

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 3. AGRICULTURE

CHAPTER 9. DEPARTMENT OF AGRICULTURE AGRICULTURAL COUNCILS AND COMMISSIONS

[R08-151]

PREAMBLE

- 1. Sections Affected**

R3-9-101	<u>Rulemaking Action</u>
R3-9-106	Amend
	Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. § 3-526.02
Implementing statutes: A.R.S. §§ 3-526.02, 3-526.06
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 14 A.A.R. 2040, May 23, 2008 (*in this issue*)
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Carlos Ramírez, Rules Analyst
Address:	Department of Agriculture 1688 W. Adams St. Phoenix, AZ 85007
Telephone:	(602) 542-0962
Fax:	(602) 542-5420
E-mail:	cramirez@azda.gov
- 5. An explanation of the rule, including the agency's reasons for initiating the rules:**

The Arizona Iceberg Lettuce Research Council, serving in cooperation with the Department of Agriculture, is proposing to amend R3-9-101 and R3-9-106 to prescribe requirements for governmental units that wish to apply for Council grants. Governmental units will include any department, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch or corporation commission of this state, another state, or the federal government. The Council wishes to support other government agencies or subunits that produce work that is mutually beneficial, but is unable to do so in its current form. A.R.S. Title 3 allows the Council to contract with another governmental unit, but providing support to research agencies seems inconsistent with the statutes' intent. The proposed rulemaking maintains the competitive nature of the grant process as well as the transparency and public review of the grants, but foregoes requirements that are unnecessary to impose on a static governmental unit. The Department's separate treatment of governmental units when applying for grants is consistent with the differences in how they are treated under Title 41, dealing with grants.
- 6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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
- 7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previ-**

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

Not applicable

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

In fiscal year 2006-2007 the AILRC issued \$83,500 in grants. The proposed rulemaking will prescribe guidelines for governmental units to apply for grants, absent the public notification process and the partial distribution requirements. The Council anticipates this will affect applicants for grants by making the process more competitive, but it will also foster further research in advancing the Council's objectives for iceberg lettuce research. It is unlikely the proposed rulemaking will affect public or private employment or the state's general fund. The Council has determined there are no alternative means of achieving the objectives of the proposed rulemaking.

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: Carlos Ramírez, Rules Analyst

Address: Department of Agriculture
1688 W. Adams St.
Phoenix, AZ 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420

E-mail: cramirez@azda.gov

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

An oral proceeding is not scheduled for these proposed rules. To request an oral proceeding or to submit comments, please contact the Rules Analyst listed in item 4 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Arizona legal holidays. If a request for an oral proceeding is not made, the public record in this rulemaking will close at 4:30 p.m. 30 days after the proposed rulemaking is published in the *Arizona Administrative Register*.

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 rule follows:

TITLE 3. AGRICULTURE

CHAPTER 9. DEPARTMENT OF AGRICULTURE
AGRICULTURAL COUNCILS AND COMMISSIONS

ARTICLE 1. ARIZONA ICEBERG LETTUCE RESEARCH COUNCIL

Section
R3-9-101. Definitions
R3-9-106. Grants

ARTICLE 1. ARIZONA ICEBERG LETTUCE RESEARCH COUNCIL

R3-9-101. Definitions

In addition to the definitions in A.R.S. § 3-526, the following terms apply to this Article:

1. "AILRC" means the Arizona Iceberg Lettuce Research Council.
2. "Authorized signature" means the signature of an individual authorized to receive funds on behalf of the applicant and responsible for the execution of the applicant's project.
3. "Awardee" means a successful applicant to whom the AILRC awards grant funds for research on a specific project.
4. "Department" means the Arizona Department of Agriculture.
5. "Grant" means an award of financial support to an applicant according to A.R.S. § 3-526.02(B) and (C)(5).
6. "Grant award agreement" means a document that advises an applicant of the amount of money awarded following receipt by the AILRC of the applicant's signed acceptance.
7. "State governmental unit" means any department, commission, council, board, bureau, committee, institution,

agency, government corporation, or other establishment or official of the executive branch or corporation commission of this state, another state, or the federal government.

R3-9-106. Grants

- A. Grant application process.**
1. The AILRC shall award grants according to the competitive grant solicitation requirements of this Article.
 2. The AILRC shall post the grant application and manual on the AILRC's web site at least four weeks before the due date of a grant application.
 3. The AILRC shall ensure that the grant application manual contains the following items:
 - a. Grant topics related to AILRC programs specified by A.R.S. § 3-526.02(B) and (C)(5);
 - b. A statement that the information contained in an application is not confidential;
 - c. A statement that the AILRC funding source is primarily from per carton assessments on iceberg lettuce grown in Arizona;
 - d. An application form including sections about the description of the grant project, scope of work to be performed, an authorized signature line, and a sample budget form;
 - e. A statement that the applicant shall not include overhead expenses in the budget for the proposed project;
 - f. The criteria that the AILRC shall use to evaluate an application;
 - g. The date and time by which the applicant shall submit an application;
 - h. The anticipated date of the AILRC award;
 - i. A copy of the AILRC grant solicitation rules; and
 - j. Any other information necessary for the grant application.
 4. The AILRC shall not consider an application received by the AILRC after the due date and time.
- B. Criteria.** The AILRC shall consider the following when reviewing a grant application and deciding whether to award AILRC funds:
1. The applicant's successful completion of prior research projects,
 2. The extent to which the proposed project identifies solutions to current issues facing the iceberg lettuce industry,
 3. The extent to which the proposed project addresses future issues facing the iceberg lettuce industry,
 4. The extent to which the proposed project addresses the findings of any industry surveys conducted within the previous year,
 5. The appropriateness of the budget request in achieving the project objectives,
 6. The appropriateness of the proposal time-frame to the stated project objectives, and
 7. Relevant experience and qualifications of the applicant.
- C. Public participation.**
1. The AILRC shall make all applications available for public inspection by the business day following the application due date.
 2. Before awarding a grant, the AILRC shall discuss and evaluate grant applications and proposed projects at a meeting conducted under A.R.S. § 38-431 et seq.
- D. Evaluation of grant applications.**
1. The AILRC may allow applicants to make oral or written presentations at the public meeting if time, applicant availability, and meeting space permit.
 2. The AILRC may modify an applicant's proposed project in awarding funding.
 3. The AILRC shall notify an applicant in writing of the AILRC's decision to fund, modify, or deny funding for a proposed project within 10 business days of the AILRC decision. The AILRC shall notify applicants by the U.S. Postal Service, commercial delivery, electronic mail, or facsimile.
- E. Awards and project monitoring.**
1. Before releasing grant funds, the AILRC shall execute a grant award agreement with the awardee. The awardee shall agree to accept the grant's legal requirements and conditions and authorize the AILRC to monitor the progress of the project by signing a grant award agreement.
 2. The AILRC shall pay no more than 50% of the grant in the initial payment to the awardee.
 3. During the term of the project, the awardee shall inform the AILRC of changes to the awardee's address, telephone number, or other contact information.
 4. The AILRC may require an interim written report or oral presentation from the awardee during the pendency of the project.
 5. The AILRC shall not award grant funds remaining after the initial payment until the awardee submits to the AILRC:
 - a. A final research report, and
 - b. An invoice for actual final project expenses not exceeding the remaining portion of the award.
 6. The AILRC shall make research findings and reports resulting from any grant awarded by the AILRC available to Arizona iceberg lettuce producers.
- F. Repayment.** If the awardee does not complete the project as specified in the grant award agreement, the awardee shall

Notices of Proposed Rulemaking

return all unexpended grant funds within 30 days after receipt of a written request by the AILRC.

G. State governmental units.

- 1. The AILRC may request one or more state governmental units to submit grant applications and may award grants to state governmental units that submit applications as prescribed in subsection (G)(2), without regard to subsections (A), (E)(2), and (E)(5).
2. A state governmental unit may apply to the AILRC for a grant when there is no pending request for grant applications under subsection (A) under the following conditions:
a. The application shall include a description of the project, the scope of work to be performed, a budget that does not include overhead expenses, and an authorized signature.
b. The application shall be available for public inspection upon receipt by the AILRC.

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 9. DEPARTMENT OF AGRICULTURE
AGRICULTURAL COUNCILS AND COMMISSIONS

[R08-152]

PREAMBLE

1. Sections Affected

- R3-9-201
R3-9-202
R3-9-203
R3-9-204
R3-9-205

Rulemaking Action

- Amend
Amend
Amend
Amend
Amend

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

Authorizing statutes: A.R.S. § 3-584
Implementing statutes: A.R.S. §§ 3-587 and 3-584

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

Notice of Rulemaking Docket Opening: 14 A.A.R. 2040, May 23, 2008 (in this issue)

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

Name: Carlos Ramirez, Rules Analyst
Address: Department of Agriculture
1688 W. Adams St.
Phoenix, AZ 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420
E-mail: cramirez@azda.gov

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

The Arizona Grain Research and Promotion Council, serving in cooperation with the Department of Agriculture, is proposing to amend its rules to remove the specific grain assessment fee of two cents and replace it with a clause that would allow the Council to set the fee annually within statutory limitations. The objective is to give the Council more flexibility to change the fee in response to grain market fluctuations. The proposed rulemaking will also make the Grain Council's authority consistent with other councils that are allowed to annually change their assessment fees without prescribing them in rule.

Additionally, the Council is proposing to amend R3-9-205 to prescribe requirements for governmental units that wish to apply for Council grants. Governmental units will include any department, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch or corporation commission of this state, another state, or the federal government. The Council wishes to support other government agencies or subunits that produce work that is mutually beneficial, but is unable to do so in its current form. A.R.S. Title 3 allows the Council to contract with another governmental unit, but providing support to research

agencies seems inconsistent with the statutes' intent. The proposed rulemaking maintains the competitive nature of the grant process as well as the transparency and public review of the grants, but foregoes requirements that are unnecessary to impose on a static governmental unit. The Council's separate treatment of governmental units when applying for grants is consistent with the differences in how they are treated under Title 41, dealing with grants.

The Council is also proposing to amend its rules to make them consistent with grammar and style changes recommended in the Administrative Procedures Act.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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

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 summary of the economic, small business, and consumer impact:

In fiscal year 2006-2007 the AGRPC issued \$39,328 in grants. The proposed rulemaking will prescribe guidelines for governmental units to apply for grants, absent the public notification process and the partial distribution requirements. The Council anticipates this will affect applicants for grants by making the process more competitive, but it will also foster further research in advancing the Council's objectives for grain research and promotion. It is unlikely the proposed rulemaking will affect public or private employment or the state's general fund. The Council has determined there are no alternative means of achieving the objectives of the proposed rulemaking.

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: Carlos Ramírez, Rules Analyst

Address: Department of Agriculture
1688 W. Adams St.
Phoenix, AZ 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420

E-mail: cramirez@azda.gov

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

An oral proceeding is not scheduled for these proposed rules. To request an oral proceeding or to submit comments, please contact the Rules Analyst listed in item 4 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Arizona legal holidays. If a request for an oral proceeding is not made, the public record in this rulemaking will close at 4:30 p.m. 30 days after the proposed rulemaking is published in the *Arizona Administrative Register*.

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 rule follows:

TITLE 3. AGRICULTURE

CHAPTER 9. DEPARTMENT OF AGRICULTURE
AGRICULTURAL COUNCILS AND COMMISSIONS

ARTICLE 2. ARIZONA GRAIN RESEARCH AND PROMOTION COUNCIL

Section

- R3-9-201. Definitions
- R3-9-202. Fees; Grain Assessment and Refund
- R3-9-203. Hearings
- R3-9-204. Records

R3-9-205. Grants

ARTICLE 2. ARIZONA GRAIN RESEARCH AND PROMOTION COUNCIL

R3-9-201. Definitions

In addition to the definitions in A.R.S. § 3-581, the following term applies to this Article:

“AGRPC” means the Arizona Grain Research and Promotion Council.

“Department” means the Arizona Department of Agriculture.

R3-9-202. Fees; Grain Assessment and Refund

A. ~~The Arizona Grain Research and Promotion Council~~ AGRPC shall ~~assess a fee of two cents annually~~ prescribe the fee to be assessed per hundredweight of grain sold in Arizona ~~as prescribed within the limitations established~~ under A.R.S. § 3-587.

B. The person who pays the fee required under subsection (A) shall ensure that:

1. The grain assessment fee is remitted to the ~~Council~~ AGRPC; and
2. The following information is provided to the ~~Council~~ AGRPC on a form obtained from the Department:
 - a. First buyer’s name, address, and telephone number;
 - b. Report date and months covered by the report;
 - c. Total amount remitted to the ~~Council~~ AGRPC for the reporting period;
 - d. Producer’s name, address, and telephone number;
 - e. Type of grain and tonnage by grain type; and
 - f. First buyer’s or designee’s signature.

C. Refund.

1. A producer may request a refund as prescribed under A.R.S. § 3-592 and shall provide the following information to the ~~Council~~ AGRPC on a form obtained from the Department:
 - a. Producer’s name, address, telephone number, and signature;
 - b. Name of the first buyer;
 - c. Amount of grain sold subject to the refund request; and
 - d. First buyer’s or designee’s notarized signature confirming the purchase, funds withheld, and date remitted to the ~~Council~~ AGRPC.
2. An executive committee member shall authorize a refund as prescribed in A.R.S. § 3-592 if the person requesting the refund complies with the requirements of subsection (B)(1).

R3-9-203. Hearings

A. The ~~Council~~ AGRPC shall use the uniform administrative procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern any hearing before the ~~Council~~ AGRPC required under A.R.S. § 3-591.

B. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.

C. The ~~Council~~ AGRPC shall grant a rehearing or review of an administrative law decision for any of the following causes materially affecting the moving party’s rights:

1. The decision is not justified by the evidence or is contrary to law;
2. There is newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original proceeding;
3. One or more of the following deprived the party of a fair hearing:
 - a. Irregularity or abuse of discretion in the conduct of the proceeding;
 - b. Misconduct of the ~~Council~~ AGRPC, the administrative law judge, or the prevailing party; or
 - c. Accident or surprise which could not have been prevented by ordinary prudence; or
4. Excessive or insufficient sanction.

D. The ~~Council~~ AGRPC may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (C). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

R3-9-204. Records

The Department shall retain the ~~Council’s~~ AGRPC’s records as prescribed in A.R.S. § 3-586. A record may be reviewed at the Department’s main office, Monday through Friday, except an Arizona legal holiday, during the hours of 8:00 a.m. to 5:00 p.m. A copy of a record will be provided according to the provisions of A.R.S. § 39-121 et seq.

R3-9-205. Grants

A. Definitions.

1. ~~“AGRPC” means the Arizona Grain Research and Promotion Council.~~

2. “Authorized signature” means the signature of an individual authorized to receive funds on behalf of an applicant and responsible for the execution of the applicant’s project.

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- 3- “Awardee” means an applicant to whom the AGRPC awards grant funds for a proposed project.
- 4- “Grant” means an award of financial support to an applicant according to A.R.S. § 3-584(C)(5).
- 5- “Grant award agreement” means a document advising an applicant of the amount of money awarded following receipt by the AGRPC of the applicant’s signed acceptance of the award.
“State governmental unit” means any department, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch or corporation commission of this state, another state, or the federal government.

B. Grant application process.

- 1. The AGRPC shall award grants according to the competitive grant solicitation requirements of this Article.
- 2. The AGRPC shall post the grant application and manual on the AGRPC’s web site at least four weeks before the due date of a grant application.
- 3. The AGRPC shall ensure that the grant application and manual contain the following items:
 - a. Grant topics related to AGRPC projects specified in A.R.S. § 3-584(C)(5);
 - b. A statement that the information contained in a grant application is not confidential;
 - c. A statement that the AGRPC funding source is primarily from assessments on the seed of barley and wheat of all classes produced in Arizona for use as food, feed, or seed or produced for any industrial or commercial use;
 - d. An application form including sections about the description of the grant project, scope of work to be performed, an authorized signature line, and a sample budget form;
 - e. A statement that the applicant shall not include overhead expenses in the budget for the proposed project;
 - f. The criteria that the AGRPC shall use to evaluate an application;
 - g. The date and time by which the applicant shall submit an application;
 - h. The anticipated date of the AGRPC award;
 - i. A copy of this Section consisting of grant solicitation procedures and requirements; and
 - j. Any other information necessary for the grant application.
- 4. The AGRPC shall not evaluate an application received by the AGRPC after the due date and time.

C. Criteria. The AGRPC shall consider the following when reviewing a grant application and deciding whether to award AGRPC funds:

- 1. The applicant’s successful completion of prior research projects, if applicable;
- 2. The extent to which the proposed project identifies solutions to current issues facing the grain industry;
- 3. The extent to which the proposed project addresses future issues facing the grain industry;
- 4. The extent to which the proposed project addresses the findings of any industry surveys conducted within the previous year;
- 5. The appropriateness of the budget request in achieving the project objectives;
- 6. The appropriateness of the proposal time-frame to the stated project objectives; and
- 7. Relevant experience and qualifications of the applicant.

D. Public participation.

- 1. The AGRPC shall make all applications available for public inspection by the business day following the application due date.
- 2. Before awarding a grant, the AGRPC shall discuss, evaluate, and make a decision on grant applications and proposed projects at a meeting conducted under A.R.S. § 38-431 et seq.

E. Evaluation of grant applications.

- 1. The AGRPC may allow applicants to make oral or written presentations at the public meeting if time, applicant availability, and meeting space permit.
- 2. The AGRPC may modify an applicant’s proposed project in awarding funding.
- 3. The AGRPC shall notify an applicant in writing of the AGRPC’s decision to fund, modify, or deny funding for a proposed project within 10 business days of the AGRPC decision. The AGRPC shall notify applicants by the U.S. Postal Service, commercial delivery, electronic mail, or facsimile.

F. Awards and project monitoring.

- 1. Before releasing grant funds, the AGRPC shall execute a grant award agreement with the awardee. The awardee shall agree to accept the grant’s legal requirements and conditions and authorize the AGRPC to monitor the progress of the project by signing the grant award agreement.
- 2. The AGRPC shall pay no more than 50% of the grant in the initial payment to the awardee.
- 3. During the term of the project, the awardee shall inform the AGRPC of changes to the awardee’s address, telephone number, or other contact information.
- 4. The AGRPC may require an interim written report or oral presentation from the awardee during the term of the project.
- 5. The AGRPC shall not award the grant funds remaining after the initial payment until the awardee submits to the AGRPC:
 - a. A final research report, and

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- b. An invoice for actual final project expenses not exceeding the remaining portion of the grant funds.
- 6. The AGRPC shall make research findings and reports resulting from any grant awarded by the AGRPC available to Arizona grain producers.
- G. Repayment. If the awardee does not complete the project as specified in the grant award agreement, the awardee shall return all unexpended grant funds within 30 days after receipt of a written request by the AGRPC.
- H. State governmental units.
 - 1. The AGRPC may request one or more state governmental units to submit grant applications and may award grants to state governmental units that submit applications as prescribed in subsection (H)(2), without regard to subsections (B), (F)(2), and (F)(5).
 - 2. A state governmental unit may apply to the AGRPC for a grant when there is no pending request for grant applications under subsection (B) under the following conditions:
 - a. The application shall include a description of the project, the scope of work to be performed, a budget that does not include overhead expenses, and an authorized signature.
 - b. The application shall be available for public inspection upon receipt by the AGRPC.

NOTICE OF PROPOSED RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 9. DEPARTMENT OF AGRICULTURE
AGRICULTURAL COUNCILS AND COMMISSIONS

[R08-153]

PREAMBLE

- 1. Sections Affected Rulemaking Action
R3-9-506 Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statutes: A.R.S. § 3-468.02
Implementing statutes: A.R.S. §§ 3-468.02, 3-468.06
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:
Notice of Rulemaking Docket Opening: 14 A.A.R. 2040, May 23, 2008 (*in this issue*)
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: Carlos Ramírez, Rules Analyst
Address: Department of Agriculture
1688 W. Adams St.
Phoenix, AZ 85007
Telephone: (602) 542-0962
Fax: (602) 542-5420
E-mail: cramirez@azda.gov
- 5. An explanation of the rule, including the agency's reasons for initiating the rules:
The Arizona Citrus Research Council, serving in cooperation with the Department of Agriculture, is proposing to amend R3-9-506 to prescribe requirements for governmental units that wish to apply for Council grants. Governmental units will include any department, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch or corporation commission of this state, another state, or the federal government. The Council wishes to support other government agencies or subunits that produce work that is mutually beneficial, but is unable to do so in its current form. A.R.S. Title 3 allows the Council to contract with another governmental unit, but providing support to research agencies seems inconsistent with the statutes' intent. The proposed rulemaking maintains the competitive nature of the grant process as well as the transparency and public review of the grants, but foregoes requirements that are unnecessary to impose on a static governmental unit. The Department's separate treatment of governmental units when applying for grants is consistent with the differences in how they are treated under Title 41, dealing with grants.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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

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 summary of the economic, small business, and consumer impact:

In fiscal year 2006-2007 the ACRC issued \$30,000 in grants. The proposed rulemaking will prescribe guidelines for governmental units to apply for grants, absent the public notification process and the partial distribution requirements. The Council anticipates this will affect applicants for grants by making the process more competitive, but it will also foster further research in advancing the Council's objectives for citrus research. It is unlikely the proposed rulemaking will affect public or private employment or the state's general fund. The Council has determined there are no alternative means of achieving the objectives of the proposed rulemaking.

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: Carlos Ramírez, Rules Analyst

Address: Department of Agriculture
1688 W. Adams St.
Phoenix, AZ 85007

Telephone: (602) 542-0962

Fax: (602) 542-5420

E-mail: cramirez@azda.gov

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

An oral proceeding is not scheduled for these proposed rules. To request an oral proceeding or to submit comments, please contact the Rules Analyst listed in item 4 between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Arizona legal holidays. If a request for an oral proceeding is not made, the public record in this rulemaking will close at 4:30 p.m. 30 days after the proposed rulemaking is published in the *Arizona Administrative Register*.

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 rule follows:

TITLE 3. AGRICULTURE

**CHAPTER 9. DEPARTMENT OF AGRICULTURE
AGRICULTURAL COUNCILS AND COMMISSIONS**

ARTICLE 5. ARIZONA CITRUS RESEARCH COUNCIL

Section
R3-9-506. Grants

ARTICLE 5. ARIZONA CITRUS RESEARCH COUNCIL

R3-9-506. Grants

A. Definitions.

1. "ACRC" means the Arizona Citrus Research Council.
2. "Authorized signature" means the signature of an individual authorized to receive funds on behalf of the applicant and responsible for the execution of the applicant's project.
3. "Awardee" means a successful applicant to whom the ACRC awards grant funds for research on a specific project.
4. "Grant" means an award of financial support to an applicant according to A.R.S. § 3-468.02(B) and (C)(5).

Notices of Proposed Rulemaking

5. "Grant award agreement" means a document advising the applicant of the amount of money awarded following receipt by the ACRC of the applicant's signed acceptance.
 6. "State governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch or corporation commission of this state, another state, or the federal government.
- B. Grant application process.**
1. The ACRC shall award grants according to the competitive grant solicitation requirements of this Article.
 2. The ACRC shall post the grant application and manual on the ACRC's web site at least four weeks before the due date of a grant application.
 3. The ACRC shall ensure that the grant application manual contains the following items:
 - a. Grant topics related to ACRC programs specified by A.R.S. § 3-468.02(B) and (C)(5);
 - b. A statement that the information contained in an application is not confidential;
 - c. A statement that the ACRC funding source is primarily from per carton assessments on citrus grown in Arizona;
 - d. An application form including sections about the description of the grant project, scope of work to be performed, an authorized signature line, and a sample budget form;
 - e. A statement that the applicant shall not include overhead expenses in the budget for the proposed project;
 - f. The criteria that the ACRC shall use to evaluate an application;
 - g. The date and time by which the applicant shall submit an application;
 - h. The anticipated date of the ACRC award;
 - i. A copy of the ACRC grant solicitation rules; and
 - j. Any other information necessary for the grant application.
 4. The ACRC shall not consider an application received by the ACRC after the due date and time.
- C. Criteria.** The ACRC shall consider the following when reviewing a grant application and deciding whether to award ACRC funds:
1. The applicant's successful completion of prior research projects,
 2. The extent to which the proposed project identifies solutions to current issues facing the citrus industry,
 3. The extent to which the proposed project addresses future issues facing the citrus industry,
 4. The extent to which the proposed project addresses the findings of any industry surveys conducted within the previous year,
 5. The appropriateness of the budget request in achieving the project objectives,
 6. The appropriateness of the proposal time-frame to the stated project objectives, and
 7. Relevant experience and qualifications of the applicant.
- D. Public participation.**
1. The ACRC shall make all applications available for public inspection by the business day following the application due date.
 2. Before awarding a grant, the ACRC shall discuss and evaluate grant applications and proposed projects at a meeting conducted under A.R.S. § 38-431 et seq.
- E. Evaluation of grant applications.**
1. The ACRC may allow applicants to make oral or written presentations at the public meeting if time, applicant availability, and meeting space permit.
 2. The ACRC may modify an applicant's proposed project in awarding funding.
 3. The ACRC shall notify an applicant in writing of the ACRC's decision to fund, modify, or deny funding for a proposed project within 10 business days of the ACRC decision. The ACRC shall notify applicants by the U.S. Postal Service, commercial delivery, electronic mail, or facsimile.
- F. Awards and project monitoring.**
1. Before releasing grant funds, the ACRC shall execute a grant award agreement with the awardee. The awardee shall agree to accept the grant's legal requirements and conditions and authorize the ACRC to monitor the progress of the project by signing a grant award agreement.
 2. The ACRC shall pay no more than 50% of the grant in the initial payment to the awardee.
 3. During the term of the project, the awardee shall inform the ACRC of changes to the awardee's address, telephone number, or other contact information.
 4. The ACRC may require an interim written report or oral presentation from the awardee during the pendency of the project.
 5. The ACRC shall not award the grant funds remaining after the initial payment until the awardee submits to the ACRC:
 - a. A final research report, and
 - b. An invoice for actual final project expenses not exceeding the remaining portion of the award.
 6. The ACRC shall make research findings and reports resulting from any grant awarded by the ACRC available to Arizona citrus producers.

- G. Repayment. If the awardee does not complete the project as specified in the grant award agreement, the awardee shall return all unexpended grant funds within 30 days after receipt of written request by the ACRC.
- H. State governmental units.
1. The ACRC may request one or more state governmental units to submit grant applications and may award grants to state governmental units that submit applications as prescribed in subsection (H)(2), without regard to subsections (B), (F)(2), and (F)(5).
 2. A state governmental unit may apply to the ACRC for a grant when there is no pending request for grant applications under subsection (B) under the following conditions:
 - a. The application shall include a description of the project, the scope of work to be performed, a budget that does not include overhead expenses, and an authorized signature.
 - b. The application shall be available for public inspection upon receipt by the ACRC.

NOTICE OF PROPOSED RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY

UNEMPLOYMENT INSURANCE

[R08-148]

PREAMBLE

- | | |
|-----------------------------------|---------------------------------|
| <u>1. Section Affected</u> | <u>Rulemaking Action</u> |
| R6-3-1407 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 41-1954(A)(1)(A) and 41-1954(A)(3)
Implementing statutes: A.R.S. §§ 23-733 and 23-733.01
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 14 A.A.R. 2042, May 23, 2008 (*in this issue*)
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|---|
| Name: | Beth Broeker |
| Address: | Department of Economic Security
1789 W. Jefferson St., Site Code 837A
Phoenix, AZ 85007 |
| or | |
| | P.O. Box 6123, Site Code 837A
Phoenix, AZ 85005 |
| Telephone: | (602) 542-6555 |
| Fax: | (602) 542-6000 |
| E-mail: | bbroeker@azdes.gov |
- 5. An explanation of the rules, including the agency's reasons for initiating the rules:**

The Arizona Department of Economic Security administers the state Unemployment Insurance (UI) program, authorized under Titles II and IX of the Social Security Act, the Federal Unemployment Tax Act, and Arizona Revised Statutes Title 23, Chapter 4. Arizona Revised Statutes § 23-772 requires that all base period employers be promptly notified when an individual files an initial claim for unemployment insurance. In conjunction with this statute, R6-3-1407 currently stipulates that the Department will mail a Notice to Employer to all base period employers, including the last employer, to notify these employers that a former employee has filed for unemployment insurance. R6-3-1407 further states that, if an employer returns a Notice within 10 days after the date of mailing with a signed statement of facts that may affect the claimant's eligibility for benefits or information on the issue of separation, the employer will be an interested party to any determination made on the supplied information.

The Department is currently developing a system that can transmit the Notice to Employer electronically. The new process will also allow the employer to respond to the Notice electronically. The proposed amendment will maintain

Notices of Proposed Rulemaking

the substance of the current language applicable to mailed notices, but will also allow the Department to transmit notices electronically. The new language also allows any employer who receives an electronic notice to respond electronically.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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

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:

There will be a positive impact for both small and large businesses that participate in the program to receive and return Notices to Employers electronically. Electronic transmission should result in a savings on postage and handling. It will also provide the employer with an extra day or two to gather information and prepare a response.

There will be no impact on workers who apply for unemployment insurance benefits.

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: Beth Broeker
Address: Department of Economic Security
1789 W. Jefferson St., Site Code 837A
Phoenix, AZ 85007

or

P.O. Box 6123, Site Code 837A
Phoenix, AZ 85005

Telephone: (602) 542-6555
Fax: (602) 542-6000
E-mail: bbroeker@azdes.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 rules:

The Department does not plan to conduct an oral proceeding on the proposed rules unless a written request for an oral proceeding is submitted to the person named in item 4 within 30 days after this notice is published. The Department will accept written comments on the proposed rules for 30 days after the date of this publication. All written comments must be submitted to the person named 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 locations in the rules:

None

13. The full text of the rules follows:

TITLE 6. ECONOMIC SECURITY

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY
UNEMPLOYMENT INSURANCE

ARTICLE 14. ADMINISTRATION AND ENFORCEMENT

Section

R6-3-1407. Interested Parties Party

ARTICLE 14. ADMINISTRATION AND ENFORCEMENT

R6-3-1407. Interested Parties Party

Notices of Proposed Rulemaking

- A. ~~Interested parties~~ An interested party to a benefit or chargeability determination is or a chargeability determination are:
1. A claimant whose right to benefits is affected.
 2. A claimant's most recent employing unit or employer, or any base period employer, if the employer:
 - a. Returns the Department's Notice to Employer₂ with a signed statement of facts ~~which that~~ which that may affect the claimant's eligibility for benefits₂ or information on the issue of separation from employment₂ within 10 business days ~~after the date the Department mails the Notice~~ of the date on the Notice to Employer the Department mails to the employer's address of record; or
 - b. Responds electronically to the Department's Notice to Employer within 10 business days of date the Department transmits the Notice to the employer's electronic address on file, provided the response contains:
 - i. A statement of facts that may affect the claimant's eligibility for benefits or information on the issue of separation from employment with the employer, and
 - ii. The name of the individual responsible for providing this information; or
 - ~~b.c.~~ Makes a bona fide offer of work to the claimant during a week for which the claimant files a claim for benefits, and sends the Department written notification of the offer within 5 five business days of the date the employer makes of the offer.
 3. The claimant's most recent employing unit or employer₂ when the claimant is disqualified on the basis of the claimant's separation from employment with the employing unit or employer.
- B. The Department shall make a previously excluded party an interested party to a decision involving whether wages are usable for a claim ~~whenever~~ when the Department determines that the decision could adversely affect the excluded party.

NOTICE OF PROPOSED RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY

UNEMPLOYMENT INSURANCE

[R08-146]

PREAMBLE

1. **Section Affected** **Rulemaking Action**
R6-3-1810 Amend
2. **The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 41-1954(A)(1)(A) and 41-1954(A)(3)
Implementing statutes: A.R.S. §§ 23-634.01, 23-771, 23-775, and 23-776
3. **A list of all previous notices appearing in the Register addressing the proposed rule.**
Notice of Rulemaking Docket Opening: 13 A.A.R. 2592, July 20, 2007
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Beth Broeker
Address: Department of Economic Security
1789 W. Jefferson St., Site Code 837A
Phoenix, AZ 85007

or

P.O. Box 6123, Site Code 837A
Phoenix, AZ 85005

Telephone: (602) 542-6555
Fax: (602) 542-6000
E-mail: bbroeker@azdes.gov
5. **An explanation of the rules, including the agency's reasons for initiating the rules:**

Notices of Proposed Rulemaking

The Arizona Department of Economic Security administers the state Unemployment Insurance (UI) program, authorized under Titles III and IX of the Social Security Act, the Federal Unemployment Tax Act, and Arizona Revised Statutes Title 23, Chapter 4.

The underlying purpose of the national unemployment insurance program is to provide benefits to workers who are temporarily unemployed through no fault of their own. In consonance with this philosophy, various statutes, including A.R.S. §§ 23-775(1), 23-775(2), and 23-776, provide for the disqualification of an applicant if the Department determines that the applicant caused the unemployment by quitting a job without good cause, or refusing an offer of suitable work, etc. The various statutory disqualifications addressed in the proposed rule remain in effect until the individual is reemployed and earns a specified amount of money.

The proposed rule, R6-3-1810, clarifies what constitutes "requalifying" earnings needed to terminate the disqualification. The rule also describes how the amount is calculated and specifies the time-frame wherein these wages must be earned.

The proposed amendment provides no substantive changes to the existing rule that has been in effect since 1976 and was last revised in 1995. Rather, the amendment is in accord with the Five Year Report approved by the Governor's Regulatory Review Council on June 7, 2007, and corrects an erroneous statute citation, removes gender specific language, and meets current standards for language, style, and format.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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

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 proposed rule change will have no impact on either small or large businesses, as the rule is only applicable to unemployment insurance applicants who need to requalify following a disqualification from the receipt of benefits.

Further, the proposal will have no effect on workers who apply for unemployment insurance, as there is no substantive change in the rule. This rule has been essentially in effect for over 30 years and has received no negative comment from the public.

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: Beth Broeker
Address: Department of Economic Security
1789 W. Jefferson St., Site Code 837A
Phoenix, AZ 85007

or

P.O. Box 6123, Site Code 837A
Phoenix, AZ 85005
Telephone: (602) 542-6555
Fax: (602) 542-6000
E-mail: bbroeker@azdes.gov

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

The Department does not plan to conduct an oral proceeding on the proposed rules unless a written request for an oral proceeding is submitted to the person named in item 4 within 30 days after this notice is published. The Department will accept written comments on the proposed rules for 30 days after the date of this publication.

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 locations in the rules:

None

13. The full text of the rules follows:

TITLE 6. ECONOMIC SECURITY

CHAPTER 3. DEPARTMENT OF ECONOMIC SECURITY
UNEMPLOYMENT INSURANCE

ARTICLE 18. BENEFITS

Section

R6-3-1810. Requalifications

ARTICLE 18. BENEFITS

R6-3-1810. Requalifications

A. ~~The Department shall apply the definitions of wages contained in regulation R6-3-1705 shall be used as the definition of wages for the purposes of A.R.S. §§ 23-634.01, 23-771(7), 23-775(1), 23-775(2), and 23-776(A) for requalification under this Section.~~

A.B. In determining whether a claimant has earned sufficient wages to requalify under ~~any of the above Sections~~ A.R.S. §§ 23-634.01, 23-771(A)(7), 23-775(1), 23-775(2), or 23-776(A), the following shall apply:

1. ~~Wages required to requalify will include~~ The Department shall use both insured and non-insured wages, but ~~will~~ shall not include ~~use earnings income~~ from self-employment.
2. ~~Any~~ The Department shall use any income, including wages from agricultural and domestic work, that would be reportable as wages on a weekly claim for unemployment insurance, ~~(except but shall not use~~ income from self-employment) can be used as wages to requalify, including wages from agricultural and domestic work.

B.C. ~~The following will govern the determination of~~ In determining whether wages are usable for requalification purposes, ~~the following shall apply:~~

1. In considering requalification under A.R.S. §§ 23-775(1), 23-775(2), and 23-776(A), ~~the Department shall consider work services must have been performed subsequent to the date of the act which that resulted in the disqualification which will be satisfied by the requalification.~~
2. In considering requalification under ~~A.R.S. § 23-771(7)~~ A.R.S. § 23-771(A)(7), ~~the Department shall consider dates the service was performed will be controlling. The services must have been performed during the period between the beginning date of a benefit year and prior to the effective date of a subsequent benefit year.~~
3. In considering requalification under A.R.S. § 23-634.01, ~~the Department shall consider the work services must have been performed subsequent to the week in which the failure to apply for, accept, or seek work occurred. The individual must have claimant shall document that the claimant has worked in each of at least four calendar weeks and the claimant's total earnings must wages equal at least four times the weekly benefit amount. The weeks need not be consecutive.~~

C.D. ~~The proof required to establish wages for requalification purposes under any of the above Sections~~ A.R.S. §§ 23-634.01, 23-771(A)(7), 23-775(1), 23-775(2), or 23-776(A) may consist of check stubs or other payment records, an employer statement, or W-2 form (if the beginning date of a prior benefit or the disqualifying act was such that the W-2 establishes wages were paid after this date). When the employer's quarterly wage reports ~~available in~~ submitted to the Department show the contended wage items, the Department may accept the ~~report(s) reports~~ as proof of the wages. ~~If necessary for a determination under B. above, the period during which the wages were earned shall be established by other proof. When other evidence cannot be obtained, the affidavit of the claimant, together with affidavit(s) from other individuals with knowledge of the claimant's employment, may be accepted as proof.~~

D.E. ~~Except for wages of which the Department has knowledge through that are included on employers' employer's quarterly wage reports to the Department,~~ the burden of establishing requalifying wages shall rest on the claimant. The Department may, ~~as it deems appropriate,~~ assist the claimant in the verification of wages ~~which that the claimant states he the claimant has earned but of which he has no proof, or insufficient proof, by contacting the employer(s) employer either by telephone, or in writing, or through electronic communication.~~

E.F. ~~A disqualification shall not be terminated prior to~~ The Department shall not terminate a disqualification period before the end of the week in which the claimant's earnings subsequent to the disqualifying act totaled wages total an amount sufficient to requalify.

F.G. In determining whether a disqualification carries over from one benefit year to a subsequent benefit year, the following shall apply:

1. ~~Unless~~ A ~~a disqualification is purged within the benefit year, the Department shall carry over a disqualification assessed in a benefit year under A.R.S. §§ 23-775(1), 23-775(2), or 23-776(A) and not satisfied within the benefit year shall be carried into the next benefit year, unless it is established by the Department's wage records establish that the claimant earned sufficient wages to requalify subsequent to the date of the act resulting in the disqualification.~~
2. ~~A~~ The Department shall not carry over a disqualification assessed under A.R.S. § 23-634.01 will not be carried over

Notices of Proposed Rulemaking

into a subsequent benefit year.

~~G.H.~~ In determining the amount of wages required to requalify after disqualifications, the following shall apply:

1. The amounts required to requalify after disqualification imposed under A.R.S. §§ 23-634.01, 23-775(1), 23-775.2, or 23-776(A) shall not be cumulative. The amount of wages required to purge the largest disqualification shall remove all disqualifications, as long as the wages ~~which that~~ are used to requalify were earned subsequent to the date of occurrence of the act ~~which that~~ resulted in the disqualification, ~~except that~~
2. For disqualifications under A.R.S. § 23-634.01 requires the work must shall have been performed subsequent to the week of occurrence of the act ~~which that~~ resulted in the disqualification and in each of at least four weeks, as shown in ~~(B)(3) above~~ subsection (C)(3).

~~H.I.~~ The following shall govern the determination of In determining the weekly benefit amount of used as a multiplier for wages required to requalify, the Department shall determine:

1. The amount of required wages to requalify under A.R.S. §§ 23-634.01, 23-775(1), 23-775(2), or 23-776(A) ~~shall be determined~~ based on the weekly benefit amount payable at the time the disqualification is imposed. When a revised monetary determination results in a change in the weekly benefit amount, the Department shall adjust the amount required to requalify after any disqualification not previously purged, ~~satisfied shall be adjusted~~ in accordance with the new weekly benefit amount; and notify the claimant ~~shall be notified~~ of the change. ~~Once a disqualification is satisfied by requalification, the amount required to satisfy that disqualification shall not be adjusted due to any subsequent revision of the weekly benefit amount.~~
2. The amount of required wages to requalify under ~~A.R.S. § 23-771(7)~~ A.R.S. § 23-771(A)(7) shall be determined based on the potential weekly benefit amount calculated under A.R.S. § 23-779 for ~~each monetary determination or redetermination~~ a subsequent benefit year. ~~When If~~ a revised monetary determination results in a change an increase in the weekly benefit amount, the claimant shall ~~be required to~~ requalify in terms of the new increased weekly benefit amount. If the claimant cannot requalify at the new higher rate, and has received benefits based on requalification at the previous, lower rate, the Department shall establish an overpayment ~~shall be established~~.

NOTICE OF PROPOSED RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 18. OFFICE OF LICENSING, CERTIFICATION, AND REGULATION

[R08-149]

PREAMBLE

- | | |
|--|---|
| <u>1. Section Affected</u> | <u>Rulemaking Action</u> |
| R6-18-707 | Amend |
| <u>2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):</u> | |
| Authorizing statutes: A.R.S. §§ 41-1954(A)(1)(a) and 41-1954(A)(3) | |
| Implementing statutes: A.R.S. § 8-504 | |
| <u>3. A list of all previous notices appearing in the Register addressing the proposed rule:</u> | |
| Notice of Rulemaking Docket Opening: 13 A.A.R. 2599, July 20, 2007 | |
| <u>4. The name and address of agency personnel with whom persons may communicate regarding this rule:</u> | |
| Name: | Beth Broeker |
| Address: | Department of Economic Security
1789 W. Jefferson St., Site Code 837A
Phoenix, AZ 85007 |
| or | |
| | P.O. Box 6123, Site Code 837A
Phoenix, AZ 85005 |
| Telephone: | (602) 542-6555 |
| Fax: | (602) 542-6000 |
| E-mail: | bbroeker@azdes.gov |

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

Subsection (B) of the rule requires water testing for settings with a non-municipal source of water to ensure safe drinking water is available for children and vulnerable adults who receive care in the setting. The current rule assigns the DES regulatory unit with responsibility for collecting a sample of the water and for submitting the sample to a state certified water testing laboratory. The proposed rule change would place this responsibility on the licensed or certified care provider.

The practice of having the DES regulatory unit bear responsibility for collecting and testing water samples has not proven feasible. Most settings with a non-municipal source of water (usually a private well) are in remote locations of the state. The process requires DES to travel to the remote location to collect a small sample of tap water. This use of staff is highly inefficient and the travel-related expenses are not cost effective.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to 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:

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:

The cost of the water testing ranges from \$35 to \$50 and would only impact those care providers who do not have a municipal source of water. Fewer than 5% of the care providers in Arizona have a non-municipal source of water.

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: Beth Broeker
Address: Department of Economic Security
1789 W. Jefferson St., Site Code 837A
Phoenix, AZ 85007

or

P.O. Box 6123, Site Code 837A
Phoenix, AZ 85005

Telephone: (602) 542-6555

Fax: (602) 542-6000

E-mail: bbroeker@azdes.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:

The Department will schedule an oral proceeding if an individual submits a written request to the person listed in item 4 above.

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:

Not applicable

13. The full text of rules follows:

TITLE 6. ECONOMIC SECURITY

CHAPTER 18. OFFICE OF LICENSING, CERTIFICATION, AND REGULATION

ARTICLE 7. LIFE-SAFETY INSPECTION

Section
R6-18-707. Plumbing Requirements

ARTICLE 7. LIFE-SAFETY INSPECTION

R6-18-707. Plumbing Requirements

- A. The care provider shall ensure that a continuous source of safe drinking water is available to individuals receiving care.
- B. If the setting has a non-municipal source of water, the ~~OLCR inspector shall collect a water sample at the time of an initial inspection and may collect a sample at subsequent inspections~~ care provider shall submit a sample of the setting's tap water to a state-certified water testing laboratory before the initial inspection by OLCR.
 - 1. ~~The care provider shall have the water tested for the presence of total coliform. OLCR inspector shall submit the water sample to a state-certified laboratory for total coliform testing.~~ The water sample shall also be tested for nitrate content when care is provided to children under 2 years of age.
 - 2. If the water sample is not within acceptable levels for safe drinking water, the care provider shall provide OLCR with a signed, written statement that:
 - a. Certifies that individuals receiving care will be provided with safe drinking water, and
 - b. Describes the care provider's plan for obtaining safe drinking water.
- C. The sewage disposal for the setting is functioning. If the setting has a septic tank, it is in good working order, with no visible signs of leakage on the ground.
- D. The hot water temperature in areas for bathing does not exceed 120°F.
- E. At least one working toilet, wash basin, and shower or tub is available for every ~~ten~~ 10 persons living or receiving care in the setting at the same time.