



NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKINGS

This section of the *Arizona Administrative Register* contains Notices of Supplemental Proposed Rulemakings.

After an agency has filed a Notice of Proposed Rulemaking and it is published in the *Register*, an agency may decide to make substantial changes to the rule after it is proposed. The agency prepares a Notice of Supplemental Proposed Rulemaking with these proposed changes. When filed, the notice is published under the deadline schedule in the back of the *Register*.

The Notice of Supplemental Proposed Rulemaking shall be published in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the proposed rules should be addressed to the agency that promulgated the rules. Refer to item #4 below to contact the person charged with the rulemaking and item #11 for the close of record and information related to public hearings and oral comments.

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 21. CHILD SAFETY

**CHAPTER 8. DEPARTMENT OF CHILD SAFETY
FOSTER CARE AND CHILD WELFARE AGENCY FACILITY SAFETY**

[R17-59]

PREAMBLE

1. Citations to the agency’s Notice of Rulemaking Docket Opening, the Notice of Proposed Rulemaking, and any other Notices of Supplemental Proposed Rulemaking (if applicable) as published in the Register as specified in R1-1-409(A). A list of any other related notices published in the Register as specified in R1-1-409(A):

Notice of Rulemaking Docket Opening: 22 A.A.R. 3198, November 11, 2016

Notice of Proposed Rulemaking: 22 A.A.R. 3181, November 11, 2016

2. Articles, Parts, or Sections Affected (as applicable) Rulemaking Action

R21-8-112

Amend

R21-8-113

Amend

3. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 8-453(A)(5)

Implementing statutes: A.R.S. §§ 8-504, 8-505, and 8-509

4. The agency’s contact person who can answer questions about the rulemaking:

Name: Kathryn Blades, Deputy General Counsel

Address: Department of Child Safety
3003 N. Central Ave.
Phoenix, AZ 85012

Telephone: (602) 255-2527

E-mail: kathrynblades@azdes.gov

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 An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The proposed amended rules pertain to fire and pool safety. The justification for this regular rulemaking is A.R.S. § 41-1026(A)(1) and (A)(5). The current rules do not enable homes with a bedroom that leads into a pool enclosure to be licensed as foster homes or residential group care facilities. The Department seeks to amend the rules to permit this circumstance, as long as safeguards are met for applicable state law, county code, or municipal ordinances. The current rules limit the number of foster homes available as this design is common in residential housing, and can unfairly preclude interested applicants from meeting current licensing requirements and becoming licensed to provide foster care. Further, the Department is in need of more licensed foster homes to protect the health and wellbeing of the children in Arizona.

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

None

7. An explanation of the substantial change which resulted in the supplemental notice:

The substantial change delimits the proposed rule changes to foster children under the age of seven years.

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:

Not applicable

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

The proposed amendments will have a positive economic impact for foster home and Child Welfare Agency applicants. Homes



with a bedroom leading to a pool enclosure will not have to undergo a significant renovation to be compliant with fire and pool safety rules. The amended rules will not require any additional safeguards that are not already required by state law, county code, and municipal ordinances in the State of Arizona.

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

Name: Kathryn Blades, Deputy General Counsel
Address: Department of Child Safety
3003 N. Central Ave.
Phoenix, AZ 85012
Telephone: (602) 255-2527
E-mail: kathrynblades@azdes.gov

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

Comments can be submitted to: DCSPolicyUnit@azdes.gov
Close of record: June 9, 2017, 5:00 p.m.

Date: June 8, 2017
Time: 5:30 p.m. - 7:00 p.m.
Location: DCS - Thunderbird Office
13450 N. Black Canyon, Suite #170
Phoenix, AZ
Nature: The Department will hold an oral proceeding.

Date: June 7, 2017
Time: 4:30 p.m. - 6:00 p.m.
Location: Joel D. Valdez Main Library
101 N. Stone Ave.
Tucson, AZ 85701
Nature: The Department will hold an oral proceeding.

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:

The rules pertain to a requirement for foster home and Child Welfare Agency licensing. A general permit is not used. The Department is exempt from issuing a general permit for foster homes, (A.R.S. 8-503), and Child Welfare Agencies (A.R.S. § 8-505) under A.R.S. § 41-1037(A)(5).

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:

42 U.S.C. 671. The rules are not more stringent than 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:

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:

Not applicable

14. The full text of the rules follows:

TITLE 21. CHILD SAFETY
CHAPTER 8. DEPARTMENT OF CHILD SAFETY
FOSTER HOME AND CHILD WELFARE AGENCY FACILITY SAFETY
ARTICLE 1. LIFE SAFETY INSPECTIONS

Section
R21-8-112. Fire Safety And Evacuation Plan Requirements
R21-8-113. Pool Safety



ARTICLE 1. LIFE SAFETY INSPECTIONS

R21-8-112. Fire Safety and Evacuation Plan Requirements

The provider shall ensure:

1. The premises is free of obvious fire hazards, such as defective heating equipment, or improperly stored flammable materials. Household heating equipment must be equipped with appropriate safeguards, maintained as recommended by the manufacturer.
2. Flammables and combustibles are stored more than three feet from water heaters, furnaces, portable heaters, fire-places, and wood-burning stoves.
3. If the premises has a working fireplace or wood-burning stove, it is protected by a fire screen sufficient to shield the room from open flames and flying embers.
4. A functioning fire extinguisher with a rating of “2A 10BC” or greater is available near the kitchen area. If the home has multiple levels at least one functioning fire extinguisher with a rating of “2A 10BC” or greater is available on each level.
5. At least one UL approved and working smoke detector is installed:
 - a. In the main living or program area of the setting;
 - b. In each bedroom, if overnight care is provided; and
 - c. On each level of a multiple-level setting.
6. A written emergency evacuation plan is developed and maintained in the home, to provide guidance on the safe and rapid evacuation of the home. An emergency evacuation plan shall:
 - a. Be reviewed with the child within 72 hours of placement in the home and posted in a prominent place in the home;
 - b. Identify multiple exits from the home;
 - c. Identify two routes of evacuation from each bedroom on every floor used by individuals residing in or receiving care in the home. At least one of the exit routes for these bedrooms shall lead leads directly to the outside of the home, ~~but shall not lead into an area that serves as a pool enclosure.~~ If that exit leads into an area that serves as a pool enclosure:
 - i. An individual under the age of seven receiving care in the home shall not use that bedroom and;
 - ii. If the exit is a window, it shall be secured with a latching device located not less than 54 inches above the finished floor;
 - iii. If the exit is a door, it shall be locked at all times with a latch or lock located a minimum of 54 inches above the floor. If there is no quick release on the lock, it must comply with the provisions of R21-8-112(11), and the key shall be located a minimum of 54 inches above the floor.
 - iv. Bedroom doors that lead into an area that serves as a pool enclosure shall comply with R21-8-112(6)(c)(iii) and also be self-closing and self-latching. Such doors that are hinged shall also swing outward from the pool area.
 - d. Identify the location of fire extinguishers and fire evacuation equipment, including rope or chain ladders, and emergency lighting, as applicable;
 - e. Designate a safe central meeting place close to the home, known to the child, at a safe distance from potential danger;
 - f. Be maintained in the home to review with individuals residing in or receiving care in the home; and
 - g. Include the placement of equipment, such as a ladder, that can be safely used by the individuals residing in each upstairs bedroom that have been identified with fire exits.
7. All windows identified as fire exits, must have enough space for an adult to move through.
8. Each bedroom used by a foster child or child in a residential group care facility receiving care or services has two exits to the outside.
 - a. One exit shall be a path through the premises and leading to a door that opens to the outside. A garage door that opens either manually by lifting or with an automatic opener shall not be accepted as an exit.
 - b. Another exit shall be a window or door within the bedroom that opens directly to the outside.
9. Premises authorized to provide care or services to five or more children shall train staff and children in evacuation procedures and conduct emergency drills at least every three months as prescribed in this subsection.
 - a. Practice drills shall include actual evacuation of children to safe areas, outside, and beyond the home.
 - b. Drills shall be held at random times and under varying conditions to simulate the possible conditions in case of fire or other disaster.
 - c. All persons in the home shall participate in the drill.
 - d. Records shall be maintained for each emergency drill and shall include:
 - i. Date and time of drill;
 - ii. Total evacuation time;
 - iii. Exits used;
 - iv. Problems noted; and
 - v. Measures taken to ensure that a foster child or a child in a residential group home facility understand the purpose of a drill and his or her responsibilities during a drill.
10. The exit routes for the home are clear of obstruction that could prevent safe and rapid evacuation.
11. The locks on exterior doors and windows, including the front door, screen doors, and bars on windows, are equipped with a quick release mechanism. A quick release mechanism is a lock that can be opened from inside the setting without special knowledge (such as a combination) or equipment (such as a key). The Department ~~may~~ grant an exception to this requirement for a double-key deadbolt on a door if:
 - a. There is breakable glass within 40 inches of the interior locking mechanism;
 - b. There is another exit with a quick release mechanism on the same level of the premises; and
 - c. The key for the deadbolt is permanently maintained in a location that is:
 - i. Within six feet of the locking mechanism;
 - ii. Accessible to all household members;



- iii. Reviewed with persons residing in or receiving care in the home; and
- iv. Identified on the emergency evacuation plan, specified in subsection (6).
- 12. The address for the home is posted and visible from the street, or the local emergency response team, such as the local fire department, is notified of the location of the home in writing, with a copy of this notification maintained in the home.
- 13. Providers must maintain a comprehensive list of emergency telephone numbers, including poison control, and post those numbers in a prominent place in the home.

R21-8-113. Pool Safety

- A. No change
- B. For a home that has a pool, and provides care to a child six years of age or less, or an individual with a Developmental Disability, the provider shall ensure the following:
 - 1. That the pool complies with A.R.S. § 36-1681 and all local municipal codes to the extent not inconsistent with this Section.
 - 2. A fence or barrier meeting the following requirements is maintained between the pool and the home, or any building used to provide care and supervision.
 - a. The exterior side of the fence or barrier is at least five feet high;
 - b. If the barrier is a chain link fence or lattice, each opening in the mesh measures less than 1 3/4 inches horizontally. Chicken wire and other light gauge wire are prohibited as a primary fencing material for the pool;
 - c. If the barrier is a fence constructed of vertical bars or wooden slats, the openings between bars or slats measure less than four inches;
 - d. The exterior side of the barrier is free of hand holds or foot holds or other means that could be used to climb over it and if it has a horizontal component spaced at least 45 inches, measured vertically;
 - e. The gate to the enclosure is locked, except when in use and there is an adult within the enclosure to supervise the pool and spa area;
 - f. The connection between the panels of the fence cannot be separated without a key or a tool;
 - g. The fence is secured to the ground or has sufficient tension to prevent the fence from being lifted more than four inches from the ground;
 - h. If the home or building to provide care or supervision constitutes part of the enclosure:
 - i. The enclosure does not interfere with safe egress from the home;
 - ii. A door from the home does not open within the pool enclosure; unless it is a bedroom door in a bedroom not occupied by an individual under the age of seven receiving care and such such a door cannot be opened by a foster child under the age of seven or child in a residential group care facility because it is either permanently locked as required in R21-8-112(6)(c)(iii) or barricaded inoperable. Any key shall not be accessible to a foster child under the age of seven or child in a residential group care facility;
 - iii. A window located in a room that is designated as a bedroom for a foster child under the age of seven or child in a residential group care facility shall not open into the pool enclosure; or shall be permanently locked and not used for egress; and
 - iv. Other windows that open into the pool enclosure are ~~permanently secured to open no more than four inches; as required in R21-8-122(c)(ii).~~
 - v. Animal or doggie doors shall not open directly into the pool enclosure.
 - 3. A pool shall have its methods of access through the barrier equipped with a safety device, such as a bolt lock:
 - a. Gates should be self-closing and self-latching, maintained in good repair, and open out or away from the pool.
 - b. The gate latch is at least 54" above the ground and is equipped with a key or combination lock.
 - 4. If the swimming pool cannot be emptied after each use, the pool must have a working pump and filtering system.
 - 5. Hot tubs and spas must have safety covers that are locked when not in use.
 - 6. Hot tubs and spas that are drained must be disconnected from the power and water source and have safety covers that are always locked.
- C. No change
- D. No change
- E. No change
- F. No change