

Arizona Secretary of State
Public Services Division
Certified Original Rules

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Code Citation: 04 A.A.C. 34

Title Number: 04

Chapter Number: 34

Title Heading: Professions and Occupations

Chapter Heading: Board of Manufactured Housing

Date/Year filed with the office: 2020

12/2/2020

Rule Number: R20-210

Archive Notes:

Effective Date: 1/31/2021

Register Date:

R20-210

SECRETARY OF STATE

2020 DEC -2 PM 4:41

FILED

AGENCY RECEIPT
NOTICE OF FINAL RULEMAKING

- 1. Agency name:** Board of Manufactured Housing
- 2. The Subchapters, if applicable; the Articles; the Parts, if applicable, and the Sections involved in the rulemaking, listed in numerical order:**

<u>Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
(in numerical order) R4-34-102	Amend

R20-210

SECRETARY OF STATE

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FILED

**AGENCY CERTIFICATE
NOTICE OF FINAL RULEMAKING**

1. **Agency name:** Board of Manufactured Housing
2. **Chapter heading:** Board of Manufactured Housing
3. **Code citation for the Chapter:** 4 A.A.C. 34
4. **The Subchapters, if applicable; the Articles; the Parts, if applicable, and the Sections involved in the rulemaking, listed in numerical order:**

Article, Part, or Section Affected (as applicable) Rulemaking Action

(in numerical order)

R4-34-102

Amend

5. **The rules contained in this package are true and correct as made.**

6. Tara Brunetti
Signature of Agency Chief Executive Officer in ink

December 1, 2020
Date of signing

Tara Brunetti
Printed or typed name of signer

Assistant Deputy Director
Title of signer

7. **No changes have been made to these rules since the Governor's Regulatory Review Council approved the rules.**



R20-210
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GOVERNOR'S REGULATORY REVIEW COUNCIL

CERTIFICATE OF APPROVAL OF FINAL RULES

1. Agency Name: Board of Manufactured Housing
2. Chapter Heading: Board of Manufactured Housing
3. Citation for the Chapter: 4 A.A.C. 34

Subchapters, Articles, Parts and Sections

R4-34-102

Action:

Amend

4. The rules described above are approved as final rules.

☒ approved as submitted (R1-6-205(A))
☐ approved in part, returned in part (A.R.S. § 41-1052(C))
☐ approved with changes accepted by the agency (R1-6-205(B))

5. Effective date:

☒ standard 60-day delayed effective date
☐ immediate effective date
☐ other [specify date:]

A handwritten signature in black ink, appearing to read "Nicole Sornsin".

Nicole Sornsin
Council Chair

Dec 2, 2020

Date of Approval

R20-210

SECRETARY OF STATE

2020 DEC -2 PM 4:41

FILED

From: **Carol Ditmore** <carol.ditmore@azhousing.gov>
Date: Wed, Aug 21, 2019 at 5:09 PM
Subject: Re: Rulemaking Waiver Request
To: Kaitlin Harrier <kharrier@az.gov>
Cc: Olivia Gibala <olivia.gibala@azhousing.gov>, Reginald Givens
<reginald.givens@azhousing.gov>, Tara Brunetti <tara.brunetti@azhousing.gov>

Thank you, Kaitlin!

On Wed, Aug 21, 2019 at 4:41 PM Kaitlin Harrier <kharrier@az.gov> wrote:
Director and team,

I have reviewed, and this request is approved.

Thank you,
Kaitlin

On Tue, Jul 30, 2019 at 3:44 PM Olivia Gibala <olivia.gibala@azhousing.gov> wrote:
Kaitlin,

Attached is the letter from Director Ditmore regarding the Rulemaking Waiver Request. The original will be sent over by interagency mail.

Thank you.

Olivia Gibala

NOTICE OF FINAL RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 34. BOARD OF MANUFACTURED HOUSING
PREAMBLE

- | <u>1. Articles, Parts, and Sections Affected</u> | <u>Rulemaking Action</u> |
|--|--------------------------|
| R4-34-102 | 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. § 41-4010(A)(13)
Implementing statute: A.R.S. § 41-4010(A)(1) and (A)(2)
- 3. The effective date for the rules:**
As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.
- 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):**
Not applicable
- 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
- 4. Citation to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**
Notice of Rulemaking Docket Opening: 26 A.A.R. 568, March 27, 2020
Notice of Proposed Rulemaking: 26 A.A.R. 529, March 27, 2020
Notice of Supplemental Proposed Rulemaking: 26 A.A.R. 1847, September 4, 2020
- 5. The agency's contact person who can answer questions about the rulemaking:**
Name: Tara Brunetti, Assistant Deputy Director
Address: Office of Manufactured Housing, Arizona Department of Housing
1110 W. Washington Street, Ste. 280
Phoenix, AZ 85007
Telephone: (602) 771-1000

Fax: (602) 771-1002
E-mail: tara.brunetti@azhousing.gov
Website: www.housing.az.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 Board is updating building-code materials incorporated by reference. The currently incorporated materials are very out of date and inconsistent with building codes used in most Arizona jurisdictions. Having to use inconsistent materials is a regulatory burden for manufacturers and installers. An exemption from Executive Order 2019-01 was provided for this rulemaking by Kaitlin Harrier, of the Governor's Office, by e-mail dated August 21, 2019.

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:

The Board did not review or rely on a study in its evaluation of or justification for the rule.

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:

Updating building codes incorporated by reference will remove a regulatory burden from manufacturers and installers who currently have to deal with state standards that are out of date and inconsistent with those of local jurisdictions.

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

Two changes were made between the rules as proposed in the supplemental notice and this final notice:

- In anticipation of conducting another rulemaking in the very near future, the Board removed the repeal of R4-34-504 from this rulemaking. The Board believes this rule action more appropriately belongs in the anticipated rulemaking.
- 24 CFR, Subtitle B, Chapter XX, which was incorporated by reference in the supplemental notice was removed from this rulemaking. The Board determined that incorporating the federal law was duplicative and therefore unnecessary because the Department, manufacturers, and installers are required to comply with the federal law regardless of whether it is incorporated by reference.

- a. Under A.R.S. § 41-4002, the Office of Manufactured Housing is to implement all existing laws and regulations mandated by the federal government. Under 24 CFR § 3280.1, the federal government mandates 24 CFR, Subtitle B, Chapter XX.
- b. Under 24 CFR § 3280.3, a manufacturer is required to comply with 24 CFR, Parts 3280 (regarding manufactured home construction and safety standards) and 3282 (regarding manufactured home procedural and enforcement regulations).
- c. Under 24 CFR § 3285.2, a manufacturer is required to provide installation designs and instructions for each manufactured home.
- d. Under 24CFR, Part 3286, dealing with manufactured home installation program, a state is required to comply with the specified installation program either by allowing HUD to conduct enforcement or by having a state-qualifying installation program.
- e. Under agreement with HUD, Arizona has a state-qualifying installation program. The Department enforces the installation program in jurisdictions with which the Department does not have an agreement. In jurisdictions with which the Department has an agreement, the jurisdiction is required under the agreement to comply with 24 CFR, Subtitle B, Chapter XX.

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

Five individuals attended the oral proceeding on October 5, 2020: Josh Hart, Joe Hart, Debbie French, Mike Myers, and John Farrell. All are from Modular Solutions. They inquired about the effective date of the newly incorporated materials and whether there would be exceptions. Department staff answered their question.

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

None

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

The rule does not require a permit.

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

The rule is not more stringent than federal law. Federal law applies to the subject of the rule (See 24 CFR 3280, 3282, 3284, 3285, 3286, and 3288). Under a contract with HUD, the Board enforces the 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:

The following materials are incorporated by reference at R4-34-102:

- International Building Code (IBC), 2018 edition;
- International Residential Code (IRC), 2018 edition;
- International Mechanical Code (IMC), 2018 edition;
- International Plumbing Code (IPC), 2018 edition;
- International Fuel Gas Code (IFGC), 2018 edition;
- International Energy Conservation Code (IECC), 2018 edition;
- National Electrical Code (NEC), 2017 edition;

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:

The rule was not previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 34. BOARD OF MANUFACTURED HOUSING
ARTICLE 1. GENERAL

Section

R4-34-102. Materials Incorporated by Reference

ARTICLE 1. GENERAL

R4-34-102. Materials Incorporated by Reference

The following materials, ~~which the Board incorporates~~ are incorporated by reference, apply to this Chapter. ~~The materials, which~~ include no later amendments or editions, and are available ~~from~~ on the ~~Board~~ Board's website. If there is a conflict between the incorporated material and a statute or rule, the statute or rule controls.

1. ~~24 CFR 3280, Manufactured Home Construction and Safety Standards, April 1, 2008, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;~~
2. ~~24 CFR 3282, Manufactured Home, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;~~
3. ~~24 CFR 3284, Manufactured Housing Program Fee, April 1, 2008, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;~~
4. ~~24 CFR 3285, Model Manufactured Home Installation Standards, April 1, 2008, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;~~
5. ~~24 CFR 3286, Manufactured Home Installation Program, April 1, 2009, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;~~
6. ~~24 CFR 3288, Manufactured Home Dispute Resolution Program, April 1, 2008, edition, available from the U.S. Government Printing Office, 732 N. Capitol St. NW, Washington, D.C. 20401 or bookstore.gpo.gov;~~
7. 1. International Building Code (IBC), 2009 2018 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478 or iccsafe.org;
8. 2. International Residential Code (IRC), 2009 2018 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478 or iccsafe.org;
9. 3. International Mechanical Code (IMC), 2009 2018 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478 or iccsafe.org;
10. 4. International Plumbing Code (IPC), 2009 2018 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478 or iccsafe.org;
11. 5. International Fuel Gas Code (IFGC), 2009 2018 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478 or iccsafe.org;

- ~~12.6.~~ International Energy Conservation Code (IECC), ~~2009~~ 2018 edition, available from the International Code Council, 4051 Flossmoor Road, Country Club Hills, IL 60478 or iccsafe.org;
- ~~13.7.~~ National Electrical Code (NEC), ~~2008~~ 2017 edition, available from the National Fire Protection Association, One Batterymarch Park, Quincy, MA 02169 or nfpa.org; and
- ~~14.8.~~ Protecting Manufactured Homes from Floods and Other Hazards, publication 85, second edition, November 2009, available from the Federal Emergency Management Agency, 500 C. St. SW, Washington, D.C. 20472 or www.fema.gov.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹**TITLE 4. PROFESSIONS AND OCCUPATIONS****CHAPTER 34. BOARD OF MANUFACTURED HOUSING****1. Identification of the rulemaking:**

The Board is updating building-code materials incorporated by reference. The currently incorporated materials are very out of date and inconsistent with building codes used in most Arizona jurisdictions. Having to use inconsistent materials is a regulatory burden for manufacturers and installers. An exemption from Executive Order 2019-01 was provided for this rulemaking by Kaitlin Harrier, of the Governor's Office, by e-mail dated August 21, 2019.

a. The conduct and its frequency of occurrence that the rule is designed to change:

Until the rulemaking is completed, manufacturers and installers will still be burdened by the requirement that they comply with building codes that are out of date and inconsistent with building codes used in most Arizona jurisdictions.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

It is not good government to burden stakeholders with out of date and inconsistent requirements. These requirements potentially pose a danger to public health and safety.

c. The estimated change in frequency of the targeted conduct expected from the rule change:

When the rulemaking is completed, the building-code materials with which the Department requires manufacturers and installers to comply will be up to date and consistent with those required in most Arizona jurisdictions. This will have eliminated an unnecessary regulatory burden for manufacturers and installers.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

Updating building codes incorporated by reference will remove a regulatory burden from manufacturers and installers who currently have to deal with state standards that are out of date and inconsistent with those of local jurisdictions.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

¹ If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms.

Name: Tara Brunetti, Assistant Deputy Director
Address: Office of Manufactured Housing, Arizona Department of Housing
1110 W. Washington Street, Ste. 280
Phoenix, AZ 85007
Telephone: (602) 771-1000
Fax: (602) 771-1002
E-mail: tara.brunetti@azhousing.gov
Website: www.housing.az.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

Manufacturers and installers of manufactured housing and factory-built buildings and the Department will be directly affected by, bear the costs of, and directly benefit from this rulemaking. The Department currently licenses 84 manufacturers and 100 installers.

The rulemaking incorporates by reference various building codes. The main purpose of the building codes is to protect public health, safety, and general welfare as they relate to construction and occupancy of buildings and other structures. A building code becomes law only when formally enacted by a jurisdiction. The codes are written to enable flexibility in use of materials and building design and not unnecessarily increase construction costs.

Attached and incorporated into this EIS is a summary prepared by the Department of the most significant changes between the currently incorporated building codes and newly incorporated building codes.

Updating the materials incorporated by reference will have a positive benefit for manufacturers and installers who will no longer have to adjust their work to using an out-of-date code that is inconsistent with that used for other projects. If an updated building code contains a provision that increases cost, it is a cost of doing business that is passed to the consumer of the manufactured home or factory-built building.

The Department incurred the cost of conducting this rulemaking and will incur the cost of implementing it. These minimal costs are outweighed by the benefit of removing an unnecessary burden from manufacturers and installers.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

No state agency other than the Department is directly affected by the rulemaking. Its costs and benefits are discussed in item 4. The Department will not need a new FTE to implement or enforce the rulemaking.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

Political subdivisions are not directly affected by the rulemaking. However, many are indirectly affected because they have agreements with the Department under which the political subdivisions conduct inspections and enforce the building code provisions. The rulemaking will have an indirect positive benefit for the political subdivisions because they will no longer have to enforce out-of-date building codes that are inconsistent with those enforced on other projects.

- c. Costs and benefits to businesses directly affected by the rulemaking:

Manufacturers and installers are businesses directly affected by the rulemaking. Their costs and benefits are discussed in item 4.

6. Impact on private and public employment:

There will be no impact on private or public employment.

7. Impact on small businesses²:

- a. Identification of the small business subject to the rulemaking:

Some manufacturers and most installers are small businesses directly affected by the rulemaking. Their costs and benefits are discussed in item 4.

- b. Administrative and other costs required for compliance with the rulemaking:

The building codes establish minimum requirements using, to the extent possible, performance-related rather than prescriptive provisions. To comply with the newly incorporated building codes, it will be necessary for manufacturers and installers to have access to a copy of the codes. Because the incorporated building codes are already being used on other projects, most manufacturers and installers already have this access.

- c. Description of methods that may be used to reduce the impact on small businesses:

² Small business has the meaning specified in A.R.S. § 41-1001(21).

The building codes are designed to protect public health, safety, and welfare without unnecessarily increasing construction costs. To achieve these goals, it is necessary that all businesses use the same code standards. The codes do not restrict the use of or give preferential treatment to particular new materials, products, or methods of construction. The Board believes there are no additional methods for reducing impact on small businesses.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

No private persons or consumers are directly affected by the rulemaking. Consumers of manufactured housing or factory-built buildings are indirectly affected by the rulemaking.

9. Probable effects on state revenues:

There will be no effect on state revenue.

10. Less intrusive or less costly alternative methods considered:

The Board believes there is no less intrusive or costly alternative method. Maintaining the current, out-of-date standards, is actually a more intrusive and costly method because it imposes the burden of having to comply with standards that are inconsistent with those used for other projects.

Changes from 2009 to 2018 IBC

311.1.1. Small storage rooms (less than 100 sf) are automatically accessory and not classified separately. Aggregates are still limited to 10% of the floor area.

505.2.3, Ex 2 Mezzanine Openness. Direct access to at least one exit at the mezzanine level is no longer required.

Changes from 2009 to 2018 IPC

305.3 Pipes through foundation walls. The requirement for a pipe sleeve or relieving arch for pipes under a footing was removed because the footing acts as the relieving arch for the pipe below.

Section 422 Health Care Fixtures and Equipment. Section 422 concerning Health Care Fixtures and Equipment is deleted.

607.2 Hot water supply temperature maintenance. The threshold for where a hot water temperature maintenance system is required was lowered from 100 feet to 50 feet (30 480 mm to 15 240 mm).

2009 to 2018 Changes to IECC

C407.4.2 Additional documentation. Allows the code official to require documentation of the reduction in energy use associated with on-site renewable energy use.

C408.3.1.3 Daylight responsive controls. Requires that calibration adjustment equipment be located for ready access by authorized personnel only.

Changes from 2009 to 2018 IRC

R202 Guestroom. New definition added: Any room or rooms used or intended to be used by one or more guests for living or sleeping purposes.

R303.5.1 Intake opening. The revision to this section increases from the minimum vertical clearance that an intake opening must be below a contaminant source from 2 feet to 3 feet.

2009 to 2018 Changes to IFGC

Table 402.4(3) Schedule 40 Metallic Pipe Sizing Table. New table added for natural gas conditions of:

- Inlet Pressure: Less than 2 pounds per square inch (13.79 kPa)
- Pressure Drop: 3.0 inches water column
- Specific Gravity: 0.60

404.1 Installation of materials. Materials must be installed in accordance with the standards under which the materials are accepted and approved, the manufacturer's installation instructions and this code.

636.1 General for outdoor decorative appliances. Permanently fixed-in-place outdoor decorative appliances must be tested in accordance with ANSI Z21.97 and must be installed in accordance with the manufacturer's installation instructions.

2009 to 2018 Changes to IMC

301.3 Identification. Each length of pipe and tubing, and each pipe fitting installed in a mechanical system, must have a unique mark that identifies the maker of the item.

505.1 Domestic systems. Ducts for domestic kitchen exhaust hoods must be independent of all other exhaust systems.