

NOTICES OF FINAL RULEMAKING

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

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of executive order on page. 160.) The Governor's Office authorized the notice to proceed through the rulemaking process on November 16, 2010.

[R13-07]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable)**

<u>Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R4-30-122	Amend
R4-30-204	Amend
R4-30-212	Amend
R4-30-214	Amend
R4-30-271	Amend
R4-30-272	Amend
R4-30-301	Amend
- 2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. §§ 32-106(A)(1) and (9), and 32-106(D) and (F).
Implementing statutes: A.R.S. §§ 32-122.01, 32-122.03, 32-122.04, 32-123, 32-148 and 41-1092.07.
- 3. The effective date of the rule:**

March 10, 2013
- 4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 17 A.A.R. 4, January 7, 2011
Notice of Proposed Rulemaking: 18 A.A.R. 50, January 13, 2012
Notice of Supplemental Rulemaking: 18 A.A.R. 1120, May 18, 2012
- 5. The agency's contact person who can answer questions about the rulemaking:**

Name:	Melissa Cornelius, Deputy Director
Address:	Board of Technical Registration 1110 W. Washington St., Suite 240 Phoenix, AZ 85007
Telephone:	(602) 364-4930
Fax:	(602) 364-4931
E-mail:	Melissa.cornelius@azbtr.gov
- 6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

The State Board of Technical Registration (Board) is charged with protecting the health, safety, and welfare of the public. Toward this end, the Board examines, registers, and issues registrations and certificates to architects, assayers, clandestine drug lab remediation firms and their employees, certified remediation specialists, engineers, geologists, home inspectors, landscape architects, and land surveyors. Pursuant to A.R.S. § 32-106(A)(1), the Board has author-

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ity to adopt rules for the “performance of duties imposed upon it by law.” The subject rulemaking is submitted pursuant to that authority.

This rulemaking proposes to amend seven of the Board’s rules. R4-30-122, the Board’s Subpoena rule, must be modified to remove the outdated phrase “Hearing Officer” and affirm the Board’s power to issue investigative subpoenas.

R4-30-204 should be modified in order to address a conflict that has arisen between the Board’s rule, which requires that Architect applicants pass the national examination required for registration (the Architect Registration Examination) within five years of first *taking* any division of it, and the new national standard, which provides architect candidates with five years to successfully complete the national examination from the date of *passing* the first of the examination’s seven sections. The new national standard allows applicants a longer period of time to pass the competency examination than the Board’s rule. R4-30-212, and R4-30-214 must be modified to reflect the changes proposed in R4-30-204.

R4-30-271 and R4-30-272 relate to drug lab remediation firm supervisors and workers. These proposed rules modifications move and update the language without making substantive changes.

Finally, R4-30-301 should be modified to remove and replace a reference to an incorrect web site regarding the Arizona association of land surveyors.

The Governor’s Office has reviewed and granted the Board’s request for an exemption to the Rules Moratorium, in place since 2009, in order to allow the Board to amend these rules to better protect the public’s health, safety and welfare.

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

This rulemaking does not reference any relevant studies.

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

Not applicable

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

The Board expects that updating the rules will benefit all parties involved in its regulatory processes. The proposed rulemaking would clarify requirements for architect applicants seeking professional registration, matching Arizona’s requirements with the national standards for testing the competency of professional architect candidates.

The proposed rule changes will not impose significant additional costs for small business. Architects will benefit from the adoption of the national standard for completion of the Architect Registration Examination.

The proposed rulemaking would tighten language relating to enforcement and clarify compliance requirements, which the Board expects will affect registrants and small businesses positively.

The proposed rulemaking is not expected to have a significant negative impact on the following sectors of the economy: 1) the competitiveness of professionals in Arizona compared to their counterparts from other states; 2) the prices of goods and services in the state; 3) state revenues. The additional administrative costs to state agencies, such as to the Board, the Secretary of State’s Office, and the Governor’s Regulatory Review Council, are not expected to be significant.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

The Board made grammatical and formatting changes to this Notice of Final Rulemaking proposed by GRRC staff and the Office of the Secretary of State. These changes also include the addition of the location information regarding materials incorporated by reference.

11. An agency’s summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The Board did not receive any public or stakeholder comments related to these rules during its open comment period.

12. 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:

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:

None of the Board’s proposed rule changes require permitting.

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:

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Federal law relating to remediating hazardous waste is applicable to the subject of the proposed rules changes, but this proposed rulemaking is not more stringent.

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 one submitted analyses to the Board that compare the proposed rules’ impact on business in this state or other states.

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

As contained in proposed rule **R4-30-271(A)(11):**

- 29 CFR 1926.62(l), effective January 8, 1998. 63 FR 1296.

As contained in proposed rule **R4-30-301(13):**

- Arizona Professional Land Surveyors Association Arizona Boundary Survey Minimum Standards

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

ARTICLE 1. GENERAL PROVISIONS

Section

R4-30-122. Issuance of Subpoenas

ARTICLE 2. REGISTRATION PROVISIONS

Section

R4-30-204. Examinations

R4-30-212. Architect-in-training Designation

R4-30-214. Architect Registration

R4-30-271. ~~On-site~~ Onsite Supervisor Certification and Renewal

R4-30-272. ~~On-site~~ Onsite Worker Certification and Renewal

ARTICLE 3. REGULATORY PROVISIONS

Section

R4-30-301. Rules of Professional Conduct

ARTICLE 1. GENERAL PROVISIONS

R4-30-122. Issuance of Subpoenas

Any party desiring the Board ~~or its hearing officers~~ to issue a subpoena shall make application, stating the substance of the testimony expected of the witness or the relevancy of the evidence to be produced. If the testimony or evidence appears to the Board ~~or its hearing officer~~ to be material and necessary, a subpoena shall be supplied. The affixing of the seal of the Board and the signature of the Chairman, Secretary, Executive Director, ~~or administrative law judge~~ shall be sufficient attestation of the same. The party applying for the subpoena shall pay for service of the subpoena. A party is considered served at the time of personal service or mailing of the document by certified mail that is addressed to the person’s last known address of record on file with the Board.

ARTICLE 2. REGISTRATION PROVISIONS

R4-30-204. Examinations

A. ~~An applicant with at least 72 but less than 96 months of required education and experience who wishes to sit for the professional examination for architecture, assaying, engineering, geology, landscape architecture, or land surveying shall submit an original and one copy of a completed application package for professional examination that contains the following:~~ Board Review For Examination Equivalency: Applicants who wish to sit for professional examination who do not possess an educational degree recognized by the applicable national council shall submit to the Board the following infor-

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mation for approval:

1. Name, residence address, mailing address if different from residence, and telephone number, ~~of the applicant;~~
2. Date of birth and ~~social security~~ Social Security number ~~of the applicant;~~
3. ~~Citizenship~~ Proof of citizenship or legal residence;
4. Category, and branch of engineering if applicable, ~~for which the applicant is seeking registration;~~
5. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university, or educational institution ~~the applicant~~ attended;
6. Certified transcripts sent directly to the Board from the registrar of each college, university, or educational institution ~~the applicant~~ attended;
7. Evidence of ~~72~~ at least 60 months of required education or experience, or both, in the category for which registration is sought.
 - a. The name, current address, and telephone number of the applicant's current and former employers in the category for which registration is sought;
 - b. ~~dates~~ Dates of employment;
 - c. ~~applicant's~~ Applicant's title;
 - d. ~~description~~ Description of work performed; and
 - e. ~~number~~ Number of hours worked per week;
8. Names and addresses of applicant's immediate supervisors in past and present employment in the category for which registration is sought. If an applicant cannot supply the names and addresses of supervisors for at least three engagements, the applicant shall provide to the Board a written, sworn statement explaining the inability to provide this information, and the names and addresses of three additional references, unrelated to the applicant, at least two of whom are registered in the category for which registration is sought;
9. A release authorizing the Board to investigate the applicant's education and experience;
10. Certificate of Experience Record and Reference Forms from the applicant's present and past immediate supervisors. The applicant shall also provide Certificate of Experience Record and Reference Forms from additional references as required by the Board. The applicant shall provide the name, address, and telephone numbers of all references. The applicant shall ensure that completed reference forms are provided to the Board;
11. Evidence of successful completion, or waiver by the Board, of the applicable in-training examination. An applicant who has successfully completed an in-training examination in another jurisdiction in the category for which registration is sought equivalent to the examination for that category administered in Arizona shall submit proof of examination directly from the authority that administered the original examination. ~~An applicant seeking professional registration as an architect, or landscape architect may take the in-training examination at the same time as the professional examination.~~ An applicant seeking professional registration as an assayer, engineer, geologist, or land surveyor shall pass the applicable in-training examination before admission to the professional examination;
12. Certification that the information provided to the Board is accurate, true, and complete; and
13. The applicable fees.

~~B.~~ An applicant with at least 96 months of required education and experience who wishes to sit for the professional examination for architecture, assaying, engineering, geology, landscape architecture, or land surveying may submit a combined application for examination and registration that contains the information required in subsection (A) and R4-30-201, and shall pay the applicable fee.

~~C.B.~~ The Board staff shall review all applications and, if necessary, refer completed applications to an advisory committee for evaluation. If the application for examination is complete and in the proper form and the Board staff or committee is satisfied that all statements on the application are true and that the applicant is eligible to take the examination, the Board staff or committee shall recommend that the Board certify the applicant as eligible to take the examination ~~or exempt from the examination requirement~~. If for any reason the Board staff or committee is not satisfied that all of the statements on the application are true or that the applicant is eligible in all respects for examination, the Board staff shall make a further investigation of the applicant.

C. National Council Examinations:

1. Applicants for architect, landscape architect, engineer, or land surveyor registration who wish to sit for a professional examination, and who have earned an educational degree recognized by the applicable national council, may apply directly to the applicable national council to take that exam.
2. Applicants not possessing the appropriate degree pursuant to subsection (C)(1) may apply to the Board for examination approval and after Board review, may be recommended to the applicable national council for entry into the applicable national examination. Applicants must meet all national council requirements for successful completion of applicable examinations.
3. An applicant for professional examination in any category must take the examination within one year after receiving approval. If an applicant fails to take an examination within one year after receiving approval, the applicant must submit a new application for professional examination to the Board.

~~F.4.~~ An applicant ~~except for a home inspector applicant~~, who has failed any division of a national multi-divisional exam-

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ination shall be ~~required to meet the applicable national council's requirements for successful completion of the examination.~~ ~~re-examined only on the division failed.~~ ~~The applicant shall submit a new application for examination, and retake and pass any division of the examination, except the in-training examination, with results that are five or more years old.~~

~~I.5.~~ Examinations administered by a national council of which the Board is a member, or a professional association approved by the Board, shall be given at the times and places determined by the testing agency. Once approved to sit for a non-Board-administered examination, the applicant shall communicate all questions and concerns regarding extensions, additional time, special accommodation, ~~re-examination,~~ reexamination, exam review and refunds to the applicable testing agency. The Board shall not refund any examination fee paid to a testing agency.

D. Board Administered Examinations:

~~D.1.~~ An examination administered by the Board shall be given at the times and places determined by the Board. Once the Board approves an applicant to sit for a Board-administered examination, the applicant shall communicate all questions and concerns regarding extensions, special accommodations and refunds to the Board. The applicant shall make any request for additional time or other special examination accommodation to the Board within a reasonable time before the examination date.

~~E.2.~~ An applicant who fails to achieve a passing grade on any division of any examination administered by the Board may request ~~re-examination~~ reexamination by notifying the Board in writing of the applicant's desire to ~~re-take~~ retake the examination and paying the applicable examination fee. An applicant who ~~re-takes~~ retakes any examination shall advise the Board of any changes in the information provided under subsection (A) of this Section and R4-30-202(B) within 30 days from the date of the change. The Board shall close an applicant's file if the Board does not receive written confirmation from the applicant of the applicant's desire to ~~re-take~~ retake the Board-administered examination within one year from the request for ~~re-examination~~ reexamination. An applicant whose file has been closed and who later wishes to apply for examination shall submit a new examination application package to the Board.

~~G.3.~~ An applicant for a Board-administered examination who wishes to review the applicant's examination scores shall file a written request with the Board within 30 days after receiving notification of the failing grade. The applicant may review an examination by making prior arrangements with the staff and paying the applicable fee. The applicant shall complete any review within 60 days of the request for a review. In reviewing multiple choice questions, an applicant may review only those questions that were incorrect.

~~H.4.~~ An applicant who desires a ~~re-grade~~ regrade of an Board administered examination and, where applicable, has exhausted all remedies for ~~re-grading with the applicable testing agency,~~ shall file a written request with the Board within 30 days after receiving notification of the failing grade or within 30 days after reviewing the examination, whichever is applicable, and pay the applicable fee. The applicant shall identify the questions to be reviewed. The applicant shall state why a review of the item is justified. The applicant shall provide specific facts, data, and references to support any assertion that the solution deserves more credit. The Board shall determine whether it will ~~re-grade~~ regrade the examination.

~~J.5.~~ The Board shall ~~deny~~ close an application file for ~~registration examination as a architect, assayer, engineer, geologist, landscape architect, or land surveyor~~ if the applicant fails to pass all divisions of the applicable examination within five years after first ~~taking~~ passing any division of the examination unless the Board approves an extension.

6. If an applicant for professional examination fails to take the examination within five years from the examination approval date, the Board shall close the application file. The applicant shall submit a new application to take the applicable examination to the Board.

R4-30-212. Architect-in-training Designation

A. To qualify for admission to the ~~in-training examination~~ Architect Registration Examination solely on the basis of education, an applicant shall be a graduate of a ~~five-year~~ an architectural degree program accredited at the time of graduation by the National Architectural Accrediting Board (NAAB).

B. To qualify for admission to the ~~in-training examination,~~ Architect Registration Examination, an applicant who is not a graduate of a ~~five-year~~ NAAB-accredited degree program shall have at least five years of education or experience or both directly related to the practice of architecture. Experience directly related to the practice of architecture of a character satisfactory to the Board includes but is not limited to the following:

1. Consultation: The active involvement in meetings, discussions, or the development of reports intended to provide information, facts or advice for the purpose of planning, designing or locating buildings, structures, alterations or construction projects.
2. Evaluation: The analysis of client's requirements involving space relations, expansion needs, site requirements and flexibility, which serves as a basis for the development of appropriate design objectives.
3. Site design: Design experience including the utilization of land, placement of structures, form relationships, traffic patterns, parking facilities and utility systems based upon an analysis of surface and subsurface conditions, ecological requirements and the requirements imposed by law.
4. Building design: Design experience including the preparation of architectural, structural and interior drawings and the development of specifications, and the selection and layout of building systems involving structural, mechanical,

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- electrical, civil and interior considerations.
- 5. Construction review: The review or supervision of construction to ensure conformance with architectural or contract specifications or requirements (maximum 12 months' credit).
- 6. Administration: Administrative experience including office and field administration, field testing, quotation requests, change orders, cost accounting and project closeouts (maximum 12 months' credit).
- 7. Editing or writing: The editing or writing for publication of articles, books, newsletters or other written materials on architectural subjects (maximum six months' credit).
- 8. Subprofessional experience: As defined in rule R4-30-101 (maximum six months' credit).
- C. An applicant shall successfully complete the ~~architect-in-training examination~~ Architect Registration Examination designated by the Board and provided by the National Council of Architectural Registration Boards.
- D. An applicant who has completed the Architect Registration Examination and the Intern Development Program, but cannot demonstrate completion of the required 96 months of education or experience, or both for registration, may apply for the Architect In-Training designation.

R4-30-214. Architect Registration

An applicant for architect registration shall complete all of the following:

~~A.1.~~ An applicant shall provide evidence of successful completion of the National Council of Architectural Registration Boards (NCARB) ~~Internship~~ Intern Development Program (IDP) training requirement, or diverse work experience substantially equal to that program that is of a character acceptable to the Board, and which includes, but is not limited to, each of the following areas. The total minimum experience shall not be less than 4,680 hours and not less than the minimum hour totals for each activity shown below:

Activity Minimum Hour Totals:

- 1- Programming 80
- 2- Site and Environmental Analysis 80
- 3- Schematic Design 120
- 4- Engineering Systems Coordination 120
- 5- Building Cost Analysis 80
- 6- Code Research 120
- 7- Design Development 320
- 8- Construction Documents 1080
- 9- Specifications and Material Research 120
- 10- Document Checking and Coordination 80
- 11- Bidding and Contract Negotiation 80
- 12- Construction Phase-Office 80
- 13- Construction Phase-Field Observation 120
- 14- Project Management 120
- 15- Office Management 80

- ~~B.2.~~ An applicant shall successfully complete the professional architect examination designated by the Board and provided by the National Council of Architectural Registration Boards.
- 3. An applicant must demonstrate 96 months of architectural education or experience, or both, satisfactory to the Board prior to being granted registration.

R4-30-271. On-site Onsite Supervisor Certification and Renewal

- A. An applicant for ~~on-site~~ onsite supervisor certification shall submit an original and one copy of a completed application package ~~that contains~~ containing the following:
 - 1. Name, residence address, mailing address if different from residence address, and telephone number;
 - 2. Date of birth and ~~social security~~ Social Security number of the applicant;
 - 3. ~~Citizenship~~ Proof of citizenship or legal residence;
 - 4. State or jurisdiction in which any other professional or occupational certification, registration, or license is held by the applicant, type of certification, registration, or license, number, and year granted;
 - 5. ~~The name~~ Name of the state or jurisdiction, the type of professional or occupational certification, registration, or license the applicant is seeking, and the status of any professional or occupational certification, registration, or license application pending in any state or jurisdiction;
 - 6. A detailed explanatory statement, regarding:
 - a. ~~Refusal~~ Denial of professional or occupational certification, registration, or license by any state or jurisdiction;
 - b. Any pending disciplinary action in any state or jurisdiction on any professional or occupational certification, registration, or license held by the applicant;
 - c. Any alias or other name used by the applicant;
 - d. Any conviction for a felony or misdemeanor, other than a minor traffic violation; and
 - e. Any disciplinary action taken by any state or jurisdiction on any professional or occupational registration, certifi-

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ation, or license held by the applicant in any state or jurisdiction.

7. Certification that the information provided to the Board is accurate, true, and complete;
 8. A copy of a current 40-hour HAZWOPER training certificate or a copy of a current ~~8-hour~~ eight hour HAZWOPER training refresher certificate and a copy of a 40-hour HAZWOPER training certificate;
 9. Documentation of 12 months or more of ~~on-site~~ onsite experience in hazardous chemical decontamination projects and a copy of a HAZWOPER training certificate that shows the applicant held valid HAZWOPER training certification during the 12 months of experience;
 10. Documentation of current AHERA contractor or supervisor certification or a copy of a current AHERA refresher certificate and a copy of an AHERA contractor or supervisor training certificate;
 11. Documentation of successful completion of a lead training course that meets the requirements of 29 CFR 1926.62(1), effective January 8, 1998, 63 FR 1296, (published by the U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 and available electronically through the federal digital system at www.gpo.gov/fdsys/. ~~the~~ The provisions of this regulation which are incorporated by reference and on file with the Secretary of State, copies of which are available at the office of the Board of Technical Registration. This rule does not include any later amendments or editions of the incorporated matter.);
 12. Documentation of successful completion of an eight hour training course approved by the Board that encompasses the following:
 - a. Clandestine drug laboratory site remediation best standards and practices contained in R4-30-305;
 - b. Chemical and physical hazards of a clandestine drug laboratory;
 - c. Typical manufacturing methods for methamphetamine, LSD, and ecstasy;
 - d. Typical flammable, combustible, corrosive, and reactive materials used in a clandestine drug laboratory;
 - e. Potential sharps and biohazards at a clandestine drug laboratory;
 - f. Proper handling and disposal of wastes from the remediation of a clandestine drug laboratory; and
 - g. Other potential hazards or dangers that can be associated with a clandestine drug laboratory;
 13. Documentation of successful completion of an 8-hour training course approved by the Board that encompasses the following:
 - a. Hazardous conditions and precautionary measures upon initial entry into a clandestine drug laboratory site,
 - b. Assessing residual contamination,
 - c. Preparing the work plans for remediation of a clandestine drug laboratory,
 - d. Assessing structural stability for safe entry into a clandestine drug laboratory site,
 - e. Characterizing waste from the remediation of a clandestine drug laboratory, and
 - f. Preparing final reports on the remediation of the clandestine drug laboratory;
 - ~~12-14.~~ A signed release authorizing the Board to investigate the applicant's education, experience, and good moral character and repute; and
 - ~~13-15.~~ The applicable fee.
- B.** ~~Beginning September 30, 2003, an~~ An applicant for renewal of ~~on-site~~ onsite supervisor certification shall submit an application package that contains:
1. A completed renewal application form provided by the Board, signed and dated by the ~~registrant~~ applicant that provides the information contained in subsections (A)(1), (2), (6), and (7);
 2. A copy of the registrant's current ~~8-hour~~ eight-hour HAZWOPER training refresher certificate;
 3. A copy of the registrant's current AHERA refresher certificate;
 4. ~~For the first annual renewal, documentation of successful completion of an 8-hour training course approved by the Board that encompasses the following:~~
 - a. ~~Clandestine Drug Laboratory Site Remediation Best Standards and Practices contained in R4-30-305;~~
 - b. ~~Chemical and physical hazards of a clandestine drug laboratory;~~
 - e. ~~Typical manufacturing methods for methamphetamine, LSD, and cestasy;~~
 - d. ~~Typical flammable, combustible, corrosive, and reactive materials used in a clandestine drug laboratory;~~
 - e. ~~Potential sharps and biohazards at a clandestine drug laboratory;~~
 - f. ~~Proper handling and disposal of wastes from the remediation of a clandestine drug laboratory; and~~
 - g. ~~Other potential hazards or dangers that can be associated with a clandestine drug laboratory;~~
 5. ~~For the first annual renewal, documentation of successful completion of an 8-hour training course approved by the Board that encompasses the following:~~
 - a. ~~Hazardous and precautionary measures for initial entry into a clandestine drug laboratory site;~~
 - b. ~~Assessment of residual contamination;~~
 - e. ~~Preparation of the work plans for remediation of a clandestine drug laboratory;~~
 - d. ~~Assessment of the structural stability for safe entry into a clandestine drug laboratory site;~~
 - e. ~~Characterizing waste from the remediation of a clandestine drug laboratory; and~~
 - f. ~~Preparing final reports on the remediation of the clandestine drug laboratory;~~
 - ~~6-4.~~ Documentation of successful completion of a 2-

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~~hour~~ two-hour refresher training course approved by the Board that encompasses the following:

- a. ~~Clandestine Drug Laboratory Site Remediation Best Standards and Practices~~ drug laboratory site remediation best standards and practices contained in R4-30-305~~2~~;
- b. Hazardous conditions and precautionary measures for upon initial entry into a clandestine drug laboratory site~~2~~;
- c. Preparation of the work plan for remediation of a clandestine drug laboratory~~2~~;
- d. Assessment of the structural stability for safe entry into a clandestine drug laboratory site~~2~~;
- e. Characterizing waste from the remediation of a clandestine drug laboratory~~2~~; and
- f. Preparing the final report on the remediation of a clandestine drug laboratory;

~~7.5.~~ The applicable fee.

- C. The Board staff shall review all applications and, if necessary, refer completed applications to the Environmental Remediation Rules and Standards Committee for evaluation. If the application is complete and in the proper form, and the Board staff or committee is satisfied that all statements on the application are true and that the applicant is eligible in all other aspects to be certified, the Board staff or committee shall recommend that the Board certify the applicant. If for any reason the Board staff or committee is not satisfied that all of the statements on the application are true, the Board staff shall make a further investigation of the applicant. The Board staff or committee shall submit recommendations to the Board for approval. The Board may also require ~~a~~ an applicant to submit additional oral or written information if the applicant has not furnished satisfactory evidence of qualifications for certification.

R4-30-272. ~~On-Site~~ Onsite Worker Certification and Renewal

- A. An applicant for ~~on-site onsite~~ worker certification shall submit an original and one copy of a completed application package containing that contains the following:

1. Name, residence address, mailing address if different from residence address, and telephone number;
2. Date of birth and ~~social security~~ Social Security number of the applicant;
3. ~~Citizenship~~ Proof of citizenship or legal residence;
4. State or jurisdiction in which any professional or occupational certification, registration, or license is held by the applicant, type of certification, registration, or license; number; and year granted;
5. Name of the state or jurisdiction, the type of professional or occupational certification, registration, or license the applicant is seeking, and the status of any professional or occupational application pending in any state or jurisdiction;
6. A detailed explanatory statement regarding:
 - a. Any ~~refusal~~ denial of professional or occupational certification, registration, or license by any state or jurisdiction;
 - b. Any pending disciplinary action in any state or jurisdiction on any professional or occupational certification, registration, or license held by the applicant;
 - c. Any alias or other name used by the applicant;
 - d. Any conviction for a felony or misdemeanor, other than a minor traffic violation; and
 - e. Any disciplinary action taken by any state or jurisdiction on any professional or occupational certification, registration, or license held by the applicant in any state or jurisdiction;
7. Certification that the information provided to the Board is accurate, true, and complete;
8. Copy of a current 40-hour HAZWOPER training certificate or copy of a current ~~8-hour~~ eight-hour HAZWOPER training refresher certificate and a copy of a 40-hour HAZWOPER training certificate;
9. Documentation of successful completion of an eight-hour training course approved by the Board that encompasses the following:

- a. Clandestine Drug Laboratory Site Remediation Best Standards and Practices contained in R4-30-305;
- b. Chemical and physical hazards of a clandestine drug laboratory;
- c. Typical manufacturing methods for methamphetamine, LSD, and ecstasy;
- d. Typical flammable, combustible, and reactive materials used in a clandestine drug laboratory;
- e. Potential sharps and biohazards at a clandestine drug laboratory;
- f. Proper handling and disposal of wastes from the remediation of a clandestine drug laboratory; and
- g. Other potential hazards or dangers that can be associated with a clandestine drug laboratory;

~~9.10.~~ A signed release authorizing the Board to investigate the applicant's education, experience, and good moral character and repute; and

~~10.11.~~ The applicable fee.

- B. ~~Effective September 30, 2003, an~~ An applicant for renewal of ~~on-site onsite~~ worker certification shall submit an application package that contains:

1. A completed renewal application form provided by the Board, signed and dated by the applicant that provides the information contained in subsections (A)(1), (2), (6) and (7);
2. A copy of the applicant's current ~~8-hour~~ eight-hour HAZWOPER training refresher certificate;
3. ~~For the first annual renewal, documentation of successful completion of an 8-hour training course approved by the Board that encompasses the following:~~

Notices of Final Rulemaking

- a. ~~Clandestine Drug Laboratory Site Remediation Best Standards and Practices contained in R4-30-305;~~
- b. ~~Chemical and physical hazards of a clandestine drug laboratory;~~
- c. ~~Typical manufacturing methods for methamphetamine, LSD, and ecstasy;~~
- d. ~~Typical flammable, combustible, corrosive, and reactive materials used in a clandestine drug laboratory;~~
- e. ~~Potential sharps and biohazards at a clandestine drug laboratory;~~
- f. ~~Proper handling and disposal of wastes from the remediation of a clandestine drug laboratory; and~~
- g. ~~Other potential hazards or dangers that can be associated with a clandestine drug laboratory;~~

4.3. The applicable fee.

- C. The Board staff shall review all applications and, if necessary, refer completed applications to the Environmental Remediation Rules and Standards Committee for evaluation. If the application is complete and in the proper form, and the Board staff or committee is satisfied that all statements on the application are true and the applicant is eligible in all other respects to be certified, the Board staff or committee shall recommend that the Board certify the applicant. If for any reason the Board staff or committee is not satisfied that all of the statements on the application are true, the Board staff shall make a further investigation of the applicant. The Board staff or committee shall submit recommendations to the Board for approval. The Board may also require an applicant to submit additional oral or written information if the applicant has not furnished satisfactory evidence of qualifications for certification.

ARTICLE 3. REGULATORY PROVISIONS

R4-30-301. Rules of Professional Conduct

All registrants shall comply with the following rules of professional conduct:

1. A registrant shall not submit any materially false statements or fail to disclose any material facts requested in connection with an application for registration or certification, or in response to a subpoena.
2. A registrant shall not engage in fraud, deceit, misrepresentation or concealment of material facts in advertising, soliciting, or providing professional services to members of the public.
3. A registrant shall not commit bribery of a public servant as proscribed in A.R.S. § 13-2602, commit commercial bribery as proscribed in A.R.S. § 13-2605, or violate any federal statute concerning bribery.
4. A registrant shall comply with state, municipal, and county laws, codes, ordinances, and regulations pertaining to the registrant's area of practice.
5. A registrant shall not violate any state or federal criminal statute involving dishonesty, fraud, misrepresentation, embezzlement, theft, forgery, perjury, bribery, or breach of fiduciary duty, ~~if the violation is reasonably related to the registrant's area of practice. The Board may take action against a registrant's license or certificate if a violation of the law is reasonably related to a registrant's area of practice.~~
6. A registrant shall apply the technical knowledge and skill that would be applied by other qualified registrants who practice the same profession in the same area and at the same time.
7. A registrant shall not accept an engagement if the duty to a client or the public would conflict with the registrant's personal interest or the interest of another client without making a full written disclosure of all material facts of the conflict to each person who might be related to or affected by the engagement.
8. A registrant shall not accept compensation for services related to the same engagement from more than one party without making a full written disclosure of all material facts to all parties and obtaining the express written consent of all parties involved.
9. A registrant shall make full disclosure to all parties concerning:
 - a. Any transaction involving payments to any person for the purpose of securing a contract, assignment, or engagement, except payments for actual and substantial technical assistance in preparing the proposal; or
 - b. Any monetary, financial, or beneficial interest the registrant holds in a contracting firm or other entity providing goods or services, other than the registrant's professional services, to a project or engagement.
10. A registrant shall not solicit, receive, or accept compensation from material, equipment, or other product or services suppliers for specifying or endorsing their products, goods or services to any client or other person without full written disclosure to all parties.
11. If a registrant's professional judgment is overruled or not adhered to under circumstances where a serious threat to the public health, safety, or welfare may result, the registrant shall immediately notify the responsible party appropriate building official, or agency, and the Board of the specific nature of the public threat.
12. If called upon or employed as an arbitrator to interpret contracts, to judge contract performance, or to perform any other arbitration duties, the registrant shall render decisions impartially and without bias to any party.
13. To the extent applicable to the professional engagement, a registrant shall conduct a land survey engagement in accordance with the April 12, 2001 Arizona Professional Land Surveyors Association (APLS) Arizona Boundary Survey Minimum Standards, available at www.azapls.org and from APLS, 3346 East Menadota Drive, Phoenix, AZ. ~~as adopted by the~~ The Board of Technical Registration adopted them on June 15, 2001; ~~the provisions of which are and incorporated them in into~~ and on file with the Office of the Secretary of State. This incorporation by reference does not include any later amendments or editions and is available at the ~~Board's~~ office of

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- the Board of Technical Registration, and APLS at www.aia.org.
14. A registrant shall comply with any subpoena issued by the Board or its designated administrative law judge.
 15. A registrant shall update the registrant's address and telephone number of record with the Board within 30 days of the date of any change.
 16. A registrant shall not sign, stamp, or seal any professional documents not prepared by the registrant or a bona fide employee of the registrant.
 17. Except as provided below and in subsections (18) and (19), a registrant shall not accept any professional engagement or assignment outside the registrant's professional registration category unless:
 - a. The registrant is qualified by education, technical knowledge, or experience to perform the work; and
 - b. The work is exempt under A.R.S. § 32-143.
 18. A registered professional engineer may accept professional engagements or assignments in branches of engineering other than that branch in which the registrant has demonstrated proficiency by registration but only if the registrant has the education, technical knowledge, or experience to perform such engagements or assignments.
 19. Except as otherwise provided by law, a registrant may act as the prime professional for a given project and select collaborating professionals; however, the registrant shall perform only those professional services ~~for which~~ that the registrant is qualified by registration to perform and shall seal and sign only the work prepared by the registrant or by the registrant's bona fide employee.
 20. A registrant who is designated as a responsible registrant shall be responsible for the firm or corporation. The Board may impose disciplinary action on the responsible registrant for any violation of Board statutes or rules that is committed by a non-registrant employee, firm, or corporation.
 21. A registrant shall not enter into a contract for expert witness services on a contingency fee basis or any other arrangement in a disputed matter where the registrant's fee is directly related to the outcome of the dispute.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM**

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of executive order on page. 160.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 16, 2012.

[R13-02]

PREAMBLE

- | | |
|---|--|
| <u>1. Article, Part, or Section Affected (as applicable)</u>
R9-28-702
R9-28-703 | <u>Rulemaking Action:</u>
New Section
New Section |
|---|--|
- 2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. §§ 36-2903.01, 36-2903, 36-2932
Implementing statute: A.R.S. §§ 36-2999.52, 36-2999.54
- 3. The effective date of the rule:**
January 8, 2013
- a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**
The agency requests an immediate effective date of January 8, 2013. As required by A.R.S. § 41-1032(A)(2) and (A)(3), the rulemaking will avoid a violation of federal law or regulation or state law and will comply with deadlines for the nursing facility assessment established in statute.
- b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B).**
Not applicable

Notices of Final Rulemaking

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 18 A.A.R. 2370, September 28, 2012

Notice of Proposed Rulemaking: 18 A.A.R. 2336, September 28, 2012

5. The agency's contact person who can answer questions about the rulemaking:

Name: Mariaelena Ugarte
Address: AHCCCS
Office of Administrative Legal Services
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4693
Fax: (602) 253-9115
E-mail: AHCCCSRules@azahcccs.gov
Web site: www.azahcccs.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

A.R.S. § 36-2999.52 authorizes the Administration to administer a provider assessment on health care items and services provided by nursing facilities and to make supplemental payments to nursing facilities for covered Medicaid expenditures. The Administration is proposing rule to delineate the method for imposing the assessment, the criteria for qualifying for supplemental payments, and the method for determining the amount of supplemental payments.

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

A study was not referenced or relied upon when revising these regulations.

8. 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:

Not applicable.

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

The Administration anticipates a minimal to moderate economic impact to individual qualifying nursing facilities. Under the statute, the amount of the assessment cannot exceed three and one-half percent of the net patient service revenue. The estimated amount of the aggregate assessment for the fiscal year ending September 30, 2013, is \$18M. Ninety-nine percent of the funds will be used as the non-federal share of supplemental payments to qualifying nursing facilities through the Medicaid program administered by AHCCCS. Because those funds will be matched with federal funds, the estimated amount of the aggregate supplemental payments for the fiscal year ending September 30, 2013, is \$50M.

Minimal = less than \$200,000

Moderate = \$200,000 to \$400,000

High = \$400,000 or over

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

The following technical changes were made between the proposed rulemaking and the final rulemaking:

R9-28-702(D)(3) – where the rule language stated “fewer annual Medicaid days than” it should have said “the number of annual Medicaid days **greater than or equal to** because those facilities with a high Medicaid volume should pay the \$1. This rate was chosen by the Nursing Facility Association when sponsoring the bill to meet the payments intended to be generated. Slope calculations were used for a broad based and uniform tax as referred to under 42 CFR 433.68(e)(2).

R9-28-703(A)(1) – where the rule language stated “Estimating the nursing facility assessments **computed for** the upcoming assessment year” should state “Estimating the nursing facility assessments **to be collected in** the upcoming assessment year” because the assessment is not computed within the description of the payment rule.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The proposed rule language was available on the AHCCCS web site, www.azahcccs.gov, as of September 10, 2012. The following oral or written comments were received by the close of the comment period, 5:00 p.m., October 29, 2012.

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Item #	Rule Cite Line #	Comment From	Comment	Analysis/Recommendation
1.	R9-22-702(D)(3)	Kathleen Pagels	<p>Page 7 Rule Says: 3. For a nursing facility with fewer annual Medicaid days than the number required to achieve a slope of at least 1 applying the uniformity tax waiver test described in 42 CFR 433.68(e)(2), the provider assessment is calculated by multiplying the nursing facility's non-Medicare resident day data for each assessment year by \$1.00. We Think it Should Say: should read "Greater than or equal to annual Medicaid days" than the number required</p> <p>(Essentially, as we see it, the posted rule is not correct- everybody but the high Medicaid would only pay \$1 while the high MA volume would pay the \$7.50-exactly opposite of the model developed- so it would have a great impact.)</p>	<p>The Administration agrees with the suggested change and has made the change in rule.</p>
2.		Matt Luger	<p>The reconciliation process as described, however, is problematic as it "punishes" the compliant facilities who remit their Provider Assessment fees in a proper and timely manner, and does nothing to disincent the non-compliant facilities not making their required Assessment payments. If at the end of the program year, more funds have been distributed than collected, it appears that ALL the participant facilities would be subject to a fund recoupment by AHCCCS, based on their percentage of ALTCS patient days. This is not an equitable method.</p> <p>As AHCCCS will be receiving additional funding under this program for new overhead expense, it would seem reasonable for a part-time FTE to serve as liaison to the Dept. of Revenue for the Assessment program. Only after AHCCCS and DOR agree that a particular facility has made the correct and timely remittal of their quarterly Provider Assessment should approval be given to release Assessment payments to that facility. In that manner, as no individual provider would receive Assessment funds until they have met their remittal obligation, there should be no need for an aggregate annual reconciliation process, or, at worst, there should be a dramatically diminished look-back review that was facility-specific, as opposed to blanket across the entire provider continuum. This change will better insure provider compliance with Assessment payment requirements and serve to prevent extensive gaming of the new system.</p>	<p>The issue of whether a facility pays taxes or not lies in the jurisdiction of the Department of Revenue; AHCCCS has no authority to be privy to this information.</p> <p>Due to the confidential nature of taxpayer information, AHCCCS is not privy to, nor can the Department of Revenue disclose, which facilities have or have not paid the assessment in a timely fashion. Furthermore, in general, if distributions to facilities are directly related to payment of the assessment, federal financial participation is not available for the distributions. The amendment to the rule proposed by the commenter has not been reviewed or approved by the federal government, and it is unlikely that approval for such an amendment could be obtained.</p>

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12. 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:

Not applicable

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:

No permit is required by this rulemaking.

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:

The rule must conform to the requirements of 42 U.S.C. 1396b(w) and the implementing federal regulations found at 42 CFR Part 433, Subpart B. An assessment or supplemental payments that do not meet federal requirements would result in a reduction in federal financial participation in the Medicaid program administered in Arizona. As indicated in the statute, federal approval for the assessment and the supplemental payments is required. As such, the rule will not exceed the parameters of federal law.

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 analysis was submitted.

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

Not applicable

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ARIZONA LONG-TERM CARE SYSTEM**

ARTICLE 7. STANDARDS FOR PAYMENTS

Section

R9-28-702. ~~Repealed~~ Nursing Facility Assessment

R9-28-703. ~~Repealed~~ Nursing Facility Supplemental Payments

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-28-702. ~~Repealed~~ Nursing Facility Assessment

A. For purposes of this Section, in addition to the definitions under A.R.S. § 36-2999.51, the following terms have the following meaning unless the context specifically requires another meaning:

“Assessment year” means the 12 month period beginning October 1st each year.

“Nursing Facility Assessment” means a tax paid by a qualifying nursing facility to the Department of Revenue on a quarterly basis established under A.R.S. § 36-2999.52.

“Medicaid days” means days of nursing facility services paid for by the Administration or its contractors as the primary payor and as reported in AHCCCS’ claim and encounter data.

“Medicare days” means resident days where the Medicare program, a Medicare advantage or special needs plan, or the Medicare hospice program is the primary payor.

B. Subject to Centers for Medicare and Medicaid Services (CMS) approval, effective October 1, 2012, nursing facilities shall be subject to a provider assessment payable on a quarterly basis.

C. All nursing facilities licensed in the state of Arizona shall be subject to the provider assessment except for:

1. A continuing care retirement community.

2. A facility with 58 or fewer beds.

3. A facility designated by the Arizona Department of Health Services as an Intermediate Care Facility for the Mentally Retarded, or

4. A tribally owned or operated facility located on a reservation.

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- D.** The Administration shall calculate the prospective nursing facility provider assessment for qualifying nursing facilities as follows:
- AHCCCS shall utilize each nursing facility's Universal Accounting Report (UAR) submitted to the Arizona Department of Health Services as of August 1st immediately preceding the assessment year. In addition, by August 1st each year, each nursing facility shall provide AHCCCS with any additional information necessary to determine the assessment. For any nursing facility that does not provide by August 1st the additional information requested by AHCCCS, AHCCCS shall determine the assessment based on the information available.
 - For each nursing facility, other than a nursing facility noted in subsection (D)(3), the provider assessment is calculated by multiplying the nursing facility's non-Medicare resident day data for each assessment year by \$7.50.
 - For a nursing facility with the number of annual Medicaid days greater than or equal to the number required to achieve a slope of at least 1 applying the uniformity tax waiver test described in 42 CFR 433.68(e)(2), the provider assessment is calculated by multiplying the nursing facility's non-Medicare resident day data for each assessment year by \$1.00.
 - The number of annual Medicaid days used in subsection (D)(3) shall be recalculated each August 1, to achieve a slope of at least 1 applying the uniformity tax waiver test described in 42 CFR 433.68(e)(2).
 - The assessment calculated under subsections (D)(2), (D)(3) and (D)(4), shall not exceed 3.5 percent of aggregate net patient service revenue of all assessed providers.
 - AHCCCS will forward the provider assessment by facility to the Department of Revenue by September 1st preceding the assessment year.

R9-28-703. Repealed Nursing Facility Supplemental Payments

- A.** On an annual basis, AHCCCS shall determine the total funds available in the nursing facility assessment fund available for supplemental payments by:
- Estimating the nursing facility assessments to be collected in the upcoming assessment year.
 - Subtracting one percent of the total estimated assessments, and
 - Multiplying the appropriate federal matching assistance percentage (FMAP) by the difference of subsections (A)(1) and (A)(2).
- B.** AHCCCS shall calculate each year's quarterly supplemental payments to each nursing facility with Medicaid utilization, excluding ICFMRs, by:
- Determining each facility's proportion of Medicaid resident bed days to total nursing facility Medicaid resident bed days by utilizing adjudicated claims and encounter data for the most recent 12 month period, including appropriate claims lag.
 - Multiplying subsections (B)(1) and (A)(3).
 - Dividing the payments determined under subsection (B)(2) by four.
- C.** AHCCCS and its contractors shall make quarterly supplemental payments to nursing facility providers.
- D.** Following the end of each assessment year, AHCCCS shall reconcile the supplemental nursing facility payments made during the assessment year to the annual deposits to the nursing facility assessment fund for the same year less one percent of the actual assessments deposited in the fund plus federal matching funds. The proportion of each nursing facility's Medicaid resident bed days shall be used to calculate the reconciliation amounts. AHCCCS and its contractors shall make additional payments to or recoupments from nursing facilities based on the reconciliation.
- E.** Aggregate supplemental payments to nursing facilities shall not exceed upper payment limits established under 42 CFR 447.272.
- F.** A facility must be open on the date the supplemental payment is made in order to receive a payment.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

**CHAPTER 3. DEPARTMENT OF TRANSPORTATION
HIGHWAYS**

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of executive order on page 160.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 9, 2011.

[R13-08]

PREAMBLE

- | | |
|---|---------------------------------|
| <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|

Notices of Final Rulemaking

R17-3-301	Amend
R17-3-302	Amend
R17-3-303	Amend
R17-3-304	Repeal
R17-3-305	Amend
R17-3-306	Repeal

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statutes (general) and the implementing statutes (specific):

Authorizing statutes: A.R.S. §§ 28-366 and 28-7148

Implementing statutes: A.R.S. §§ 28-7141 to 28-7149, 28-7152

3. The effective date of the rules:

March 10, 2013

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 17 A.A.R. 2422, December 2, 2011

Notice of Proposed Rulemaking: 18 A.A.R. 1672, July 13, 2012

5. The agency's contact person who can answer questions about the rulemaking:

Name: Jane McVay

Address: Arizona Department of Transportation
Government Relations and Policy Development Office
206 S. 17th Ave., MD 140A
Phoenix, AZ 85007

Telephone: (602) 712-4279

Fax: (602) 712-3232

E-mail: jmcvay@azdot.gov

Web site: http://www.azdot.gov/Government_Relations/adotrules/

Please visit the Arizona Department of Transportation (ADOT) web site to track progress of this rule and any other agency rulemaking matters.

6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

These rules incorporate by reference the October 1, 2010 federal relocation assistance regulations, complete the course of action prescribed in a Five-Year Rule Review report on relocation assistance, and update the rule language in accordance with the Administrative Procedure Act and related rules. These rules have not been updated since 2003. The Arizona Department of Transportation (ADOT) administers relocation assistance in the state, which is based on the federal statutes, the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs of 1970 as amended, 42 U.S.C. 4601 et seq. These statutes are referred to in this document as the Uniform Act. ADOT is required to follow this program for federally-funded transportation projects. Federal regulations prescribe the maximum replacement housing and moving expense payments that a displaced person or business may receive as relocation assistance. ADOT implements the relocation assistance program and provides relocation assistance required under the federal statutes and regulations. The Arizona Legislature has also adopted state relocation assistance statutes and ADOT has promulgated relocation assistance rules to implement the federal program. ADOT has determined that the focus of this rulemaking is to update the relocation assistance rules without addressing the separate functions of real property acquisition and utility relocation, which are included in the federal statutes.

A.R.S. § 28-7148 requires the ADOT Director to adopt rules to ensure that relocation payments and assistance to displaced persons due to transportation facility construction or reconstruction are administered in a fair, reasonable, and uniform manner. A.R.S. § 28-7148(A)(2) requires a displaced person who makes proper application for an authorized payment to be paid promptly, or in a hardship case, to be paid in advance.

A.R.S. § 28-7141 contains primary definitions that relate to relocation assistance. ADOT, the displacing agency, is required under A.R.S. § 28-7142 to ensure that relocation assistance advisory services are made available to all persons displaced by the agency. These services include determining the needs and preferences of displaced persons, providing information on the availability and costs of comparable replacement dwellings for displaced persons and businesses, and providing services to minimize hardships of persons adjusting to relocation. Displaced persons or businesses meeting certain criteria are eligible to receive payment for actual reasonable moving expenses not to exceed \$10,000 to reestablish a displaced farm or small business at a new site under A.R.S. § 28-7143. A.R.S. § 28-7144 requires the displacing agency to pay no more than \$22,500 to a person displaced from a dwelling owned and

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occupied for at least 180 days before the initiation of negotiations to acquire the property. After paying for the property, ADOT is required under A.R.S. § 28-7145 to reimburse the property owner for certain expenses the owner incurred for recording fees, transfer taxes, and a pro rata portion of real property taxes paid and allocated to a period after the date when the title was vested in the state. Under A.R.S. § 28-7146(B), ADOT is also required to make payment, not to exceed \$5,250, to a displaced tenant who occupied a dwelling for at least 90 days, to enable the person to lease or rent a comparable replacement dwelling for no more than 42 months. A.R.S. § 28-7147 allows a displaced person who is aggrieved by a determination of payment eligibility to have the ADOT Director review the person's application.

R17-3-301 incorporates by reference numerous sections of the Code of Federal Regulations on relocation assistance and Appendix A to Part 24 as it relates to Subparts A, C, D, and E, revised as of October 1, 2010. R17-3-302 is amended to modify general provisions in 49 CFR 24, Subpart A to address circumstances in Arizona, including 49 CFR 24.2 regarding definitions and acronyms, 49 CFR 24.5 on manner of notices, 49 CFR 24.9 on recordkeeping and reports, and 49 CFR 24.10 on appeals. The rules modify relocation assistance definitions and change the record retention period for displacement activities to at least three years after each property owner and displaced person receives a final payment. This record retention period complies with federal regulations and is no more stringent than federal regulations. The rules delete the definition of business because the inclusion of a farm operation in this definition conflicts with federal regulations. The rules add a cross-reference to the definition of decent, safe, and sanitary dwelling. In addition, the rules modify the definition of "Uniform Act" by referring to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.).

R17-3-303 amends provisions substituted for 49 CFR 24.206 relating to eviction requirements. These provisions provide that persons who occupy real property, are in unlawful occupancy, and meet certain factors, may be entitled to relocation payments and assistance. This rulemaking repeals R17-3-304 and R17-3-306 because the Department follows the corresponding federal regulations and no additional changes are needed. R17-3-305 contains a requirement that the interest rate on a new mortgage shall not exceed the prevailing fixed interest rate for conventional mortgages and requires certain mortgage documents if a displaced person plans to buy down the interest rate.

The relocation assistance program provides financial assistance for replacement housing and moving costs as prescribed in federal and state statutes and regulations to displaced persons and businesses relocated because of transportation facility construction and reconstruction. This assistance allows displaced persons and businesses to move and reestablish their homes and businesses.

7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not 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:

ADOT did not review or rely on any study.

8. 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:

Not applicable

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

The relocation assistance program provides financial assistance and services to displaced persons and businesses that are relocated because of transportation facility construction and reconstruction. Persons and businesses displaced by ADOT may receive relocation assistance for replacement housing and moving expenses to reestablish homes and businesses. ADOT helps small businesses to identify relocation issues and develops a successful plan to reestablish small businesses at a new location. The federal regulations and state statutes prescribe the maximum housing and moving expense payments that a displaced person or business may receive. The rules provide a positive economic impact to those businesses and individuals that receive relocation assistance payments to cover some of the housing and moving costs incurred due to displacement. In addition, the motoring public benefits from completed transportation projects that improve and expand the state transportation system. Transportation construction projects enhance the state's economy by increasing jobs, expanding businesses, and increasing state and local tax revenue. Relocation of displaced persons and businesses allows ADOT to complete construction programs that enhance the state transportation network. ADOT contracts with businesses to provide relocation assistance services, which increase state and local tax revenue and provide employment.

In calendar year 2011, ADOT spent about \$5.6 million for residential and business relocation. Ten percent of this amount was expended for residential relocation, and the remainder for commercial relocation required to relocate displaced businesses and individuals because of highway construction and expansion. During calendar year 2011, ADOT paid residential and commercial moving costs for 235 displaced persons and 20 businesses. ADOT has a limited amount of funding to construct transportation programs and projects and provide relocation assistance to displaced persons and businesses. In addition to these costs, ADOT also pays minimal costs to complete this rulemaking. The program has intangible benefits, such as goodwill and good relations. These benefits extend to other state agencies and political subdivisions because ADOT serves as the lead relocation agency in the state. Relocation services lessen disruption to the public and governmental agencies. Due to funding and regulatory limitations, displaced persons or businesses are likely to incur some relocation-related costs that are not payable under this program.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final

rulemaking:

ADOT made grammatical and clarifying language changes to the proposed rules to conform to rulemaking format and style requirements of the Administrative Procedure Act, the Office of the Secretary of State, the Governor's Regulatory Review Council, and to comply with the Uniform Act. Language was added in R17-3-301(A) stating that the incorporated material is available free of charge at the web site indicated. In R17-3-302, the definition of Uniform Act was modified to refer to the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.). Federal reference citations were also added in the definition of notice of intent to acquire or notice of eligibility for relocation assistance in R17-3-302. Amendments were made to R17-3-303(1) stating that any person who occupies real property and is in unlawful occupancy on the date of initiation of negotiations, is presumed to be entitled to relocation payments unless certain factors apply. ADOT is required to use the listed factors to determine eligibility of an unlawful occupant for advisory relocation assistance.

11. An agency's summary of the public stakeholder comments made about the rulemaking and the agency response to the comments:

ADOT did not receive any comments on this rulemaking.

12. 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:

Not applicable

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:

A permit is not required under these rules.

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:

The federal relocation assistance law, the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, as amended (42 U.S.C. 4601 et seq.) is applicable to the rules. The rules are no more stringent than federal law.

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

Not applicable

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

R17-3-301: 49 CFR 24.1 through 24.10, 49 CFR 24.201 through 24.209, 49 CFR 24.301 through 24.305, 49 CFR 24.401 through 24.404, 49 CFR 24.501 through 24.503, 49 CFR 24.601 through 24.603, and Appendix A to Part 24 as it relates to Subparts A, C, D, and E, published October 1, 2010.

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

**CHAPTER 3. DEPARTMENT OF TRANSPORTATION
HIGHWAYS**

ARTICLE 3. RELOCATION ASSISTANCE

Section

- R17-3-301. Relocation Assistance; Adoption of Federal Regulations
- R17-3-302. Relocation Assistance; 49 CFR Part 24, Subpart A - General
- R17-3-303. Relocation Assistance; 49 CFR Part 24, Subpart C - General Relocation Requirements
- R17-3-304. Relocation Assistance; 49 CFR Part 24, Subpart D - Payments for Moving and Related Expenses Repealed
- R17-3-305. Relocation Assistance; 49 CFR Part 24, Subpart E - Replacement Housing Payments
- R17-3-306. Relocation Assistance; Appendix A to Part 24 Additional Information Repealed

TITLE 17. TRANSPORTATION

CHAPTER 3. DEPARTMENT OF TRANSPORTATION
HIGHWAYS

ARTICLE 3. RELOCATION ASSISTANCE

R17-3-301. Relocation Assistance; Adoption of Federal Regulations

- A. The Department incorporates by reference 49 CFR 24.2, 24.3, 24.5, 24.8, 24.9, 24.10, 24.202, 24.203, 24.204, 24.205, 24.206, 24.207, 24.208, 24.301, 24.302, 24.303, 24.304, 24.305, 24.306, 24.401, 24.402, 24.403, 24.404, 24.501, 24.502, 24.503, 24.504, 24.505, and Appendix A to Part 24 published October 1, 2001, and no later amendments or editions, as amended by R17-3-301 through R17-3-306. The incorporated material is on file with the Arizona Department of Transportation and the Office of Secretary of State. An unofficial version of the federal regulations is available at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>. The Department incorporates by reference 49 CFR 24.1 through 24.10, 49 CFR 24.201 through 24.209, 49 CFR 24.301 through 24.305, 49 CFR 24.401 through 24.404, 49 CFR 24.501 through 24.503, 49 CFR 24.601 through 24.603, and Appendix A to Part 24 as it relates to Subparts A, C, D, and E, revised as of October 1, 2010, and no later amendments or editions, as amended by this Article. These sections apply to relocation assistance activity provided by the Department. The incorporated material is on file with the Arizona Department of Transportation and is available from the U.S. Government Printing Office, P. O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov> or is available free of charge at <http://gpo.gov>.
- B. The following definitions apply definition applies for the purpose of R17-3-301 through R17-3-306 this Article unless indicated otherwise.
“Department” means the Arizona Department of Transportation.

R17-3-302. Relocation Assistance; 49 CFR Part 24, Subpart A - General

- A. 49 CFR 24.2, “Definitions² and acronyms” is amended as follows:
1. “Agency” means the Arizona Department of Transportation.
 2. “Business” is amended to read:
The term business means any lawful activity, including a farm operation, that is conducted:
 3. “Comparable replacement dwelling” is amended at paragraph (8) (i) to read:
A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days before initiation of negotiations (180-day homeowner) is considered to be within the homeowner’s financial means if the homeowner will receive the price differential as described in Sec. 24.401(e), all increased mortgage interest costs as described at Sec. 24.401(d) and all incidental expenses as described at Sec. 24.401(e), plus any additional amount required to be paid under Sec. 24.404, Replacement housing of last resort.
 4. “Contribute materially” in paragraph (a)(7) is amended to read:
The term “contribute materially” means that during the two taxable years before the taxable year in which displacement occurs, a business: contributed at least 33 1/3% of the owner’s or operator’s average annual gross income from all sources.
 - a. Contributed at least 33 1/3 percent of the owner’s or operator’s average annual gross income from all sources;
 - b. Registered and has a use permit from the local political subdivision; and
 - e. Submitted federal income tax returns for the last two years.
 5. Decent, safe, and sanitary dwelling” in paragraph (a)(8) is amended to read:
The term decent, safe, and sanitary dwelling means a dwelling which that meets applicable housing and occupancy codes. However, any of the following standards which that are not met by an applicable code shall apply unless waived for good cause by the federal agency or state agency funding the project. The dwelling shall:
 - a. Be structurally sound, weathertight, and in good repair;
 - b. Contain a safe electrical wiring system adequate for lighting and other devices; and
 - e. Contain heating and cooling systems capable of sustaining a healthful temperature for a displaced person, except in those areas where local climatic conditions do not require such systems.
 6. “Displaced person” is amended to read:
 - a. General. The term “displaced person” means, except as provided in the definition of “persons not displaced,” any person who is required to move from the real property or moves his or her personal property from the real property as a direct result of the real property being acquired in whole or in part for an approved State project as a result of a written notice of intent to acquire:
 - i. This includes a person who occupies the real property before its acquisition but does not meet the length of occupancy requirements for relocation assistance other than reimbursement of moving expenses.
 - ii. Any person who does not meet the statutory occupancy requirements and is unable to obtain comparable

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~~replacement housing within the person's financial means is eligible for assistance only under Sections 24.401 and 24.402, as qualified by Section 24.404, in obtaining comparable, decent, safe, and sanitary housing.~~

b. "Persons not displaced" is amended as follows:

i. Amend paragraph (2)(i) to read:

~~A person who moves before the initiation of negotiations unless this requirement is waived by the Department due to a move necessitated for reasons beyond the person's control.~~

ii. Delete paragraphs (2)(v); (2)(viii); (2)(ix), and (2)(x).

7. "Initiation of negotiations" is amended to have has the same meaning as prescribed in A.R.S. § 28-7141(8): A.R.S. § 28-7141.

8. "Notice of intent to acquire or notice of eligibility for relocation assistance" as described in 49 CFR 24.203(d) and 49 CFR 24.203(b) is amended to read: means:

Written notice furnished to a person to be displaced that establishes eligibility for relocation benefits before the initiation of ~~negotiation; negotiations.~~

9. "Owner of dwelling" is amended as follows:

~~Subsection (3) is deleted.~~

"Persons not displaced" in paragraph (a)(9)(ii)(A) is amended to read:

A person who moves before the initiation of negotiations, unless this requirement is waived by the Department due to a move necessitated for reasons beyond the person's control.

10. "Program or project" in paragraph (a)(22) is amended to read:

The phrase "program" or "project" means any displacing activity or series of activities undertaken by the Department, related to construction or reconstruction of a transportation facility, or a facility necessary for maintaining a transportation facility.

11. "Salvage value" in paragraph (a)(23) is deleted.

12. "State" is amended to read:

"State" means a state of the United States or the District of Columbia.

13. "Uneconomic remnant" in paragraph (a)(27) is deleted.

14. "Uniform Act" in paragraph (a)(28) is amended to read:

The term "Uniform Act" refers to A.R.S. §§ 28-7141 through 28-7156; means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.).

15. "Unlawful occupancy" is amended to read:

A person is considered to be in unlawful occupancy if:

a. A court of competent jurisdiction has found the person guilty of forcible entry and detainer, or forcible detainer (under A.R.S. §§ 12-1171 through 12-1183) before the initiation of negotiations, or

b. The Department determines that the person is occupying the real property without the permission of the owner and has no legal right to occupy the property under state law.

16. "Utility costs" is amended to read:

~~The term "utility costs" means expenses for electrical, gas, water, and sewer.~~

17. "Utility facility" in paragraph (a)(31) is deleted.

18. "Utility relocation" in paragraph (a)(32) is deleted.

B. 49 CFR 24.5 "Manner of notices" is amended to read:

Each notice which the Agency ~~agency~~ is required to provide to a property owner or occupant under this part shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency ~~agency~~ files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person ~~who may be contacted~~ to contact for answers to questions or other needed help.

C. 49 CFR 24.9 "Recordkeeping and reports" is amended ~~as follows:~~ to read:

1. Paragraph (a) Records. The Agency ~~agency~~ shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least ~~five~~ three years after each owner of a property and each person displaced from the property receives the final payment to which ~~he or she~~ each owner of property is entitled under this part, or in accordance with the applicable regulations of the federal funding agency, whichever is later.

2. ~~Paragraph (e) is deleted.~~

D. 49 CFR 24.10 "Appeals" is amended to read:

In addition to the provisions of A.R.S. §§ 41-1061 through 41-1067, the following provisions apply:

1. Actions ~~which that~~ may be appealed. A person who believes the Department has failed to properly ~~prop-~~
~~erly~~ determine the person's eligibility for, or the amount of, a relocation payment, may file a written appeal. A person shall include all contested issues in one appeal.

2. Process. To appeal, a person shall submit a letter stating name and address; and the reasons for disagreeing with the

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Department's decision to the Right-of-Way Group, Arizona Department of Transportation, 205 S. 17th Ave., MD 612E, Phoenix, AZ 85007-3212.

3. Time limit. The person shall file the written appeal within 60 days after receiving notice of the Department's determination on the person's claim. The date the appeal request is received begins the official time limit constraints, as prescribed in subsections (D)(4) and ~~(D)(8)~~; of this Section. Filing the appeal does not extend any eligibility periods or a required date to vacate a property.
 4. Hearing date. Within 45 days of ~~receiving receipt of~~ the appeal request, the Department shall set a mutually acceptable date for a hearing before a hearing officer.
 5. Review of files. ~~Upon~~ After making a written request to the Department at the address in subsection (D)(2); of this Section, the person may review and receive a copy of any non-confidential documentation contained in the Department's files regarding the person's appeal.
 6. Scope of review. The Department shall consider and review the person's arguments, statements, and documents in support of the appeal, allowing reasonable latitude for the hearing of relevant material.
 7. Right to representation. The person has a right to be represented by legal counsel or ~~other~~ another representative in connection with the person's appeal, but solely at the person's own expense.
 8. Determination. Within 30 days of the hearing, the hearing officer shall make a recommendation to the Chief Right-of-Way Agent. The Department shall promptly issue a written decision and provide a copy to the person by certified mail. The Department shall explain the basis on which its decision was made, and what relief, if any, is to be provided.
 9. Judicial review. If the Department does not grant the relief requested, the Department shall advise the person of the right to seek judicial review.
- ~~E. Conflict of interest. If a displaced person is an employee of the state, or of a political subdivision involved in a joint project with the displacing agency, the Department shall forward the displaced person's file to the Office of the Attorney General for settlement purposes and decision.~~
- ~~F. The Department shall determine whether a person is required to relocate permanently as a direct result of a project.~~

R17-3-303. Relocation Assistance; 49 CFR ~~Part~~ 24, Subpart C - General Relocation Requirements

- ~~A. 49 CFR 24.203(b) "Notices of relocation eligibility" is amended to read:~~
 Notice of relocation eligibility. Eligibility for relocation assistance shall begin on the date of the notice of intent to acquire or notice of eligibility for relocation assistance (defined in Sec. 24.2) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.
- ~~B. 49 CFR 24.205 "Relocation planning, advisory services, and coordination" is amended as follows:~~
1. ~~Paragraph (a) is amended to read:~~
 Relocation planning. During the early stages of development, federal and federal aid programs or projects will be planned in a manner that the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. The planning, appropriate to the scope, complexity, and scheduling shall precede any action by an Agency which will cause displacement. The planning should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. If timing or scheduling is restricted, the planning may be limited. Planning may involve a relocation survey or study which may include the following:
 2. ~~Paragraph (b) is deleted.~~
- ~~C. 49 CFR 24.206 "Eviction for cause" is amended to read:~~
1. Eviction for cause must conform to A.R.S. §§ 12-1171 through 12-1183. The Department may determine that a person who is an unlawful occupant (as defined in 49 CFR 24.2) is still eligible for advisory relocation assistance, ~~using the following factors:~~ Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this part unless the agency determines that the factors in subsections (1)(a) or (b) apply. The Department shall use the following factors to determine eligibility of an unlawful occupant for advisory relocation assistance:
 - a. The person received an eviction notice before the initiation of negotiations and, as a result of that notice, is later evicted; or
 - b. The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and
 - c. The eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this part;
 - d. The person occupying the property and the owner dispute the issue of lawful occupancy;
 - e. The duration of prior legal occupancy of the person occupying the property;
 - f. Financial or medical hardship of the person occupying the property; or
 - g. The cost of the relocation assistance is less than the cost of an appeal.
 2. For purposes of determining eligibility for relocation payments, the date of displacement is the date the person

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moves, or if later, the date a comparable replacement dwelling is made available.-

3. The state may initiate eviction proceedings due to:
 - a. Unlawful activities being conducted on state-owned property,
 - b. Willful destruction of state-owned property,
 - c. Refusal to vacate state-owned property after all required notices to vacate have been delivered and appropriate assistance provided, or
 - d. Failure to pay rent when there is no hardship.

R17-3-304. Relocation Assistance; ~~49 CFR Part 24, Subpart D Payments for Moving and Related Expenses Repealed~~

~~A. 49 CFR 24.301 "Payment for actual reasonable moving and related expenses-residential moves" is amended as follows:~~

- ~~1. Paragraph (d) is amended to read:
Storage, if necessary to accommodate the Department's project schedule, for a period not to exceed 12 months.~~
- ~~2. Paragraph (f) is deleted.~~

~~B. 49 CFR 24.303 "Payments for actual reasonable moving and related expenses-nonresidential moves" is amended as follows:~~

- ~~1. Paragraphs (a)(7) and (a)(13)(iv) are deleted~~
- ~~2. Paragraph (a)(8) is amended to read:
Professional services necessary for:
 - i. Planning the move of the personal property, when the Department approves in advance the quantity and type of planning;
 - ii. Moving the personal property, and
 - iii. Installing the relocated personal property at the replacement location.~~
- ~~3. Paragraph (a)(10)(i) is amended to read:
The market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that the effort is not necessary. When payment for property loss is claimed for goods held for sale, the market value shall be based on the cost of the goods to the business, not the potential selling price.); or~~

- ~~4. Paragraph (e) is amended to read:
Self-moves. If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency. At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate. The Agency has sole authority to determine, in the best interests of the Agency and the displaced business or farm operation, if a self-move will be permitted.~~
- ~~5. Paragraph (e) is amended to read:
Advertising signs. The amount of a payment for direct loss of an on-premise advertising sign which is personal property shall be the lesser of:
 - a.(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or
 - b.(2) The estimated cost of moving the sign, but with no allowance for storage.~~

~~C. 49 CFR 24.305(h) for "Ineligible moving and related expenses" is amended to read:~~

~~Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency, except as required under A.R.S. § 28-7153.~~

R17-3-305. Relocation Assistance; 49 CFR Part 24, Subpart E - Replacement Housing Payments

~~A. 49 CFR 24.401 "Replacement housing payment for 180-day homeowner-occupants" in paragraph (d)(3) is amended as follows: to read:~~

- ~~1. Paragraph (e)(4)(iii) is amended to read:
The current market value for residential use of the replacement site (see Appendix A of this part, Sec. 24.401(e)(4)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and~~
- ~~2. Paragraph (d)(3) is amended to read:
The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located. If a displaced person chooses to buy down the interest rate, the Agency agency shall:~~

- ~~a.1. Require documents indicating the initial interest rate,~~
- ~~b.2. Require documents indicating the final interest rate, and~~
- ~~e.3. Limit reimbursement to the lower of the amount the displaced person actually paid to buy down the interest rate or the amount for which the person qualified under the established market interest rate.~~

- ~~3. Paragraph (e)(1) is amended to read:~~

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~~Closing and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.~~

~~4. Paragraphs (c)(7) and (c)(8) are deleted.~~

B. ~~49 CFR 24.402 “Replacement housing payment for 90-day occupants” is amended as follows:~~

~~1. Paragraph (b)(2)(i) is amended to read:~~

~~The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency. (For an owner-occupant, use the market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the market rent, unless its use would result in a hardship because of the person’s income or other circumstances); or~~

~~2. Paragraph (e)(1) is amended to read:~~

~~Amount of payment. An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under paragraph (b) of this section if the person rented a comparable replacement dwelling.~~

C. ~~49 CFR 24.403 “Additional rules governing replacement housing payments” is amended as follows:~~

~~1. Paragraph (a)(1) is amended to read:~~

~~At least one comparable replacement dwelling shall be examined. If more than one dwelling is examined, then the payment shall be computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data (see also Sec. 24.205(a)(2) and Appendix A of this part). An obviously overpriced dwelling will be ignored.~~

~~2. Paragraph (a)(3) is amended to read:~~

~~If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.~~

~~3. Paragraph (e)(6) is amended to read:~~

~~Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current market value.~~

R17-3-306. Relocation Assistance; Appendix A to Part 24 – Additional Information Repealed

A. ~~Appendix A, Section 24.9 “Recordkeeping and Reports” is deleted.~~

B. ~~Appendix A, Subpart B – “Real Property Acquisition” is deleted.~~

C. ~~Appendix A, Section 24.204(a) “General” is amended to read:~~

~~This provision requires that no one may be required to move from a dwelling without one comparable replacement dwelling having been made available. In addition, Sec. 24.204(a) requires that, “Where possible, three or more comparable replacement dwellings shall be made available.” Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.~~

D. ~~Appendix A, Section 24.307 “Discretionary Utility Relocation Payments” is deleted.~~

E. ~~Appendix A, Section 24.401(e) “Price differential” is amended to read:~~

~~The provision in Sec. 24.401(e)(4)(iii) to use the current market value for residential use does not mean the Agency must have the property appraised. Any reasonable method for arriving at the market value may be used.~~

F. ~~Appendix A, Section 24.402 “Replacement Housing Payment for 90-Day Occupants” is deleted.~~

G. ~~Appendix A, Section 24.403 “Additional Rules Governing Replacement Housing Payments” Section 24.403(a)(1) is amended to read:~~

~~The procedure for adjusting the asking price of comparable replacement dwellings requires that the agency provide advisory assistance to the displaced person concerning negotiations so that he or she may enter the market as a knowledgeable buyer. If a displaced person elects to buy the selected comparable, but cannot acquire the property for the adjusted price, it is appropriate to increase the replacement housing payment to the actual purchase amount.~~