

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 18. ENVIRONMENTAL QUALITY

#### CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY ADMINISTRATION

[R07-108]

#### PREAMBLE

**1. Sections Affected**

R18-1-101  
R18-1-201  
R18-1-202  
R18-1-203  
R18-1-207  
R18-1-207  
R18-1-208  
R18-1-208

**Rulemaking Action**

Amend  
Amend  
Amend  
Amend  
ReNUMBER  
New Section  
ReNUMBER  
Amend

**2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 49-104(B)(4)  
Implementing statute: A.R.S. § 41-1003

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 1345, April 21, 2006

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

Name: Henry R. Darwin, Office of Administrative Counsel  
Address: Arizona Department of Environmental Quality  
1110 W. Washington St., Mail Code: 6415A-1  
Phoenix, AZ 85007  
Telephone: (602) 771-2328 [Toll-free number in Arizona: (800) 234-5677]  
TDD: (602) 771-4829  
Fax: (602) 771-2251  
E-mail: Darwin.Henry@azdeq.gov

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

**A. Background for Proposed Rules**

The proposed rules are part of the Arizona Department of Environmental Quality (ADEQ or Department) administrative procedures establishing the nature and requirements of all formal procedures available to the public. Specifically, ADEQ proposes changes to the administrative appeals rules that govern appeals filed with ADEQ requesting a hearing before the Office of Administrative Hearings (OAH) or the Water Quality Appeals Board.

The rationale for this rulemaking is to improve the clarity and efficiency of rules governing formal administrative adjudications filed with the ADEQ.

**B. Section-by-Section Explanation of the Rules**

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R18-1-101. Definitions: Two rule changes reflect the incorporation of the Uniform Administrative Hearing Procedures in Title 41, Chapter 6, Article 10 applicable to appeals of agency decisions under A.R.S. § 49-114. First, adding A.R.S. § 41-1092 to the first sentence of R18-1-101 stating definitions of A.R.S. § 41-1092 are applicable to administrative appeals rules. Second, the definition of hearing officer is deleted from definitions in R18-1-101 since ADEQ no longer appoints hearing officers. Formal hearings challenging ADEQ are now resolved in a hearing before OAH, pursuant to A.R.S. § 49-114.

R18-1-201. Applicability: This Section explains which Arizona Administrative Code (A.A.C.) rules govern notices of administrative appeals filed with ADEQ and requesting a hearing before a body of formal administrative adjudication. No substantive change was made to the rule rather the proposed rule change clarifies that other than OAH, the only body of formal administrative adjudication other than ADEQ governed by A.A.C. Title 18, Article 2. Administrative Appeals is the Water Quality Appeals Board.

R18-1-202. Notice of Appeal and Contested Case Procedures: This Section clarifies when ADEQ must serve notice as prescribed in A.R.S. § 41-1092.03(A); the process for a party to obtain a hearing on an appealable agency action or contested case as prescribed in A.R.S. § 41-1092.03(B); when ADEQ takes no action on a notice of appeal; and that informal settlement conference provisions of A.R.S. § 41-1092.06 apply to contested cases as well as appealable agency actions.

The proposed rules in R18-1-202(A) clarify that, in addition to service of notice of appealable agency action, ADEQ must also serve A.R.S. § 41-1092.03(A) notice on contested cases within the prescribed time limit. These proposed rules also clarify that the failure of ADEQ to serve A.R.S. § 41-1092.03(A) notice does not prevent a party from requesting a hearing on either an appealable agency action or a contested case within prescribed time limits. Further, conforming to A.R.S. §§ 41-1001(4), 41-1092(3) and 41-1092.03(B), the proposed rules in this subsection clarify that ADEQ will take no action with respect to a notice of appeal or a request for hearing that is not an appealable agency action, contested case, or otherwise not according to applicable law.

The proposed rules in R18-1-203(B) clarify informal settlement provisions of A.R.S. § 41-1092.06 are available for contested cases as well as appealable agency actions. Informal settlement conference provisions formerly appearing in subsection (A) of this Section regarding contested case procedures are placed in R18-1-202 subsection (B) conforming to the existing structure of R18-1-202 for Notice of Appeal rules. Notice provisions of R18-1-203 subsection (A) are deleted as redundant in light of the general provisions of A.R.S. § 41-1092.03(A).

R18-1-203. Time Limit on Appeals: All appeals must comply with applicable A.R.S. Title 49 time limits on filing of a notice of administrative appeal. This Section contains rules clarifying that applicable time limits for filing a notice of administrative appeal or a contested case with ADEQ are controlled first by Title 49, and then by Title 41, Chapter 6, Article 10.

R18-1-207. Objection to Recommended Decision: Ability to file objection with the Director; Time limits for objection and response; no reply permitted. This Section's proposed rules clarify that parties to a formal adjudicative proceeding may file a written objection with the Director no later than 10 days after the recommended decision is issued by the Administrative Law Judge (ALJ), and that Parties may respond within seven days, of the receipt of the objection, but that no reply to response is permitted.

R18-1-208. Requests for Rehearing or Review: Ability to seek review; time limits; requirements. The proposed rule change for this Section clarifies it is only the Director's final administrative decision which can obtain rehearing or review. The proposed rules of this Section also clarify misconduct by OAH is a basis for rehearing or review.

**C. Discussion of Five-year-review Report**

A five-year-review report for 18 A.A.C. 1, Article 2 was approved by the Governor's Regulatory Review Council December 3, 2002.

**6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the 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

**7. 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

**8. The preliminary summary of the economic, small business, and consumer impact:**

This preliminary economic, small business, and consumer impact statement is provided pursuant to A.R.S. §§ 41-1001(14)(a)(v), 41-1022, 41-1035, 41-1052(A), 41-1055(A), and A.A.C. R1-1-502(B)(8). The rulemaking concerns 18 A.A.C. 1, which contains ADEQ's administrative rules. The following subsections address the anticipated impact of this proposed rulemaking.

**Identification of the proposed rulemaking.** This proposed rulemaking pertains to Title 18, Chapter 1, Article 2, "Administrative Appeals." The rule proposes to amend R18-1-201 through R18-1-207, except 204 through 206, which will remain unchanged, and create a new Section 208.

**Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.** Potential classes that could be directly affected, bear costs, or directly benefit include the following: Entities filing a hearing request or notice of appeal to ADEQ (i.e., administrative appellants); OAH, Water Quality Appeals Board, Attorney General's (AG) Office, ADEQ, and general public. Potential administrative appellants could include political subdivisions, businesses, or persons. ADEQ does not anticipate that other political subdivisions of the state or other state agencies will be impacted by this rulemaking.

**Cost benefit analysis of the following:** Because the intent of this proposed rule is to clarify the appeals process and to reduce confusion and assure that correct standards are applied across the board to potential administrative appellants, ADEQ expects probable benefits will outweigh probable costs. No additional costs are expected to accrue to the parties impacted by this rule. An objection filed under proposed R18-1-207 may negate the need to file a Superior Court appeal avoiding further litigation costs.

**(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking.** From the perspective of ADEQ, benefits are expected to accrue, although in the minimal range of less than \$5,000 per annum. With the anticipation that a small number of administrative appellant requests will not be forwarded to OAH, potentially some costs can be avoided, e.g., AG Office representation and hearing process costs. In addition, implementation of the new Section R18-1-207 should contribute toward greater efficiency of the appeals process when a party is involved in a formal adjudicative proceeding before the OAH. This is because such appellants can file a written objection with ADEQ's Director regarding the decision of the ALJ. Parties may file a response to the objection within seven days of the filing of the objection.

**(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.** Because this rule merely clarifies what constitutes the current practice by ADEQ and deletes unnecessary and outdated sections of the rule, it does not generate compliance costs to the regulated community, including political subdivisions. In fact, the rule likely will provide cost-saving benefits to both the regulated community and ADEQ.

**(c) The probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.** Cost-saving benefits also may accrue to the regulated community from less confusion of the process and the potential for diminished appeals, but those costs are unquantifiable. In general, the public also may benefit from a more efficient appeals process and clarification of rules.

**General description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking.**

No impacts are anticipated on private or public employment, revenues, or payroll expenditures.

**Probable impact of the proposed rulemaking on small businesses, including:**

**(a) An identification of the small businesses subject to the proposed rulemaking.** Small businesses regulated by ADEQ that appeal agency actions or request hearings for contested cases may be subject to the clarifications contained in this proposed rulemaking.

**(b) The administrative and other costs required for compliance with the proposed rulemaking.** There are no compliance costs associated with the rule.

**(c) A description of the methods that the agency may use to reduce the impact on small businesses.** A.R.S. § 41-1035 requires agencies to reduce the impact of a rule on small businesses by using certain methods when they are legal and feasible in meeting the statutory objectives of a rulemaking. The five methods are listed below:

1. Establish less stringent compliance or reporting requirements in the rule;
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements;
3. Consolidate or simplify the rule's compliance or reporting requirements;
4. Establish performance standards for small businesses to replace design or operational standards; and
5. Exempt small businesses from any or all requirements in the rule.

ADEQ has found that it is not legal or feasible to adopt any of the five listed methods in ways that reduce the impact of these rules on small businesses. The initial four methods are not applicable to this rulemaking because this rule is not a compliance or reporting rule. The last method is not legal or feasible because small businesses are entitled to pursue the appellate process.

**Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.**

Whenever a regulatory agency's rules are improved, clarified, and enforced, benefits potentially could accrue to the general public. The improved clarity of this proposed rulemaking is intended to enhance the administration of justice, reduce associated legal costs and enhance the efficiency of the administrative hearing process.

**Probable effect on state revenues**

Benefits are expected to accrue to ADEQ, although in the minimal range of less than \$5,000 per annum.

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Conclusion. This rulemaking not only provides cost-saving benefits to all parties involved, but it may lead to protecting public health and welfare. Probable benefits are expected to outweigh probable costs. Furthermore, there are not adverse economic impacts to political subdivisions of the state, other state agencies, or private businesses. Minimal impact is expected on state revenues. ADEQ will not need to hire any additional employees to implement or enforce these rules.

Contact Whom to Submit or Request Additional Information:

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TDD: (602) 771-4829
Fax: (602) 771-2251
E-mail: Darwin.Henry@azdeq.gov

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement;

A person may submit written comments to the person listed in item #4.

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule;

Written, faxed, or e-mailed comments, or a request for an oral proceeding, may be made with the analyst listed in item #4. Contact may be made between 8:00 a.m. and 5:00 p.m., Monday through Friday. If no oral proceeding is requested, the public comment period shall continue for 30 days from this notice's publication. This proposed rule-making's public record will close at 5:00 p.m. on May 21, 2007.

If the Department holds a hearing at which oral comments can be made for the rulemaking record, the date(s) and time(s) of the proceeding(s) will be published in the Arizona Administrative Register and posted on the Department's web site on its Draft and Proposed Rules web page (http://azdeq.gov/function/laws/draft.html) and its Events Calendar (http://azdeq.gov/cgi-bin/vertical.pl). Persons interested in keeping informed of proposed changes to the Department's rules via e-mail notice may so request by sending an e-mail to the person referenced in item #4.

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

None

12. Incorporations by reference and their location in the rules;

None

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY ADMINISTRATION

ARTICLE 1. DEFINITIONS

Section
R18-1-101. Definitions

ARTICLE 2. ADMINISTRATIVE APPEALS

Section
R18-1-201. Applicability
R18-1-202. Notice of Appeal and Contested Case Procedures
R18-1-203. Contested Case Procedures Time Limit on Appeals
R18-1-207. Objection to Recommended Decision
R18-1-207. R18-1-208. Repealed Requests for Rehearing or Review of Director's Final Decision

ARTICLE 1. DEFINITIONS

R18-1-101. Definitions

The definitions in A.R.S. §§ 41-1001 and 41-1092, except for the definition of “person”, shall apply to this Chapter. In addition, the terms in this Chapter shall have the following meanings:

1. “Attorney general” means the attorney general of the state of Arizona and includes assistant attorneys general or other attorneys appointed by Office of Attorney General to represent the Department at a contested case or an applicable agency action.
2. “Department” means the Department of Environmental Quality.
3. “Director” means the Director of the Department of Environmental Quality.
4. “General public hearing” means a hearing, subject to the requirements of Article 4, held to obtain comment from the public with respect to Department actions. “General public hearing” shall not include oral proceedings, or contested case hearings.
5. ~~“Hearing officer” means an individual appointed by the Director to perform the duties described in R18-1-203 at any contested case hearing.~~
- 6.5. “Oral proceeding” means a proceeding held during the rulemaking process, as described by A.R.S. § 41-1023.
- 7.6. “Person” means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association, state, a political subdivision of this state, or commission or the United States Government or a federal facility, interstate body or other entity.
- 8.7. “Presiding officer” means any individual appointed by the Director to perform the duties described in R18-1-304 at any oral proceeding.

## ARTICLE 2. ADMINISTRATIVE APPEALS

### **R18-1-201. Applicability**

Sections R18-1-202 through R18-1-205, ~~and R18-1-207, and R18-1-208~~ govern notices of administrative appeal filed with the Department and requesting a hearing before the Office of Administrative Hearings or ~~a body of formal administrative adjudication other than the Department~~ the Water Quality Appeals Board.

### **R18-1-202. Notice of Appeal and Contested Case Procedures**

- A.** When the Department determines that an agency action is an appealable agency action or a contested case, the Department shall serve notice as prescribed in A.R.S. § 41-1092.03(A). Any failure of the Department to serve notice of an appealable agency action or a contested case under A.R.S. § 41-1092.03(A) does not prevent a party from filing a notice of appeal or requesting a hearing under A.R.S. § 41-1092.03(B) if the request is made within 30 days of the date on the ~~Departmental~~ Department’s notice of the action giving rise to the request. The Department shall forward all timely notices of appeal or hearing requests made ~~under~~ according to A.R.S. § 41-1092.03 to the Office of Administrative Hearings, or, if indicated on the notice of appeal or hearing request the Water Quality Appeals Board. If the Department believes that the agency matter referenced in a notice of appeal or hearing request is not an appealable agency action or contested case or is otherwise not made according to applicable law, the Department shall notify the person filing the notice of appeal or hearing request that the Department takes no action on the notice of appeal or hearing request with a written statement of the reasons the Department believes the matter is not an appealable agency action, contested case, or otherwise not made according to applicable law.
- B.** Subject to the provisions at A.R.S. §§ 41-1092.01 and 41-1092.02 and except as provided at Section R18-1-203, the Department shall apply the informal settlement conference provisions at A.R.S. §§ 41-1092.03 and 41-1092.06 to contested cases that are appealable through the Office of Administrative Hearings or the Water Quality Appeals Board.

### **R18-1-203. Contested Case Procedures Time Limit on Appeals**

- A.** ~~Subject to the provisions at A.R.S. §§ 41-1092.01 and 41-1092.02 and except as provided at subsection (B), the Department shall apply the notice and informal settlement conference provisions at A.R.S. §§ 41-1092.03 and 41-1092.06 to contested cases that are appealable through the Office of Administrative Hearings.~~
- B.** If A.R.S. Title 49 provides a time limit on the filing of a notice of administrative appeal, then the person filing the notice of administrative appeal shall comply with that filing time limit, otherwise time limits of A.R.S. Title 41, Chapter 6, Article 10 apply.

### **R18-1-207. Objection to Recommended Decision**

A party to a formal adjudicative proceeding before the Office of Administrative Hearings or the Water Quality Appeals Board may file a written objection with the Director regarding the recommended decision after a copy of the recommended decision is issued by the Administrative Law Judge to the party under A.R.S. § 41-1092.04.

1. The party shall file with the Department and serve upon every other party to the action the objection to the recommended decision no later than 10 days after service of the recommended decision upon the party.
2. An opposing party may file with the Department and serve upon every other party to the action a written response to the objection to the recommended decision no later than seven days after service of the objection to the recommended decision upon the opposing party.
3. Service is complete on personal service or five days after the objection to the recommended decision or the response

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to the objection is mailed to the party or opposing party.

- 4. No reply to the response is permitted.

~~R18-1-207, R18-1-208, Repealed~~ Requests for Rehearing or Review of the Director’s Final Decision

A party to a formal adjudicative proceeding before the Office of Administrative Hearings or the Department Water Quality Appeals Board may obtain a rehearing or review of the Director’s final administrative decision that is based on the proceeding, as follows:

- 1. The party shall file with the Department a written motion for rehearing or review of the decision not no later than 30 days after service of the decision upon the party.
2. An opposing party may file with the Department a written response to the motion for rehearing or review not no later than 15 days after service of the motion for rehearing or review upon the opposing party.
3. Service is complete on personal service or five days after the date the decision or motion is mailed to the party or opposing party.
4. The Director may require the filing of written briefs upon the issues raised in the motion or response and may provide for oral argument.
5. The Director shall decide whether to grant a motion for rehearing or review of the decision within 15 days after the response to the motion is filed or, if a response is not filed, within five days after the expiration of the response period. The Director shall grant a rehearing or review for any of the following reasons and shall specify the reasons:
a. The decision is not justified by the evidence or is contrary to law.
b. There is newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original proceeding.
c. One or more of the following has deprived the party of a fair hearing:
i. Irregularity or abuse of discretion in the conduct of the proceeding.
ii. Misconduct of the Department, its hearing officer, the Office of Administrative Hearings, or the prevailing party.
iii. Accident or surprise which could not have been prevented by ordinary prudence.

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 1. DEPARTMENT OF COMMERCE

[R07-110]

PREAMBLE

1. Sections Affected

- Article 7
R20-1-701
R20-1-702
R20-1-703
R20-1-704
R20-1-705
R20-1-706
R20-1-707
R20-1-708
R20-1-709
R20-1-710
R20-1-711
R20-1-712

Rulemaking Action

- New Article
New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 41-1504(B)(4)
Implementing statute: A.R.S § 41-1505.02

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 3384, September 15, 2006

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

Notices of Proposed Rulemaking

Name: Lisa Henderson, Program Manager  
Address: Department of Commerce  
1700 W. Washington St., Ste. 420  
Phoenix AZ 85007  
Telephone: (602) 771-1134  
Fax: (602) 771-1210  
E-mail: Lisah@azcommerce.com

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

The rules establish procedures for the Main Street program, which was created in 1986 under A.R.S. § 41-1505.02 to "provide for the revitalization of central business districts in rural communities of this state." The rules also indicate the responsibilities of the Department of Commerce (Department) to communities accredited under the Main Street program.

Arizona's Main Street program is associated with the National Trust for Historic Preservation's National Main Street Center. In the 1970s, the National Trust developed the Main Street approach to commercial district revitalization, an innovative methodology that combines historic preservation with economic development to restore prosperity and vitality to downtowns and neighborhood business districts. The Main Street approach is a comprehensive strategy tailored to meet local needs and opportunities. It encompasses work in four areas—design, economic restructuring, promotion, and organization—that combine to address the needs of a commercial district. The Main Street program is an effective tool for community-based, grassroots revitalization.

The Main Street program in Arizona has operated successfully since its inception. The Department believes; however, that developing these rules will enable it to improve program procedures. The rules streamline the application procedure and clarify requirements for eligibility and remaining in good standing. One of the responsibilities of the Department is to provide an annual "workshop" for organizations (communities and nonprofits in partnership) regarding the Main Street program and how to make a successful application. The Department provides continuing technical assistance and training and eligibility for grants for improvement and enhancement projects to communities that are accredited.

Program staff and funding resources are limited so the number of new communities that can be accredited annually is also limited. This is particularly true because each newly accredited community receives a full onsite evaluation that can cost as much as \$20,000. The community evaluation involves a team of economic development professionals spending time in a community evaluating its commercial district and developing written recommendations on how the community can improve over both the short and long term.

Before announcing the annual application period, the Department determines how many new accreditations may be issued. Applications are scored against the criteria established in the rules. Applicants with the highest scores receive accreditation, up to the annual number of new accredited communities the Department can support.

Careful consideration was given to the impact of the rules on currently accredited communities. For example, in the past, if a community ceased to participate in program activities, it remained eligible to use the Department's resources and apply for project grants. This will no longer be the case under the rules. This will allow the Department to use its limited resources where they will do the most good, for communities actively working toward planned improvement and development under the program. R20-1-702 addresses transitional requirements. It allows a previously accredited community to continue Main Street participation without having to receive new accreditation if the community indicates that it intends to participate actively in the program.

**6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the 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:**

None

**7. 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

**8. The preliminary summary of the economic, small business, and consumer impact:**

The Main Street program is administered by the Department with a staff of one and \$130,000 allocated annually by the Commerce and Economic Development Commission, which is established by A.R.S. § 41-1505.05. The Commission is funded by receipt of 21.5% of the monies generated by two designated Scratchers tickets issued by the Arizona Lottery (See A.R.S. § 41-1505.10).

The economic cost resulting from the rules will be minimal and will be voluntarily assumed by a community that seeks accreditation under the Main Street program. The costs result from the application process and the requirements

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for remaining in good standing. A community voluntarily assumes these costs because the economic benefits from participation in the Main Street program can be substantial.

Although it is a community and its nonprofit partner that will bear the costs resulting from these rules, it is business in or around the Main Street program area and the political subdivision and citizens of the program area that will economically benefit as the program area is revitalized and its historic character preserved.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Lisa Henderson, Program Manager  
Address: Department of Commerce  
1700 W. Washington St., Ste. 420  
Phoenix, AZ 85007  
Telephone: (602) 771-1134  
Fax: (602) 771-1210  
E-mail: Lisah@azcommerce.com

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

An oral proceeding regarding the proposed rules will be held as follows:

Date: Thursday, May 31, 2007  
Time: 1:00 p.m.  
Location: Department of Commerce  
1700 W. Washington  
6th Floor Conference Room  
Phoenix, AZ 85007

The rulemaking record will close at 5:00 p.m. on June 8, 2008.

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

None

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

None

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

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**

**CHAPTER 1. DEPARTMENT OF COMMERCE**

**ARTICLE 7. ARIZONA MAIN STREET PROGRAM**

Section	
<u>R20-1-701.</u>	<u>Definitions</u>
<u>R20-1-702.</u>	<u>Communities Accredited before the Effective Date of this Article</u>
<u>R20-1-703.</u>	<u>Accreditation Prerequisites</u>
<u>R20-1-704.</u>	<u>Annual Application Period</u>
<u>R20-1-705.</u>	<u>Application for Main Street Program Accreditation</u>
<u>R20-1-706.</u>	<u>Application Processing and Time-frames</u>
<u>R20-1-707.</u>	<u>Scoring Applications for Accreditation</u>
<u>R20-1-708.</u>	<u>Department Responsibilities</u>
<u>R20-1-709.</u>	<u>Continuing Accreditation Requirements</u>
<u>R20-1-710.</u>	<u>Eligibility for Program Grants</u>
<u>R20-1-711.</u>	<u>Revocation of Accreditation</u>
<u>R20-1-712.</u>	<u>Appeals</u>

**ARTICLE 7. ARIZONA MAIN STREET PROGRAM**

**R20-1-701. Definitions**

In addition to the definitions in A.R.S. § 41-1501, the following definitions apply to this Article unless the context otherwise requires:

“Accreditation” or “accredited” means certified by the Department as meeting all of the requirements of this Article for participation in the Main Street program.

“Commercial district” means a specific physical location in which goods and services are bought and sold within a community.

“Community” means a rural city or town that has an identifiable commercial district.

“Historic asset” means a person, place, or thing that has significance to the members of a community.

“Metropolitan Phoenix” means the following municipalities:

Avondale,  
Carefree,  
Cave Creek,  
Chandler,  
El Mirage,  
Fountain Hills,  
Gilbert,  
Glendale,  
Goodyear,  
Guadalupe,  
Litchfield Park,  
Mesa,  
Paradise Valley,  
Peoria,  
Phoenix,  
Scottsdale,  
Sun City,  
Sun City West,  
Surprise,  
Tempe,  
Tolleson, and  
Youngtown.

“Metropolitan Tucson” means the following municipalities:

Marana,  
Oro Valley,  
Tucson, and  
South Tucson.

“Program” means the Arizona Main Street program authorized by A.R.S. § 41-1505.

“Program manager” means the individual authorized by the governing organization to represent an accredited community or a joint community and nonprofit organization seeking accreditation and who maintains contact with the Department.

“Rural” means having a population of less than 50,000 according to the most recent U.S. decennial census and located outside of metropolitan Phoenix and metropolitan Tucson.

**R20-1-702. Communities Accredited before the Effective Date of this Article**

- A.** A community accredited before the effective date of this Article is not required to apply and compete for accreditation under this Article if the community is eligible under subsection (B) and provides the notice required under subsection (C).
- B.** A community accredited before the effective date of this Article is eligible for continued accreditation only if the community has done the following within the 12 months before the effective date of this Article:
1. Participated in at least two conference calls, retreats, or other events scheduled by the Department;
  2. Submitted an annual report as described in R20-1-709(F);
  3. Notified the Department regarding program changes; and
  4. Attended at least one financial or economic development conference sponsored by the Department.
- C.** To continue accreditation, the program manager of a community that is eligible under subsection (B) shall provide to the Department written notice of intent to continue participation within 45 days after the effective date of this Article.
- D.** The Department shall issue a written notice of accreditation under this Article to the program manager of a community that is eligible under subsection (B) and provides the notice required under subsection (C). The Department shall issue a written notice of revocation of accreditation to the program manager of a community that is not eligible under subsection (B) or does not provide the notice required under subsection (C).

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**R20-1-703. Accreditation Prerequisites**

- A. A community that does not meet the requirements of R20-1-702 may receive accreditation only by complying with the competitive application requirements of this Article.
- B. The Department shall not accept an application for accreditation from a community unless the community designates a program manager.

**R20-1-704. Annual Application Period**

- A. The Department shall announce the annual application period and deadline for application for Main Street program accreditation by written notice to all communities in the state.
- B. The Department shall include in its written notice the maximum number of communities that will be accredited during the application period.
- C. At least 45 days before the application period, the Department shall conduct a pre-application workshop to provide information on the program and application requirements.

**R20-1-705. Application for Main Street Program Accreditation**

- A. To apply for accreditation, the program manager shall submit to the Department an original and four copies of the following:
  - 1. A completed application form, which is available from the Department, that provides the information required under subsection (B);
  - 2. The narrative listed in subsection (C);
  - 3. The supporting documents listed in subsection (D); and
  - 4. If desired, the supporting materials listed in subsection (E).
- B. The program manager shall provide the following information on the application form:
  - 1. Information about the program manager:
    - a. Name,
    - b. Title,
    - c. Name of the organization employing the program manager,
    - d. Mailing address,
    - e. Telephone and fax numbers,
    - f. E-mail address, and
    - g. Signature;
  - 2. Information about the community:
    - a. Name of community;
    - b. County in which community is located;
    - c. Population change over the last 20 years;
    - d. Form of local government; and
    - e. Whether the local government has agencies, ordinances, or plans supportive of economic development and historic preservation and if so, detailed information regarding the agencies, ordinances, and plans;
  - 3. Information about the commercial district:
    - a. Number of square blocks in the commercial district;
    - b. Number of buildings in the commercial district;
    - c. Number of businesses in the commercial district;
    - d. Whether any properties within the commercial district are listed on the national or local historic register and if so, identification of each property;
    - e. Whether properties within the commercial district are subject to a local historic preservation ordinance and if so, identification of each property; and
    - f. Description of cultural features or special qualities of the commercial district.
- C. The program manager shall submit a narrative containing:
  - 1. The reasons for seeking program accreditation;
  - 2. What the community expects to achieve through program participation;
  - 3. An identification of any other organization within the community that supports economic development or historic preservation and the manner in which the other organization was informed about this application;
  - 4. A proposed budget for the program that demonstrates long-term sustainability;
  - 5. The organizational structure for the program including to whom the program manager will report and the names and types of businesses and organizations that will participate;
  - 6. A statement whether the community received economic development or historic preservation funds from another governmental unit within the last three years and if so, how the funds were used and what results were achieved; and
  - 7. A statement whether the community has participated in other federal, state, or local economic development or historic preservation programs within the last three years and if so, the names of the programs and the results of the participa-

tion.

- D.** The program manager shall submit the following supporting documents:
1. A map with an outline of the commercial district, clearly showing names and locations of all streets;
  2. A zoning map of the commercial district;
  3. The resolution supporting program participation passed by the governing entity for the community;
  4. If applicable, the bylaws of all nonprofit organizations having an agreement for program participation with the community; and
  5. If applicable, a copy of the written agreement between the community and all nonprofit organizations regarding joint participation in the program.
- E.** The program manager may submit letters and resolutions of support for program participation from merchants, property owners, community organizations, and other stakeholders.

**R20-1-706. Application Processing and Time-frames**

- A.** The Department shall perform an administrative review of each application within 45 days of the application deadline under R20-1-704 and provide each program manager with written notice stating whether the application is accepted for scoring or rejected. The Department shall include with any notice of rejection the reason that the application did not meet the requirements of R20-1-705. The Department shall not accept another application from that community until the next application period.
- B.** The Department shall score all completed applications within 90 days of the close of the administrative review period, using the criteria in R20-1-707 to determine which communities to accredit.
- C.** At the end of the 90 days under subsection (B), the Department shall provide written notice of the score to communities and advise whether they have been accredited.

**R20-1-707. Scoring Applications for Accreditation**

The Department shall use the criteria in this Section to score an application for accreditation from an eligible community. The Department shall score each criterion using a scale of zero to 10 points. The Department shall accredit the communities receiving the highest score, up to the maximum established under R20-1-704.

1. How well defined is the community's expectation of and plan for participating in the Main Street program?
2. To what extent does the community have a well defined commercial district?
3. What is the potential for the Main Street program to affect the community's economic development and historic preservation efforts?
4. To what extent is there evidence of support for Main Street program participation from both the public and private sectors?
5. To what extent does the community demonstrate capacity for economic growth?
6. To what extent does the community demonstrate a historic preservation ethic?
7. To what extent does the commercial district contain historic or architecturally significant buildings capable of establishing the community's social or cultural identity?
8. To what extent does the community's proposed Main Street program budget demonstrate sustainability?

**R20-1-708. Department Responsibilities**

- A.** Except for communities accredited under R20-1-702, the Department shall conduct an onsite evaluation within one year of accrediting a community and issue a written report containing findings and recommendations.
- B.** The Department shall publish at least annually a schedule of conference calls, trainings, meetings, conferences, and other events available and required to maintain accreditation. The Department shall include in the schedule the dates grants may become available for accredited communities. The Department shall make the schedule available during business hours and post it on the Department's web site.
- C.** The Department shall provide a minimum of 40 hours of training annually for accredited communities on any of the following topics:
1. Redevelopment of declining commercial districts.
  2. Reuse of existing properties and lands.
  3. Sustainability of commercial districts.
  4. Methods of fundraising.
  5. Nonprofit organization effectiveness.
  6. Real estate.
  7. Finance, or
  8. Other topics requested by Main Street program communities.
- D.** The Department shall compile data from the reports provided by accredited communities under this Article into an annual document that goes to the national Main Street organization and may be used by accredited communities.

**R20-1-709. Continuing Accreditation Requirements**

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- A. To remain accredited, a community shall meet the participation and reporting requirements of this Section.
- B. An accredited community shall authorize a new program manager within 15 days after a vacancy occurs in the program manager position. The accredited community shall provide immediate written notice to the Department of the new program manager's name, mailing address, e-mail address, and telephone and fax numbers.
- C. In each year, an accredited community shall designate at least one representative to participate in at least 85% of the conference calls, trainings, meetings, conferences, and other events scheduled by the Department under R20-1-708.
- D. An accredited community shall annually submit to the Department a letter indicating whether the community intends to continue participating in the Main Street program.
- E. No later than September 1 of each year, an accredited community shall provide to the Department annual reinvestment information as defined by the National Main Street Center.
- F. At the end of each program year, as identified in the accredited community's by-laws, an accredited community shall submit a report to the Department including:
  - 1. Program operating budget for the upcoming year;
  - 2. Goals and objectives for the upcoming year;
  - 3. Schedule of Main Street-related events for the upcoming year;
  - 4. Prior year accomplishments;
  - 5. Current list of members of the board of directors for the Main Street program; and
  - 6. Name, address, and telephone and fax numbers of the program manager.
- G. An accredited community shall submit a report to the Department by the last business day of April, July, October, and January, containing:
  - 1. The name of the accredited community and the period covered;
  - 2. The name, telephone number, and e-mail address of the contact person for the report;
  - 3. Major accomplishments during the reporting period;
  - 4. Barriers met during the reporting period;
  - 5. Other issues impacting the program;
  - 6. Changes in the program's board of directors;
  - 7. Changes, if any, in the boundaries of the program area, with:
    - a. A resolution approving the changes from the community's governing entity and the program board of directors, and
    - b. A street map showing the current program boundaries.

**R20-1-710. Eligibility for Program Grants**

- A. Except as provided in subsection (B), an accredited community may apply for grant funding according to the schedule under R20-1-708. The Department shall award grants, when funding is available, under the procedures in A.R.S. § 41-2701 et seq.
- B. The Department shall suspend an accredited community's eligibility for grants if the accredited community fails to meet the requirements of R20-1-709. The Department shall provide written notice to the community's governing entity and the program manager explaining the requirement that must be met and allowing 30 days from the date of the written notice for the accredited community to comply. If the accredited community does not comply by the date specified in the notice, the Department shall provide written notice to the program manager that grant eligibility is suspended until compliance is achieved and provide notice for revocation of accreditation under R20-1-711.

**R20-1-711. Revocation of Accreditation**

- A. The Department shall provide written notice to the community's governing entity and the program manager of any accredited community that fails to comply with R20-1-709 for more than 120 days. The Department shall include a copy of this Section with the notice.
- B. The program manager may provide the Department with a written statement of intent to maintain accreditation within 60 days of the date of the Department's notice under subsection (A).
- C. If the Department does not receive the statement of intent to maintain accreditation described in subsection (B), the Department shall provide written notice to the community's governing entity and the program manager that the community is no longer accredited. To become accredited again, the community shall meet all of the competitive application requirements of this Article.
- D. If the program manager provides a statement of intent to maintain accreditation as described in subsection (B), the accredited community has 120 days from the date of the statement to be in full compliance with R20-1-709.
- E. If the accredited community is not in full compliance with R20-1-709 within the 120 days provided under subsection (D), the Department shall provide written notice to the community's governing entity and the program manager that the community is no longer accredited. To become accredited again, the community shall meet all of the competitive application requirements of this Article.

**R20-1-712. Appeals**

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- A. The community's governing entity or the program manager of an accredited community whose accreditation is revoked or whose eligibility for grant funding is suspended by the Department may file an appeal with the Department by submitting a letter to the Director providing the reason for appealing the decision within 30 working days after the date on the written notice.
- B. The Director shall review the substance of the appeal and respond in writing within 30 working days after receiving the appeal letter.
- C. An appeal of the Director's decision is conducted under A.R.S. Title 41, Chapter 6, Article 10, and the rules established by the Office of Administrative Hearings.

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R07-107]

PREAMBLE

- 1. Sections Affected  
R20-5-602
- Rulemaking Action  
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):  
Authorizing statute: A.R.S. § 23-405(4)  
Implementing statute: A.R.S. § 23-410
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:  
Notice of Rulemaking Docket Opening: 13 A.A.R. 872, March 16, 2007
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:  
Name: William M. Wright, Assistant Director  
Address: Division of Occupational Safety and Health  
Industrial Commission of Arizona  
800 W. Washington St., Ste. 203  
Phoenix, AZ 85007  
Telephone: (602) 542-1695  
Fax: (602) 542-1614  
E-mail: wright.william.m@dol.gov
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:  
In order to conform to the Federal Occupational Safety and Health Standards as required by Section 18(c) of the Federal Occupational Safety and Health Act of 1970 requiring state administered occupational safety and health programs to adopt standards that are at least as effective as those adopted by the U.S. Department of Labor, The Industrial Commission is amending R20-5-602 by adopting amendments to Subpart S, Electrical and Subpart F, Powered Platforms, Manlifts, and Vehicle - Mounted Work Platforms of Section 1910, as published in 72 FR 7135 - 7221, February 14, 2007. These rules revise the existing Electrical Standards that are contained in 1910.302 through 1910.308 of Subpart S. OSHA has determined that electrical hazards in the workplace pose a significant risk of injury or death to employees, that the requirements in the revised standard, which draw heavily from the 2000 edition of the national Fire Protection Association's (NFPA) Electrical Safety Requirements for Employee workplaces (NFPA 70 E), and the 2002 edition of the National Electric Code (NEC) are necessary to provide protection from these hazards. This revision focuses on safety in the design and installation of electric equipment in the work place, and provides the first update of the installation requirements in the general industry electrical installation standard since 1981.
- 6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the 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:  
None
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previ-

**ous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

The Federal Occupational Safety and Health Administration has determined that these amendments will have little financial impact for general industry and has determined the amendments to be economically feasible for all industries including small business. Cost and benefit analysis of these amendments is available for inspection, review, and copying at the Industrial Commission of Arizona, Division of Occupational Safety and Health, 800 W. Washington St., Phoenix, AZ 85007.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: William M. Wright, Assistant Director  
Address: Industrial Commission of Arizona  
Division of Occupational Safety and Health  
800 W. Washington St., Ste. 203  
Phoenix, AZ 85007  
Telephone: (602) 542-1695  
Fax: (602) 542-1614  
E-mail: wright.william.m@dol.gov

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

An oral proceeding has been scheduled as follows:

Date: May 23, 2007  
Time: 9:00 a.m.  
Location: Hearing Room A, First Floor  
Industrial Commission of Arizona  
800 W. Washington St.  
Phoenix, AZ 85007

Written comments may be submitted on or before 9:00 a.m. May 23, 2007

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

Not Applicable

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

29 CFR 1910 *The Federal Safety and Health Standards for General Industry*, with amendments as of February 14, 2007. This incorporation by reference will appear in R20-5-602.

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

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

**ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

Section

R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910

**ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

**R20-5-602. The Federal Occupational Safety and Health Standards for General Industry, 29 CFR 1910**

Each employer shall comply with the standards in Subparts B through Z inclusive of the Federal Occupational Safety and Health Standards for General Industry, as published in 29 CFR 1910, with amendments as of ~~February 17, 2004~~, February 14, 2007, incorporated by reference. Copies of these reference 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 general industry activity by all employers, both public and private, in the state of Arizona; provided that this rule shall not apply to those conditions and practices which

*Arizona Administrative Register / Secretary of State*  
**Notices of Proposed Rulemaking**

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are the subject of rule R20-5-601. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after ~~February 17, 2004~~, February 14, 2007.