number, year granted, and how license or certification was granted (that is, by examination, education, experience or reciprocity).
 7. The current status of any application for any type of license or certification pending in another state or jurisdiction.
 8. Name, current address, telephone number and facsimile number of the candidate's current and former employers and immediate supervisors in the area of home inspection; dates of employment, candidate's title; description of the work performed; and number of inspections performed;
 9. Names and addresses of the last three immediate supervisors in past and present employment in home inspection, or other personal references. If a candidate cannot supply the names and addresses of supervisors or other personal references, the candidate shall provide to the Board a written, sworn statement explaining the inability to provide this information and the names and addresses of three additional references, unrelated to the candidate, at least 2 of whom are certified home inspectors.
 10. A release authorizing the Board to investigate the candidate's education, experience and good moral character and repute.
 11. An affidavit that the information provided to the Board is accurate, true and complete.
 12. Copies of five reports that meet the standards set forth in R4-30-301.01, verified on a form provided by the Board.
- D.** The Board staff shall review all applications and, if necessary, refer completed applications to the Home Inspector Rules and Standards Committee for evaluation. If the application is complete and in the proper form and the Board staff or committee is satisfied that all statements on the application are true and that the applicant is eligible in all other aspects to be certified as a home inspector, the Board staff or committee shall recommend that the Board certify the applicant. If the evidence is not clear and convincing of entitlement to certification, the matter shall be reviewed by the committee and the committee may request additional information in regard to any issue upon which the applicant has not established by clear and convincing evidence that he/she has met a particular criteria.
- E.** Loss of financial assurance shall require written notification to the Board by the Certified Home Inspector within 5 business days. The certificate holder's certification shall be suspended immediately and home inspections shall not be performed upon loss, until such time as current proof of financial assurance is provided to the Board. Revocation of certification shall automatically result if no proof of financial assurance is obtained within ninety days of loss of financial assurance or lapse of policy. Proof of financial assurance shall also be provided by the candidate at the time of each annual certification renewal. No home inspector shall be renewed unless the financial assurance is in full force and effect.

ARTICLE 3. REGULATORY PROVISIONS

R4-30-301.01. Home Inspector Rules of Professional Conduct

- A.** To the extent applicable, a home inspection shall be conducted in accordance with the "Standards of Professional Practice" adopted by the Arizona Chapter of the American Society of Home Inspectors, Inc., on September 30, 2001, the provisions of which are incorporated herein by reference and are on file with the Office of the Secretary of State. This section does not include any later amendments or additions to the incorporated matter. Copies of these standards are available at the offices of the Board of Technical Registration.
- B.** A Certified Home Inspector shall not:
1. Pay or receive, directly or indirectly, in full or in part, a commission or compensation as a referral or finder's fee;
 2. Perform, or offer to perform, for an additional fee, any repairs to a structure having been inspected by that inspector or the inspector's firm for a period of twenty-four months following the inspection; or
 3. Be accompanied by more than two home inspectors in-training while conducting any parallel home inspection.