

NOTICES OF FINAL RULEMAKING

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

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. ALLOPATHIC BOARD OF MEDICAL EXAMINERS

PREAMBLE

1. Sections Affected

R4-16-101
R4-16-103
R4-16-109
R4-16-401
R4-16-402
R4-16-403
R4-16-404
R4-16-405
R4-16-406
R4-16-407
R4-16-408
R4-16-409
R4-16-410

Rulemaking Action

Amend
Amend
New Section
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. §§ 32-1403(A)(8), 32-1403(A)(10), and 32-1404(D)

Implementing statutes: A.R.S. §§ 32-1405(C)(21) through 32-1405(C)(27), 32-1405(E), 32-1422(E), 32-1434(A), 32-1451(A), and 32-1426(C)

3. The effective date of the rules:

February 7, 2002

4. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 7 A.A.R. 2233, June 1, 2001

Notice of Proposed Rulemaking: 7 A.A.R. 3886, September 7, 2001

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

Name: Dominick Spatafora, Legislative and Regulatory Affairs Director

Address: Arizona Board of Medical Examiners
9545 East Doubletree Ranch Road
Scottsdale, AZ 85258

Telephone: (480) 551-2712

Fax: (480) 551-2701

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

The Arizona Board of Medical Examiners (Board) is created to protect the public from unlawful, incompetent, unqualified, impaired, or unprofessional practitioners of allopathic medicine. A.R.S. § 32-1403(A). A.R.S. § 32-1403(A)(8) authorizes the Board to make rules to regulate the practice of medicine, including qualifications of physicians. A.R.S. § 32-1404(D) authorizes the Board to adopt administrative hearing rules consistent with A.R.S. § 41-1001 et seq.

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The Board initiates the rulemaking for several reasons. First, rulemaking action on R4-16-101 incorporates the recommendations made in a February 1998 five-year review. Recommendations include amending the rule to be consistent with current rulewriting standards and conforming it to current law. The purpose of R4-16-101 is to designate the number of hours of required annual continuing medical education (CME), those programs which are approved for licenses to attend in order to meet the CME requirement, the process for requesting an extension to complete CME, and the CME reporting requirements.

Second, rulemaking action on R4-16-103 is being amended to conform with Laws 1999, Ch.218. Issues were identified regarding the use of the Special Purpose Licensing Examination (SPEX) in both the licensing and disciplinary process. Statutory language required the SPEX to be used as the sole determinant of competence. Laws 1999, Ch.18, allows the SPEX to be used as part of a comprehensive assessment of competence, not the sole determinant. Now, the failure to pass the SPEX alone does not create a legal presumption of incompetence, however, when used in conjunction with records review, physical and psychological assessments where appropriate, and practice history, the SPEX is an appropriate determinant. Therefore, R4-16-103 is amended to interpret statutory changes regarding the SPEX, in addition to, updating outdated rule language to reflect current standards.

Third, the Board is promulgating rules regarding fees currently in use pursuant to A.R.S. § 32-1436. A.R.S. § 32-41-1002(A) provides that the rulemaking provisions of the Arizona Administrative Procedures Act (APA) apply to all agencies and proceedings unless expressly exempt. The Board has not obtained a statutory exemption. As such, formal rules are being promulgated under A.R.S. § 32-1436.

The remaining rules are being promulgated due to Laws, 1999, Ch. 218, Laws 1999, which allowed the Arizona Board of Medical Examiners to delegate specified functions to the Executive Director. On July 28, 1999 the Board formally voted to delegate the acts promulgated in this rule to the Executive Director. In doing so, specific requirements were also voted on and are contained in this rulemaking. The Board believes this delegation will facilitate the flow of work, improve disciplinary timeliness, and allow the Board to focus upon the more important disciplinary matters and critical issues. The delegations include: interim evaluation and investigational interview, direct referral to formal interview, uncontested request for inactive status and cancellation of license, interim consent agreement, mediated case, referral to formal hearing, dismissal of complaint and denial of license. R4-16-410 explains how an aggrieved person may appeal an action taken by the executive director.

7. A reference to any study that the agency relied on in its evaluation of or jurisdiction for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

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

Not applicable

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

The rule has a minimal financial impact. The Arizona Board of Medical Examiners will bear a minimal cost for writing the rule and fulfilling requirements imposed by the Governor's Regulatory Review Council and the Secretary of State's Office, and for public comments from the regulated community and interested parties regarding the rulemaking.

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

After examining this rulemaking several times the Board decided to make one non-substantive change to R4-16-410(E)(1). The Board feels as though it would be clearer to say that "The Board shall consider the appeal at its next regularly scheduled meeting," as opposed to "The Board shall schedule the case for review at its next regularly scheduled meeting." In addition to the change listed above, other minor technical changes were made throughout the rules to improve clarity, grammar, and consistency as suggested by the G.R.R.C. staff.

11. A summary of the principal comments and the agency response to them:

No comments were received.

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

None

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

None

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

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 16. ALLOPATHIC BOARD OF MEDICAL EXAMINERS

ARTICLE 1. GENERAL PROVISIONS

Section

- R4-16-101. Continuing Medical Education
- R4-16-103. Licensure by Endorsement
- R4-16-109. Miscellaneous Fees

ARTICLE 4. EXECUTIVE DIRECTOR DUTIES

Section

- R4-16-401. Interim Evaluation and Investigational Interview
- R4-16-402. Direct Referral to Formal Interview
- R4-16-403. Uncontested Request for Inactive Status and License Cancellation
- R4-16-404. Interim Consent Agreement
- R4-16-405. Mediated Case
- R4-16-406. Referral to Formal Hearing
- R4-16-407. Dismissal of Complaint
- R4-16-408. Denial of License
- R4-16-409. Limitation Consent Agreement
- R4-16-410. Appealing Executive Director Actions

ARTICLE 1. GENERAL PROVISIONS

R4-16-101. Continuing Medical Education

- A. ~~Every calendar year, A physician each person~~ holding an active license to practice medicine in this ~~state~~ State shall complete ~~40 twenty~~ credit hours of the continuing medical education required by A.R.S. § 32-1434 ~~during the two calendar years preceding biennial registration. A physician may not carry excess hours over to another two-year cycle.~~ One hour of credit ~~is will~~ be allowed for each clock hour of participation in ~~Board-~~ approved continuing medical education activities, unless otherwise designated in ~~subsection (B) Subsection B~~ below.
- B. ~~A physician may claim continuing medical education for the following: Approved continuing medical education activities include the following:~~
 - 1. ~~Participating in an internship Internship, residency, or fellowship in~~ at a teaching institution approved by the American Medical Association, ~~or~~ the Association of American Medical Colleges, or the American Osteopathic Association. ~~A physician One credit hour may be claimed claim one credit hour of continuing medical education for each full day of training. No other credit may be claimed during in a full-time the time a physician is in full-time training in an approved program, or accredited program. Less for a less than full-time study may be claimed training on a pro-rata prorata basis. In this subsection teaching institutions define "full-time."~~
 - 2. ~~Participating in an education program Education~~ for an advanced degree in a medical or ~~medically-related medically related~~ field in a teaching institution approved by the American Medical Association, ~~or~~ the Association of American Medical Colleges, or the American Osteopathic Association. ~~A physician may claim one credit hour of continuing medical education One credit hour may be claimed for each full day of full-time study. Less than full-time study may be claimed on a pro-rata basis. or less than a full-time study on a prorata basis. In this subsection teaching institutions define "full-time".~~
 - 3. ~~Participating in full-time Full-time~~ research in a teaching institution approved by the American Medical Association, ~~or~~ the Association of American Medical Colleges, or the American Osteopathic Association. ~~A physician may claim one One credit hour for of continuing medical education may be claimed for each full day of full-time research, or research. Less than full-time research study may be claimed on a pro-rata prorata basis. In this subsection teaching institutions define "full-time".~~
 - 4. ~~Participating in an education program Education~~ certified as Category 1 by an organization accredited by the Accreditation Council ~~on~~ for Continuing Medical Education, 515 North State Street, Suite 2150, Chicago, Illinois 60610.
 - 5. ~~Participating in a medical education program Medical educational programs~~ designed to provide necessary understanding of current developments, skills, procedures, or ~~treatments treatment~~ related to the practice of medicine, ~~that is~~ provided by ~~an organization organizations or institution institutions that have not been~~ accredited by the Accreditation Council ~~on~~ for Continuing Medical Education.
 - 6. Serving as an instructor of medical students, house staff, other physicians, or allied health professionals from a hospital or ~~other health care~~ institution with a formal training program, ~~if where~~ the ~~instructional instruction~~ activities ~~are~~

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such as will provide ~~the instructor participants the licensee~~ with necessary understanding of current developments, skills, procedures, or ~~treatments treatment~~ related to the practice of allopathic medicine. ~~Publication~~

7. ~~Publishing or presentation presenting of medical a paper, report, or book that is authored and published and deals with current developments, skills, procedures, or treatments treatment related to the practice of allopathic medicine. The physician may claim one credit hour for each hour preparing, writing, and presenting materials:~~
- a. ~~Actually published or presented; and~~
 - b. ~~After the date of publication or presentation.~~
- ~~Credits may be claimed only for materials presented. Credits may be claimed once as of the date of publication or presentation. One credit hour may be reported per hour of preparation, writing and/or presentation.~~
8. ~~A credit hour Credit hours may be earned for any of the following activities that which provide necessary an understanding of current developments, skills, procedures, or treatments treatment related to the practice of allopathic medicine:~~
- a. ~~Completing Completion of a medical education program based on self-instruction that uses which utilized video-tapes, audiotapes, films, filmstrips, slides, radio broadcasts, or and computers;~~
 - b. ~~Reading Independent reading of scientific journals and books;~~
 - c. ~~Preparing Preparation for specialty board Board certification or recertification examinations;~~
 - d. ~~Participating Participation on a staff committee or quality of care committee, or and/or utilization review committee in a hospital, or health care institution, or government agency.~~
- C. If a physician person holding an active license to practice medicine in this state State fails to meet the continuing medical education requirements under subsection (A) ~~foregoing requirements~~ because of illness, military service, medical or religious missionary activity, residence in a foreign country, or other extenuating circumstances, the Board, upon appropriate written application, ~~shall may~~ grant an extension of time to complete the continuing medical education. ~~same on an individual basis.~~
- D. Each year, with the application for renewal of an active license to practice medicine in this State, the Board will include a form which requires the person holding the license to certify by signature, under penalty of perjury, that he or she has met the stipulated continuing medical education requirements. In addition, the Board may randomly require physicians submitting such a certification to demonstrate, prior to renewal of license, satisfaction of the continuing medical education requirements stated in his or her certification. The Board shall mail to each physician a license renewal form that includes a section regarding continuing medical education compliance. The physician shall sign and return the form certified under penalty of perjury that the continuing medical education requirements under subsection (A) are satisfied for the two-year period preceding biennial renewal. Failure to receive the license renewal form under subsection (A) shall not relieve the physician of the requirements of subsection (A). The Board may randomly audit a physician to verify compliance with the continuing medical education requirements under subsection (A).

R4-16-103. Licensure by Endorsement

- A. An applicant for licensure by endorsement may make a written request from of the Board ~~in writing, for an extension beyond of the seven-year 7-year time period provided by A.R.S. § 32-1426 (B)(4) for passage of one to pass one of the combinations of specified examinations. examinations specified in that subsection. An~~ The applicant shall submit the written the request to the Board ~~together~~ with evidence that:
1. The applicant meets all requirements for licensure and for taking the United States Medical Licensing Examination,
 2. The combination of examinations cannot be passed in the time required by law, and
 3. The applicant is:
 - a. A full-time student in an approved school of medicine, as defined in A.R.S. § 32-1401(5);
 - b. A participant in an approved hospital internship Internship, residency, or clinical fellowship program, as defined in A.R.S. § 32-1401(4); or
 - c. A full-time student in a recognized medical degree program, as defined in subsection (E), concurrently or consecutively with medical school or postgraduate training.
- B. ~~A requested extension shall be granted by the Board upon~~ If the Board determines determining that an the applicant has submitted evidence which satisfies the requirements of subsection (A), the Board shall grant the extension.
- C. ~~An applicant may be granted an An extension of up to shall not exceed 10 years from the date of the on which the applicant successfully completes completion of the first 1st part of the combination of examinations.~~
- D. ~~If the Board denies the request for extension, the An applicant who is denied an extension may request a hearing to contest the denial by filing a written notice with the Board within 16 no later than 30 days of after receipt of notice of the Board's action. A hearing shall be conducted in accordance with according to A.R.S. Title 41, Chapter 6, Article 6 10.~~
- E. ~~For purpose of In this Section, a "recognized degree program" means an education program that is offered by a college or university approved by the New England Association of Schools and Colleges, Middle States Association of Colleges and Secondary Schools, North Central Association of Colleges and Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, or the Western Association of Schools and Colleges; or accredited by the United States Department of Education, the Council on Postsecondary Accreditation, the Association of American Medical Colleges, the Association of Canadian Medical Colleges, or the American Medical Association.~~

F. An applicant for licensure by endorsement under A.R.S. § 32-1426(C) shall:

1. Provide proof of passing an examination specified in A.R.S. § 32-1426(A) less than ten years before the date of filing a license application with the Board.
2. Hold a current certification in an American Board of Medical Specialty (“ABMS”), and
3. Take and pass the Special Purposes Examination (SPEX).

R4-16-109. Miscellaneous Fees

The following fees are established:

1. Application to practice allopathic medicine, \$500;
2. For issuing an initial license, \$450, which may be prorated from date of issuance to date of license renewal;
3. Two-year license renewal, \$450;
4. Reactivation of an inactive license, \$450, which may be prorated from date of reactivation to date of license renewal;
5. Application for a temporary license to practice medicine, \$200;
6. Locum tenens registration, \$200;
7. Duplicate license, \$50;
8. Annual registration of an approved internship, residency, clinical fellowship program, or short-term residency program, \$25;
9. Annual teaching license at an approved school of medicine or at an approved hospital internship, residency, or clinical fellowship program, \$225;
10. Five-day teaching permit at an approved school of medicine or at an approved hospital internship, residency, or clinical fellowship program, \$100;
11. Copy of the annual allopathic medical directory, \$30;
12. Initial registration to dispense drugs and devices, \$200;
13. Annual renewal to dispense drugs and devices, \$100;
14. Penalty fee for late renewal of an active license, \$350;
15. Verifying a license, \$5 per request;
16. Copies of the minutes of all Board meetings during a fiscal year, \$15 per meeting;
17. Copies of records, documents, letters, minutes, applications, and files, \$1 for the first three pages and 25¢ for each additional page; and
18. Sale of computerized tapes or diskettes not requiring programming, \$100.

ARTICLE 4. EXECUTIVE DIRECTOR DUTIES

R4-16-401. Interim Evaluation and Investigational Interview

A. The executive director may require a physician, who is under investigation by the Board, to submit to a mental, physical, oral, or written medical competency examination after the following:

1. Reviewing the allegations and investigator’s summary of findings; and
2. Consulting with and receiving the agreement of the Board’s supervising medical consultant or designee that an examination is necessary.

B. The executive director may request a physician to attend an investigational interview to answer questions regarding a complaint against the physician. Before issuing a request for an investigational interview, the executive director shall review the allegations and facts to determine whether an interview is necessary to provide information the Board needs to adjudicate the case. The executive director shall consult with and receive the agreement of either the investigation supervisor or supervising medical consultant that an investigational interview is necessary before requesting one.

C. The executive director shall report to the Board at each regularly scheduled Board meeting, a summary of the number and type of evaluations ordered and completed since the preceding Board meeting.

R4-16-402. Direct Referral to Formal Interview

The executive director shall refer a case to a formal interview on a future Board meeting agenda. If the case involves quality of care, and the investigative staff, the medical consultant, and the lead Board member concur after review of the case that a formal interview is appropriate.

R4-16-403. Uncontested Request for Inactive Status and License Cancellation

A. If a physician requests inactive status or license cancellation and meets the requirements of A.R.S. §§ 32-1431 and 32-1433, and if the request is not contested, the executive director shall grant the request.

B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the individuals granted inactive or cancelled license status since the preceding Board meeting.

R4-16-404. Interim Consent Agreement

The executive director may enter into an interim consent agreement with a physician if there is evidence that a restriction is needed to mitigate imminent danger to the public health and safety and the investigative staff, the medical consultant, and the lead Board member concur after review of the case that a consent agreement is appropriate.

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R4-16-405. Mediated Case

- A. The executive director shall close a case resolved through mediation.
- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the physicians whose cases are resolved through mediation since the preceding Board meeting.

R4-16-406. Referral to Formal Hearing

- A. The executive director may directly refer a case to a formal hearing if the investigative staff, the medical consultant, and the lead Board member concur after review of the physician's case that a formal hearing is appropriate.
- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the physicians whose cases were referred to formal hearing since the preceding Board meeting and whether the referral is for revocation, suspension or is a result of an out-of-state disciplinary action, or is due to complexity of the case.

R4-16-407. Dismissal of Complaint

- A. The executive director, with the concurrence of the investigative staff, shall dismiss a complaint if the review shows the complaint is without merit and dismissal is appropriate.
- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the physicians about whom complaints were dismissed since the preceding Board meeting.

R4-16-408. Denial of License

- A. The executive director shall deny a license to an applicant who does not meet statutory requirements for licensure if the executive director, in consultation with the investigative staff and the medical consultant concur after reviewing the application, that the applicant does not meet the statutory requirements.
- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the physicians whose applications were denied since the preceding Board meeting.

R4-16-409. Limitation Consent Agreement

The executive director may enter into a consent agreement under A.R.S. § 32-1451(F) with a physician to limit the physician's practice if there is evidence that a licensee is mentally or physically unable to safely engage in the practice of medicine and the investigative staff, the medical consultant, and the lead Board member concur after review of the case that a consent agreement is appropriate.

R4-16-410. Appealing Executive Director Actions

- A. Any person aggrieved by an action taken by the executive director may appeal that action to the Board. The aggrieved person shall file a written request to the Board:
 - 1. Thirty days after notification of the action, if personally served; or
 - 2. Thirty-five days after the notification, if mailed.
- B. The aggrieved person shall provide, in the written request, evidence showing:
 - 1. An irregularity in the investigative process or the executive director's review deprived the party of a fair decision; or
 - 2. Misconduct by Board staff, a Board consultant, or the executive director that deprived the party of a fair decision; or
 - 3. Material evidence newly discovered that could have a bearing on the decision and that, with reasonable diligence, could not have been discovered and produced earlier.
- C. The fact that the aggrieved party does not agree with the final decision is not grounds for a review by the Board.
- D. If an aggrieved person fails to submit a written request within the time specified in subsection (A), the Board is relieved of the requirement to review actions taken by the executive director. The executive director may, however, evaluate newly provided information that is material or substantial in content to determine whether the Board should review the case.
- E. If a written request is submitted that meets the requirements of subsection (B):
 - 1. The Board shall consider the written request at its next regularly scheduled meeting.
 - 2. If the written request provides new material or substantial evidence that requires additional investigation, the investigation shall be conducted as expeditiously as possible and the case shall be forwarded to the Board at the first possible regularly scheduled meeting.

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Phoenix, AZ 85007

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Fax: (602) 528-3956

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

The State Board of Tax Appeals (the "Board") is updating and reorganizing its rules to conform to statutory and procedural changes. The old rules in Title 16, Chapter 3 are being concurrently repealed in this rulemaking. The new rules incorporate changes proposed in the last five-year review report. All rule Sections have been updated to reflect current rule-drafting style.

7. A reference to any study that the agency relied on in its evaluation of or justification for the final rules and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

Not applicable

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

Not applicable

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

The parties that appear before the Board consist of taxpayers, which may include small businesses, corporations, municipalities, as well as individuals, and the Arizona Department of Revenue as represented by Assistant Attorney Generals. The Board had 144 appeals before it during the last fiscal year. This number could increase significantly during the next fiscal year due to the anticipated number of appeals associated with the alternative fuel program. The implementation of the rules will only minimally impact most participants in the tax appeals process and should result in no appreciable difference in the state's revenues.

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

Minor grammatical and stylistic changes were made at the request of G.R.R.C. staff.

Below are the minimal changes between the text of the rules contained in the notice of the proposed rulemaking filed with the Secretary of State pursuant to A.R.S. § 41-1022 and the text of these final rules and the reasons for the changes:

R16-3-108, entitled "Hearing Procedure," erroneously duplicated information in subsection (A)(2) in subsection (A)(4). Both subsections stated that "The Department may make an opening statement or reserve its opening statement until the close of Appellant's case." This error was not a substantive mistake and subsection (A)(4) was corrected to state that "The Department may, if previously reserved, make an opening statement, state its position, and present its evidence" when the rules were republished. (6 A.A.R. 4242, November 13, 2000)

R16-3-112 and the corresponding repeal of R16-3-118 were removed from the package to address concerns of the Department of Revenue. These rules will appear in a future Notice of Supplemental Proposed Rulemaking.

11. A summary of the principal comments and the agency response to them:

The principal comment received by the Board was submitted by the Department of Revenue concerning rule R16-3-112, which governs the burden of proof. The Department believes that the new rule, which changes the burden of proof from the taxpayer to the Department, under certain circumstances, goes beyond the authority of the Board. The Board removed R16-3-112 and the corresponding repeal of R16-3-118 to address this comment. These rules will appear in a future Notice of Supplemental Proposed Rulemaking.

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

Not applicable

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

None

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

No

15. The full text of the rules follows:

TITLE 16. TAX APPEALS

CHAPTER 3. STATE BOARD OF TAX APPEALS - ~~DIVISION TWO~~ LUXURY, TRANSACTION PRIVILEGE (SALES), ~~RENTAL OCCUPANCY~~, USE, ESTATE, INCOME

ARTICLE 1. ~~GENERAL PROVISIONS~~ TAX APPEAL PROCEDURES

Section

- R16-3-101. ~~Purpose~~ Definitions
- R16-3-102. ~~Proper parties~~ Notice of Appeal
- R16-3-103. ~~Form of notice of appeal~~ Incomplete Notice of Appeal
- R16-3-104. ~~Manner of filing~~ Memoranda, Waivers, and Supporting Authorities
- R16-3-105. ~~Timeliness of appeal~~ Stipulation or Statements of Fact
- R16-3-106. ~~Supplementation of appeal~~ Dismissal, Withdrawal, or Suspension of Appeal
- R16-3-107. ~~Memoranda~~ Request for Hearing
- R16-3-108. ~~Dismissal of appeal~~ Hearing Procedure
- R16-3-109. ~~Deferral~~ Evidence Produced at the Hearing
- R16-3-110. ~~Hearing; oral or waived~~
- ~~R6-3-116~~R16-3-110. Official Notice
- R16-3-111. ~~Hearing before single member/hearing officer~~ Subpoena
- R16-3-112. ~~Place of hearing; time allowed~~ Repealed
- R16-3-113. ~~Hearing procedure~~ Transcripts and Records
- R16-3-114. ~~Stipulation of facts~~ Decision or Order
- R16-3-115. ~~Evidence~~
- ~~R16-3-121~~R16-3-115. Rehearing or Review of Decision or Order
- R16-3-116. Renumbered
- R16-3-117. ~~Subpoena~~ Repealed
- R16-3-119. ~~Transcripts and records~~ Repealed
- R16-3-120. ~~Decisions and orders~~ Repealed
- R16-3-121. Renumbered

ARTICLE 1. ~~GENERAL PROVISIONS~~ TAX APPEAL PROCEDURES

R16-3-101. Purpose Definitions

The purpose of the law providing for the establishment of the State Board of Tax appeals, Division Two (hereinafter "Board") is to provide taxpayers with an effective opportunity to appeal from decisions of the Department of Revenue (hereinafter "Department") concerning luxury, transaction privilege (sales), rental occupancy, use, estate, income and any other taxes not appealable to Division One. In order to implement that law and its purpose, these rules and Regulations are hereby promulgated.

For purposes of this Article:

1. "Appellant," unless otherwise noted, means a taxpayer or the representative of a taxpayer, or other person or entity directly interested who is legally entitled to initiate proceedings before the Board.
2. "Board" means the State Board of Tax Appeals.
3. "Clerk" means the Clerk appointed by the Board to carry out the duties established by A.R.S. § 42-1252.
4. "Commission" means the Municipal Tax Code Commission.
5. "Day" means a calendar day. If the last day for filing a document under the provisions of this Article falls on a Saturday, Sunday, or legal holiday, the document is considered timely if filed on the following business day.
6. "Department" means the Arizona Department of Revenue.
7. "Hearing Officer" means a person appointed by the Board to take oral testimony and other evidence, make recommendations, and carry out the duties of the Board established by A.R.S. § 42-1252.
8. "Memorandum" means a document that supports a party's position.
9. "Notice of appeal" means a written request for correction or redetermination, including all applicable attachments.
10. "Notice of determination" means a written notification of a final decision or order issued by the Department or any other governmental entity from which an appeal to the Board may be taken.
11. "OAH" means Office of Administrative Hearings as established by A.R.S. § 41-1092.01.
12. "Quorum" means two members of the Board.
13. "Supporting authorities" means cases and authorities cited and relied on by a party.

R16-3-102. Proper parties Notice of Appeal

An appeal from a ruling of the Department shall be filed by and in the name of the person against whom the deficiency or other tax liability was determined, or by and in the full descriptive name of the fiduciary or other person directly interested who is legally entitled to institute the proceedings. If there is a variance between the name set forth in the notice of determination or

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other notice of tax liability issued by the Department and the name of the appellant, the appeal shall contain a statement of the reasons for such variance:

- A.** The Appellant shall sign the notice of appeal and mail or deliver the original and six copies to the Board's office in Phoenix, Arizona. The Board shall consider a notice of appeal received by mail filed on the date shown by its postmark. In the absence of a legible postmark, the Board shall determine whether an appeal was timely filed.
- B.** The Appellant shall legibly type, write, or print the notice of appeal and include the following information:
 - 1. The Appellant's name, address, and telephone number. If there is a difference between the name on the notice of determination and the name on the notice of appeal, the notice of appeal shall contain an explanation of the difference;
 - 2. The amount of money involved in the Department's determination, the type of tax, the year or other period for which the determination was made, and, if different from the determination, the approximate amount of money at issue in the appeal;
 - 3. A statement of issues involved in the appeal;
 - 4. A statement of errors the Appellant alleges the Department committed in the determination;
 - 5. The relief sought; and
 - 6. Whether a hearing is requested. The Appellant may waive a previously requested hearing within 10 days after the due date of the reply memorandum.
- C.** The Appellant shall file six copies of the notice of determination and any findings of fact or conclusions of law issued by the Department or the OAH with the notice of appeal.
- D.** The Appellant shall file the notice of appeal not more than 30 days after the final decision or order of the Department or the OAH becomes final.
- E.** In addition to the requirements in subsections (A) through (D), a notice of appeal regarding reimbursement for fees or other costs shall include six copies of the following:
 - 1. The application that was submitted to the Department for reimbursement of fees or other costs.
 - 2. Documentation of payment of fees or other costs.
- F.** If the notice of appeal is filed by a person aggrieved by an order or decision of the Municipal Tax Code Commission, the Appellant shall file a signed notice of appeal within 30 days after receiving the Commission's notice of the order or decision. The notice of appeal shall include the following information:
 - 1. The name and address of each municipality;
 - 2. The Appellant's name, address, and telephone number;
 - 3. The applicable tax rate of each municipality;
 - 4. A statement of issues involved in the appeal;
 - 5. The relief sought; and
 - 6. Whether a hearing is requested.
- G.** The Appellant shall submit six copies of any municipal ordinance involved in the appeal.

R16-3-103. ~~Form of notice of appeal~~ Incomplete Notice of Appeal

- A.** ~~All notices of appeal shall be typewritten, legible written or legible printed and shall state the following information:~~
 - 1. ~~Appellant's name and address.~~
 - 2. ~~The amount of deficiency (or liability) determined by the Department, the nature of the tax, the year or other period for which the determination was made, and, if different from the determination, the approximate amount of taxes in controversy.~~
 - 3. ~~Statement of error(s) alleged to have been committed by the Department in determination of the deficiency.~~
 - 4. ~~Statement of fact(s) upon which the appellant relies to support their assignment of error(s) alleged to have been committed by the Department.~~
 - 5. ~~Relief sought.~~
 - 6. ~~If oral hearing is requested.~~
- B.** ~~A copy of the decision notice, including any findings of fact and conclusions of law issued by the Department, shall be filed with the notice of appeal.~~
- C.** ~~A notice of appeal shall not be accepted for filing more than 30 days after the receipt of the decision or order of the Department.~~
- A.** If the Appellant files a timely notice of appeal that is incomplete, the Clerk shall grant the Appellant 15 days to perfect the appeal.
- B.** Upon written request, the Clerk shall grant the Appellant a reasonable extension of time to comply with the provisions of this Section for good cause shown.
- C.** The Board may dismiss an appeal or exclude supplemental information for the Appellant's failure to act in a timely manner.

R16-3-104. Manner of filing Memoranda, Waivers, and Supporting Authorities

- ~~A.~~ An appeal to the Board from action by the Department and any memoranda in support of such appeal shall be mailed or delivered to the office of the Board in Phoenix, Arizona and shall be filed in duplicate.
- ~~B.~~ Upon receipt of a notice of appeal, the Clerk shall record the filing of the appeal in the docket book and assign a case number. A copy of the appeal and any memoranda in support thereof shall then be transmitted by the Board to the Department at Phoenix, Arizona.
- ~~C.~~ A fee will not be charged for the filing of any document.
- A. Each party shall file an original and 6 copies of any memoranda filed with the Board. The Board shall provide a copy to the opposing party.
- B. A party may waive in writing the right to file a memorandum any time before the memorandum is due.
- C. The Appellant shall file a memorandum of not more than 15 pages that addresses the facts and law in support of the appeal within 20 days after filing the notice of appeal.
- D. The Department shall file a response memorandum of not more than 15 pages within 20 days after receiving the Appellant's memorandum or waiver.
- E. The Appellant may file a reply memorandum of not more than 10 pages within 15 days after receiving the Department's memorandum. The Appellant's reply memorandum shall only address the issues of law or fact raised in the Department's memorandum.
- F. Each party shall file 6 copies of cited supporting authorities at the time the party files a memorandum.
- G. Upon written request, the Board may grant a reasonable extension of time for filing a memoranda upon good cause shown.

R16-3-105. Timeliness of appeal Stipulation or Statements of Fact

- ~~A.~~ An appeal will be timely filed if it is received at the office of the Board within 30 days from receipt of the Department's decision. If the last day for filing an appeal falls on a Saturday, Sunday, or legal holiday, the appeal may be timely filed on the following business day. An appeal filed by mail will be considered filed on the date shown by its postmark. In the absence of other evidence, the Board will determine whether an appeal was timely filed.
- ~~B.~~ An appeal not filed within the time prescribed shall be dismissed pursuant to R16-3-108.

At the Board's request, the parties shall file a stipulation or separate statements of fact with any supporting affidavits or exhibits, listing the facts upon which they agree, the facts that are in dispute, and the reasons for the dispute. If there are no facts in dispute, this should be stated in the stipulation or statements.

R16-3-106. Supplementation of appeal Dismissal, Withdrawal, or Suspension of Appeal

If the appeal is timely but incomplete, the appellant may be granted an additional period of time by the Clerk within which to supplement the appeal. The appeal is subject to dismissal or the supplemental information is subject to exclusion if it is not filed within the time period which was granted for that purpose. Reasonable extensions of time for complying with the provisions of this rule may be granted upon written request.

- A. If the Board lacks jurisdiction regarding an appeal, the Board shall dismiss the appeal on its own motion or on motion by the Department.
- B. The Appellant may withdraw an appeal upon written notification to the Board or by the parties' written stipulation at any time before the Board issues its decision.
- C. The Board may suspend proceedings for a reasonable period of time at the written request of either party, the written stipulation of the parties, or its own discretion.

R16-3-107. Memoranda Request for Hearing

- ~~A.~~ The appellant may file a memorandum in support of the appeal within 30 days of filing the notice of appeal. The Department will be allowed 30 days from the date of receipt of appellant's memorandum to respond. In the event that appellant does not file a memorandum, the Department will be allowed 30 days to file its memorandum from the time appellant's memorandum would have been due. The appellant will then be allowed 30 days from receipt from the Department's memorandum to respond. Appellant's reply memorandum shall be limited to a reply to the issues of law or fact raised in the Department's memorandum. Reasonable extensions of time for the filing of memoranda may be granted upon written request from either party. The Board will transmit a copy of any memorandum filed to the opposing party. Both or either party to the appeal may waive the filing of memorandum.
- ~~B.~~ If the last day for filing a memorandum falls on a Saturday, Sunday, or legal holiday, the memorandum may be timely filed on the following business day. A memorandum filed by mail will be considered filed on the date shown by its postmark. In the absence of other evidence, the Board will determine whether a memorandum was timely filed.
- A. The Board shall schedule a hearing at the written request of either party. Either party may waive appearance, in writing, at least 10 days before the hearing.
- B. A hearing officer or 1 or more members of the Board shall hold the hearing, taking testimony and other evidence.
- C. The Board shall send a written notice to the parties of the date, time, and location of the hearing at least 20 days before the hearing. The Board shall ordinarily schedule one hour hearings. Upon written request, and after consideration of the hear-

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ing schedule, the Board may grant a party additional time for the hearing if the request is filed with the Clerk within 10 days after the due date of the reply memorandum.

- D. The Board may postpone, continue, or cancel a hearing for good cause upon the written request of either party if the request is submitted at least 10 days before the hearing.
- E. If a hearing is not requested, the Board shall consider the appeal submitted for decision based on the record.

R16-3-108. Dismissal of appeal Hearing Procedure

- A. Prior to the issuance of a decision by the Board, an appeal may be withdrawn at the written request of the appellant or upon the basis of a written stipulation between the appellant and the Department. The Board shall thereafter enter an order dismissing the appeal.
- B. Whenever it is evident that the Board lacks jurisdiction of an appeal, such appeal shall be dismissed by order of the Board on its own motion or on motion filed by the Department.
- A. A hearing shall ordinarily proceed in the following manner:
 - 1. The Appellant may make an opening statement.
 - 2. The Department may make an opening statement or reserve its opening statement until the close of the Appellant's case.
 - 3. The Appellant shall state its position and present its arguments and evidence.
 - 4. The Department may make a previously-reserved opening statement, state its position, and present its arguments and evidence.
 - 5. The Appellant may make a closing statement, presenting final arguments.
 - 6. The Department may make a closing statement, presenting final arguments.
 - 7. The Appellant may reply to the Department's closing statement or final arguments.
- B. The Board may direct a party to submit an additional memorandum or information within a reasonable period of time. The Board shall grant the opposing party a reasonable period of time to respond to the additional memorandum or information.
- C. The Board may recess or continue a hearing for good cause.

R16-3-109. Deferral Evidence Produced at the Hearing

The Board may defer proceedings for an indefinite period upon the filing of a written stipulation between the appellant and the Department. Proceedings may also be deferred for a reasonable period upon the request of either party or at the discretion of the Board.

- A. The Board shall accept oral evidence only upon oath or affirmation.
- B. Each party may call and examine witnesses, introduce exhibits, and cross-examine witnesses on any matter relevant to the appeal. The presiding officer at the hearing may call a party, or any other person who is present, to testify under oath or affirmation. The presiding officer and any member of the Board or its staff may question witnesses.
- C. The Board may admit any relevant evidence, including affidavits and forms of hearsay evidence. The Board shall be liberal in admitting evidence but shall consider objections to the admission and comments on the weakness of evidence in assigning weight to the evidence.
- D. The Board may admit carbon copies, photocopies, or copies made by similar procedures in place of original documents upon a showing of authenticity and proper foundation.
- E. A party may substitute an exact legible copy for an exhibit upon written request if the request is submitted to the Board within 10 days after the hearing.

R16-3-110. Hearing; oral or waived

- A. After the notice of appeal and permitted memoranda are filed, the appeal shall be set for oral hearing. Written notice of the time and place of hearing will be sent to the parties at least 20 days in advance. The hearing may be postponed for good cause shown, in the Board's discretion, at the written request of either party.
- B. Oral hearing may be waived in writing by both the appellant and the Department. If oral hearing is waived, the appeal will be deemed submitted to the Board for decision upon the basis of the notice of appeal and any memoranda filed in the matter. Either party may waive appearance at the oral hearing.

~~R16-3-116.~~ R16-3-110. Official Notice

- A. The Board may take official notice as an admission of facts in the case of the following without the production of additional evidence:
 - 1. Records maintained by the Board.
 - 2. Tax returns filed with the Department for or on behalf of the ~~appellant~~ Appellant or any affiliated company ~~together with and~~ related records on file with the Department.
 - 3. Any fact that may be judicially noticed by the courts of this state.
- B. The parties may, refute any matters ~~thus~~ officially noticed at any time before the Board's decision or order becomes final.

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R16-3-111. ~~Hearing before single member/hearing officer~~ Subpoenas

When a member of the Board or hearing officer conducts a hearing, that individual shall make a report to the other members of the Board. The report shall include a summary of the material evidence presented at the hearing, a recommendation as to the Board's decision and the reasons in support of the recommended decision.

The Board may, at its discretion or upon written request submitted by a party at least 15 days before a hearing, issue subpoenas for the attendance of witnesses or the production of books, records, documents, or other evidence that is not confidential or privileged. A subpoena shall be served on behalf of and at the expense of the party requesting its issuance.

R16-3-112. ~~Place of hearing; time allowed~~ Repealed

Oral hearings are held in the Board's hearing room in Phoenix, Arizona. Hearings shall ordinarily be conducted between the hours of 9 A.M. and 5 P.M. and are scheduled to last for not more than one hour. If additional time is needed, this may be arranged in advance through the Clerk of the Board. Hearings may be authorized to be held in other parts of the state subject to the approval of a majority of the Board.

R16-3-113. ~~Hearing procedure~~ Transcripts and Records

A. The hearing will ordinarily proceed in the following manner:

1. The appellant may make an opening statement.
2. The Department may make an opening statement or reserve its opening statement until the close of the appellant's case;
3. The appellant will state its position and present its evidence;
4. The Department may, if previously reserved, make an opening statement, state its position and present its evidence;
5. Closing statements or arguments of the appellant may be made;
6. Closing statements or arguments of the Department may be made;
7. The appellant may reply to any statements or arguments.

B. If the Board desires the submission of additional memoranda or information, it shall so direct the parties to comply within a reasonable period of time.

C. Whenever, because of illness, emergency or for other reasons the Board considers that it would be in the interest of justice to order a recess or continuance, the hearing shall be recessed or continued to a specified date, time and place.

A. The hearing before the Board shall be transcribed upon written request submitted by a party to the Board at least 5 days before the hearing. The transcript shall be prepared at the expense of the requesting party.

B. A person shall not remove the records of the Board from its office for use as evidence or for other purposes. The Board shall provide certified copies of records as required under A.R.S. Title 39, Chapter 1.

R16-3-114. ~~Stipulation of facts~~ Decision or Order

The appellant and the Department may file a stipulation stating the facts upon which they agree, the facts which are in dispute and the reasons for the dispute. The Board may require the parties to file such a stipulation.

A. If a quorum of the Board agrees on a decision or order, the Board shall issue the decision or order.

B. The Board shall issue all decisions or orders in writing and shall include separately-stated findings of fact and conclusions of law.

C. The Board shall mail, return receipt requested, or hand deliver a decision or order to the parties.

D. Except in the case of a tax dispute between municipalities, a decision or order is final 30 days after the Appellant receives it unless an aggrieved party files a motion for rehearing or review within 15 days after receipt.

E. In a dispute between municipalities, a decision or order is final on the date of receipt by the party. An aggrieved party has 30 days to appeal the decision or order of dismissal to the tax court.

~~R16-3-115. Evidence~~

A. ~~Oral evidence will be taken only on oath or affirmation.~~

B. ~~Each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, impeach any witness regardless of which party called the witness to testify, and rebut the evidence against it. A party or its employee, agent or officer may be called by the opposing party and examined as if under cross-examination. The presiding officer at the hearing may call a party, or any other person who is present, to testify under oath or affirmation. Any member of the Board or its staff may question witnesses.~~

C. ~~Any relevant evidence, including affidavits and other forms of hearsay evidence, will be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. The Board will be liberal in admitting evidence, but objections to the admission of and comments on the weaknesses of evidence will be considered in assigning weight to the evidence which it considers irrelevant, untrustworthy or unduly repetitious.~~

D. ~~Carbon copies, photocopies or copies made by other types of similar procedures may, upon a showing of proper foundation, be admitted in evidence or substituted in place of the original documents.~~

E. ~~At the conclusion of the hearing, any exhibit may be withdrawn on written request of the party who produced the exhibit. In such case the party may be required to substitute an exact legible copy of the original thereof.~~

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R16-3-121. R16-3-115. Rehearing or Review of Decision or Order

- A.** ~~Procedure; grounds. A decision of the Board may be vacated and~~ The Board may grant a rehearing or review of the a decision or order ~~granted based on a motion filed by the an aggrieved party, within 15 days from receipt of such order or decision or at its own discretion,~~ for any of the following reasons materially affecting his rights:
1. ~~Irregularity in the proceedings of the Board or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing. The findings of fact, conclusions of law, order, or decision are not supported by the evidence or are contrary to law.~~
 2. ~~Misconduct of the prevailing party. The party seeking review was deprived of a fair hearing due to irregularity in the proceedings, abuse of discretion, or misconduct of the prevailing party.~~
 3. Accident or surprise which could not have been prevented by ordinary prudence.
 4. Material evidence, newly discovered, which with reasonable diligence could not have been discovered and produced at the hearing.
 5. ~~Excessive or insufficient damages. Error in admission or rejection of evidence, or other errors of law occurring at the hearing or during the progress of the action.~~
 6. ~~Error in admission or rejection of evidence, or other errors of law occurring at the hearing or during the appeal. The decision is the result of passion, bias or prejudice.~~
 7. ~~That the decision is the result of passion or prejudice.~~
 8. ~~That the decision, findings of fact, or conclusions of law is not justified by the evidence or is contrary to law.~~
- B.** ~~Scope. On motion for a rehearing or review of a decision, the Board may open the decision, if one has been entered take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions of law or make new findings and conclusions, and direct the entry of a new decision. Enforcement of a decision of the Board is stayed pending a determination on the motion for rehearing or review. If a motion for rehearing or review is denied, the stay is automatically lifted. The decision becomes final 30 days after the Appellant is notified of the Board's action on the motion for rehearing or review.~~
- C.** ~~Contents of motion; amendment; rulings reviewable~~
1. ~~The motion for a rehearing or review of a decision shall be in writing, shall specify generally the grounds upon which the motion is based, and may be amended at any time before it is ruled upon by the Board.~~
 2. ~~Upon the general ground that the Board erred in admitting or rejecting evidence, the Board shall review all rulings during the hearing upon objections to evidence.~~
 3. ~~Upon the general ground that the decision or findings of fact is not justified by the evidence, the Board shall review the sufficiency of the evidence.~~
- The aggrieved party shall ensure that the motion for a rehearing or review is in writing and specifies the grounds upon which the motion is based. The aggrieved party may amend the motion at any time before the Board rules on it.
- D.** ~~Time for serving affidavits. When a motion for rehearing or review of a decision is based upon affidavits, they shall be served with the motion. The opposing has 20 days after receipt of the motion and affidavits within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the Board for good cause shown or by the parties by written stipulation. The Board may permit reply affidavits. If the Board desires a response to the motion for rehearing or review from the opposing party, the Board shall notify the opposing party in writing and allow a reasonable period of time for preparation and filing of the response.~~
- E.** ~~On initiative of the Board. Before the decision becomes final, the Board on its own initiative may order a rehearing or review of the decision for which it might have granted a rehearing or review of the decision on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Board may grant a motion. In either case, the Board shall specify in the order the grounds for the rehearing or review. After granting a motion for rehearing or review, the Board may take additional testimony, amend findings of fact or conclusions of law, or make new findings or conclusions, and issue a new decision, depending on the particular circumstances of the appeal.~~
- F.** ~~Questions to be considered at rehearing or review of decision. A rehearing or review of a decision, if granted, shall be only a rehearing or review of the question or questions with respect to which the decision is found erroneous, if separable. If a rehearing or review is ordered because the refund or assessment is excessive or insufficient and granted solely for that reason, the decision shall be set aside only in respect of the refund or assessment, and shall stand in all other respects.~~
- G.** ~~Specification of grounds of rehearing or review of a decision in order. order granting a rehearing or review of a decision shall be made and entered unless the order specifies with particularity the ground or grounds on which the rehearing or review of the decision is granted.~~

R16-3-117. Subpoena Repealed

- A.** ~~Subpoenas for the attendance of witnesses and/or the production of books, records, documents and other evidence may, upon request by any party or at the Board's instance, be issued by the Board. Except where the subpoena is issued at the instance of the Board, a subpoena shall be served on behalf of and at the expense of the person requesting its issuance.~~
- B.** ~~Nothing in this regulation shall be construed to authorize the issuance of a subpoena for confidential or privileged information.~~

R16-3-119. ~~Transcripts and records~~ Repealed

- ~~A. The record of hearing before the Board will be transcribed at the request of any party to the appeal. The transcript shall be prepared at the expense of the requesting party, unless otherwise provided by law. A request that the hearing be transcribed shall be made in writing to the Clerk of the Board at least five days in advance of the hearing.~~
- ~~B. The records and files of the Board will not be removed from its office for use as evidence or other purposes. Certified copies of records which the Board is permitted by law to divulge will, however, be furnished.~~
- ~~C. Where certified copies of papers or records are requested, a reasonable charge will be made as determined by the Board.~~

R16-3-120. ~~Decisions and orders~~ Repealed

- ~~A. A decision or order must be agreed upon by a quorum of the Board. Two members shall constitute a quorum. Any member who dissents may state the reasons for their dissent.~~
- ~~B. All decisions shall be in writing and shall include findings of fact and conclusions of law, separately stated.~~
- ~~C. Notice of the decision or order of the Board shall be mailed, return receipt requested, or delivered to all parties to the proceedings.~~
- ~~D. Such order or decision shall be final as to a party upon the expiration of 30 days from receipt thereof. The Board shall send a copy of the return receipt from the appellant to the Department within five days of the return thereof.~~

R16-3-121. Renumbered

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 3. DEPARTMENT OF TRANSPORTATION - HIGHWAYS

PREAMBLE

- 1. Sections Affected:**
R17-3-703
- Rulemaking Action:**
Amend
- 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. §§ 28-366, 28-7942(D)
Implementing statutes: A.R.S. §§ 28-7941 through 28-7946
- 3. The effective date of the rules:**
February 8, 2002
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 7 A.A.R. 2528, June 15, 2001
Notice of Proposed Rulemaking: 7 A.A.R. 4852, October 19, 2001
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Wendy S. LeStarge, Rules Analyst
Address: Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079
Telephone: (602) 712-6007
Fax: (602) 241-1624
E-mail: wlestage@dot.state.az.us
Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules.
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
As part of the Highway Beautification Act of 1965, 23 U.S.C. 136 requires states to provide effective control of outdoor junkyards within 1000 feet of an interstate or primary system highway. States that fail to provide effective control of such junkyards face a 10 percent reduction in federal highway funds. Arizona's response for effective control is to require that a junk yard be screened from view of a highway. A.R.S. §§ 28-7941 through 28-7946. A.R.S. § 28-7943(A) requires a junk yard within 1000 feet of a highway to obtain a screening license. The Arizona Department of Transportation ("ADOT") is required to adopt and enforce rules regarding the location, planting, construction, and

maintenance for screening junkyards. A.R.S. § 28-7942(D). Arizona Junk yard Control, R17-3-703, governs the criteria and procedure for obtaining a junk yard screening license. ADOT is increasing the license fee from \$20 to \$25, which has not seen a fee increase since R17-3-703 was last amended in 1980.

This rulemaking arises from proposed agency action in the five-year review report approved by the Governor's Regulatory Review Council on May 2, 2000 (F-00-0402). ADOT is amending R17-3-703 so that the language is clear, concise, and understandable, and complies with the Secretary of State's rulemaking standards.

7. A reference to any study that the agency relied on its evaluation or justification for the rule, and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

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

Not applicable

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

ADOT incurs a not-readily-quantifiable cost in administering the junk yard screening license procedure. Since the licenses are rarely requested, staff charged with overseeing a license application have other pending job duties. ADOT has designed a license procedure to create the least inconvenience to comply with a statutory mandate requiring screening around a junkyard and a junkyard screening license. A junkyard screening license does not need to be renewed, and the regulation allows flexibility in the screening materials used. This rulemaking provides a substantial benefit to ADOT and the general public. By having statutes and rules in place that provide effective control of junkyards, ADOT does not face a penalty of having its federal highway funds reduced. ADOT may receive an indirect minimal benefit for increasing the license fee from \$20 to \$25.

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

Subsection (E) was relabeled to subsection (D). The title of the Chapter was amended from "Highway Division" to "Highways". Grammatical and technical changes were made at the suggestion of the Governor's Regulatory Review Council's staff.

11. A summary of the principal comments and the agency response to them:

No comments were received.

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

None

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

None

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

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 3. DEPARTMENT OF TRANSPORTATION - HIGHWAYS ~~DIVISION~~

ARTICLE 7. HIGHWAY ENCROACHMENTS AND PERMITS

Section

R17-3-703. Arizona ~~junkyard control~~ Junkyard Control

ARTICLE 7. HIGHWAY ENCROACHMENTS AND PERMITS

R17-3-703. Arizona ~~junkyard control~~ Junkyard Control

A. Authority. A.R.S. §§ 28-2131 through 28-2136 are the authority for and are relevant to the content and intent of this rule. This rule is in addition to and does not purport to change or alter federal or state law.

B. ~~A.~~ Purpose and responsibility. The purpose of this ~~subsection~~ Section is to describe the Arizona Department of Transportation's responsibility ~~the Arizona Department of Transportation exercises to effectively control junkyards within one thousand 1000 feet of the right-of-way on interstate and primary highways in accordance with statutory directives under~~ A.R.S. §§ 28-7941 through 28-7946.

C. ~~B.~~ Definitions. ~~The definition of specialized terms describing roadside junkyards, and matters relating thereto, as used in this rule are as follows: For purposes of this Section:~~

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1. "Department" means the Arizona Department of Transportation.
 - ~~1-2.~~ "Director" means the Director, Arizona Department of Transportation or his the Director's delegated designated representative.
 - ~~2-3.~~ "Screening" means the use of ~~any~~ vegetative planting, fencing, masonry wall or other ~~architectural treatment constructed structure~~, earthen embankment, or a combination of any of these ~~which will that~~ effectively ~~hide~~ hides from view ~~any a~~ deposit of junk from the main-traveled way.
 - ~~3-4.~~ "Screening license" means a license issued by the Director, ~~Arizona Department of Transportation~~, as required by A.R.S. § ~~28-2133~~ 28-7943 and as ~~further~~ described in this rule Section.
 5. "Unzoned industrial area" means the same as in A.R.S. § 28-7901(11).
- ~~D.C.~~ Roadside junkyard screening Screening license application procedure.
1. Purpose. The purpose of this subsection is to present the procedures to be followed by the applicants in requesting licenses for the screening of roadside junkyard facilities.
 - ~~2-1.~~ Junkyard screening Screening license required. After May 11, 1971, any new junkyard established or any lawfully existing junkyard expanded, any portion of which is within one thousand feet of the nearest edge of the right-of-way of the interstate or primary highway systems, and of which any portion is within view of the main-traveled way on such highway system will require a screening license from the Director. The Department requires a screening license for a junkyard that:
 - a. Was established or expanded after July 1, 1974;
 - b. Is located within 1000 feet of the nearest edge of the right-of-way of the interstate highway system;
 - c. Is within view of the main-traveled way of the interstate highway system; and
 - d. Is not located in a zoned or unzoned industrial area.
 - ~~3-2.~~ ADOT screening Screening license form and fee required. Each application for a license to screen a roadside junkyard must be made on forms prescribed by the Director which shall be designated "Junkyard Permit Application and shall be accompanied by a check or money order in the amount of \$20.00 payable to the Arizona Department of Transportation for credit to the State Highway Fund. Assistance to applicants is available at District Offices. An applicant shall use the Department "junkyard permit application" form to apply for a screening license, and provide the following information:
 - a. Name, address, and telephone number of the owner;
 - b. Legal description of the land where the junkyard to be screened is located;
 - c. Name and address of the junkyard business;
 - d. Location of the junkyard, including:
 - i. The highway route number,
 - ii. Distance, in feet, to nearest highway milepost,
 - iii. Distance, in feet, from the highway right-of-way to the junkyard boundaries.
 - e. Zoning classification of the land where the junkyard is located; and,
 - f. Type, size, and date of establishment of the junkyard.
 - ~~4-3.~~ Application mailed to maintenance permit engineer. Applications for a license to screen a roadside junkyard should be mailed to Permits Manager. An applicant shall mail the completed junkyard permit application, required documentation and the \$25.00 fee, in the form of a check or money order payable to the Arizona Department of Transportation, to:

Arizona Department of Transportation
~~Highways Division~~ Intermodal Transportation Division
206 South 17th Avenue, ~~Room 175-A~~ MD 004R
Phoenix, AZ 85007
Attention: ~~Maintenance Permit Engineer~~ Permits Manager, Maintenance Section
 - ~~5-4.~~ Property description, ownership, and location diagram. Applicants shall submit the legal description and ownership of record of the land occupied by the junkyard to be screened along with a location diagram or plat of the junkyard area which shall indicate the highway route number, distance to nearest highway milepost and such physical features as: buildings, bridges, culverts, utility poles and other stationary improvements or site features necessary to adequately describe the location. This site plan shall also indicate the distance in feet from the highway right-of-way to the junkyard boundaries if not coincident. Required documentation. Along with the junkyard permit application, an applicant shall submit the following documentation:
 - a. A location diagram or plat of the junkyard area that indicates:
 - i. The highway route number;
 - ii. Distance, in feet, to nearest highway milepost;
 - iii. Physical features such as buildings, bridges, culverts, utility poles, and other stationary improvements or site features that adequately describe the location; and
 - iv. Distance, in feet, from the highway right-of-way to the junkyard boundaries.
 - b. A drawing or plan, drawn to scale, of the junkyard screening design to be used, that includes:

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- i. Plan view;
 - ii. Elevation;
 - iii. Construction details of fencing, berms, and plantings used alone or in combination;
 - iv. If applicable, plant pit size, backfill material to be used, planting and staking details, botanical names of plant materials, plant size at the time of planting, and the spacing between plants; and
 - v. Any details necessary to show design and construction materials to be used.
6. ~~Screen design.~~
- a. ~~The applicant shall submit drawings or plans to scale satisfactorily illustrating the design of the junkyard screen to be implemented. Drawings submitted shall include plan view, elevation and details adequate to show design and construction materials to be used. The design submitted shall effectively screen from view from the traveled way all contained junk in accordance with standards established by the Director. The design of screening plans submitted will be reviewed and approved by Roadside Development Services prior to issuance of approved license.~~
 - b. ~~After the screening plans have been approved by the Director, the applicant has a maximum of~~
7. ~~Each pending application field checked. Each pending application will be field checked for compliance with the state act and these regulations. If all requirements are met, final approval for the screening license will be given by the Director.~~
5. Extensions. A request for an extension shall be in writing. The Department shall grant a 60 day extension in the following circumstances:
- a. If an applicant requests an extension for completion of screening within 90 days after the Department approves a screening license; and
 - b. If the Department gives a junkyard owner a violation notice and the junkyard owner requests an extension to submit the screening application within 60 days of receiving the violation notice.
- 8.6. ~~Noncompliance. Each application for a license to screen a roadside junkyard facility which does not comply with all requirements of the law and these regulations will be denied and the application fee will be retained by the state. The applicant may, however, receive a 90-day extension upon written request within ten days of denial, by submitting an amended application without loss of fee. License issuance or denial.~~
- a. The Department shall grant an application for a screening license only if the application complies with all requirements of A.R.S. §§ 28-7941 through 28-7946 and this Section.
 - i. A junkyard owner has 180 days from the date of approval to screen the junkyard.
 - ii. The Department shall field check each approved license to ensure compliance with the screening requirements of A.R.S. §§ 28-7941 through 28-7946, and this Section.
9. ~~Forfeiture of screening license fee.~~
- b. ~~Construction for new roadside junkyard screening facilities, for which screening license has been issued, shall be commenced within 120 days and completed within 180 days from the date of the issuance of the permit. If the applicant mails a written request for extension of time prior to the expiration of the construction commencement date, an additional 60 days extension for commencement and completion of construction may be granted. Any screening license cancelled because the junkyard screening was not completed within the prescribed time will result in forfeiture of the \$20.00 fee. If the Department denies an application because the screening plan does not comply with A.R.S. §§ 28-7942 through 28-7946 or this Section, an applicant may, within 10 days of the denial, request permission in writing to submit an amended application and amended screening plan without paying an additional fee.~~
 - c. A junkyard owner who fails to complete the junkyard screening within 180 days from approval of the screening license, or other prescribed period, may be found guilty under subsection (D)(9).
- 10.7. ~~Invalidation of screening license. An existing screening license will shall become invalid at a previously approved location when the junkyard facilities have been is enlarged or substantially changed in use so that the screening is no longer adequate to screen adequately screens the junk. A An owner shall apply for a new and separate screening license will be required.~~
- 11.8. ~~Transfer of screening license. Screening licenses are permanent and transferable To transfer a screening license upon sale of the facility provided a junkyard, a new owner furnishes the Director with shall submit to the Department written notification of sale within 30 days after date of sale. Upon sale of a junkyard, the new owner shall continue all screening maintenance.~~
12. ~~Calendar days. All references to days made in this junkyard screening procedure shall mean calendar days.~~
- E.D.** Screening.
- 1. Purpose. ~~The purpose of this This subsection is to describe describes the regulations requirements governing the location, planting, construction, and maintenance, including of materials used in screening junkyards as required in A.R.S. § 28-2132, subsection D 28-7942(D).~~

2. Junkyard expansions. ~~Any expansion of a junkyard shall be screened by the owner at his own expense. A junkyard owner shall be responsible for any expense to expand an existing junkyard screen.~~ Screening expansions shall be aesthetically compatible, as ~~determined by the Director determines,~~ with any existing screens.
3. Screening responsibility. Junkyards established subsequent to May 11, 1971, the effective date of the "Beautification of Highways — Regulation of Junkyards" Act (A.R.S. §§ 28-2131–28-2136), any part of which is located in the area of control must be adequately screened by the owners of the junkyard. Such screening shall be licensed in accordance with state law and these regulations by the Director and located off of the right-of-way.
- 4.3. Screening location. Fences and screens ~~must shall~~ be located in such a manner ~~so as to~~ not ~~to~~ be hazardous to the traveling public. New junkyards and expansions shall have screens in place ~~prior to the time the~~ before any junk is deposited.
- 5.4. Acceptable screening. ~~Plans shall show construction details of fencing, berms and plantings used alone or in combination. When fencing is used alone or in combination with plant material, the results fencing shall provide immediate screening be capable of screening the junk entirely from view. When planting is used alone or in combination with an earthen berm, the number, type, size, and spacing of the plants shall be capable of screening the junk entirely from view. The ability of the proposed plant material to accomplish this objective shall be judged by the Director, as determined by the Department.~~
- 6.5. Acceptable fencing materials. ~~Subject to the approval of the Director, acceptable~~ Acceptable fencing shall include ~~fences of~~ includes: steel or other metals; durable woods such as heart cypress, redwood, or other wood treated with a preservative, ~~or;~~ and walls of concrete block, brick, stone, or other masonry. Metal fencing shall be stained, colored, coated, or painted to blend into surroundings and be aesthetically unobtrusive.
- 7.6. Acceptable plant materials. ~~Subject to the approval of the Director, plant materials indicated on the plans shall specify the botanical name, the size at the time of planting, and the spacing between plant. Plant materials used shall be predominantly evergreen. Planting plans shall show plant pit size, backfill material to be used, planting and staking details. In general, the minimum size of plant materials used shall be equal to five-gallon containers. Condition and sizes shall meet appropriate plant type requirements established by the American Nurserymen's Association's current publication, "American Standard for Nursery Stock" An applicant may obtain a list of acceptable plant materials from the Department.~~
- 8.7. Screening maintenance. A junkyard owner shall ensure that screening does not enter the right-of-way. The owners of any A junkyard owner shall maintain any all screening off the right-of-way in good condition: by:
 - a. ~~Fences; Maintaining fences,~~ walls, or other structural material shall be kept in good appearance by timely painting and repair.
 - b. ~~Plant material shall be adequately watered, cultivated, or mulched and given any required maintenance; Adequately watering, cultivating, mulching, or giving other maintenance to plant material, including spraying for insect control, to keep the planting in good healthy condition; and~~
 - c. ~~Dead Removing all dead plant material will be removed immediately and shall be replaced replacing it promptly during the following proper planting season. Replacement plants shall be at least as large as the initial planting as approved on the screening license. Upon sale of the junkyard, the new owner shall continue all screening maintenance.~~
- 9.8. Abandoned, destroyed, or voluntarily discontinued junkyards. ~~When a A junkyard establishment or place of business in existence on the effective date of the Article that ceases to operate for a period of one year or longer, it must shall~~ comply with A.R.S. § 28-2133 28-7943 and obtain a screening license to be reopened.
- 10.9. Violation.
 - a. ~~The owners of any junkyards in violation will be given a violation notice and be given The Department shall issue a violation notice to a junkyard owner for failing to comply with A.R.S. §§ 28-7941 through 28-7946. A junkyard owner shall have 60 days from the date the violation notice is issued to apply for a screening license and submit a screening plan for our the Department's review and approval. If requested in writing, prior to the expiration of the 60 days, an additional 60 days extension may be granted.~~
 - b. A person who violates any ~~provisions provision~~ of the state statutes or regulation promulgated by the Director A.R.S. §§ 28-7941 through 28-7946 or this Section for junkyard control is can be found guilty of a misdemeanor (A.R.S. § 28-2136 under A.R.S. § 28-7946).

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 3. DEPARTMENT OF TRANSPORTATION – HIGHWAYS

PREAMBLE

- 1. Sections Affected:**

Article 4	<u>Rulemaking Action:</u>
R17-3-406	Repeal
R17-3-407	Repeal
R17-3-408	Repeal
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 28-366

Implementing statutes: A.R.S. §§ 28-652, 28-733, 28-7045
- 3. The effective date of the rules:**

February 8, 2002
- 4. A list of all previous notices appearing in the Register addressing the final rule:**

Notice of Rulemaking Docket Opening: 7 A.A.R. 4363, October 5, 2001

Notice of Proposed Rulemaking: 7 A.A.R. 4849, October 19, 2001
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Wendy S. LeStarge, Rules Analyst

Address: Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079

Telephone: (602) 712-6007

Fax: (602) 241-1624

E-mail: wlestarge@dot.state.az.us

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules.
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**

This rulemaking deals with traffic control devices at bridge approaches, restrictions of use of controlled access roadways, and regulating traffic through roadway construction and maintenance projects. The Arizona Department of Transportation seeks to repeal these rules, because statutes require the subject matter to be handled through traffic control devices. A.R.S. §§ 28-652, 28-733. This rulemaking arises from proposed agency action in the five-year review report approved by the Governor's Regulatory Review Council on May 2, 2000 (F-00-0402).
- 7. A reference to any study that the agency relied on its evaluation or justification for the rule, and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

None
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 9. The summary of the economic, small business, and consumer impact:**

The Department claims exemption under A.R.S. § 41-1055(D). The only foreseen economic impact of repealing R17-3-406, R17-3-407, and R17-3-408 is clerical costs in formal rulemaking. Repeal of these unnecessary rules decreases agency monitoring and enforcing burdens.
- 10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**

Not applicable

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11. A summary of the principal comments and the agency response to them:

No comments were received.

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

None

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

None

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

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 3. DEPARTMENT OF TRANSPORTATION - HIGHWAYS

ARTICLE 4. ~~HIGHWAYS LIMITATIONS (WEIGHT RESTRICTIONS AND TRAFFIC CONTROLS)~~ REPEALED

Section

R17-3-406. ~~Traffic controls at bridge approaches~~ Repealed

R17-3-407. ~~Restrictions of use of controlled access roadways~~ Repealed

R17-3-408. ~~Regulating traffic through hazardous areas created by construction and maintenance activity~~ Repealed

ARTICLE 4. ~~HIGHWAYS LIMITATIONS (WEIGHT RESTRICTIONS AND TRAFFIC CONTROLS)~~ REPEALED

R17-3-406. ~~Traffic controls at bridge approaches~~ Repealed

Application of traffic control devices at narrow bridges having a roadway clearance less than the width of the approach pavement:

1. ~~One lane bridge — a bridge with a roadway width less than 18 feet.~~
2. ~~Narrow bridge — a bridge with a roadway width between 18 feet and 24 feet (not including 24 feet) and the bridge width is less than the sum of the lane widths on the approach. (Narrow bridge conditions are not considered to exist wherever a bridge is as wide as the sum of the widths of the approach traffic lanes.)~~
3. ~~A bridge 24 feet or wider, but where the bridge is narrower than the approach roadway pavement width.~~

R17-3-407. ~~Restrictions of use of controlled access roadways~~ Repealed

~~Pedestrians and operators of or drivers of bicycles, motor driven cycles, nonmotorized vehicles, and equestrian riders may not travel or ride upon those controlled access roadways, designated as Interstate Routes I-8, I-10, I-15, I-17, I-19, I-40 and S.R. 360, which are under the jurisdiction of the Arizona Department of Transportation and where official signs have been erected to inform such persons thereof.~~

R17-3-408. ~~Regulating traffic through hazardous areas created by construction and maintenance activity~~ Repealed

- A.** ~~Title 18, Chapter 1, Arizona Revised Statutes, provides that the Arizona State Highway Commission shall exercise complete and exclusive control and jurisdiction of state highways, and prescribe such rules and regulations to govern the use of state highways as it deems necessary for public safety and convenience.~~
- B.** ~~Title 28, Chapter 6, Arizona Revised Statutes, provides that the Arizona State Highway Commission may determine and declare reasonable and safe maximum speed limits when appropriate signs giving notice thereof are erected.~~
- C.** ~~The Arizona State Highway Commission, in the interest of public safety and convenience, has determined that existing legal speed limits shall remain in effect on construction and maintenance projects, except for those locations within and/or adjacent to project limits where construction and maintenance activity creates a public hazard.~~
- D.** ~~The Arizona State Highway Commission has determined that posted or statutory speed limits may be too great for the safety and protection of men and equipment working on or near the roadway on construction or maintenance projects and for traffic through these construction or maintenance projects.~~
- E.** ~~When construction or maintenance activities have progressed to a point where roadway conditions warrant a reduction of speed through all or part of the construction or maintenance project as determined by the District Engineer or his duly authorized representative, the necessary speed reduction shall be established by the use of legal speed limit signs placed, or caused to be placed, by the Arizona State Highway Department prior to creation of the hazard. Upon elimination of the hazard, these signs shall be removed, or caused to be removed, by the Arizona State Highway Department.~~
- F.** ~~When the necessary signs have been placed and maintained in accordance with these rules and Part VI and others of the Manual on Uniform Traffic Control Devices for Streets and Highways and the Arizona Highway Department Traffic Control Manual for Highway Construction and Maintenance, no vehicle shall proceed at a speed greater than the numerical limits posted on the signs.~~

11. A summary of the principal comments and the agency response to them:

The Arizona Division of Occupational Safety and Health did not receive any written or oral comments concerning this rule.

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

None

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

29 CFR 1926, *Federal Occupational Safety and Health Standards for the Construction Industry*, with amendments as of January 18, 2001. This incorporation by reference will appear in A.A.C. R20-5-601.

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

No

15. The full text of the rule follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH CONSTRUCTION STANDARDS

Section

R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH CONSTRUCTION STANDARDS

R20-5-601. The Federal Occupational Safety and Health Standards for Construction, 29 CFR 1926

Each employer shall comply with the standards in the *Federal Occupational Safety and Health Standards for Construction*, as published in 29 CFR 1926, with amendments as of January 18, 2001 ~~December 1, 1998~~, incorporated by reference and on file with the Office of the Secretary of State. Copies of these referenced materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to construction activity by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1926 published after January 18, 2001 ~~December 1, 1998~~.