

# 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 36. DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY

*Editor's Note: The following Notice of Final Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 at 15 A.A.R. 1942, November 20, 2009.) The Governor's Office authorized the notice to proceed through the rulemaking process on June 14, 2010.*

[R11-02]

#### PREAMBLE

**1. Sections Affected**

Article 4  
R4-36-401  
R4-36-402  
R4-36-403

**Rulemaking Action**

New Article  
New Section  
New Section  
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. § 36-1609(A)  
Implementing statute: A.R.S. §§ 36-1601 through 36-1610

**3. The effective date for the rules:**

January 11, 2011

The Department respectfully requests an immediate effective date under A.R.S. § 41-1032(A)(1) and (3). Under Laws 2010, Ch. 286, § 6, the statutory amendments allowing the sale of consumer fireworks in Arizona go into effect on December 1, 2010. An immediate effective date is needed to ensure that this rulemaking is in effect as soon as possible after it becomes legal to sell consumer fireworks in Arizona. The need for an immediate effective date is not due to the Department's delay or inaction. Indeed, the statutory amendments allowing the sale of consumer fireworks in Arizona were signed by the Governor on May 10, 2010, and the Department filed the Notice of Rulemaking Docket Opening with the Office of the Secretary of State on July 14, 2010.

**4. List of all previous notices appearing in the *Register* addressing the final rules:**

Notice of Rulemaking Docket Opening: 16 A.A.R. 1471, August 6, 2010  
Notice of Proposed Rulemaking: 16 A.A.R. 1700, September 3, 2010

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

Name: Bob Barger, State Fire Marshal  
Address: Department of Fire, Building and Life Safety  
1110 W. Washington St., Suite 100  
Phoenix, AZ 85007-2935  
Telephone: (602) 364-1081  
Fax: (602) 364-1084  
E-mail: Bob.barger@dfbls.az.gov

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

In 2010, the Arizona legislature enacted HB 2246, which changed existing law to permit the retail sale and use of permissible consumer fireworks. The legislature instructed the State Fire Marshal to make rules to carry out the new law, including incorporating by reference the National Fire Protection Association Code for the Manufacture, Transporta-

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tion, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 edition. The State Fire Marshal is making the required rules.

7. **A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**  
None
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 statutes permitting the sale and use of permissible consumer fireworks in Arizona will have significant economic impact. These rules, which simply incorporate by reference the material specified by the legislature, will have minimal economic impact.
10. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**  
Minor, non-substantive changes were made between the proposed and final rules. Additionally, the circumstances under which the State Fire Marshal will impose a civil penalty for prohibited use of fireworks was clarified in R4-36-403(A).
11. **A summary of the comments made regarding the rules and the agency response to them:**  
No written comments were submitted regarding the rules. No one attended the oral proceeding.
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:**  
NFPA 1124, Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471 or www.nfpa.org is incorporated at R4-36-401.
14. **Were these rules previously made as emergency rules?**  
No
15. **The full text of the rules follows:**

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 36. DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY

**ARTICLE 4. PERMISSIBLE CONSUMER FIREWORKS**

Section

- R4-36-401. Material Incorporated by Reference  
R4-36-402. Modification of NFPA 1124  
R4-36-403. Civil Penalties

**ARTICLE 4. PERMISSIBLE CONSUMER FIREWORKS**

**R4-36-401. Material Incorporated by Reference**

As required by A.R.S. § 36-1609(A), the State Fire Marshal incorporates by this reference NFPA 1124, Code for the Manufacture, Transportation, Storage and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 edition, which is published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471 and is available from NFPA at www.nfpa.org and the Office of the State Fire Marshal. The incorporated material does not include a later amendment or edition but is modified as specified in R4-36-402.

**R4-36-402. Modification of NFPA 1124**

- A.** Whenever the term “Consumer fireworks” is used in NFPA 1124, substitute the term “Consumer firework” as defined at A.R.S. § 36-1601(1).
- B.** Whenever the term “Display fireworks” is used in NFPA 1124, substitute the term “Display firework” as defined at A.R.S. § 36-1601(2).
- C.** Whenever the term “Fireworks” is used in NFPA 1124, substitute the term “Fireworks” as defined at A.R.S. § 36-1601(3).

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**R4-36-403. Civil Penalties**

- A.** Under the authority provided by A.R.S. § 36-1610, the State Fire Marshal shall impose a civil penalty of \$1,000 for each incident of prohibited use of fireworks on state land when the State Fire Marshal determines that the incident of prohibited use of fireworks posed a risk of harm to life or property.
- B.** As used in A.R.S. § 36-1610 and subsection (A), an incident of prohibited use of fireworks means the combustion, explosion, deflagration, or detonation of a single firework device.

**NOTICE OF FINAL RULEMAKING**

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

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

*Editor's Note: The following Notice of Final Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 at 15 A.A.R. 1942, November 20, 2009.) The Governor's Office authorized the notice to proceed through the rulemaking process on May 4, 2010.*

[R11-05]

**PREAMBLE**

- | <b><u>1. Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
|------------------------------------|---------------------------------|
| R20-5-602                          | 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. The effective date of the rules:**  
January 12, 2011  
The effective date of this final rule package will be the date it is filed with the Secretary of State according to § 41-1032. The new changes to the rule directly affect the health and safety of those employees working in the state of Arizona who are required to use acetylene in the scope of their employment. These new rules will further help to reduce the numbers of deaths and injuries associated with improper manufacturing, use, storage or transportation of acetylene.
- 4. A list of all previous notices appearing in the Register addressing the final rule:**  
Notice of Rulemaking Docket Opening: 16 A.A.R. 880, May 28, 2010  
Notice of Proposed Rulemaking: 16 A.A.R. 1446, August 6, 2010
- 5. 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., Suite 203  
Phoenix, AZ 85007  
Telephone: (602) 542-1695  
Fax: (602) 542-1614  
E-mail: wright.william.m@dol.gov
- 6. An explanation of the rule, including the agency's reason 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, incorporating by reference, amendments to 29 CFR 1910 Subpart H, as published in *Federal Register* 74 FR 40450-40455, August 11, 2009, and became a final order when published in the *Federal Register* 74 FR 57883-57884, November 10, 2009. This incorporation by reference replaces the reference to the 1966 edition of the Compressed Gas Association, Inc. Pamphlet G-1 for Acetylene with the Compressed Gas Association CGA-1-2003 edition. The changes between the 1966 and the 2003 edition are for the most part adding language for guidance of proper storage, use and transportation of acetylene cylinders, identifying appropriate dis-

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charge flow rates from cylinders, avoidance for potential damage to small cylinder valves and appropriate handling of leaking acetylene tanks. The 2003 edition has been written in plain language for better understanding of the requirements of this subpart.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each 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 Federal Occupational Safety and Health Administration have determined that these amendments will have minimal financial impact on the employers in general industry and too, 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.

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

None

**11. A summary of the comments made regarding the rule 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 agency or to any specific rule or class of rules:**

None

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

CFR 1910 Federal Occupational Safety and Health Standards for the General Industry with Amendments as of November 10, 2009. This incorporation by reference will appear in A.A.C. R20-5-602.

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

No

**5. 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 ~~September 9, 2009~~, November 10, 2009, 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 are the subject of rule R20-5-601. This incorporation by reference does not include amendments or editions to 29 CFR 1910 published after ~~September 9, 2009~~. November 10, 2009.