

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 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 12. BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Editor's Note: The following Notices of Proposed Rulemaking were exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 1116.)

[R14-61]

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|--|--------------------------|
| R4-12-101 | Amend |
| R4-12-602 | Repeal |
| R4-12-612 | Amend |
| R4-12-613 | Amend |
| R4-12-621 | Repeal |
| R4-12-631 | Amend |
| R4-12-632 | Repeal |
| R4-12-633 | Amend |
| R4-12-634 | Repeal |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. § 32-1307(A)(5)
Implementing statute: A.R.S. §§ 32-1301, 32-1365.01, 32-1365.02, 32-1371, 32-1372, 32-1373, 32-1393, 32-1394, 32-1397, 32-1398, 32-1398.01, 32-1399, 36-831
- 3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rules:**
Notice of Rulemaking Docket Opening: 20 A.A.R 1111, May 16, 2014 (*in this issue*)
- 4. The agency's contact person who can answer questions about the rulemaking:**
Name: Rudy Thomas, Executive Director
Address: Board of Funeral Directors and Embalmers
1400 W. Washington St., Suite 230
Phoenix, AZ 85007
Telephone: (602) 542-3095
Fax: (602) 542-3093
E-mail: rudy.thomas@funeralboard.us
- 5. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**
The Board is amending its cremation rules in Article 6 to make them conform to current statutory authority and current standards for crematories; make the rules clear, concise understandable; correct statutory citations; and reflect the changes set out in its 2012 Five-Year Review Report. The Board is amending its definitions in R4-12-101 to make the terms understandable to the reader and afford consistent interpretation and application of the terms throughout the rules. The Board is repealing R4-12-602, Authorizing Agent, because A.R.S. § 32-1365.02 governs most of the pro-

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visions in the rule. The Board is amending crematory requirements in R4-12-613 to ensure that certain information required by the Board's statutes is conveyed to a consumer purchasing cremation. The Board is repealing R4-12-621 because many of the requirements are currently found in A.R.S. §§ 32-1365.01 and 32-1365.02 and A.R.S. § 32-1393 *et seq.* Because the records requirements for a crematory or funeral establishment that provides for cremation are the same, the Board is combining records requirements that are currently in R4-12-631 and R4-12-632 into one rule, R4-12-631. The Board is repealing R4-12-634 because authorization for cremation is set forth in A.R.S. § 32-1365.02.

The Board is submitting this rulemaking to the Secretary of state's office in accordance with the exemption authorization under item 4 of Executive Order 2012-03, State Regulatory Rulemaking Moratorium.

6. A reference to any study relevant to the rules that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Board did not review or rely on any study.

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

None

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

Annual cost/revenue changes are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$5,000, and substantial when greater than \$5,000.

The Board will incur moderate costs to write the rules. The rules update the current practices and procedures of the Board and reflect amendments made to the Board's statutory authority in 2007. The Board is repealing four of the eight rules contained in Article 4, chapter 12, Article 6 because the requirements are already contained in the funeral board statutes, making the rules being repealed unnecessary. The requirements in R4-12-612 should not increase costs to a crematory because the requirements clarify A.R.S. § 32-1394. Refrigeration is already required for human remains that are not embalmed, so a crematory is required to either have a refrigerated holding facility or send the human remains to a funeral establishment or crematory that has refrigeration. The requirements in R4-12-613 ensure that certain information required by the Board's statutes is being conveyed to a consumer purchasing cremation and is already required by A.R.S. §§ 32-1371, 32-1372, and 32-1373. The amendments should not increase costs to a funeral establishment that provides for cremation. The records requirements in R4-12-631 should not increase costs to a funeral establishment that provides for cremation or crematory because the rule is being combined with R4-12-632 and the language is being amended for clarity, conciseness, and understandability. The language in R4-12-633 does not add any new requirements and should not increase costs to a funeral establishment that provides for cremation, crematory or the Board.

The Board, crematories, funeral establishments that provide for cremations, and consumers who choose cremation as their final disposition should benefit from rules that are clearly and consistently written. A hospital or medical practice should not realize any increase in costs from the rules.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Rudy Thomas, Executive Director
Address: Board of Funeral Directors and Embalmers
1400 W. Washington St., Suite 230
Phoenix, AZ 85007
Telephone: (602) 542-3095
Fax: (602) 542-3093
Web site: www.azfuneralboard.us

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

The Board will hold an oral proceeding regarding the proposed rules as follows:

Date: June 18, 2014
Time: 10:00 a.m.
Location: 1400 W. Washington St., Room B1
Phoenix, AZ 85007

The rulemaking record will close at 5:00 p.m. on June 18, 2014.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond

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to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Yes, the Board is issuing a license, which falls within the definition of general permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law is not applicable to the subject of the rules.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

The Board did not receive such an analysis from any person.

12. A list of any incorporation by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 12. BOARD OF FUNERAL DIRECTORS AND EMBALMERS

ARTICLE 1. GENERAL PROVISIONS

Section

R4-12-101. Definitions

ARTICLE 6. CREMATORY AND CREMATORY REGULATION

R4-12-602. ~~Authorizing agent~~ Repeal

R4-12-612. Crematory requirements

R4-12-613. ~~Cremation container or casket for cremation; requirements~~ Requirements for a funeral establishment that provides for cremation

R4-12-621. ~~Cremation requirements; prohibited practices~~ Repeal

R4-12-631. ~~Crematory record of cremations; retention~~ Record requirements for crematories and funeral establishments that provide for cremation

R4-12-632. ~~Cremation documentation by funeral establishments~~ Repeal

R4-12-633. Disposition of records

R4-12-634. ~~Authorization of cremation; required information~~ Repeal

ARTICLE 1. GENERAL PROVISIONS

R4-12-101. Definitions

In this Chapter:

1. "Applicant" means:
 - a. An individual requesting to take a state equivalent examination;
 - b. An individual requesting a reinstatement or an initial or renewal license or registration issued by the Board; or
 - c. One of the following if requesting an interim permit or an initial or renewal funeral establishment license, crematory license, or prearranged funeral sales establishment endorsement:
 - i. The individual, if a sole proprietorship;
 - ii. Any two of the corporation's officers, if a corporation;
 - iii. The managing partner, if a partnership or limited liability partnership; or
 - iv. The designated manger, or if no manger is designated, any two members of the limited liability company, if a limited liability company.
2. "Application packet" means the documents, forms, and additional information required by the Board for an initial or renewal application for a license, registration, endorsement, or reinstatement.
3. "Board" means the same as in A.R.S. § 32-1301.
4. "Burial" means a disposition of human remains, other than direct cremation.
5. "Cash advance item" means any service or merchandise such as pallbearers, transportation, clergy, flowers, motorcycle escorts, hair dressers, barbers, nurses, obituary notices, or death certificates, which is paid for by a funeral estab-

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- ishment on behalf of a purchaser and charged to the purchaser at the same amount as originally purchased.
6. "Continuing education" means a workshop, seminar, lecture, conference, class, or instruction related to funeral practices.
 7. "Credit hour" means 60 minutes of participation in continuing education.
 8. "Day" means calendar day.
 9. "~~Designated funeral director~~" has the same meaning as responsible funeral director in A.R.S. § 32-1301.
 - ~~10.9.~~ "Direct cremation" means cremation of human remains without a formal viewing, ceremony, or visitation of the human remains except for identification purposes.
 - ~~11.10.~~ "Disposition-transit permit" means the document that meets the requirements in A.R.S. § 36-326 and A.A.C. R4-19-302.
 11. "Endorsement" means a written authorization issued by the Board to a funeral establishment to offer or sell prearranged funeral agreements under 4 A.A.C. 12, Article 5.
 12. "Fraud," "misleading," or "false" means the actions described in A.R.S. § 44-1522.
 13. "Funeral establishment that provides for cremation" means a funeral establishment defined in A.R.S. § 32-1301(26) that owns a crematory on or off the funeral establishments premises or contracts with a crematory for cremation.
 - ~~13.14.~~ "Immediate burial" means a disposition of human remains, other than direct cremation, without a formal viewing, ceremony, or visitation except for identification purposes.
 - ~~14.15.~~ "Manager" means an individual who manages according to A.R.S. § 32-1301.
 - ~~15.16.~~ "Party" has the meaning in A.R.S. § 41-1001.
 - ~~16.17.~~ "Previous owner" means a person who owned 10 percent or more of a funeral establishment before the current owner.
 18. "Refrigerated" means the act of maintaining human remains at or below a temperature of 38 degrees Fahrenheit.
 - ~~17.19.~~ "Registrant" means an individual authorized by the Board to act as an embalmer's assistant or a prearranged funeral salesperson.
 - ~~18.20.~~ "Unfinished wood box" means an unornamented receptacle or casket for human remains.
 - ~~19.21.~~ "Week" means seven consecutive days.

ARTICLE 6. CREMATORY AND CREMATORY REGULATION

R4-12-602. Authorizing agent Repeal

- ~~A.~~ In conformity with A.R.S. §§ 36-831 and 36-831.01, the persons authorized to order the cremation of human remains have the following order of precedence:
- ~~1. Spouse of the decedent.~~
 - ~~2. An adult child with preference given in the following order:
 - ~~a. Executor of the estate.~~
 - ~~b. Guardian of the spouse.~~
 - ~~c. An adult child living in Arizona.~~~~
 - ~~3. A parent of a minor child.~~
 - ~~4. Any other person or organization, except the county where the death occurred, that is willing to order cremation and assume the legal and financial responsibility within 24 hours after the death. Preference shall be given in the following order:
 - ~~a. A parent~~
 - ~~b. Executor of the estate.~~
 - ~~c. Last appointed guardian of the decedent.~~~~
- ~~B.~~ If none of the persons named in subsection (A) is willing to decide whether to cremate, the public fiduciary or other representative designated to handle funeral arrangements by the county in which the death occurred may order cremation.
- ~~C.~~ A crematory authority knowingly shall not cremate human remains if a challenge of the qualifications of an authorizing agent is received prior to a cremation. If there is a challenge of the qualifications of an authorizing agent, the funeral establishment shall:
- ~~1. Provide to the decedent's family or the authorizing agent all options available at the funeral establishment for preserving the body which are not in conflict with R4-12-302(A)(3); and~~
 - ~~2. Await a court order or settlement of the dispute before cremation may occur.~~
- ~~D.~~ If the human remains already have been delivered to the crematory, the crematory shall either place the human remains in a refrigerated holding facility or return the human remains to the custody of the funeral establishment.
- ~~E.~~ If an event described in subsections (C) or (D) occurs, chronological reports of the event shall be prepared by the funeral

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establishment and the crematory authority. Each report shall be dated and signed by the author and shall be entered into the cremation record within 24 hours after the occurrence.

~~F.~~ A funeral establishment or cemetery operator may challenge the authority of an authorizing agent.

R4-12-612. Crematory requirements

~~A.~~ A crematory shall be maintained in a clean and orderly manner. "Clean and orderly" means the following: In addition to the requirements in A.R.S. § 32-1394, the responsible cremationist of a crematory shall ensure:

- ~~1.~~ Absence of litter, dirt and debris inside a facility, except that which is contained in a covered receptacle no larger than 35 gallons. The crematory is maintained free from dirt and debris,
- ~~2.~~ Scrupulous maintenance of the cremation chamber so that, as far as practicable, visible residue of the cremation process is removed after each cremation. Equipment and supplies maintained in the crematory do not impede passage through the crematory, and
- ~~3.~~ Neat alignment of unused cremation containers, urns, boxes or other merchandise so that they do not impede passage through the facility or their placement in a separate storage area. Human remains that are not embalmed are held in a refrigerated holding facility at the crematory or sent to a funeral establishment or another crematory for refrigeration.

~~B.~~ Unclaimed cremated remains shall be placed in an enclosed receptacle which shall be held temporarily in a secure place which is restricted to the crematory owners, operators, employees, and public officials in the discharge of their duties.

~~C.~~ A receptacle containing unclaimed cremated remains shall be identified clearly and indelibly with the name and location of the crematory, the name of the deceased and the date of cremation. If the receptacle containing the cremated remains is a temporary cremation box, the identification shall be affixed permanently on the cremation box. If the receptacle is an urn, the identification shall be affixed securely but temporarily to the urn.

~~D.~~ A crematory registered pursuant to R4-12-611 shall maintain the following on its premises:

- ~~1.~~ A cremation chamber constructed to withstand temperatures high enough to reduce human remains to bone fragments and sufficiently safe so that employees, surrounding structures, other persons and property are not subjected to damage from excessive heat or harmful emissions.
- ~~2.~~ A holding facility which preserves the dignity of the decedent as follows:
 - ~~a.~~ Human remains which have not been embalmed shall be held at a temperature of 38 degrees Fahrenheit or below.
 - ~~b.~~ Entrance to the holding facility while human remains are being held shall be limited to authorized employees of the crematory authority, a funeral director, embalmer, public officials in the discharge of their duties or other persons having the legal right to be present.
 - ~~e.~~ Except at the request and in the presence of the authorizing agent, crematory personnel shall not open a container or casket containing human remains without the presence of a licensed funeral director or embalmer. If a container or casket is opened, the funeral director or embalmer shall prepare, execute and date a report stating the reason. The report shall be made part of the cremation record of the crematory authority.
 - ~~d.~~ Each crematory authority shall adopt, and the responsible funeral director or cemetery operator shall enforce, personnel procedures which shall assure compliance with this subsection.

R4-12-613. ~~Cremation container or casket for cremation: requirements~~ Requirements for a funeral establishment that provides for cremation

~~A.~~ A funeral establishment that owns a crematory on or off the funeral establishment's premises shall designate a responsible cremationist.

~~A-B.~~ The responsible funeral director of a funeral establishment which offers that provides for cremation services shall display, ensure that:

place on its general price list under "Direct Cremation," and make available to consumers who choose cremation services, a rigid, covered, alternative container which is constructed of a material, such as cardboard, fiberboard or unfinished wood, that shall be entirely consumed or reduced to fine residue during the cremation process.

- ~~1.~~ The cost of cremation is included on its general price list required by A.R.S. § 32-1371;
- ~~2.~~ A price card for cremation is placed as required by A.R.S. § 32-1372;
- ~~3.~~ If the funeral establishment contracts with a licensed crematory to perform the cremation, the information required in A.R.S. § 32-1373(A) and (B) is provided to the purchaser of the cremation;
- ~~4.~~ A consumer who chooses cremation is informed that human remains may be cremated in a cremation container capable of being entirely consumed or reduced to fine residue during the cremation process, such as a casket, unfinished wood box, or fiberboard container; and

~~B.~~ A funeral establishment also may offer for sale in connection with cremation a closed casket which meets the combustibility requirements in subsection (A).

~~C-5.~~ Caskets or containers constructed of metal or of a substance which that when subjected to the cremation process emits may emit harmful fumes when subjected to the cremation process shall not be are not sold or used for cremation.

~~D.~~ If the responsible funeral director determines that there is potential for leakage from the cremation container or casket

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prior to the cremation, the funeral establishment shall line the container or casket with material that will prevent such occurrence or shall encase the human remains in a leakproof body pouch prior to placing the human remains in the container or casket.

- ~~E. Body fluids removed from the decedent prior to cremation shall not be forwarded for cremation except by the explicit request of the authorizing agent and with the knowledge and consent of the crematory authority.~~

R4-12-621. ~~Cremation requirements; prohibited practices~~ Repeal

- ~~A. A cremation chamber used for the cremation of human remains shall not be used for any other purpose without the express knowledge and consent of each authorizing agent.~~
- ~~B. Delivery of human remains to a crematory shall be made in a container meeting the requirements of R4-12-613.~~
- ~~C. No cremation shall occur except after completion of the requirements of A.A.C. Title 9, Chapter 19, compliance with A.R.S. § 11-599 and receipt of an authorization of cremation signed by the authorizing agent.~~
- ~~D. The following events shall occur only when the crematory authority has been provided with written instructions by an authorizing agent who is a spouse or kin of the decedent or decedents, as applicable. Such instructions shall be made part of the cremation record:~~
- ~~1. Removal of human remains from the delivery container or casket for the purpose of preserving the casket or container from the cremation process.~~
 - ~~2. Simultaneous cremation of the remains of more than one person.~~
 - ~~3. Knowingly and avoidably commingling the cremated remains of more than one person.~~
- ~~E. Unless otherwise instructed by the authorizing agent, the crematory shall encase the cremated remains in a temporary cremation box or an urn and release them within seven days to the funeral establishment which initiated the funeral services contract.~~
- ~~F. Cremated remains which are not returned in person shall be shipped by a service which assigns a number to the parcel or shipment and provides a receipt of delivery to enable misdirected cremated remains to be traced.~~
- ~~G. A funeral establishment shall not advertise as a crematory unless the funeral establishment is a registered crematory authority.~~
- ~~H. Any funeral establishment may offer and advertise cremation services.~~

R4-12-631. ~~Crematory record of cremation; retention~~ Records requirements for crematories and funeral establishments that provide for cremation

- ~~A. The responsible cremationist of a crematory or funeral establishment that provides for cremation authority shall establish and maintain ensure for each cremation performed that the following records are established and maintained for a period of five years from the date of the cremation a record of each cremation which shall include the following:~~
- ~~1. The name of the decedent and date of death;~~
 - ~~1-2. Authorization of cremation and any special instructions signed by the authorizing agent. The authorization document required by A.R.S. § 32-1365.01, if applicable or a record of the oral or written consent of the authorizing agent that meets the requirements in A.R.S. § 32-1365.02; and~~
 - ~~2-3. A copy copy of the completed and executed disposal/transit disposition-transit permit which authorizes the cremation; that meets the requirements in A.R.S. § 36-326 and A.A.C. R9-19-302.~~
 - ~~3. Reports or records relevant to the cremation not contained on the chronological log described in subsection B.~~
- ~~B. The responsible cremationist of a crematory or funeral establishment that provides for cremation shall establish and maintain a written permanent chronological log of cremations showing the following information that includes the identification number and identification information required in A.R.S. § 32-1399(1) and the following for each cremation performed:~~
- ~~1. The Date day, month, and year the human remains were received at the crematory or funeral establishment that provides for cremation;~~
 - ~~2. Name of the decedent;~~
 - ~~3. The Name name of the person or funeral establishment forwarding the human remains, responsible cremationist;~~
 - ~~4. The Type type of receptacle in which the human remains were received at the crematory, such as a wooden casket or a cardboard, fiberboard, or wooden container, or wooden casket, etc.;~~
 - ~~5. A Check check list showing receipt of the following:~~
 - ~~a. Authorization of cremation. The authorization document required in R4-12-631(A)(1) or R4-12-631(A)(3); and~~
 - ~~b. Disposal/transit authorizing the cremation The disposition-transit permit;~~
 - ~~6. Code indicator if there are reports in the decedent's file.~~
 - ~~7-6. The Time and date time, day, month, and year of the cremation;~~
 - ~~8-7. The Name printed name and signature of the authorized crematory operator, cremationist who performed the cremation;~~
 - ~~9-8. The following information regarding Disposition of the cremated remains including the following:~~
 - ~~a. Date The time, day, month, and year the cremated remains were picked up, delivered or disposed of and a written~~

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- record of the occurrence; disposed of according to the authority set forth in A.R.S. § 32-1365.01 or 32-1365.02; ;
- b. ~~Signature~~ The name of the crematory, funeral establishment, or authorizing agent person who delivered, shipped or disposed of the cremated remains authorized according to A.R.S. § 32-1365.01 or 32-1365.02 to dispose of cremated remains; and the name of the person to whom delivered.;
 - c. ~~The destination of shipment or place and manner of disposition~~ disposal according to A.R.S. § 32-1399(7).
10. ~~If the uncremated human remains are returned to a funeral establishment, the date and time of the return and the name of the person who picked up the human remains.~~
11. ~~Column for referencing a subsequent log entry.~~
- C. ~~If the uncremated human remains are returned to the a funeral establishment, and subsequently delivered to the crematory, a new log entry shall be made~~ the responsible cremationist shall ensure that the time, day, month, and year the human remains were picked up and the name of the individual who picked up the human remains are recorded on the written chronological log required in subsection (B).
- D. If a funeral establishment returns human remains that have been sent back according to subsection (C), the responsible cremationist shall ensure that a new entry that meets the requirements of subsection (B) is made.

R4-12-632. Cremation documentation by funeral establishments Repeal

- ~~A. A funeral establishment which contracts with a crematory for the cremation of human remains shall establish and maintain for at least five years from the last use a record of each contract which contains the following:~~
- 1. ~~Name of the decedent and the date of death.~~
 - 2. ~~Dated copy of the funeral arrangement or cremation purchase agreement.~~
 - 3. ~~Copy of the authorization of cremation.~~
 - 4. ~~Copy of the notification to the authorizing agent of the disposition of the cremated remains.~~
 - 5. ~~If a certified letter is sent to the authorizing agent concerning unclaimed cremated remains, a copy of the letter with the certification number on it or the returned, unopened certified letter.~~
 - 6. ~~Reports, instructions or other written information originating at the funeral establishment and pertaining to the cremation.~~
- ~~B. A funeral establishment also shall maintain a permanent record of each cremation which includes the following:~~
- 1. ~~Name of the decedent and the date of death.~~
 - 2. ~~Name of the issuing authority and the identifying number of the disposal/transit permit.~~
 - 3. ~~Date and name of the crematory to which the human remains were delivered.~~
 - 4. ~~Date of cremation.~~
 - 5. ~~Type, date and place of disposition.~~

R4-12-633. Disposition of records

- A. ~~If a the crematory of a funeral establishment that provides for cremation or a crematory changes ownership or a crematory is sold, the responsible funeral director or responsible cremationist shall ensure~~ the records described in R4-12-631 and R4-12-632 shall be delivered are provided to and maintained by the new owners the new responsible funeral director of the funeral establishment or responsible cremationist of the crematory.
- B. ~~If a funeral establishment that provides for cremation or a crematory is closed ceases operations, within seven 20 days after closing from the date of cessation, the responsible funeral director of the funeral establishment that provides for cremation or responsible cremationist of a crematory shall ensure that the records required in R4-12-631 and R4-12-632 shall be are:~~
- 1. ~~Delivered Provided~~ Provided to the Board office in person or by certified ~~delivery mail~~; or
 - 2. ~~Delivered Provided~~ Provided to another funeral establishment or crematory and the location of the records is provided to the Board. If this option is taken, the receiver of the records shall advise the Board of their new location by certified mail within seven days after receipt.

R4-12-634. Authorization of cremation; required information Repeal

- ~~The funeral establishment or crematory shall require the authorizing agent to sign an authorization of cremation which meets the requirements of A.R.S. § 32-1393 and contains the following:~~
- 1. ~~Name, address, and telephone number of the funeral establishment or crematory.~~
 - 2. ~~Name, address, and telephone number of the authorizing agent and his relationship to the decedent such as spouse, child, parent, personal representative, friend, or organization, public fiduciary, etc.~~
 - 3. ~~Name of the decedent and the date and place of death.~~
 - 4. ~~Conditions under which the funeral establishment or crematory agrees to carry out the disposition of the cremated remains or the conditions under which the authorizing agent or the agent's representative will take possession of the cremated remains.~~

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

Currently, the Community Right-to-Know program is paid for by a Federal Emergency Management Performance Grant (86%) and the State General Fund (14%) for a total cost of \$438,831 (pay and ERE for DEMA employees managing the program). H.B. 2174 allows DEMA to begin collecting user fees to offset costs from the Performance Grant that are reducing in cost and scope and will no longer be able to fully support AZSERC program costs.

Proposed user fees for facilities subject to Tier II reporting will be assessed \$75 for the first report and \$20 for each subsequent report up to a maximum of \$500. For example, a business that has 300 facilities that require Tier II reports would be assessed a maximum fee of \$500 versus \$6,055. Total proposed user fees would generate approximately \$300,000 annually to fund the Community Right-to-Know program and offset the reduction in the Performance Grant.

The proposed user fees for Tier II reporting will not be sufficient to make AZSERC self-sufficient, and this was known at the time the legislation was passed. AZSERC did not wish to impose an undue hardship on the small business community and it is for that reason that higher fees are not proposed that would have assisted AZSERC in becoming self-sufficient.

Thirty-two of fifty states collect Tier II reporting fees. Their fee collection formulae vary greatly based on the type and quantity of hazardous chemicals. The average base fee per facility is approximately \$100, but this can go up to as much as \$5,000 with one state maximum set at \$13,000.

Businesses file their Tier II reports based on a threshold of how many chemicals they possess through AZSERC's online database, which is recognized as one of the best in the nation. Small businesses are exempt from reporting (e.g., local gas stations). Many businesses use the online database as their primary chemical reporting system; therefore they have not had to duplicate it which saves businesses money.

The public (businesses and individuals) can look up addresses online and learn what hazardous chemicals are stored/used in their area and make determinations about residential, commercial, and industrial property values and purchases.

First responders (firefighters) use the system to determine what chemicals are on site when called to a fire, especially industrial sites, which helps them extinguish such fires properly and improves public safety.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Mark Howard, Executive Director
Address: Arizona Emergency Response Commission
5636 E. McDowell Rd.
Phoenix, AZ 85008
Telephone: (602) 464-6346
Fax: (602) 464-6529
E-mail: AZSERC@azdema.gov
Web site: www.azserc.org

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written comments will be received at the address listed in item 9 for 30 days after the Notice of Proposed Rulemaking is published in the *Register*. An oral proceeding will be scheduled if one is requested; otherwise, the record will be closed at the end of the 30-day period after publication in the *Register*. Should a request for an oral proceeding be received, notice of that proceeding will be published in a future edition of the *Register*.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rules do not require issuance of a regulatory permit or license.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

No

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

These rules contain no material incorporated by reference.

13. The full text of the rule follows:

TITLE 8. EMERGENCY AND MILITARY AFFAIRS

CHAPTER 4. ARIZONA EMERGENCY RESPONSE COMMISSION

ARTICLE 1. EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW

Section

R8-4-107. ~~EHS~~ Extremely Hazardous Substance (EHS) or Hazardous Chemical Reporting

ARTICLE 1. EMERGENCY PLANNING AND COMMUNITY RIGHT TO KNOW

R8-4-107. ~~EHS~~ Extremely Hazardous Substance (EHS) or Hazardous Chemical Reporting

- A.** The owner or operator of a facility shall comply with the extremely hazardous substance and hazardous chemical reporting requirements of 40 CFR 370, Subpart B, July 1, 2007, which is incorporated by this reference, contains no later amendments or editions, and is available from the Commission and the U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250.
- B.** As required by A.R.S. § 26-350, an owner or operator described in subsection (A) shall submit a Tier Two Emergency and Hazardous Chemical Inventory Form, using a form available from the Commission, by March 1 of each year. All facilities subject to this reporting requirement shall be subject to the Tier II Emergency and Hazardous Chemical Inventory Reporting fee schedule:
1. Each owner or operator of a facility required to file a hazardous chemical inventory report(s) (Tier II Reports) under the provisions of 42 U.S.C. § 11022 will be assessed an annual fee of \$75.00 for the first required facility report and an additional fee of \$20.00 for each additional required facility report up to a maximum limit of \$500.00 per reporting period.
 2. Owners or operators of facilities meeting the following conditions are exempt from the reporting fee(s):
 - a. Any business or other outlet that primarily reports or sells gasoline, diesel and other motor fuel only at retail to the public shall be exempt from paying the fees outlined in this subsection.
 - b. Any business or other outlet that only files a Tier II report to claim lead acid batteries shall be exempt from paying the fees outlined in this subsection.
 - c. Any business or other outlet that only files a Tier II report to claim Diesel or Gasoline shall be exempt from paying the fees outlined in the subsection.
 - d. Any business or other outlet that resides on tribal lands or a tribal Nation and must report to the C-TERC or TERC is exempt from paying the fees outlined in this subsection.
- C.** If a facility ceases to meet the minimum reporting thresholds of 40 CFR 370, Subpart B, for EHS and hazardous chemical reporting with regard to a specific EHS or hazardous chemical, the owner or operator of the facility may submit a notice to the Commission, LEPC, and FD indicating that the specific EHS or hazardous chemical is no longer present in a quantity that meets the minimum reporting threshold.