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From the Publisher

ABOUT THIS PUBLICATION

The authenticated pdf of the *Administrative Register* (A.A.R.) posted on the Arizona Secretary of State's website is the official published version for rulemaking activity in the state of Arizona.

Rulemaking is defined in Arizona Revised Statutes known as the Arizona Administrative Procedure Act (APA), A.R.S. Title 41, Chapter 6, Articles 1 through 10.

The *Register* is cited by volume and page number. Volumes are published by calendar year with issues published weekly. Page numbering continues in each weekly issue.

In addition, the *Register* contains notices of rules terminated by the agency and rules that have expired.

ABOUT RULES

Rules can be: made (all new text); amended (rules on file, changing text); repealed (removing text); or renumbered (moving rules to a different Section number). Rulemaking activity published in the *Register* includes: proposed, final, emergency, expedited, and exempt rules as defined in the APA, and other state statutes.

New rules in this publication (whether proposed or made) are denoted with underlining; repealed text is stricken.

WHERE IS A "CLEAN" COPY OF THE FINAL OR EXEMPT RULE PUBLISHED IN THE REGISTER?

The *Arizona Administrative Code* (A.A.C) contains the codified text of rules. The A.A.C. contains rules promulgated and filed by state agencies that have been approved by the Attorney General or the Governor's Regulatory Review Council. The *Code* also contains rules exempt from the rulemaking process.

The authenticated pdf of *Code* Chapters posted on the Arizona Secretary of State's website are the official published version of rules in the A.A.C. The *Code* is posted online for free.

LEGAL CITATIONS AND FILING NUMBERS

On the cover: Each agency is assigned a Chapter in the *Arizona Administrative Code* under a specific Title. Titles represent broad subject areas. The Title number is listed first; with the acronym A.A.C., which stands for the *Arizona Administrative Code*; following the Chapter number and Agency name, then program name. For example, the Secretary of State has rules on rulemaking in Title 1, Chapter 1 of the *Arizona Administrative Code*. The citation for this Chapter is 1 A.A.C. 1, Secretary of State, Rules and Rulemaking. Every document filed in the office is assigned a file number. This number, enclosed in brackets, is located at the top right of the published documents in the *Register*. The original filed document is available for 10 cents a page.

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ADMINISTRATIVE REGISTER
This publication is available online for free at www.azsos.gov.

ADMINISTRATIVE CODE
The *Arizona Administrative Code* is available online at www.azsos.gov.

PUBLICATION DEADLINES
Publication dates are published in the back of the *Register*. These dates include file submittal dates with a three-week turnaround from filing to published document.

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Participate in the Process

Look for the Agency Notice

Review (inspect) notices published in the *Arizona Administrative Register*. Many agencies maintain stakeholder lists and would be glad to inform you when they proposed changes to rules. Check an agency's website and its newsletters for news about notices and meetings.

Feel like a change should be made to a rule and an agency has not proposed changes? You can petition an agency to make, amend, or repeal a rule. The agency must respond to the petition. (See A.R.S. § 41-1033)

Attend a public hearing/meeting

Attend a public meeting that is being conducted by the agency on a Notice of Proposed Rulemaking. Public meetings may be listed in the Preamble of a Notice of Proposed Rulemaking or they may be published separately in the *Register*. Be prepared to speak, attend the meeting, and make an oral comment.

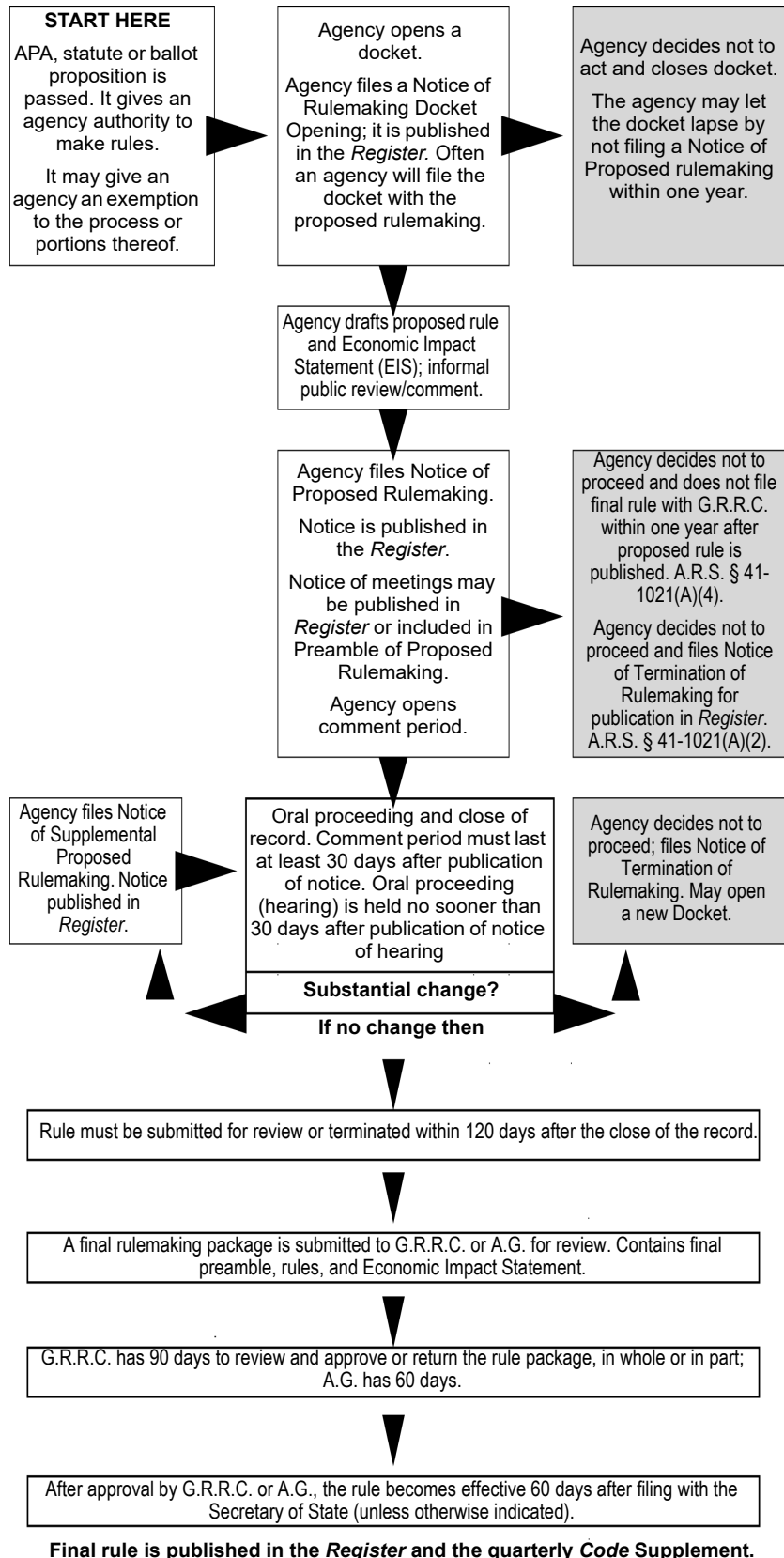
An agency may not have a public meeting scheduled on the Notice of Proposed Rulemaking. If not, you may request that the agency schedule a proceeding. This request must be put in writing within 30 days after the published Notice of Proposed Rulemaking.

Write the agency

Put your comments in writing to the agency. In order for the agency to consider your comments, the agency must receive them by the close of record. The comment must be received within the 30-day comment timeframe following the *Register* publication of the Notice of Proposed Rulemaking.

You can also submit to the Governor's Regulatory Review Council written comments that are relevant to the Council's power to review a given rule (A.R.S. § 41-1052). The Council reviews the rule at the end of the rulemaking process and before the rules are filed with the Secretary of State.

Arizona Regular Rulemaking Process



Definitions

Arizona Administrative Code (A.A.C.): Official rules codified and published by the Secretary of State’s Office. Available online at www.azsos.gov.

Arizona Administrative Register (A.A.R.): The official publication that includes filed documents pertaining to Arizona rulemaking. Available online at www.azsos.gov.

Administrative Procedure Act (APA): A.R.S. Title 41, Chapter 6, Articles 1 through 10. Available online at www.azleg.gov.

Arizona Revised Statutes (A.R.S.): The statutes are made by the Arizona State Legislature during a legislative session. They are compiled by Legislative Council, with the official publication codified by Thomson West. Citations to statutes include Titles which represent broad subject areas. The Title number is followed by the Section number. For example, A.R.S. § 41-1001 is the definitions Section of Title 41 of the Arizona Administrative Procedures Act. The “§” symbol simply means “section.” Available online at www.azleg.gov.

Chapter: A division in the codification of the *Code* designating a state agency or, for a large agency, a major program.

Close of Record: The close of the public record for a proposed rulemaking is the date an agency chooses as the last date it will accept public comments, either written or oral.

Code of Federal Regulations (CFR): The *Code of Federal Regulations* is a codification of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government.

Docket: A public file for each rulemaking containing materials related to the proceedings of that rulemaking. The docket file is established and maintained by an agency from the time it begins to consider making a rule until the rulemaking is finished. The agency provides public notice of the docket by filing a Notice of Rulemaking Docket Opening with the Office for publication in the *Register*.

Economic, Small Business, and Consumer Impact Statement (EIS): The EIS identifies the impact of the rule on private and public employment, on small businesses, and on consumers. It includes an analysis of the probable costs and benefits of the rule. An agency includes a brief summary of the EIS in its preamble. The EIS is not published in the *Register* but is available from the agency promulgating the rule. The EIS is also filed with the rulemaking package.

Governor’s Regulatory Review (G.R.R.C.): Reviews and approves rules to ensure that they are necessary and to avoid unnecessary duplication and adverse impact on the public. G.R.R.C. also assesses whether the rules are clear, concise, understandable, legal, consistent with legislative intent, and whether the benefits of a rule outweigh the cost.

Incorporated by Reference: An agency may incorporate by reference standards or other publications. These standards are available from the state agency with references on where to order the standard or review it online.

Federal Register (FR): The *Federal Register* is a legal newspaper published every business day by the National Archives and Records Administration (NARA). It contains federal agency regulations; proposed rules and notices; and executive orders, proclamations, and other presidential documents.

Session Laws or “Laws”: When an agency references a law that has not yet been codified into the Arizona Revised Statutes, use the word “Laws” is followed by the year the law was passed by the Legislature, followed by the Chapter number using the abbreviation “Ch.,” and the specific Section number using the Section symbol (§). For example, Laws 1995, Ch. 6, § 2. Session laws are available at www.azleg.gov.

United States Code (U.S.C.): The Code is a consolidation and codification by subject matter of the general and permanent laws of the United States. The Code does not include regulations issued by executive branch agencies, decisions of the federal courts, treaties, or laws enacted by state or local governments.

Acronyms

A.A.C. – *Arizona Administrative Code*

A.A.R. – *Arizona Administrative Register*

APA – *Administrative Procedure Act*

A.R.S. – *Arizona Revised Statutes*

CFR – *Code of Federal Regulations*

EIS – *Economic, Small Business, and Consumer Impact Statement*

FR – *Federal Register*

G.R.R.C. – *Governor’s Regulatory Review Council*

U.S.C. – *United States Code*

About Preambles

The Preamble is the part of a rulemaking package that contains information about the rulemaking and provides agency justification and regulatory intent.

It includes reference to the specific statutes authorizing the agency to make the rule, an explanation of the rule, reasons for proposing the rule, and the preliminary Economic Impact Statement.

The information in the Preamble differs between rulemaking notices used and the stage of the rulemaking.

NOTICES OF PROPOSED RULEMAKING

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

A proposed rulemaking is filed by an agency upon completion and submittal of a Notice of Rulemaking Docket Opening. Often these two documents are filed at the same time and published in the same *Register* issue.

When an agency files a Notice of Proposed Rulemaking under the Administrative Procedure Act (APA), the notice is published in the *Register* within three weeks of filing. See the publication schedule in the back of each issue of the *Register* for more information.

Under the APA, an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule (A.R.S. §§ 41-1013 and 41-1022).

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 #10 for the close of record and information related to public hearings and oral comments.

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R24-08]

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R20-5-608	Amend
R20-5-609	Amend
R20-5-610	Amend
R20-5-611	Amend
R20-5-613	Amend
R20-5-614	Amend
R20-5-615	Amend
R20-5-617	Amend
R20-5-618	Amend
R20-5-619	Amend
R20-5-621	Amend
R20-5-622	Amend
R20-5-623	Amend
R20-5-624	Amend
R20-5-625	Amend
R20-5-626	Amend
R20-5-627	Amend
R20-5-629	Amend
R20-5-650	Amend
R20-5-652	Amend
R20-5-654	Amend
R20-5-655	Amend
R20-5-656	Amend
R20-5-657	Amend
R20-5-658	Amend
R20-5-659	Amend
R20-5-661	Amend
R20-5-663	Amend
R20-5-664	Amend
R20-5-665	Amend
R20-5-666	Amend
R20-5-667	Amend
R20-5-669	Amend
R20-5-680	Amend
R20-5-681	Amend
R20-5-682	Amend

R20-5-683

New Section

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

Authorizing statute: A.R.S. § 23-405

Implementing statute: A.R.S. § 23-407

Consistent with A.R.S. § 41-1039(A) the Industrial Commission of Arizona received written approval from the Governor's office to proceed with this rulemaking on December 4, 2023.

3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:Notice of Rulemaking Docket Opening: 30 A.A.R. 248, February 2, 2024 (*in this issue*)**4. The agency's contact person who can answer questions about the rulemaking:**

Name: Phil Murphy, Interim Director

Address: Division of Occupational Safety and Health
Industrial Commission of Arizona
800 W. Washington St., Suite 203
Phoenix, AZ 85007

Telephone: (602) 542-1695

Fax: (602) 542-1614

Email: Phil.murphy@azdosh.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 following rule changes are justified under A.R.S. § 41-1039(2) "Reducing or ameliorating a regulatory burden on the public, while achieving the same regulatory objective" because they clarify the current rules, and eliminate confusion of the informal review process when an inspection is not warranted, the prelitigation processes for citations issued by ADOSH, the change of venue for hearings on citations that are contested, the different variance processes, the judicial review process, and the process established for cases under A.R.S. § 23-425, R20-5-608, R20-5-619, R20-5-624, R20-5-625, R20-5-626, R20-5-652, R20-5-654, R20-5-655, R20-5-656, R20-5-657, R20-5-658, R20-5-659, R20-5-661, R20-5-663, R20-5-664, R20-5-665, R20-5-666, R20-5-667, R20-5-669, R20-5-680, R20-5-682, and R20-5-683.

The following rule changes are justified under A.R.S. § 41-1039(5) Complying with a new state statutory or regulatory requirement if the compliance is related to a condition for the receiving federal monies or participating in any federal program because they comply with federal requirements R20-5-615, R20-5-629 and R20-5-681.

The following rule changes are justified under A.R.S. § 41-1039(6) Complying with a new or existing state statutory requirement, because they comply with state statutory requirements R20-5-613, R20-5-614 and R20-5-622.

The following rule changes are justified under A.R.S. § 41-1039(10) Eliminating rules that are antiquated, redundant or otherwise no longer necessary for the operation of state government because they eliminate antiquated language R20-5-609, R20-5-610, R20-5-611, R20-5-614, R20-5-615, R20-5-617, R20-5-618, R20-5-621, R20-5-650, and R20-5-654.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or 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 Commission did not review or rely on any study relevant to the proposed amended rules.

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

Not applicable

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

The proposed amendments will reduce regulatory burden while achieving the Commission's regulatory objectives as prescribed by the Act.

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

Name: Phil Murphy, Interim Director

Address: Division of Occupational Safety and Health
Industrial Commission of Arizona
800 W. Washington St., Suite 203
Phoenix, AZ 85007

Telephone: (602) 542-1695

Fax: (602) 542-1614

Email: Phil.murphy@azdosh.gov

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

Written comments can be submitted to the address listed in item 9 by the close of the comment period, which is at 5:00 p.m., on March 7, 2024. An oral proceeding on the proposed amended rule is scheduled for March 7, 2024, at 10:00 a.m., at the Industrial Commission of Arizona, 800 West Washington, Room 339, Phoenix, Arizona 85007.

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

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:

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

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

The proposed 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:

No analysis was submitted.

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

None

13. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Section

R20-5-608.	Definitions
R20-5-609.	Posting of Notice: Availability of the Act, Regulations and Applicable Standards
R20-5-610.	Authority for Inspection
R20-5-611.	Objection to Inspection
R20-5-613.	Advance Notice of Inspections
R20-5-614.	Conduct of Inspections
R20-5-615.	Representatives of Employers and Employees
R20-5-617.	Consultation with Employees
R20-5-618.	Complaints by Employees
R20-5-619.	Inspection Not Warranted; Informal Review
R20-5-621.	Citations: Notices of De Minimis Violations
R20-5-622.	Proposed Penalties
R20-5-623.	Posting of Citations
R20-5-624.	Employer and Employee Contests before the Hearing Division <u>Office of Administrative Hearings</u>
R20-5-625.	Failure to Correct <u>Abate</u> a Violation for Which a Citation Has Been Issued
R20-5-626.	Informal Conferences
R20-5-627.	Abatement Verification
R20-5-629.	The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904
R20-5-650.	Definitions
R20-5-652.	Effects of Variances
R20-5-654.	<u>Variances</u> ; Form of Documents; Subscription; Copies
R20-5-655.	Variances <u>under A.R.S. §23-411</u>
R20-5-656.	Variances under A.R.S. § 23-412
R20-5-657.	Renewal of Rules or Orders ; Federal Multi-state Variances
R20-5-658.	Action on Applications
R20-5-659.	Request for Hearings on Petition
R20-5-661.	Notice of Hearing
R20-5-663.	Industrial Commission; Powers and Duties
R20-5-664.	Prehearing Conferences
R20-5-665.	Consent Findings and Rules or Orders
R20-5-666.	Discovery
R20-5-667.	<u>Variance</u> Hearings
R20-5-669.	Judicial Review
R20-5-680.	Protected Activity
R20-5-681.	Elements of a Violation of A.R.S. § 23-425
R20-5-682.	Procedure
R20-5-683.	<u>Reconsideration of Initial Determination</u>

ARTICLE 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS

R20-5-608. Definitions

- ~~A.~~ “Act” means the Arizona Occupational Safety and Health Act of 1972, with amendments effective August 27, 1977 (Arizona Revised Statutes, Title 23, Chapter 2, Article 10).
- ~~B.~~ The definitions and interpretations contained in A.R.S. § 23-401 of the Act shall be applicable to such terms when used in these rules.

In addition to the definitions provided in A.R.S. § 23-401, the following definitions apply to this Article:

- “Act” means the Arizona Occupational Safety and Health Act of 1972.
- ~~C.~~ “Working days” means Mondays through Fridays but shall not include Saturdays, Sundays, or state holidays. In computing fifteen working days, the day of the receipt of any notice shall not be included, and the last day of the fifteen working days shall be included.
- ~~D.~~ “Compliance Safety and Health Officer” means a person authorized by the Occupational Safety and Health Division, Industrial Commission of Arizona, to conduct inspections.
- ~~E.~~ “Establishment” means a single physical location where business is conducted or where services or industrial operations are performed. (For example: a factory, mill, stores, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Industrial Commission of Arizona, Division of Occupational Safety and Health. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this Section shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as traveling salesmen, technicians, engineers, etc., such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with requirements of ~~subsection (A) of this Section~~ R20-5-609.
- “Working days” means Mondays through Fridays but shall not include Saturdays, Sundays, or state holidays. In computing 15 working days, the day of the receipt of any notice shall not be included, and the last day of the 15 working days shall be included.

R20-5-609. Posting of Notice: Availability of the Act, Regulations and Applicable Standards

- A. Each employer shall post and keep posted a notice or notices, to be furnished by the Industrial Commission of Arizona, Division of Occupational Safety and Health, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact the employer or the nearest office of the Industrial Commission. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced, or covered by other material.
- B. Copies of the Act, all regulations published in this Chapter and applicable standards will be available at all offices of the Arizona Division of Occupational Safety and Health. If an employer has obtained copies of these materials, ~~he~~ the employer shall make them available upon request to any employee or ~~his~~ the employee’s authorized representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or ~~his~~ the employee’s authorized representative and the employer.
- C. Any employer failing to comply with the provisions of this Section shall be subject to citation and penalty in accordance with the provisions of A.R.S. § 23-418 ~~of the Act.~~

R20-5-610. Authority for Inspection

- A. The Director of the Division of Occupational Safety and Health or ~~his~~ the Director’s authorized representative upon presentation of credentials shall be permitted to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, or place of environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee and to review records required by the Act and regulations published in this Article and other records which are directly related to the purpose of the inspection.
- B. Representatives of the Secretary of Health, Education, and Welfare are authorized to make inspections and to question employers and employees in order to carry out the functions of the Secretary of Health, Education, and Welfare under the Williams-Steiger Occupational Safety and Health Act. Inspections conducted by Department of Labor Compliance Safety and Health Officers and representatives of the Secretary of Health, Education and Welfare under Section 8 of the Williams-Steiger Occupational Safety and Health Act and pursuant to 29 CFR Part 1903 shall not affect the authority of any state to conduct inspections in accordance with agreements and plans under Section 18 of the Williams-Steiger Occupational Safety and Health Act.
- C. Prior to inspecting areas containing information which is classified by an agency of the United States government in the interests of national security, Compliance Safety and Health Officers shall have obtained the appropriate security clearance.

R20-5-611. Objection to Inspection

- A. Upon a refusal to permit a Compliance Safety and Health Officer, in the exercise of ~~his~~ official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to privately question any employer, owner, operator, agent, or employee, in accordance with rule R20-5-610, or to permit a representative of employees to accompany the Compliance Safety and Health Officer during the physical inspection of any workplace in accordance with rule R20-5-615, the Compliance Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised. The Compliance Safety and Health Officer shall endeavor to ascertain the reason for such refusal and shall immediately report the refusal and the rea-

son therefore to the Director of the Division. The Director shall immediately consult with the Industrial Commission and its legal counsel, who shall promptly take appropriate action, including compulsory process if necessary.

- B. Compulsory process may be sought in advance of an inspection or reinvestigation if, in the judgment of the Director of the Division and the Industrial Commission Chief Legal Counsel, circumstances exist including but not limited to specific evidence of an existing violation or reasonable legislative or administrative standards for conducting an inspection which make pre-inspection process desirable or necessary.
- C. With the approval of the Industrial Commission, and the Industrial Commission Chief Legal Counsel, compulsory process may also be obtained by the Director of the Division or ~~his~~ the Director's designee.
- D. For purposes of this Section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent.

R20-5-613. Advance Notice of Inspections

- A. Advance notice of inspections may not be given except in the following situations:
 1. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;
 2. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;
 3. Where necessary to ensure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in an inspection; and
 4. In other circumstances where the Division Director determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.
- B. In the situations described in subsection (A) of this Section, advance notice of inspections may be given only if authorized by the Division Director. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of such representative is known to the employer. (See rule R20-5-615(B) as to situations where there is no authorized representative of employees.) Upon the request of the employer, the Compliance Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Compliance Safety and Health Officer with the identity of such representative and with such other information as is necessary to enable ~~him~~ the Compliance Safety and Health Officer promptly to inform such representative of the inspection. An employer who fails to comply with ~~his~~ the obligation under this subsection promptly to inform the authorized representative of the employees of the inspection or to furnish such information as is necessary to enable the Compliance Safety and Health Officer to promptly inform such representative of the inspection may be subject to citation and penalty under A.R.S. § 23-408 ~~of the Act~~. Advance notice in any of the situations described in subsection (A) of this Section shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and other unusual circumstances.

R20-5-614. Conduct of Inspections

- A. At the beginning of an inspection, Compliance Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in rule R20-5-610 which they wish to review.
- B. Compliance Safety and Health Officers shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment.
- C. In taking photographs and samples, Compliance Safety and Health Officers shall take reasonable precautions to ensure that such actions with flash, spark producing, or other equipment would not be hazardous. Compliance Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.
- D. The conduct of inspections shall be such as to preclude unreasonable disruption to the operations of the employer's establishment.
- E. At the conclusion of an inspection, a Compliance Safety and Health Officer shall confer with the employer or ~~his employer~~ representative and informally advise ~~him the employer or employer representative~~ of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Compliance Safety and Health Officer any pertinent information regarding conditions in the workplace.
- F. Small business inspections, qualifying under the Small Business Bill of Rights A.R.S. § 41-1009, shall be subject to the provisions in A.R.S. § 41-1009.

R20-5-615. Representatives of Employers and Employees

- A. Compliance Safety and Health Officers shall be in charge of inspections and questioning of persons. A Compliance Safety and Health Officer may permit additional employer representatives and additional representatives authorized by employees to accompany ~~him~~ where he if it is determined determined that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Compliance Officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.
- B. Compliance Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this rule. If there is no authorized representative of employees, or if the Compliance Safety and Health Officer is unable to determine with reasonable certainty who is such representative, ~~he~~ the Compliance Safety and Health Officer shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.
- C. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Compliance Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Compliance Safety and Health Officer during the inspection.

- D.** Compliance Safety and Health Officers are authorized to deny the right of accompaniment under this Section to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of rule R20-5-616(B). With regard to information classified by an agency of the United States government in the interest of national security, only persons authorized to have access to such information may accompany a Compliance Safety and Health Officer in areas containing such information.
- E.** An employee of the division or the commission may not:
1. Before, during or after an inspection or investigation, communicate to an employer that the employer should not be represented by an attorney or that the employer may be treated more favorably by the division or the commission if the employer is not represented by an attorney.
 2. Conduct an audio recording of an oral statement provided during an interview without the knowledge and consent of the person being interviewed. The employee of the division or the commission shall inform the person being interviewed of the person's right to receive a copy of the recorded oral statement within a reasonable time.
 3. Obtain a written statement during an interview without informing the person of the person's right to receive a copy of the written statement within a reasonable time.

R20-5-617. Consultation with Employees

Compliance Safety and Health Officers may privately consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act, which ~~he~~ the employee has reason to believe exists in the workplace, to the attention of the Compliance Safety and Health Officer.

R20-5-618. Complaints by Employees

- A.** A copy of a complaint submitted pursuant to A.R.S. § 23-408(~~E~~) shall be provided to the employer or ~~his~~ the employer's agent by the Director of the Division of Occupational Safety and Health or ~~his~~ the employers' representative no later than the time of inspection, except that, upon the request of the person giving such notice, ~~his~~ the person's name shall not appear in such copy or in any record published, released, or made available by the Arizona Division of Occupational Safety and Health.
- B.** If upon receipt of such notification the Division Director determines that the complaint meets the requirements set forth in subsection (A) of this rule, and that there are reasonable grounds to believe that the alleged violation exists, ~~he~~ the Division Director shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspections under this rule shall not be limited to matters referred to in the complaint.

R20-5-619. Inspection Not Warranted; Informal Review

If the Division Director determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint in accordance with A.R.S. § 23-408(~~E~~), ~~he~~ the Division Director shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Industrial Commission and, at the same time, providing the employer with a copy of such statement by certified mail. The employer may submit an opposing written statement of position with the Industrial Commission and, at the same time, provide the complaining party with a copy of such statement by certified mail. Upon the request of the complaining party or the employer, the Industrial Commission, at their discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral views presented, the Industrial Commission shall affirm, modify, or reverse the determination of the Division Director and furnish the complaining party and the employer a written notification of their decision and the reasons therefore. The decision of the Industrial Commission shall be final and not subject to further review. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of A.R.S. § 23-408(~~E~~).

R20-5-621. Citations: Notices of De Minimis Violations

- A.** The Division Director shall review the inspection reports of the Compliance Safety and Health Officer. If, on the basis of the report, the Division Director believes that the employer has violated a requirement of A.R.S. § 23-403 ~~of the Act~~, of any standard, rule or order promulgated pursuant to A.R.S. § 23-410 of the Act, or of any substantive rule published in these rules, ~~he~~ the Division Director shall, if appropriate, consult with the Industrial Commission's counsel and shall issue to the employer either a citation or notice of de minimis violations. An appropriate citation or notice of de minimis violation shall be issued even though after being informed of an alleged violation by the Compliance Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Any citation or notice of de minimis violations shall be issued with reasonable promptness after termination of the inspection. No citation may be issued under this rule after the expiration of six months following the occurrence of any alleged violation.
- B.** If a citation or notice of de minimis violation issued for a violation alleged in a request for inspection under A.R.S. § 23-408(~~E~~), a copy of the citation or notice of de minimis violation shall also be sent to the employee or representative of employees who made such request or notification.
- C.** After an inspection, if the Division Director determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under A.R.S. § 23-408(~~E~~), the informal review procedures prescribed in rule R20-5-619(~~A~~) shall be applicable. After considering all views presented, the Industrial Commission shall affirm the determination of the Division Director, order a reinspection, or issue a citation if the Industrial Commission believes that the inspection disclosed a violation. The Industrial Commission shall furnish the complaining party and the employer with a written notification of their determination and the reasons therefore. The determination of the Industrial Commission shall be final and not subject to review.
- D.** Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless a citation is affirmed by the ~~Hearing Division Office of Administrative Hearings~~ or the Review ~~Commission~~ Board.

R20-5-622. Proposed Penalties

- A. All employers shall be notified of any proposed penalties, issued pursuant to A.R.S. § 23-418 and A.R.S. § 23-418.01, by certified mail or by a signed verification in person.
- B. The Division Director shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, quick-fix abatement, and the history of previous violations in accordance with the provisions of A.R.S. § 23-418 of the Act.
- C. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Compliance Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for de minimis violations which have no direct or immediate relationship to safety or health.

R20-5-623. Posting of Citations

- A. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided below. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employers are engaged in activities which are physically dispersed, the citation may be posted at the location to which the employees report each day. Where employees do not primarily work at or report to a single location, the citation may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material. Notices of de minimis violations need not be posted.
- B. Each citation, or a copy thereof, shall remain posted until the violation has been abated, or for three working days, whichever is later. The filing by the employer of a notice of intention to contest under A.R.S. § ~~23-471(A)~~ § 23-420 shall not affect ~~his~~ the posting responsibility under this rule unless and until the ~~Hearing Division~~ Office of Administrative Hearings and/or Review ~~Commission~~ Board issues a final order vacating the citation.
- C. An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the ~~Hearing Division~~ Office of Administrative Hearings and/or Review ~~Commission~~ Board, and such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

R20-5-624. Employer and Employee Contests before the ~~Hearing Division~~ Office of Administrative Hearings

- A. All notices to contest citations and/or penalties shall be submitted to the Division Director and immediately transmitted to the ~~Hearing Division~~ Office of Administrative Hearings in accordance with the Rules of Procedure prescribed by the Industrial Commission.
- B. Any affected employee or employee representative appealing the period allowed an employer to abate a particular violation shall submit the notice of contest to the Division Director who shall immediately transmit such notice to the ~~Hearing Division~~ Office of Administrative Hearings in accordance with the Rules of Procedure prescribed by the Industrial Commission.

R20-5-625. Failure to ~~Correct~~ Abate a Violation for Which a Citation Has Been Issued

- A. All employers failing to ~~correct~~ abate an alleged violation for which a citation has been issued, within the period permitted for its ~~correction~~ abatement, shall be notified of such failure and any proposed penalties issued pursuant to A.R.S. § 23-418 by certified mail or by signed verification in person.
- B. All notices to contest a notification of failure to ~~correct~~ abate a violation and of proposed additional penalty shall be submitted to the Division Director and immediately transmitted to the ~~Hearing Division~~ Office of Administrative Hearings in accordance with the Rules of Procedure prescribed by the Industrial Commission.
- C. Each notification of failure to ~~correct~~ abate a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Industrial Commission and not subject to review by any court or agency unless within fifteen working days from the receipt of such notification, the employer notifies the Division Director in writing ~~that he intends of the intent~~ to contest the notification or the proposed additional penalty before the ~~Hearing Division~~ Office of Administrative Hearings.

R20-5-626. Informal Conferences

At the request of an affected employer, employee, or representative of employees, the Industrial Commission, or their designee, may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The settlement of any issue at such conference shall be subject to rules and procedures prescribed by the Industrial Commission. If the conference is requested by the employer, an affected employee or ~~his~~ an affected employee's representative shall be afforded an opportunity to participate, at the discretion of the Industrial Commission or their designee. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Industrial Commission or their designee. Any party may be represented by counsel in such conference. No such conference or request for such conference shall operate as a stay of any fifteen working day period for filing a notice of intention to contest as prescribed in ~~rule R20-5-624~~ A.R.S. §23-417(A).

R20-5-627. Abatement Verification

- A. Scope and application. This Section applies to employers, as defined in A.R.S. § 23-401, who receive a citation for a violation of the Arizona Occupational Safety and Health Act.
- B. Definitions
 1. Abatement means action by an employer to comply with a cited standard or rule or to eliminate a recognized hazard, as defined in A.R.S. § 23-401, identified by the Division during an inspection.
 2. Abatement date means:
 - a. For an uncontested citation item, the later of:
 - i. The date in the citation for abatement of the violation;
 - ii. The date approved by the Division as a result of a petition for modification of the abatement date (PMA); or
 - iii. The date for abatement completion as established in a citation by an informal conference agreement.

- b. For a contested citation item for which an administrative law judge has issued a final decision affirming the violation, the later of
 - i. The date identified in the final decision for completion of abatement;
 - ii. The date computed by adding the original period allowed for abatement in the citation to begin 15 days from the final decision date of an administrative law judge; or
 - iii. The date established by a formal settlement agreement.
 3. Affected employee means an employee who is exposed to the hazard identified as a violation in a citation.
 4. Final order date means:
 - a. The date on which an uncontested citation is deemed final under A.R.S. § ~~23-417(A)~~ 23-417(A); or
 - b. For a contested citation item: The date on which a decision or order of an administrative law judge becomes final under A.R.S. § 23-421 or § 23-423.
 5. Movable equipment means a hand-held or non-hand-held machine or device, powered or unpowered, that is used to do work and is moved within or between workplaces.
- C. Abatement certification.**
1. Within 10 calendar days after the abatement date, an employer shall certify to the Division that the employer has abated each cited violation except as provided in subsection (C)(2). An employer may use Appendix A to certify abatement.
 2. An employer is not required to certify abatement if a Compliance Safety and Health Officer, during an onsite inspection:
 - a. Observes, within 24 hours after a violation is identified, that abatement has occurred; and
 - b. Notes the abatement action on the citation.
 3. An employer's certification that abatement is complete shall include, for each cited violation, in addition to the information required by subsection (H), the completion date and method of abatement and a statement that affected employees and their representatives have been informed of the completed abatement.
- D. Abatement documentation.**
1. Within 10 days after the abatement date, an employer shall submit to the Division, documents which evidence that abatement is complete for each willful or repeat violation and for any serious violation for which abatement documentation is required.
 2. Documents which evidence that abatement is complete may include documents for purchase or repair of equipment, photographs or videos of the abatement, or other written records.
- E. Abatement plans.**
1. The Division may require an employer to submit an abatement plan, except for a nonserious violation, when the time permitted for abatement is more than 90 days. The citation shall state that an abatement plan is required. An employer may use Appendix B for an abatement plan.
 2. An employer shall submit an abatement plan for each cited violation within 25 days from the date of a final order when the citation states that a plan is required. In the abatement plan, the employer shall identify:
 - a. The violation,
 - b. The steps necessary to achieve abatement,
 - c. A schedule for completing abatement, and
 - d. How the employer will protect employees from the violative condition until abatement is complete.
- F. Progress reports.**
1. The Division may require an employer who submits an abatement plan under subsection (E), to submit periodic progress reports for each cited violation. If the Division requires a periodic progress report, the citation shall include the following information:
 - a. Periodic progress reports are required and the cited violations for which periodic progress reports are required;
 - b. The date on which an initial progress report must be submitted. The date of the initial progress report shall be no sooner than 30 days after the submission date required for abatement;
 - c. Whether additional progress reports are required; and
 - d. The date on which additional progress reports shall be submitted.
 2. For each violation, the employer shall summarize in the progress report, the action taken to achieve abatement and the date the action was taken.
- G. Employee notification.**
1. An employer shall inform affected employees and the employees' representative of abatement activities covered by this Section by posting a copy of each document submitted to the Division or a summary of the document at the location of the cited violation.
 2. For employers who have mobile work operations, the employer shall:
 - a. Post each document or a summary of the document submitted to the Division in a conspicuous place where it can be readily seen by employees and the employee representative; or
 - b. Take other steps to communicate fully to affected employees and the employees' representative about abatement actions.
 3. The employer shall inform employees and the employees' representative of the right to examine and copy all abatement documents submitted by the employer to the Division.
 - a. An employee or an employee representative shall submit a written request to examine and copy all abatement documents within three working days of receiving notice that the documents have been submitted to the Division.
 - b. An employer shall comply with an employee's or employee representative's written request to examine and copy abatement documents within five working days of receiving the request.
 4. An employer shall ensure that notice in subsection (G)(1) to employees and a employee representative is provided at the same time or before the information is provided to the Division and that abatement documents are:
 - a. Not altered, defaced, or physically covered by other material; and
 - b. Remain posted for at least three working days after submission to the Division.
- H. Transmitting abatement documents.**

1. An employer shall include, in each submission required by this Section, the following information:
 - a. The employer's name and address;
 - b. The inspection number to which the submission relates;
 - c. The citation, item number, and location to which the submission relates;
 - d. A statement that the information submitted is accurate; and
 - e. The signature of the employer or the employer's authorized representative.
2. The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the Division receives the document is the date of submission.

I. Movable equipment.

1. For serious, repeat, and willful violations involving movable equipment, an employer shall attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within or between workplaces. The Division shall deem attaching a copy of the citation to the equipment to meet the tagging requirement of subsection (I)(3) and the posting requirement of R20-5-623.
2. The employer shall use a warning tag to warn employees about the nature of the violation involving the movable equipment and identifies the location of the violation. An employer may use the tag in Appendix C to meet this requirement.
3. If a violation has not been abated, an employer shall attach a warning tag or a copy of the citation to the equipment as follows:
 - a. For hand-held equipment, the employer shall attach a warning tag or copy of the citation within eight hours after the employer receives the citation; and
 - b. For non-hand-held equipment, the employer shall attach a warning tag or copy of the citation before moving the equipment within or between workplaces.
4. For the construction industry, a tag that is designed and used in accordance with 29 CFR 1926.20(b)(3) and 29 CFR 1926.200(h) is deemed by the Division to meet the requirements of this Section when the information required by subsection (I)(2) is included on the tag.
5. An employer shall ensure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or physically covered by other material.
6. An employer shall ensure that the tag or copy of the citation attached to movable equipment remains attached until:
 - a. The employer has abated the violation and all abatement verification documents required by this Section have been submitted to the Division;
 - b. The employer has permanently removed the cited equipment from service or the cited equipment is no longer within the employer's control; or
 - c. The Division, administrative law judge, or Review Board vacates the citation.

R20-5-629. The Occupational Injury and Illness Recording and Reporting Requirements, 29 CFR 1904

Each employer shall comply with the standards in the Federal Occupational Safety and Health Standards for Recordkeeping, as published in 29 CFR 1904, with amendments as of ~~May 14, 2019~~ July 21, 2023, incorporated by reference. Copies of the incorporated materials are available for review at the Industrial Commission of Arizona and may be obtained from the United States Government Printing Office, Superintendent of Documents, Washington, D.C. 20402. These standards shall apply to all conditions and practices related to recordkeeping by all employers, both public and private, in the state of Arizona. This incorporation by reference does not include amendments or editions to 29 CFR 1904 published after ~~May 14, 2019~~ July 21, 2023.

R20-5-650. Definitions

As used in rules R20-5-650 through R20-5-669 inclusive, unless the context clearly requires otherwise:

1. ~~“Act” means the Arizona Occupational Safety and Health Act of 1972 (Arizona Revised Statutes, Title 23, Chapter 2, Article 10).~~
2. ~~“Commission” means the Industrial Commission of Arizona.~~
3. ~~“Person” means an individual, partnership, association, corporation, business trust, legal representative, an organized group of individuals, or political subdivision.~~
4. ~~“Party” means a person admitted to participate in a hearing conducted in accordance with subsection (3) R20-5-624. An applicant for relief and any affected employee shall be entitled to be named as parties.~~
5. ~~“Affected employee” means an employee or any one of his authorized employee representatives, such as his the employee’s collective bargaining agent, who would be affected by the granting or denial of a variance.~~
~~“Commission” means the Industrial Commission of Arizona.~~
~~“Party” means a person admitted to participate in a hearing conducted in accordance with subsection (3) R20-5-624. An applicant for relief and any affected employee shall be entitled to be named as parties.~~
~~“Person” means an individual, partnership, association, corporation, business trust, legal representative, an organized group of individuals, or political subdivision.~~

R20-5-652. Effects of Variances

All variances granted hereunder shall have only future effect. In their discretion, the Commission may decline to entertain an application for variance on the subject or issue concerning which a citation has been issued to the employer involved and a proceeding on the citation or a related issue concerning a proposed penalty or period of abatement is pending before the Federal Occupational Safety and Health Review Commission, ~~State of Arizona Hearing Division~~ Office of Administrative Hearings or the Arizona Review Board until the completion of such proceeding.

R20-5-654. Variances; Form of Documents; Subscription; Copies

- A. No particular form is prescribed for applications and other papers which may be filed in proceedings ~~hereunder pursuant to R20-5-655 and R-20-5-656~~. However, any applications and other papers shall be clearly legible. An original and six copies of any applica-

tion and other papers shall be filed. The original shall be typewritten. Clear carbon copies or printed or processed copies are acceptable copies.

- B.** Each application or other paper which is filed in proceedings hereunder shall be signed by the person filing the same or by his attorney or other authorized representative and where required by these regulations shall be verified by the applicant.

R20-5-655. Variances under A.R.S. §23-411

A. ~~Application for variance.~~ Any employer, or class of employers, desiring a variance from a standard or regulation or any portion thereof, authorized by A.R.S. § 23-411(B) ~~of the Act~~ may file a written application containing the information specified in ~~subsection (B) of this Section~~ A.R.S. § 23-411(C) with the Industrial Commission of Arizona, ~~1601 800 West Jefferson Washington,~~ Phoenix, Arizona ~~85005 85007.~~

B. ~~Contents.~~ An application filed pursuant to subsection (A) of this Section shall contain the information specified in A.R.S. § 23-411(B) and (C) of the Act.

~~C.~~ B. Interim order.

~~1.~~ **Application.** In accordance with A.R.S. § 23-411(B)(3) ~~of the Act~~, an application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order shall include a verified statement of facts and arguments supporting such application. The Commission may rule ex parte upon the application.

~~2.~~ **Notice of denial of application.** ~~If an application filed pursuant to subsection (C)(1) is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefore. If an application filed pursuant to subsection (C)(1) is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefore.~~

~~3.~~ **Notice of the grant of an interim order.** ~~If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties and the terms of the order shall be published in statewide newspapers. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for variance.~~

C. If an application for a variance is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefore.

D. If an interim order is granted, a copy of the order shall be served upon the applicant for the order and other parties and the terms of the order shall be published in statewide newspapers. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for variance.

E. Renewal of rules or orders. Any final rule or order issued under A.R.S. § 23-411 may be renewed or extended as permitted by the applicable Section and in the manner prescribed for its issuance.

R20-5-656. Variances under A.R.S. § 23-412

A. ~~Application for variance.~~ Any employer, or class of employers, desiring a variance authorized by A.R.S. § 23-412 ~~of the Act~~ may file a written application containing the information specified in subsection (B) of this Section, with the Industrial Commission of Arizona, ~~1601 W. Jefferson 800 W. Washington,~~ Phoenix, Arizona ~~85005 85007.~~

B. ~~Contents.~~ An application filed pursuant to subsection (A) of this Section shall contain the information specified in A.R.S. § 23-412 ~~of the Act.~~

C. Interim order

~~1.~~ **Application.** An application may also be made for an interim order to be effective until a decision is rendered on the application for the variance filed previously or concurrently. An application for an interim order shall include a verified statement of facts and arguments supporting such application. The Commission may rule ex parte upon the application.

~~2.~~ **Notice of denial of application.** ~~If an application filed pursuant to subsection (C)(1) is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefore.~~

~~3.~~ **Notice of the grant of an interim order.** ~~If an interim order is granted, a copy of the order shall be served upon the applicant and other parties, and the terms of the order shall be published in statewide newspapers. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.~~

D. If an application is denied, the applicant shall be given prompt notice of the denial, which shall include, or be accompanied by, a brief statement of the grounds therefore.

E. If an interim order is granted, a copy of the order shall be served upon the applicant and other parties, and the terms of the order shall be published in statewide newspapers. It shall be a condition of the order that the affected employer shall give notice thereof to affected employees by the same means to be used to inform them of an application for a variance.

R20-5-657. ~~Renewal of Rules or Orders:~~ Federal Multi-state Variances

~~A.~~ ~~Renewal of rules or orders.~~ Any final rule or order issued under A.R.S. § 23-411 of the Act may be renewed or extended as permitted by the applicable Section and in the manner prescribed for its issuance.

~~B.~~ **Multi-state variances.** Where a federal variance has been granted with multi-state applicability, including applicability in this state operating under a state plan approved under Section 18 of the ~~Act~~ Federal Williams-Steiger Occupational Safety and Health Act of 1970, from a standard or portion thereof identical to this state's standard or ~~regulation rule~~ or portion thereof such variance shall likewise be deemed an authoritative interpretation of the employer(s)' compliance obligation with regard to the state standard or portion thereof provided no objections of substance are found to be interposed by the Commission.

R20-5-658. Action on Applications

A. Defective applications

~~1.~~ If an application filed pursuant to rule R20-5-655, R20-5-656, ~~or R20-5-657 and R20-5-658~~ does not conform to the applicable Section, the Commission may deny the application.

2. Prompt notice of the denial of an application shall be given to the applicant.
3. A notice of denial shall include, or be accompanied by, a brief statement of the grounds for denial.
4. A denial of an application pursuant to this subsection shall be without prejudice to the filing of another application.

B. Adequate applications

1. If an application has not been denied pursuant to subsection (A) of this Section, the ~~The~~ Commission shall cause to be published in statewide newspapers a notice of the filing of ~~the~~ an approved application: which shall include:
 2. A notice of the filing of an application
 - a.1. The terms, or an accurate summary, of the application;
 - b.2. A reference to the Section of the Act under which the application has been filed;
 - e.3. An invitation to interested persons to submit within a stated period of time written data, views, or arguments regarding the application; and
 - d.4. Information to affected employers, employees, of any right to request a hearing on the application.

R20-5-659. Request for Hearings on Petition

- A. ~~Request for hearing.~~ Any employer, employee, authorized employee representative, representative, or other person interested in or affected by an order of the Commission may petition for a hearing on the reasonableness and lawfulness of an order issued under A.R.S. §§ 23-411 or 23-412, by a verified petition filed with the Commission.
- B. ~~Contents of a petition.~~ A request for a hearing filed pursuant to subsection (A) of this Section shall include:
 1. The name and address of the applicant;
 2. A concise statement of facts showing how the employer, employee, authorized employee representative, representative, or other person would be affected by the relief applied for;
 3. A petition shall set forth specifically and in detail the order upon which a hearing is desired;
 4. The reasons why the order is unreasonable or unlawful;
 5. The issue to be considered by the Commission on the hearing. Objections other than those set forth in the petition are deemed finally waived.
 6. If the applicant is an employer, a certification that the applicant has informed ~~his~~ the affected employees of the application by:
 - a. Giving a copy thereof to their authorized representative;
 - b. Posting at the place or places where notices to employees are normally posted, a statement giving a summary of the petition specifying where a copy of the full petition may be examined (or, in lieu of the summary, posting the application itself); and
 - c. Other appropriate means.
 7. If the applicant is an affected employee, a certification that a copy of the petition has been furnished to the employer.
- C. The Commission may on its own motion proceed to modify or revoke a rule or order issued under A.R.S. §§ 23-411 or 23-412 ~~of the Act.~~ In such event, the Commission shall cause to be published in statewide newspapers a notice of its intention, affording interested persons an opportunity to submit written data, views, or arguments regarding the proposal and informing the affected employer and employees of their right to request a hearing and shall take such other action as may be appropriate to give actual notice to the affected employees. Any request for a hearing shall include a short and plain statement of:
 1. How the proposed modification or revocation would affect the requesting party; and
 2. What the requesting party would seek to show on the subjects or issues involved.

R20-5-661. Notice of Hearing

- ~~A. Service.~~ Upon request for a hearing as provided in this Section, or upon its own initiative, the Commission shall serve, or cause to be served, a reasonable notice of hearing: which
- ~~B. Contents.~~ A notice of hearing served under subsection (A) of this Section shall include:
 1. The time, place, and nature of the hearing;
 2. The legal authority under which the hearing is to be held;
 3. A specification of issues of fact and law.

R20-5-663. ~~Industrial~~ Commission; Powers and Duties

- A. ~~Powers.~~ The Commissioners shall have all powers necessary or appropriate to conduct a fair, full, and impartial hearing, including the following:
 1. To administer oaths and affirmations;
 2. To rule upon offers of proof and receive relevant evidence;
 3. To provide for discovery and to determine its scope;
 4. To regulate the course of the hearing and the conduct of the parties and their counsel therein;
 5. To consider and rule upon procedural requests;
 6. To hold conferences for the settlement or simplification of the issues by consent of the parties;
 7. To make, or to cause to be made, an inspection of the employment or place of employment involved;
 8. To make decisions in accordance with A.R.S. §§ ~~23-405-5-23-405(5)~~, 23-411, 23-412, and 23-945; and
 9. To take any other appropriate action authorized by the Act, this Section, or A.R.S. §23-945.
- ~~B. Contumacious conduct; failure or refusal to appear or obey the rulings of the Commission.~~
 1. ~~Contumacious~~ Insubordinate conduct at any hearing before the Commission shall be grounds for exclusion from the hearing.
 2. ~~If a witness or a party refuses to answer a question after being directed to do so, or refuses to obey an order to provide or permit discovery, the Commission may make such orders with regard to the refusal as are just and appropriate, including an order denying an application of an applicant or regulating the contents of the record of the hearing.~~
- C. If a witness or a party refuses to answer a question after being directed to do so, or refuses to obey an order to provide or permit discovery, the Commission may make such orders with regard to the refusal as are just and appropriate, including an order denying an application of an applicant or regulating the contents of the record of the hearing.

~~C.D. Referral to Rules of Procedure for Occupational Safety and Health hearings.~~ On any procedural question not regulated by this Section, the Act, or A.R.S. § 23-945, Commission shall be guided to the extent practicable by any pertinent provisions of the ~~Rules of Procedure for Occupational Safety and Health~~ Rules of Procedure ~~hearings before the Industrial Commission of Arizona.~~

R20-5-664. Prehearing Conferences

- A. ~~Convening a conference.~~ Upon its own motion or the motion of a party, the Commission may direct the parties or their counsel to meet with them for a conference to consider:
1. Simplification of the issues;
 2. Necessity or desirability of amendments to documents for purposes of clarification, simplification, or limitation;
 3. Stipulations, admissions of fact, and of contents and authenticity of documents;
 4. Limitation of the number of parties and of expert witnesses; and
 5. Such other matters as may tend to expedite the disposition of the proceeding and to assure a just conclusion thereof.
- B. ~~Record of conference.~~ The Commission shall make an order which recites the action taken at the conference, the amendments allowed to any documents which have been filed, and the agreements made between the parties as to any of the matters considered, and which limits the issues for hearings to those not disposed of by admission or agreements; and such order when entered controls the subsequent course of the hearing, unless modified at the hearing, to prevent manifest injustice.

R20-5-665. Consent Findings and Rules or Orders

- A. ~~General.~~ At any time before the reception of evidence in any hearing, or during any hearing, a reasonable opportunity may be afforded to permit the negotiation by the parties of an agreement containing consent findings and a rule or order disposing of the whole or any part of the proceeding. The allowance of such opportunity and the duration thereof shall be in the discretion of the Commission. ~~After~~ after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement which will result in a just disposition of the issues involved.
- B. ~~Contents.~~ Any agreement containing consent findings in rule or other disposing of a proceeding shall also provide:
1. That the rule or order shall have the same force and effect as if made after a full hearing;
 2. That the entire record on which any rule or order may be based shall consist solely of the application and the agreement;
 3. A waiver of any further procedural steps before the Commission; and
 4. A waiver of any right to challenge or contest the validity of the findings and of the rule or order made in accordance with the agreement.
- C. ~~Submission.~~ On or before the expiration of the time granted for negotiations, the parties or their counsel may:
1. Submit the proposed agreement to the Commission for its consideration; or
 2. Inform the Commission that agreement cannot be reached.
- D. In the event an agreement containing consent findings and rule or order is submitted within the time allowed therefor, the Commission may accept such agreement by issuing its decision based upon the agreed findings.

R20-5-666. Discovery

- A. ~~Depositions.~~ For reasons of unavailability or for other good cause shown, the testimony of any witness may be taken by deposition.
1. ~~For reasons of unavailability or for other good cause shown, the testimony of any witness may be taken by deposition.~~ Depositions may be taken orally or upon written interrogatories before any person designated by the Commission and having power to administer oaths.
 2. ~~Application.~~ Any party desiring to take the deposition of a witness may make application in writing to the Commission, setting forth:
 - a. The reasons why such deposition should be taken;
 - b. The time when, the place where, and the name and post office address of the person before whom the deposition is to be taken;
 - c. The name and address of each witness; and
 - d. The subject matter concerning which each witness is expected to testify.
 3. ~~Notice.~~ Such notice as the Commission may order shall be given by the party taking the deposition to every other party.
 4. ~~Taking and receiving in evidence.~~ Each witness testifying upon deposition shall be sworn, and the parties not calling ~~him~~ the witness shall have the right to cross-examine ~~him~~ the witness. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, read to the witness, subscribed by ~~him~~ the witness, and certified by the officer before whom the deposition is taken. Thereafter, the officer shall seal the deposition, with two copies thereof, in an envelope and mail the same by registered mail to the presiding hearing examiner. Subject to such objections to the questions and answers as were noted at the time of taking the deposition and would be valid were the witness personally present and testifying, such deposition may be read and offered in evidence by the party taking it as against any party who was present, represented at the taking of the deposition, or who had due notice thereof. No part of a deposition shall be admitted in evidence unless there is a showing that the reasons for the taking of the deposition in the first instance exist at the time of the hearing.
- B. ~~Other discovery.~~ Whenever appropriate to a just disposition of any issue in a hearing, the Commission may allow discovery by any other appropriate procedure, such as by written interrogatories upon a party, production of documents by a party, or by entry for inspection of the employment or place of employment involved.

R20-5-667. Variance Hearings

- A. ~~Order of proceeding.~~ Except as may be ordered otherwise by the Commission, the party ~~applicant~~ applicant applying for relief shall proceed first at a hearing.
- B. ~~Burden of proof.~~ The party ~~applicant~~ applicant applying for relief shall have the burden of proof.
- C. ~~Evidence.~~ A party shall be entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

1. ~~Admissibility. A party shall be entitled to present its case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.~~ Any oral or documentary evidence may be received, but the Commission shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.
 2. ~~Testimony of witnesses.~~ The testimony of a witness shall be upon oath or affirmation administered by the Commission.
- D. ~~Official notice.~~ Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice: provided that the parties shall be given adequate notice, at the hearing or by reference in the Commission's decision, of the matters so noticed and shall be given adequate opportunity to show the contrary.
- E. ~~Record.~~ Minutes shall be taken of the Commission hearings. Copies of the minutes may be obtained by the parties upon written application filed with the secretary of the Commission and upon the payment of fees at the rate provided in the agreement with the Commission.

R20-5-669. Judicial Review

Any employer, employee, authorized employee representative, representative, or any person in interest is dissatisfied with an order of the Commission may appeal in accordance with A.R.S. § 23-413 ~~of the Act.~~

R20-5-680. Protected Activity

- A. All complaints pursuant to A.R.S. § 23-425 shall relate to conditions at the workplace. The filing of complaints need not be in writing for purposes of this subsection except that those complaints filed pursuant to R20-5-682 shall comply with R20-5-682. The term "filed any complaint" as used in A.R.S. § 23-425(A) includes:
1. Employee requests for inspection pursuant to A.R.S. § 23-408~~(F)~~;
 2. Complaints registered with other state, local or federal governmental agencies which have the authority to regulate or investigate occupational safety and health conditions;
 3. Complaints lodged with employers; or
 4. Complaints filed as specified in R20-5-682.
- B. The term "instituted or caused to be instituted any proceeding" as used in A.R.S. § 23-425(A) includes:
1. Inspections of worksites under A.R.S. § 23-408(A);
 2. Employee contest of abatement date under A.R.S. § 23-417(D);
 3. Employee initiation of proceedings for promulgation of an occupational safety and health standard under A.R.S. § 23-410(A);
 4. Employee application for modification or revocation of a variance under A.R.S. § 23-413;
 5. Employee judicial challenge to a standard under A.R.S. § 23-410(E);
 6. Employee appeal of an Administrative Law Judge ~~Division~~ order under A.R.S. § 23-421(C);
 7. Exercise of rights by any employee pursuant to A.R.S. § 23-418.01;
 8. Any other employee action authorized by the Arizona Occupational Safety and Health Act of 1972; or
 9. Setting into motion the activities of others which result in the proceedings specified in subsections (B)(1) through (8).
- C. The term "testified or is about to testify in any such proceeding" as used in A.R.S. § 23-425(A) includes:
1. Testimony in proceedings instituted or caused to be instituted by the employee; or
 2. Any statements given in the course of judicial, quasi-judicial or administrative proceedings. For this purpose, administrative proceedings include inspections, investigations and administrative rulemaking or adjudicative functions.
- D. The term "the exercise by such employee on behalf of himself or others of any right afforded by this Article" as used in A.R.S. § 23-425(A) includes:
1. The right to participate as a party in enforcement proceedings pursuant to A.R.S. § 23-408~~(D)~~;
 2. The right to request information from the Industrial Commission; or
 3. To cooperate with inspections or investigations by the Industrial Commission.
- E. If the employee, with no reasonable alternative, refuses in good faith to ~~be expose~~ exposed himself to a dangerous condition, the employee is engaged in protected activity. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the dangers through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from ~~his~~ the employer and been unable to obtain a correction of the dangerous condition.
- F. Employees who refuse to comply with valid occupational safety and health standards or valid safety rules implemented by the employer are not protected by A.R.S. § 23-425.

R20-5-681. Elements of a Violation of A.R.S. § 23-425

To establish a violation of A.R.S. § 23-425(A), the employee shall prove all of the following:

1. The employee was engaged in protected activities as defined in R20-5-680.
2. The employer had actual or implied knowledge of the employee's protected activities prior to the adverse action which the employee claims to be a discharge or discrimination.
3. The action claimed to be discharge or discrimination was adverse to the employee.
4. ~~The protected activity was a substantial reason for the alleged discharge or discrimination or the~~ alleged discharge or discrimination would not have taken place but for the employee's engagement in the protected activity.

R20-5-682. Procedure

- A. A complaint of A.R.S. § 23-425(A) discharge or discrimination shall be filed with the Division of Occupational Safety and Health by the employee or by a representative authorized by A.R.S. § 23-408~~(F)~~ to do so on the employee's behalf. The complaint shall be written and shall be signed by the person filing the complaint.
- B. The date of filing a complaint under A.R.S. § 23-425(B) is the date of receipt of the complaint by the Division. The date of receipt is the date of postmark, date of facsimile transmittal, date of e-mail communication, date of telephone call, date of hand-delivery to a

third-party commercial carrier, or date of in-person filing at the Division. If the post-mark is absent or illegible, the date filed is the date the complaint is received by the Division.

- C. The Division ~~may~~will accept or deny an employee’s withdrawal of a complaint; ~~however~~ The the Industrial Commission’s investigatory jurisdiction shall not be foreclosed by unilateral action of the employee.
- D. The Industrial Commission may resolve an A.R.S. § 23-425 complaint with the employer without the consent of the employee.
- E. The Industrial Commission’s jurisdiction to investigate and determine A.R.S. § 23-425 complaints is independent of the jurisdiction of other agencies or bodies. The Industrial Commission may defer to the results of other such proceedings where:
 1. The rights asserted in those other proceedings are substantially the same as the rights pursuant to A.R.S. § 23- 425;
 2. The factual issues in such proceedings are substantially the same as the factual issues before the Industrial Commission;
 3. The proceedings were fair and regular; and
 4. The outcome of the proceedings was not inconsistent with the purposes of this Chapter and the Act.
- F. A determination pursuant to A.R.S. § 23-425(C) includes:
 1. A decision to not proceed with the case;
 2. To defer the case to another forum; or
 3. To proceed to litigation in Superior Court.

R20-5-683. Reconsideration of Initial Determination

- A. In cases where ADOSH issues an initial determination to not proceed with a complaint filed under A.R.S. § 23-425, the employee can request reconsideration of the initial determination.
- B. The request for reconsideration must be filed with, and received by, the ADOSH Director within 15 calendar days from the receipt of the initial determination letter.
- C. The reconsideration will be placed upon the agenda for a meeting of the Industrial Commission of Arizona Commissioners.
- D. The employee, and the employer will be notified of the reconsideration date, and may appear at the Commissioners’ meeting to provide testimony. The employee, and the employer will not be allowed to present documentary evidence.
- E. Upon hearing the testimony, and review of the file, the Commissioners may:
 1. Affirm the initial determination;
 2. Remand the file back to ADOSH for further investigation; or
 3. Reverse the initial determination and have a lawsuit filed in the appropriate Superior Court
- F. The decision of the Commissioners will constitute the final determination of the Division.

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R24-09]

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
Article 8	Amend
R20-5-801	Amend
R20-5-802	Repeal
R20-5-803	Amend
R20-5-804	Amend
R20-5-805	Amend
R20-5-806	Amend
R20-5-807	Amend
R20-5-808	Amend
R20-5-809	Amend
R20-5-810	Amend
R20-5-811	Amend
R20-5-812	Amend
R20-5-813	Amend
R20-5-814	Amend
R20-5-815	Amend
R20-5-817	Amend
R20-5-818	Amend
R20-5-819	Amend
R20-5-820	Amend
R20-5-821	Amend
R20-5-822	Amend
R20-5-823	Amend
R20-5-824	Amend
R20-5-825	Amend

R20-5-826	Amend
R20-5-827	Amend
R20-5-828	Amend
R20-5-829	Amend

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

Authorizing statute: A.R.S. § 23-405

Implementing statute: A.R.S. §§ 23-417, 23-420

Consistent with A.R.S. § 41-1039(A) the Industrial Commission of Arizona received written approval from the Governor's office to proceed with this rulemaking on December 4, 2023.

3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: 30 A.A.R. 248, February 2, 2024 (*in this issue*)

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

Name: Phillip Murphy, Interim Director
 Address: Division of Occupational Safety and Health
 Industrial Commission of Arizona
 800 W. Washington St., Suite 203
 Phoenix, AZ 85007
 Telephone: (602) 542-1695
 Fax: (602) 542-1614
 Email: phil.murphy@azdosh.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 following rule changes are justified under A.R.S. § 41-1039(2) "Reducing or ameliorating a regulatory burden on the public, while achieving the same regulatory objective" because they clarify the current rules, eliminate confusion of the citation hearing process which has switched from the Industrial Commission of Arizona to the Office of Administrative Hearings, and modernize the rules, Article 8 title, R20-5-801, R20-5-803, R20-5-804, R20-5-805, R20-5-806, R20-5-807, R20-5-808, R20-5-809, R20-5-811, R20-5-813, R20-5-814, R20-5-815, R20-5-817, R20-5-818, R20-5-819, R20-5-820, R20-5-822, R20-5-823, R20-5-826, R20-5-827, and R20-5-828.

The following rule changes are justified under A.R.S. § 41-1039(10) "Eliminating rules that are antiquated, redundant or otherwise no longer necessary for the operation of state government" because they eliminate antiquated language or processes R20-5-803, R20-5-805, R20-5-810, R20-5-811, R20-5-812, R20-5-814, R20-5-818, R20-5-819, R20-5-820, R20-5-821, R20-5-822, R20-5-824, R20-5-825, R20-5-826 R20-5-827, R20-5-828, and R20-5-829.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or 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 Commission did not review or rely on any study relevant to the proposed amended rules.

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

Not applicable

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

The proposed amendments will reduce regulatory burden while achieving the Commission's regulatory objectives as prescribed by the Act.

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

Name: Phillip Murphy, Interim Director
 Address: Division of Occupational Safety and Health
 Industrial Commission of Arizona
 800 W. Washington St., Suite 203
 Phoenix, AZ 85007
 Telephone: (602) 542-5795
 Fax: (602) 542-1614
 Email: phil.murphy@azdosh.gov

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

Written comments can be submitted to the address listed in item 9 by the close of the comment period, which is at 5:00 p.m. on March 7, 2024. An oral proceeding on the proposed amended rule is scheduled for March 7, 2024, at 11:00 a.m., at the Industrial Commission of Arizona, 800 West Washington, Room 339, Phoenix, Arizona 85007.

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

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:

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

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

The proposed 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:

No analysis was submitted.

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

None

13. The full text of the proposed rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 8. OCCUPATIONAL SAFETY AND HEALTH RULES OF PROCEDURE ~~BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA~~

Section

- R20-5-801. Notice of Rules
- R20-5-802. ~~Location of Office and Office Hours~~ Repealed
- R20-5-803. Definitions
- R20-5-804. Computation of Time
- R20-5-805. Record Address
- R20-5-806. Service and Notice
- R20-5-807. Consolidation
- R20-5-808. Severance
- R20-5-809. Election to Appear
- R20-5-810. Employee Representatives
- R20-5-811. Form of Pleadings
- R20-5-812. Caption; Titles of Cases
- R20-5-813. Requests for Hearing
- R20-5-814. Pre-hearing Conference
- R20-5-815. Payment of Witness Fees and Mileage
- R20-5-817. Failure to Appear -- Withdrawal of Request for Hearing
- R20-5-818. Duties and Powers of ~~Hearing Officers~~ Administrative Law Judges
- R20-5-819. ~~Witnesses’ Oral Witness~~ Deposition; In State
- R20-5-820. ~~Witnesses’ Oral Witness~~ Deposition; Out-of-State
- R20-5-821. ~~Parties’ Disposition upon~~ Written Interrogatories and Request for Production of Documents
- R20-5-822. Refusal to Answer; Refusal to Attend
- R20-5-823. Burden of Proof
- R20-5-824. Intermediary Rulings or Orders by the ~~Hearing Officer~~ Administrative Law Judge
- R20-5-825. Legal Memoranda
- R20-5-826. Administrative Law Judge Decisions ~~of Hearing Officers~~
- R20-5-827. Settlement
- R20-5-828. Special Circumstances; Waiver of Rules
- R20-5-829. Variances

ARTICLE 8. OCCUPATIONAL SAFETY AND HEALTH RULES OF PROCEDURE ~~BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA~~

R20-5-801. Notice of Rules

Sections R20-5-801 et seq. This Article apply applies to all actions and proceedings of or before the Commission and Review Board an administrative law judge pertaining to those issues arising out of Title 23, Chapter 2, Article 10. In the event of a conflict between A.R.S. §§ 23-401 through 23-433 or this Article and the rules of procedure pertaining to OAH, A.R.S. §§ 23-401 through 23-433 and this Article control.

R20-5-802. ~~Location of Office and Office Hours~~ Repealed

The main office of the Industrial Commission of Arizona is located in Phoenix, Arizona. An office is also located in Tucson, Arizona. The offices are open for the transaction of business from 8:00 a.m. until 5:00 p.m. every day except Saturdays, Sundays and legal holidays.

R20-5-803. Definitions

In these Rules of Procedures, unless the context otherwise requires, the following words and terms shall have the following meanings. In addition to the definitions provided in A.R.S. § 23-401, the following definitions apply to this Article:

1. ~~“Commission” means the Industrial Commission of Arizona.~~ “Act” means the Arizona Occupational Safety and Health Act of 1972.
2. ~~“Affected employee” means an employee of a cited employer who is exposed to the alleged hazard described in the citation, as a result of his assigned duties.~~
3. ~~“Authorized employee representative” means a labor organization which has a collective bargaining relationship with the cited employer and which represents affected employees.~~
4. ~~“Representative” means any person, including an authorized employee representative, authorized by a party to represent him in a proceeding.~~
5. ~~“Citation” means a written communication issued by the Division of Occupational Safety and Health of the Industrial Commission of Arizona pursuant to A.R.S. § 23-415.~~
6. ~~“Notification of proposed penalty” means a written communication issued by the Industrial Commission of Arizona pursuant to A.R.S. § 23-418.~~ “OAH” means the Arizona Office of Administrative Hearings.
7. ~~“Party” means the Occupational Safety and Health Division of the Commission, the affected employer and affected employees.~~ shall have the same meaning as “interested party,” as defined in A.R.S. § 23-401. “Representative” means any person, including an authorized employee representative, authorized by a party to represent the party under A.R.S. § 23-429 in a proceeding.

R20-5-804. Computation of Time

In computing any period of time prescribed or allowed in ~~these rules~~ this Article, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

R20-5-805. Record Address

The initial pleading filed by any ~~person~~ interested party shall contain ~~his~~ the party’s name, address, e-mail address, and telephone number. Any change in such information must be communicated promptly in writing to the Commission, OAH, and ~~to~~ all other interested parties. ~~A~~ An interested party who fails to furnish such correct and current information shall be deemed to have waived ~~his~~ the right to object to the validity of any notice and/or service which has been made to the last known address of the party as shown by the records of the Commission.

R20-5-806. Service and Notice

- A. At the time of filing pleadings or other documents a copy thereof shall be served by the filing party on every other interested party.
- B. Service upon ~~a~~ an interested party who has appeared through a representative shall be made only upon such representative.
- C. Unless otherwise herein indicated, service may be accomplished by (1) postage prepaid first class mail; ~~(2)~~ or by personal delivery; ~~or~~ (3) with an interested party’s consent, transmission by e-mail. Service is deemed effected at the time of mailing or e-mailing (if by mail or e-mail) or at the time of personal delivery (if by personal delivery).
- D. Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.
- E. Service and notice to employees represented by an authorized employee representative shall be deemed accomplished by serving the authorized employee representative in the manner prescribed in subsection (C).
- F. In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of ~~Notice~~ notice of the time and place Date of Hearing hearing, post, where the citation is required to be posted, a copy of the ~~Notice~~ notice of the time and place Date of Hearing hearing and a notice informing such affected employees of their right to appear at the hearing and state their position and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this subsection:

(Name of employer)

Your employer has been cited by the ~~Industrial Commission of Arizona~~ Arizona Division of Occupational Safety and Health for ~~violation of~~ violating the Arizona Occupational Safety and Health Act of 1972. The citation has been contested and will be the subject of a hearing before the ~~Industrial Commission~~ Arizona Office of Administrative Hearings. Affected employees are entitled to appear in this hearing under the terms and conditions established by the Industrial Commission and the Arizona Office of Administrative Hearings in its ~~published Rules~~ rules of Procedure ~~procedure~~. Notice of Intent to Participate should be sent to:

~~THE INDUSTRIAL COMMISSION OF ARIZONA~~ Arizona Office of Administrative Hearings
1601 West Jefferson Street-1740 West Adams Street, Lower Level,
Phoenix, Arizona 85007.

All papers relevant to this matter may be inspected at:
(Place reasonably convenient to employees, preferably at or near workplace.)

Where appropriate, the second sentence of the above Notice ~~will~~ may be deleted and the following sentence will be substituted:
The reasonableness of the period prescribed by the Industrial Commission for abatement of the violation has been contested and will be the subject of a hearing before the ~~Industrial Commission~~ Arizona Office of Administrative Hearings.

- G. Where service is accomplished by posting, proof of such posting shall be filed with OAH not later than ~~the first working day~~ five days following the posting.
- H. The authorized employee representative, if any, shall be served with the ~~notice~~ proof of posting set forth in subsection (G) and with a copy of the ~~Notice~~ notice of time and place of the Date of Hearing hearing.
- ~~I.~~ A copy of the ~~Notice of the Date of Hearing~~ shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the Notice of such hearing at or near the place where the citation is required to be posted.
- ~~J.~~ A copy of the ~~Notice~~ notice of time and place of the Date of Hearing hearing shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in subsection (C) of this Section, if the employer has not been informed that the authorized employee representative has entered an appearance with OAH as of the date such ~~Notice~~ notice is received by the employer.
- ~~K.~~ Where a ~~petition request~~ for hearing is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall, upon receipt of the ~~Notice~~ notice of time and place the Date of Hearing hearing, serve a copy thereof on such authorized employee representative in the manner prescribed in subsection (C) of this Section and shall file proof of such service with OAH.
- ~~L.~~ Where a ~~Petition request~~ for ~~Hearing hearing~~ is filed by an affected employee or an authorized employee representative, a copy of the ~~Petition request~~ for ~~Hearing hearing~~ shall be provided to the employer for posting by the employer at the place the citation is required to be posted.
- ~~M.~~ An authorized employee representative who files a ~~Notice of Contest~~ request for hearing shall be responsible for serving any other authorized employee representative whose members are affected employees.
- ~~N.~~ Where posting is required by this Section, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

R20-5-807. Consolidation

Cases may be consolidated on the motion of any interested party, or on the ~~hearing officer's~~ administrative law judge's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

R20-5-808. Severance

Upon ~~its~~ an administrative law judge's own motion, or upon motion of any party, the ~~hearing officer~~ administrative law judge may, for good cause, order any part of a proceeding severed with respect to some or all issues or parties.

R20-5-809. Election to Appear

- A. Affected employees may elect to appear at a hearing for the purpose of testifying or stating their position concerning the subject matter of ~~the a~~ hearing.
- B. If An affected employees ~~desire~~ desiring to appear at ~~the a~~ hearing ~~they~~ must ~~so~~ notify the administrative law judge in writing ~~the Commission or the hearing officer, if the case has been assigned.~~

R20-5-810. Employee Representatives

- A. ~~Employees~~ Affected employees may appear in person or through a representative.
- B. An authorized employee representative shall be deemed to control all matters respecting the interest of ~~such~~ represented employees ~~in~~ during the proceeding proceedings.
- C. Affected employees who are represented by an authorized employee representative may appear only through ~~such~~ the authorized employee representative.
- D. ~~Withdrawal of appearance of any~~ Any representative may be effected withdraw from representation by filing a written ~~Notice~~ notice of ~~Withdrawal~~ withdrawal with the administrative law judge and by serving a copy thereof on all interested parties.

R20-5-811. Form of Pleadings

- A. Except as provided ~~herein in A.R.S. § 23-420 and this Article~~, there are no specific requirements as to the form of any pleading or filing. ~~A pleading is simply required to~~ All pleading and filings shall contain a caption sufficient to identify the parties in accordance with R20-5-812, ~~which~~ All pleadings and motions shall include the Commission's citation number, and a clear and plain statement of the relief that is sought, together with the grounds therefor.
- B. Pleadings and other ~~documents~~ filings (other than exhibits and petitions for hearing) shall be typewritten and double spaced, on standard letter size ~~opaque~~ paper (approximately 8 1/2 inches by 11 inches). ~~The left margin shall be 1 1/2 inches and the right margin 1 inch. Pleadings and other documents shall be fastened at the upper left corner.~~
- C. Pleadings and motions shall be signed or electronically signed by the party filing or by ~~his~~ the representative. Such signing constitutes a representation by the signer that ~~he~~ the signer has read the ~~document or pleading or motion~~, that to the best of ~~his~~ the signer's knowledge, information and belief the statements made therein are true, and that it is not interposed for delay.
- D. ~~The Commission~~ OAH may refuse to filing any pleading or document which does not comply with the requirements of subsections (A), (B), and (C) of this Section.

R20-5-812. Caption; Titles of Cases

- A. Cases initiated by ~~the a~~ cited employer filing a ~~Petition request~~ for ~~Hearing hearing~~ contesting ~~the violations cited citations and/or proposed penalties~~ shall be titled:
Arizona Division of Occupational Safety and Health ~~of the Industrial Commission of Arizona~~, Complainant, vs. (name of employer), Respondent.
- B. Cases initiated by ~~the a~~ cited employer filing a ~~Petition request~~ of for ~~Hearing hearing~~ for modification of the abatement period shall be titled:

(name of employer), Petitioner vs. Arizona Division of Occupational Safety and Health of the ~~Industrial Commission of Arizona~~, Respondent.

- C. Cases initiated by an affected employee filing a ~~Petition request~~ for Hearing hearing for modification of the abatement period shall be titled:
(name of affected employee or authorized employee representative), Petitioner vs. Arizona Division of Occupational Safety and Health, Respondent, and (employer), Respondent.
- D. The ~~case Titles titles~~ listed in subsections (A), ~~and (B), and (C)~~ of this Section shall appear ~~at in~~ the left upper portion of the initial page of any pleading, motion, or document filing (other than exhibits and ~~Petitions for Hearing~~ filed).
- E. The initial page of any pleading, motion, or document filing (other than exhibits and requests for hearing) shall show the citation number at the upper right of the page, opposite the title.

R20-5-813. Requests for Hearing

- A. Requests for hearing shall be filed with the ~~Commission~~ Arizona Division of Occupational Safety and Health.
- B. Requests for hearing shall be in writing and contain a clear and plain statement of the relief that is sought, together with the grounds thereof.
- C. The Commission shall, after receipt of a request for hearing, refer the file to the ~~Hearing Officer Division~~ OAH for hearing and determination.

R20-5-814. Pre-hearing Conference

- A. At any time before a hearing, the ~~hearing officer administrative law judge, on his own motion sua sponte~~ or on motion of a an interested party, may direct the parties, or their representatives, to exchange information or to participate in a pre-hearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings.
- B. The ~~hearing officer administrative law judge~~ may issue a pre-hearing order which includes the agreements reached by the parties. Such order shall be served on all parties and shall be part of the record.

R20-5-815. Payment of Witness Fees and Mileage

Witnesses summoned before the ~~hearing officer OAH~~ shall be paid the same fees and mileage that are paid to witnesses in the courts of Arizona. Witness fees and mileage shall be paid by the party at whose ~~instance~~ request the witness appears.

R20-5-817. Failure to Appear -- Withdrawal of Request for Hearing

- A. The failure of a an interested party who has requested a hearing to appear at such scheduled hearing shall be deemed to be an admission of the validity of any citation, abatement period, or penalty issued ~~or proposed pursuant to A.R.S. § 23-417(A)~~, and additionally a waiver of all rights except the right to be served with a copy of the decision of the ~~hearing officer administrative law judge~~ and to request review.
- B. Withdrawal of a request for hearing shall be construed as an admission of the validity of any citation, abatement period or penalty issued ~~or proposed pursuant to A.R.S. § 23-417(A)~~. No decision need be issued in this case, as the subject instrument is deemed to be admitted.

R20-5-818. Duties and Powers of Hearing Officers Administrative Law Judges

It shall be the duty of the ~~hearing officer administrative law judge~~ to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The ~~hearing officer administrative law judge~~ shall have authority with respect to assigned cases ~~assigned to him~~, between the time ~~he is designated a case is assigned~~ and the time ~~he a decision is issued~~ his decision, subject to the rules and regulations of the Commission and OAH, to:

1. Administer oaths and affirmations;
2. Rule upon admissibility of exhibits;
3. Rule upon applications for depositions;
4. Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;
5. Call and examine witnesses;
6. Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;
7. Adjourn the hearing as the needs of justice and good administration require;
8. Issue appropriate orders for protection of trade secrets;
9. Take any other action necessary under the foregoing and authorized by the rules and regulations of the Commission and OAH.

R20-5-819. Witnesses' Oral-Witness Deposition; In State

- A. After a request for hearing has been filed with the Commission, any party desiring to take the ~~oral~~ deposition of any other interested party or witness residing within the state State of Arizona shall file with the ~~hearing officer administrative law judge, in duplicate,~~ a notice of taking deposition by oral examination. Copies of such Notice notice shall be served at least five days prior to the date of the deposition upon the deponent and upon every interested party by the party desiring to take the ~~oral~~ deposition.
- B. If any interested party or the deponent has any objection to the taking of the ~~a oral~~ deposition of the party or witness, ~~he the objecting party~~ shall file with the ~~presiding hearing officer administrative law judge~~ and serve on all interested parties written objections thereto setting forth the basis of the opposition to the deposition. Such objection shall be filed with the ~~hearing officer administrative law judge~~ within two days after the notice of taking deposition by oral examination is served received.
- C. If objections to the taking of the ~~oral~~ deposition are filed with the ~~hearing officer administrative law judge~~ as provided in subsection (B) ~~hereof~~, the ~~hearing officer administrative law judge~~ shall rule on the objections within five days ~~after of~~ the filing of the objections. The taking of the ~~oral~~ deposition shall be held in abeyance pending the ruling of the ~~hearing officer administrative law judge~~. The ~~hearing officer administrative law judge~~ shall either order the deposition to proceed, order that the deposition not be taken, or enter such other protective order as may be appropriate.

- D. The party taking ~~the~~ a deposition shall comply with the Arizona Rules of Civil Procedure governing the taking of depositions.
- E. The expense of any deposition shall be borne by the party taking the deposition but shall not include the expense of any other interested party.
- F. ~~No~~ A scheduled hearing shall not be cancelled or continued for failure to timely take or complete a deposition ~~taken~~ pursuant to the provisions of this rule Section.
- G. Depositions taken pursuant to the provisions of this rule Section shall only be used at the time of a hearing for impeachment of a witness, unless the deponent is deceased or a non-party witness is unavailable at the time of the scheduled hearing, in which event ~~#~~ the deposition transcript may be admitted into evidence. The transcript shall be filed with the administrative law judge at least 15 days prior to the hearing date if an interested party intends to introduce it into evidence. If the deposition transcript is not filed within the time prescribed herein, it shall not be considered for any purpose except by stipulation of all interested parties, and then only with the concurrence of the administrative law judge.

R20-5-820. ~~Witnesses' Oral-Witness~~ Deposition; Out-of-State

- A. After a request for hearing is filed with the Commission, any interested party desiring to take the ~~oral~~ deposition of any other interested party or witness residing ~~without~~ outside the ~~State~~ State of Arizona shall file with the ~~hearing officer~~ administrative law judge, ~~in duplicate, a request for permission to take the deposition of such witness or witnesses. Such~~ The request shall show include the name and address of ~~such~~ the witness ~~or witnesses~~ and set forth the reason why ~~said witness or witnesses' the witness's~~ testimony is necessary for an adjudication of the ~~issue case~~. Copies of ~~such~~ the request shall be served upon each interested party by the party requesting permission to take the deposition. If no objection to the request for permission to take the deposition is filed as provided in subsection (B) ~~hereof~~, the ~~hearing officer~~ administrative law judge may, within 10 days, in ~~his~~ the administrative law judge's discretion, grant or deny the permission to take the deposition. If the ~~hearing officer~~ administrative law judge permits the taking of the deposition, the requesting party may proceed in the manner provided by and subject to the limitations of R20-5-819, subsections (A), (D), (E), and (F).
- B. If any interested party ~~has any objections~~ objects to the taking of the ~~oral~~ deposition of ~~the~~ an interested party or witness, ~~he~~ the objecting party shall file with the ~~hearing officer~~ administrative law judge and serve on all other interested parties written objections thereto setting forth the basis for the opposition to the deposition. Such objection shall be filed with the ~~hearing officer~~ administrative law judge within five days after the request to take the deposition is served.
- C. If objections to the taking of ~~the~~ a ~~oral~~ deposition are filed with the ~~hearing officer~~ administrative law judge as provided in subsection (B) ~~hereof~~, the hearing officer shall rule on the objections within five days after the filing of the objections. The taking of the ~~oral~~ deposition shall be held in abeyance pending the ruling of the ~~hearing officer~~ administrative law judge. The ~~hearing officer~~ administrative law judge shall either order the deposition to proceed, order that the deposition not be taken, or enter such other protective order as may be appropriate. If the ~~hearing officer~~ administrative law judge orders that the deposition proceed, the party may proceed to take the deposition in the manner provided by and subject to the limitation of R20-5-819, subsections (A), (D), (E), and (F).
- D. ~~Any~~ The transcript of any deposition taken pursuant to ~~the provisions of this rule Section~~ shall be filed with the ~~Commission~~ administrative law judge at least ~~five~~ 15 days prior to the hearing date ~~or any scheduled hearing~~ and may be admitted into evidence. If the deposition transcript is not filed within the time prescribed herein, it shall not be considered for any purpose except by stipulation of all interested parties, and then only with the concurrence of the ~~hearing officer~~ administrative law judge.

R20-5-821. ~~Parties' Disposition upon~~ Written Interrogatories and Request for Production of Documents

- A. After a request for hearing is filed with the Commission, any interested party desiring to ~~take the deposition of another party upon issue~~ written interrogatories or a request for production of documents to another interested party shall ~~file with the hearing officer, in duplicate, copies of the interrogatories sought to be submitted to the party. The written interrogatories submitted pursuant to this rule shall be limited to 25 in number, with no subsections inclusive of sub-parts. Copies of such interrogatories shall be filed at least five days prior to any scheduled hearing.~~
- B. Answers to ~~the~~ written interrogatories or a request for production of documents shall be served on all interested parties by the answering party ~~answering the interrogatories~~ within ~~40~~ 30 days after service of the interrogatories or a request for production of documents, or within ~~40~~ 30 days after a ruling by the ~~hearing officer~~ administrative law judge that the interrogatories must be answered or documents must be produced.
- C. No scheduled hearing shall be cancelled or continued for failure ~~of a party~~ to timely take or complete ~~the taking of a deposition taken pursuant to the provisions of this rule~~ issue interrogatories or a request for production of documents to another interested party.
- D. ~~Depositions~~ Written interrogatories issued ~~taken~~ pursuant to the provisions of this rule Section shall may only be used at the time of hearing for impeachment of a witness unless the ~~deponent~~ answering party is deceased at the time of the scheduled hearing in which event ~~they~~ the interrogatory answers may be admitted into evidence.

R20-5-822. Refusal to Answer; Refusal to Attend

- A. If a an interested party or ~~other deponent witness~~ refuses to answer any question propounded ~~upon~~ during ~~oral examination~~ deposition pursuant to R20-5-819 and R20-5-820, the ~~examination~~ deposition shall be completed in other matters ~~or adjourned~~, as the proponent of the question may prefer. Thereafter on reasonable notice to all parties and persons affected thereby the proponent of the question may apply to the ~~hearing officer~~ administrative law judge for an order compelling an answer. Upon the refusal of ~~a deponent~~ an interested party to answer any interrogatory submitted under R20-5-821, or produce a document requested under R20-5-821, the proponent of the ~~question~~ interrogatory or requestor of the document may on like notice make like application for such an order ~~from the administrative law judge~~. If the motion is granted and if the ~~hearing officer~~ administrative law judge finds that the refusal was without substantial justification, the ~~hearing officer~~ administrative law judge shall require the refusing party, witness, or deponent ~~and the party, or representative~~ advising the refusal or either of them to pay to the examining party ~~propounding the interrogatory or requesting the document~~ the amount of the reasonable attorney's fees incurred in obtaining the order and the reasonable expenses which will be incurred to obtain the requested answers or documents. If the motion is denied and if the ~~hearing officer~~ administrative law judge finds that the motion was made without substantial justification, the ~~hearing officer~~ administrative law judge shall require the ~~exam-~~

ing party filing the motion or the representative advising the party to file the motion, or both ~~of them~~, to pay to the refusing party or witness the amount of the reasonable attorney’s fees incurred in opposing the motion.

- B. If ~~a an interested party or an officer or managing agent a representative of a an interested party~~ willfully willfully fails to appear ~~before an officer who is to take his for~~ deposition after being served with the proper notice, or fails to serve answers to interrogatories or produce requested documents after proper service of such interrogatories or request for production of documents, the ~~hearing officer~~ administrative law judge, on motion and notice, may strike out all or any part of any pleading of that party, dismiss the action or proceeding or any part thereof, or preclude the introduction of evidence.

R20-5-823. Burden of Proof

- A. In all proceedings other than those stated in subsection (B) commenced by the filing of a request for hearing, the burden of proof shall rest with the ~~Commission~~ Arizona Division of Occupational Safety and Health.
- B. In proceedings commenced by a request for hearing requesting modification of the abatement period, the burden of establishing the necessity for such modification shall rest with the petitioner.

R20-5-824. Intermediary Rulings or Orders by the ~~Hearing Officer~~ Administrative Law Judge

No intermediary rulings or orders by the ~~hearing officer~~ administrative law judge may be appealed to the Review Board, but shall become a part of the record.

R20-5-825. Legal Memoranda

Legal memoranda may be filed if ~~request is granted~~ authorized by the applicable rules of procedure or the hearing officer administrative law judge. ~~If such request is granted~~ When authorized, the hearing officer administrative law judge shall establish a reasonable time for such filing and response or simultaneous filing briefing deadlines for all interested parties.

R20-5-826. Administrative Law Judge Decisions of Hearing Officers

- A. The decision of the ~~hearing officer~~ administrative law judge shall be signed, include findings and conclusions of fact and law, and include an order.
- B. ~~The hearing officer shall sign the decision. Upon issuance of the decision jurisdiction OAH shall rest solely in the Commission, and if a request for review is filed it shall be addressed to the Commission retain jurisdiction to require compliance with the order, or to determine a breach of an approved settlement agreement.~~
- C. A request to determine breach of a settlement agreement shall be filed with the administrative law judge and served upon all interested parties.
- D. A request for review by the Review Board shall be filed with the administrative law judge and served upon all interested parties and the Commission.

R20-5-827. Settlement

- A. Settlement is encouraged at any stage of the proceedings where such settlement is consistent with the provisions and objectives of the Act.
- B. ~~A Settlement settlement~~ agreement submitted by the interested parties shall be accompanied by ~~an a appropriate~~ proposed order which, if appropriate, shall be approved and signed by the assigned hearing officer or chief hearing officer administrative law judge.
- C. Where parties ~~to the settlement agree upon a proposal enter into a settlement agreement, it the settlement agreement~~ shall be served upon represented and unrepresented affected employees in the manner set forth in R20-5-806. Proof of such service shall accompany the proposed settlement when submitted to the ~~Commission or the hearing officer~~ administrative law judge.

R20-5-828. Special Circumstances; Waiver of Rules

In special circumstances, or for good cause shown, the ~~hearing officer~~ administrative law judge may, upon application by any interested party, or on his own motion sua sponte, waive any rule or make such orders as justice or the administration of the Act requires.

R20-5-829. Variances

- A. Any hearing concerning variances shall be filed ~~before with the Commission and shall be heard by the Commissioners~~ Commission at a time set by the Commission.
- B. Such proceeding shall be informal, but shall be transcribed at the expense of the person seeking the variance if a written record of the proceeding is ~~desired~~ requested.

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R24-10]

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
Article 9	New Article
R20-5-901	New Section
R20-5-902	New Section
R20-5-903	New Section
R20-5-904	New Section
R20-5-905	New Section

R20-5-906	New Section
R20-5-907	New Section
R20-5-908	New Section

- 2. Citations to agency's statutory rulemaking authority to include the authorizing statutes (general) and the implementing statutes (specific):**
 Authorizing statute: A.R.S. § 23-240
 Implementing statute: A.R.S. Title 23, Chapter 2, Article 3
 Note: Consistent with A.R.S. § 41-1039(A) the Industrial Commission of Arizona received written approval from the Governor's office to proceed with this rulemaking on December 4, 2023.
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
 Notice of Rulemaking Docket Opening: 29 A.A.R. 249, February 2, 2024 (*in this issue*)
- 4. The agency's contact person who can answer questions about the rulemaking:**
 Name: Afshan Peimani, Chief Counsel
 Address: Industrial Commission of Arizona
 800 W. Washington St., Suite 303
 Phoenix, AZ 85007
 Telephone: (602) 542-5905
 Fax: (602) 542-6783
 Email: Afshan.Peimani@azica.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:**
 Article 9 is justified to fulfill the duty under A.R.S. § 23-240 to "promulgate such rules and regulations as are necessary to carry out the provisions of this article."
- 6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or 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 Commission did not review or rely on any study relevant to the proposed amended rule.
- 7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**
 Not applicable
- 8. The preliminary summary of the economic, small business and consumer impact:**
 The Commission anticipates that the inclusion of rules for the Youth Labor program will have no adverse economic impact on businesses.
- 9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:**
 Name: Afshan Peimani, Chief Counsel
 Address: Industrial Commission of Arizona
 800 W. Washington St., Suite 303
 Phoenix, AZ 85007
 Telephone: (602) 542-5905
 Fax: (602) 542-6783
 Email: Afshan.Peimani@azica.gov
- 10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**
 Written comments can be submitted to the addresses listed in items 4 and 9 by the close of the comment period, which is at 5:00 p.m. on March 7, 2024. An oral proceeding on the proposed amended rule is scheduled for March 7, 2024, at 9:00 a.m., at the Industrial Commission of Arizona, 800 West Washington, Room 339, Phoenix, Arizona 85007.
- 11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**
- 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 proposed rules do not require issuance of a regulatory permit or license.
- b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**
 A.R.S. § 23-242 provides that "(N)o provision of this article alters or excuses noncompliance with any applicable federal statute or regulation relating to the employment of child labor. If both federal law and the provisions of this article are applicable, the law with the higher standard governs."
- 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:**

An analysis was not submitted.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:
Not applicable

13. The full text of the rules follows:

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

ARTICLE 9. ~~EXPIRED~~ YOUTH EMPLOYMENT

Section

R20-5-901.	Expired <u>Definitions</u>
R20-5-902.	Expired <u>Forms</u>
R20-5-903.	Expired <u>Recordkeeping Requirements for Youths Under the Age of 16</u>
R20-5-904.	Expired <u>Findings and Order Issued by the Department</u>
R20-5-905.	Expired <u>Conduct Hindering an Investigation</u>
R20-5-906.	Expired <u>Hearing Procedure on Cease and Desist Order; Review</u>
R20-5-907.	Expired <u>Hearing Procedure on Denied Variation, Modification, or Renewal of Variation; Review</u>
R20-5-908.	Expired <u>Service</u>

ARTICLE 9. ~~EXPIRED~~ YOUTH EMPLOYMENT

R20-5-901. ~~Expired~~ Definitions

In this Article, the definitions of A.R.S. §§ 23-230, 23-231, 23-232, and 23-233 apply. In addition, unless the context otherwise requires, the following definitions shall apply to both the Act and this Article:

“Act” means A.R.S. Title 23, Chapter 2, Article 3.

“Baking” means to cook food with dry heat, especially in an oven.

“Cafeteria” means a restaurant in which the customers are served at a counter and carry their meals on trays to tables.

“Cooking” means to prepare food for eating by applying heat.

“Counter” means a flat surface on which food is prepared or served.

“Department” means the Labor Department of the Industrial Commission of Arizona.

“Director” means the Director of the Department.

“Employee” means every minor in receipt of or entitled to compensation for labor performed for any employer.

“Lunch counter” means a long counter at which lunches are sold.

“Snack bar” means a lunch counter or small restaurant where light meals are served.

“Soda fountain” means a lunch counter in a commercial establishment equipped for preparing and serving soft drinks, ice-cream dishes, or sandwiches.

“Work about” means engage in labor in the area or vicinity.

“Work in” means engage in labor in the occupation or activity.

“Work in connection with” means engage in labor in relation to the occupation or activity.

R20-5-902. ~~Expired~~ Forms

The following forms, available at <http://www.azica.gov> and upon request from the Division, shall be used when applicable:

1. Application for variation;
2. Request for hearing on cease and desist order form;
3. Request for hearing on denied variation, modification, or renewal of variation form;
4. Youth labor complaint form.

R20-5-903. ~~Expired~~ Recordkeeping Requirements for Youths Under the Age of 16

An establishment employing youths under the age of 16 must have the following information available:

1. Number of hours the youth is employed in each week,
2. Number of hours the youth is employed in each day,
3. The dates the youth is enrolled in a session of school,
4. The name of the school district in which the youth is enrolled,
5. The specific hours the youth works at the establishment.

R20-5-904. ~~Expired~~ Findings and Order Issued by the Department

A. Upon receipt of a complaint alleging a violation of the Act, the Department shall issue a Findings and Order of its determination.

B. If the Department determines that an employer has violated the Act, the Department shall:

1. Shall direct the employer or other person to cease and desist from the violation and may take action necessary to remedy the violation, and
 2. Order the employer to pay a civil penalty to the general fund, consistent with A.R.S. § 23-236.
- C.** If the Department determines that no violation of the Act has occurred, or if the Department is unable to reach a conclusion based on the evidence submitted, the Department shall notify the parties and shall dismiss the complaint.
- D.** The Director of the Department shall sign the written Findings and Order issued by the Department.

R20-5-905. ~~Expired~~ Conduct Hindering an Investigation

An employer hinders an investigation under the Act if the employer engages in conduct, or causes another person to engage in conduct, that delays or otherwise interferes with the Department's investigation, including:

1. Obstructing or refusing to admit the Department to any place of employment authorized under the Act;
2. Obstructing or refusing to permit interviews authorized under the Act;
3. Failing to make, keep, or preserve records required under the Act or this Article;
4. Failing to permit the review and copying of records required under the Act and this Article; and
5. Falsifying any record required under the Act or this Article.

R20-5-906. ~~Expired~~ Hearing Procedure on Cease and Desist Order: Review

- A.** A request for hearing on a cease and desist order form must be completed in writing and received by the Director no later than 20 days after the issuance of the cease and desist order.
- B.** The Department has the burden of proof to establish a violation of the Act.
- C.** An Administrative Law Judge shall preside over hearings held under this Section and shall apply the provisions of A.R.S. § 41-1062 to hearings held under this Section and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.
- D.** The Chief Counsel of the Commission, or a designee, shall represent the Division in hearings held under this Section.
- E.** Except as otherwise provided by law, a party to a hearing may appear on its own behalf or through an authorized legal representative. When an authorized legal representative appears or intends to appear before the Commission, the representative shall file a notice of appearance with the Commission.
- F.** Upon the completion of a hearing, the ALJ shall issue an order either affirming, modifying, or reversing the cease and desist order.
- G.** The order issued by the ALJ after the hearing is final unless within thirty days after the date of service of an order a party requests review.
- H.** A party may request review of the ALJ order by filing with the ALJ a written request for review.
- I.** Upon the completion of a review, the ALJ shall issue an order upon review either affirming, modifying, or reversing the ALJ order no later than 30 days after receiving a request for review.
- J.** The order upon review is final unless a party seeks judicial review as provided in A.R.S. § 23-237(C).

R20-5-907. ~~Expired~~ Hearing Procedure on Denied Variation, Modification, or Renewal of Variation: Review

- A.** A request for hearing on denied variation, modification, or renewal of variation form must be completed in writing and received by the Director no later than 30 days after the issuance of the denied variation request.
- B.** The Department has the burden of proof to establish the application, modification, or renewal for variation does not satisfy the requirements established in A.R.S. § 23-241(A).
- C.** An Administrative Law Judge shall preside over hearings held under this Section and shall apply the provisions of A.R.S. § 41-1062 to hearings held under this Section and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.
- D.** The Chief Counsel of the Commission, or a designee, shall represent the Division in hearings held under this Section.
- E.** Except as otherwise provided by law, a party to a hearing may appear on its own behalf or through an authorized legal representative. When an authorized legal representative appears or intends to appear before the Commission, the representative shall file a notice of appearance with the Commission.
- F.** Upon the completion of a hearing, the ALJ shall issue an order either affirming, modifying, or reversing the denied variation, modification, or renewal of variation.
- G.** The order issued by the ALJ after the hearing is final unless within thirty days after the date of service of an order a party requests review.
- H.** A party may request review of the ALJ order by filing with the ALJ a written request for review.
- I.** Upon the completion of a review, the ALJ shall issue an order upon review either affirming, modifying, or reversing the ALJ order no later than 30 days after receiving a request for review.
- J.** The order upon review is final unless an action is commenced pursuant to A.R.S. § 12-904.

R20-5-908. ~~Expired~~ Service

- A.** A determination, order, or other document required by this Article or other law to be served upon a party, shall be made upon the party, or, if represented by legal counsel, the party's legal counsel. Service upon legal counsel is considered service upon the party.
- B.** Service may be made and is deemed complete by:
1. Depositing the document in regular or certified mail, addressed to the party served at the address shown in the records of the Department, or by personal delivery upon the party.
 2. With a party's consent, transmission by e-mail to the email address shown in the records of the Department.

NOTICES OF PROPOSED EXPEDITED RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Proposed Expedited Rulemaking. The Office of the Secretary of State is the filing office and publisher of these rules.

Expedited rulemaking is a rulemaking process that does not increase the cost of regulatory compliance, or increase a fee, or reduce procedural rights of persons regulated. Other requirements to conduct expedited rulemaking are listed under A.R.S. § 41-1027.

Under A.R.S. § 41-1027(C), the Governor’s Regulatory Review Council also posts Notices of Proposed Expedited Rulemakings on its website and allows any person to provide written comment for at least 30 days after posting the notice.

Questions about the interpretation of expedited rules should be addressed to the agency promulgating the rules.

Refer to item 4 to contact the person charged with the rulemaking.

NOTICE OF PROPOSED EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

[R24-11]

PREAMBLE

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

Rulemaking Action

R18-15-101	Amend
R18-15-102	Amend
R18-15-103	Amend
R18-15-104	Amend
R18-15-105	Amend
R18-15-107	Amend
R18-15-401	Amend
R18-15-402	Amend
R18-15-403	Amend
R18-15-404	Amend
R18-15-405	Amend
Article 9	New Article
R18-15-901	New Section
R18-15-902	New Section
R18-15-903	New Section
R18-15-904	New Section
R18-15-905	New Section
R18-15-906	New Section
Article 10	New Article
R18-15-1001	New Section
R18-15-1002	New Section
R18-15-1003	New Section
R18-15-1004	New Section
R18-15-1005	New Section
R18-15-1006	New Section

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

Authorizing statute: A.R.S. §§ 49-1274(B)(2); 49-1308(B)(2); and 49-1333(B)(2)
 Implementing statute: A.R.S. §§ 49-1270 through 49-1282; 49-1301 through 49-1313; and 49-1331 through 49-1335

3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: 30 A.A.R. 247, February 2, 2024 (*in this issue*)

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

Name: Joe Citelli, General Counsel
 Address: Water Infrastructure Finance Authority of Arizona
 100 N. 7th Ave., Suite 130
 Phoenix, AZ 85007
 Telephone: (602) 364-1314
 Email: JCitelli@azwifa.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 purpose of this Water Infrastructure Finance Authority of Arizona (“WIFA”) rulemaking is to amend A.A.C. Title 18, Chapter 15 by:

- Amending Article 1 – General Provisions;
- Amending Article 4 – Water Supply Development Revolving Fund;
- Adding Article 9 – Long-Term Water Augmentation Fund; and
- Adding Article 10 – Water Conservation Grant Fund.

On September 24, 2022, Arizona Senate Bill 1740 (Fifty-fifth Legislature, Second Regular Session (2022)) became effective, establishing WIFA as an independent state agency and transferring governance of WIFA from the Arizona Finance Authority Board of Directors to the WIFA Board of Directors. Among other changes, SB1740: (1) Significantly modified the WSDRF and expanded eligibility for water supply development loans and grants; (2) Established the LTWAF and permitting WIFA to provide financial assistance for water supply development projects inside or outside of Arizona; and (3) Established the WCGF provide grants for voluntary water conservation programs or projects expected to result in long-term sustainable reductions in water use and improvements in water use efficiency and reliability.

As part of its five-year review report approved by the Governor’s Regulatory Review Council on November 7, 2023, WIFA proposed submitting rules to comply with the statutory changes to the WSDRF and to govern the new LTWAF and WCGF programs. After receiving an exception according to A.R.S. § 41-1039(A), WIFA now submits those rules through expedited rulemaking. Expedited rulemaking is appropriate pursuant to A.R.S. § 41-1027(A)(7) because this rulemaking will implement without material change, a course of action that was proposed in WIFA’s five-year review report.

A. Proposed Rules Amending Article 4 – Water Supply Development Revolving Fund

Pursuant to A.R.S. § 49-1273(A), monies in the WSDRF may be used to make loans up to \$3,000,000 and/or provide grants or technical assistance up to \$2,000,000 to eligible entities for water supply development projects in Arizona. WIFA is authorized to prescribe rules governing the criteria by which assistance will be awarded. A.R.S. § 49-1274(B)(2).

The proposed rulemaking amends existing WSDRF rules to align with statutory changes enacted by SB1740. The proposed rules are primarily procedural in nature and are closely modeled after the successful Clean Water and Drinking Water State Revolving Fund programs. The proposed rules do not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights.

B. Proposed Rules Adding Article 9 – Long-Term Water Augmentation Fund

Pursuant to A.R.S. § 49-1303(A)(6), monies in the LTWAF may be used to provide financial assistance to eligible entities for the purposes of financing or refinancing water supply development projects in Arizona, including projects for conservation through reducing existing water use or more efficient uses of existing water supplies. WIFA is authorized to prescribe rules governing the criteria by which financial assistance will be awarded. A.R.S. § 49-1308(B).

The proposed rulemaking adds Article 9 – Long-Term Water Augmentation Fund to administer the new LTWAF program enacted by SB1740. The proposed rules are primarily procedural in nature and establish a framework for applicants to apply to WIFA for financial assistance from the LTWAF. The proposed rules do not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights.

C. Proposed Rules Adding Article 10 – Water Conservation Grant Fund

Pursuant to A.R.S. § 49-1331(A), monies in the WCGF may be used to facilitate voluntary water conservation programs or projects that are expected to result in long-term reductions in water use, improvements in water use efficiency, or improvements in water reliability. Through the WCGF, WIFA may provide grants to eligible applicants up to \$3,000,000 for a water conservation program, and up to \$250,000 for a water conservation project. A.R.S. § 49-1333(B)(4). WIFA is authorized to prescribe rules governing the criteria by which assistance will be awarded from the WCGF.

The proposed rulemaking adds Article 10 – Water Conservation Grant Fund to administer the new WCGF program enacted by SB1740. The proposed rules are primarily procedural in nature and establish a framework for applicants to apply to WIFA for financial assistance from the WCGF. The proposed rules do not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights.

D. Proposed Rules Amending Article 1 – General Provisions

The proposed rulemaking also updates several sections in Article 1 – General Provisions. The proposed updates are intended to increase the clarity and effectiveness of WIFA’s existing rules. Additionally, the proposed rulemaking updates citations contained in the definitions section to conform to statutory changes enacted by SB1740.

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:

The Authority did not review or rely on any study for this rulemaking.

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

Not applicable

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

Under A.R.S. § 41-1055(D)(2), the Authority is not required to provide an economic, small business, and consumer impact statement.

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

Name: Joe Citelli, General Counsel
 Address: Water Infrastructure Finance Authority of Arizona
 100 N. 7th Ave., Suite 130
 Phoenix, AZ 85007
 Telephone: (602) 364-1314
 Email: JCitelli@azwifa.gov

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

Written or emailed comments related to this proposed rulemaking may be submitted at any time during the public comment period to the person referenced in item 4. Close of comment period will occur on the date of the oral proceeding (listed below) at 4:00 p.m.

Additionally, the Authority has scheduled the following oral proceeding to receive oral comments on the proposed rules in accordance with A.R.S. § 41-1023; the date, time, location, and nature of the proceeding are listed below:

Date of proceeding: March 4, 2024, at 1:00 p.m.
 Time: 1:00 p.m. MST.
 Location: Virtual (Via Microsoft Teams)
<https://azcommerce.zoom.us/j/91752825332>
 Webinar ID: 917 5282 5332
 Telephone: +1 719 359 4580
 Close of record: March 4, 2024, at 4:00 p.m.
 Nature: Oral proceeding on the proposed rules, with opportunity for formal comments on the record.

The Authority will take reasonable measures to provide access to Authority services to individuals with limited ability to speak, write, or understand English and to those with disabilities. Requests for language interpretation, ASL interpretation, CART captioning services, or disability accommodations must be made at least 48 hours in advance by contacting the individual referenced in item 4.

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

There are no other matters prescribed by statutes applicable to the Authority or this specific rulemaking.

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

The rules do not require the use of a permit. Therefore, a general permit is not applicable.

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 rules do not require the use of a permit. Therefore, a general permit is not applicable.

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 business competitiveness analysis was submitted to the Authority.

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

Not applicable

13. The full text of the rules follows:**TITLE 18. ENVIRONMENTAL QUALITY****CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA****ARTICLE 1. GENERAL PROVISIONS**

Section	
R18-15-101.	Definitions
R18-15-102.	Types of Assistance Available
R18-15-103.	Application Process
R18-15-104.	General Financial Assistance Application Requirements
R18-15-105.	General Financial Assistance Conditions
R18-15-107.	Disputes

ARTICLE 4. WATER SUPPLY DEVELOPMENT REVOLVING FUND

Section	
R18-15-401.	Water Supply Development Revolving Fund Financial Assistance Criteria

- R18-15-402. Water Supply Development Revolving Fund Project ~~Priority List~~
- R18-15-403. Water Supply Development Revolving Fund ~~Project List Ranking Order and Priority~~
- R18-15-404. Water Supply Development Revolving Fund Application for Financial Assistance
- R18-15-405. Water Supply Development Revolving Fund Application Review for Financial Assistance

ARTICLE 9. LONG-TERM WATER AUGMENTATION FUND

Section

- R18-15-901. Long-Term Water Augmentation Fund Financial Assistance Eligibility Criteria
- R18-15-902. Long-Term Water Augmentation Fund Request for Applications
- R18-15-903. Long-Term Water Augmentation Fund Order and Priority
- R18-15-904. Long-Term Water Augmentation Fund Application for Financial Assistance
- R18-15-905. Long-Term Water Augmentation Fund Application Review for Financial Assistance
- R18-15-906. Long-Term Water Augmentation Fund Requirements

ARTICLE 10. WATER CONSERVATION GRANT FUND

Section

- R18-15-1001. Water Conservation Grant Fund Eligibility Criteria
- R18-15-1002. Water Conservation Grant Fund Request for Grant Applications
- R18-15-1003. Water Conservation Grant Fund Order and Priority
- R18-15-1004. Water Conservation Grant Fund Application for Financial Assistance
- R18-15-1005. Water Conservation Grant Fund Awards
- R18-15-1006. Water Conservation Grant Fund Requirements

ARTICLE 1. GENERAL PROVISIONS

R18-15-101. Definitions

In addition to the definitions prescribed in A.R.S. § 49-1201, the terms of this Chapter, unless otherwise specified, have the following meanings:

- ~~“Advisory Board” has same meaning as prescribed in A.R.S. § 41-5356(A)(5).~~
- “ADEQ” means the Arizona Department of Environmental Quality.
- ~~“Applicant” means a governmental unit, a non point source project sponsor, a drinking water facility, or a water provider an entity that is seeking financial or technical assistance from the Authority under the provisions of this Chapter.~~
- ~~“Application” means a request for financial or technical assistance submitted to the Board Authority by an applicant.~~
- ~~“Authority” means the Water Infrastructure Finance Authority of Arizona pursuant to A.R.S. § 49-1201(1).~~
- ~~“Board” means the board of directors of the Arizona finance authority established by A.R.S. Title 41, Chapter 53, Article 2 has the same meaning as prescribed in A.R.S. § 49-1201(2).~~
- ~~“Certified Water Quality Management Plan” means a plan prepared by a designated Water Quality Management Planning Agency under Section 208 of the Federal Water Pollution Control Act (P.L. 92-500) as amended by the Water Quality Act of 1987 (P.L. 100-4), certified by the Governor or the Governor's designee, and approved by the United States Environmental Protection Agency.~~
- ~~“Clean Water Revolving Fund” means the fund established by A.R.S. § 49-1221.~~
- ~~“DBE” means EPA's Disadvantaged Business Enterprise Program.~~
- ~~“Dedicated revenue source for repayment” means a source of revenue pledged by a borrower to repay the financial assistance.~~
- ~~“Department” means the Arizona Department of Environmental Quality.~~
- “Director” means the director of the Water Infrastructure Finance Authority of Arizona.
- ~~“Disbursement” means the transfer of cash from a fund to a recipient.~~
- ~~“Discharge” has same meaning as prescribed in A.R.S. § 49-201(12).~~
- ~~“Drinking water facility” has same meaning as prescribed in A.R.S. § 49-1201(5) A.R.S. § 49-1201(6).~~
- ~~“Drinking Water Revolving Fund” means the fund established by A.R.S. § 49-1241.~~
- ~~“EA” means an environmental assessment.~~
- ~~“EID” means an environmental information document.~~
- ~~“EIS” means an environmental impact statement.~~
- ~~“EPA” means the United States Environmental Protection Agency.~~
- ~~“Executive director” means the executive director of the Water Infrastructure Finance Authority of Arizona.~~
- ~~“Federal capitalization grant” means the assistance agreement by which the EPA obligates and awards funds allotted to the Authority for purposes of capitalizing the Clean Water Revolving Fund and the Drinking Water Revolving Fund.~~
- ~~“Financial assistance” means the use of monies for any of the purposes identified in R18-15-102(B).~~
- ~~“Financial assistance agreement” means any agreement that defines the terms for financial assistance provided according to this Chapter.~~
- ~~“FONSI” means a finding of no significant impact, it is a public decision document that briefly describes why the project will not have any significant environmental effects.~~

“Fundable range” means a subset of ~~the a project priority list~~ Project Priority List that demarcates the ranked projects which have been determined to be ready to proceed ~~and will be provided with a project finance application.~~

“Governmental unit” means a political subdivision or Indian tribe that may receive technical or financial assistance from the Authority pursuant to A.R.S. § 49-1203.

“Impaired water” means a navigable water for which credible scientific data exists that satisfies the requirements of A.R.S. § 49-232 and that demonstrates that the water should be identified pursuant to 33 U.S.C. 1313(d) and the regulations implementing that statute.

“Intended Use Plan” means the document prepared by the Authority identifying the intended uses of Clean Water Revolving Fund and Drinking Water Revolving Fund federal capitalization grants according to R18-15-202 and R18-15-302, and the intended uses of funds for technical assistance according to R18-15-502.

“Long-Term Water Augmentation Committee” means the committee established by A.R.S. § 49-1208(B).

“Master priority list” means the master priority list for Capacity Development developed by the Arizona Department of Environmental Quality under A.A.C. R18-4-803, which ranks public water systems according to their need for technical assistance.

“Onsite system” means a conventional septic tank system or alternative system that is installed at a site to treat and dispose of wastewater of predominantly human origin that is generated at that site.

“Planning and design assistance” means technical assistance that provides for the use of monies for a specific water facility wastewater treatment facility, or water supply delivery system for planning or design to facilitate the design, construction, acquisition, improvement, or consolidation of a drinking water project, wastewater project, or water supply development project.

“Planning and design assistance agreement” means any agreement that defines the terms for technical assistance provided according to Article 5 of this Chapter.

“Planning and design technical assistance applicant” means a governmental unit, a nonpoint source project sponsor, a drinking water facility, or a water provider that is seeking planning and design assistance from the Authority under the provisions of this Chapter.

“Planning and design technical assistance application” means a request for planning and design assistance submitted to the Board by an applicant in a format prescribed by the Authority.

“Planning and design loan repayment agreement” means the same as technical assistance loan repayment agreement and has the meaning at A.R.S. § 49-1201(11)

“Professional assistance” means the use of monies by or on behalf of the Authority to conduct research, conduct studies, conduct surveys, develop guidance, and perform related activities that benefit more than one water or wastewater treatment facility.

“Project” means any distinguishable segment or segments of a wastewater treatment facility, drinking water facility, water supply delivery system, stormwater system, or nonpoint source pollution control ~~that can be bid separately~~ and for which financial or technical assistance is being requested or provided.

“Project ~~priority list~~ Priority List” means the document developed by the ~~Board~~ Authority according to R18-15-203 ~~or~~ R18-15-303; ~~or R-18-402~~ that ranks projects according to R18-15-204; ~~or~~ R18-15-304; ~~or R-18-15-403~~.

“Recipient” means an applicant who has entered into a financial assistance agreement or planning and design assistance agreement with the Authority.

“ROD” means a record of decision, it is the conclusion of the EIS process.

“Staff assistance” means the use of monies for a specific water or wastewater treatment facility to assist that system to improve its operations or assist a specific water provider with a water supply delivery system. For water providers, staff assistance is limited to planning and design of water supply development projects according to A.R.S. § 49-1203(B)(17).

“Technical assistance” means assistance provided by the Authority in the form of staff assistance, professional assistance and planning and design assistance.

“Wastewater treatment facility” has the same meaning as prescribed in ~~A.R.S. § 49-1201(12)~~ A.R.S. § 49-1201(19).

“Water Conservation Grant Committee” means the committee established by A.R.S. § 49-1335.

“Water provider” has the same meaning as prescribed in ~~A.R.S. § 49-1201(13)~~ A.R.S. § 49-1201(20).

“Water supply development” has the same meaning as prescribed in ~~A.R.S. § 49-1201(14)~~ A.R.S. § 49-1201(22).

“Water Supply Development Revolving Fund” means the fund established by A.R.S. § 49-1271.

R18-15-102. Types of Assistance Available

A. The Authority may provide financial and technical assistance under the following programs if the Board determines funding is available:

1. Clean Water Revolving Fund ~~Program~~ and Clean Water Technical Assistance ~~Program~~;
2. Drinking Water Revolving Fund ~~Program~~ and Drinking Water Technical Assistance ~~Program~~;
3. Water Supply Development Revolving Fund ~~Program~~ and Water Supply Development Technical Assistance ~~Program~~; and;
4. Hardship Grant Fund ~~Program~~;
5. Long-Term Water Augmentation Fund; and
6. Water Conservation Grant Fund.

B. Financial assistance available from the Authority includes any of the following:

1. Financial assistance loan repayment agreements;
2. The purchase or refinance of local debt obligations;
3. The guarantee or purchase of insurance for local obligations to improve credit market access or reduce interest rates;
4. Short-term emergency loan agreements in accordance with A.R.S. § 49-1269; and

5. Providing linked deposit guarantees through third-party lenders as authorized by A.R.S. §§ 49-1223(A)(6), 49-1243(A)(6), and 49-1273(A)(6).
- C. Technical assistance available from the Authority includes planning and design assistance, staff assistance, and professional assistance. Technical assistance may be offered at the Board's discretion.

R18-15-103. Application Process

- A. An applicant requesting assistance shall apply to the Authority for the financial or technical assistance described in R18-15-102 on forms provided by the Authority.
- B. An applicant seeking financial assistance through the Clean Water Revolving Fund ~~Program~~ shall apply for financial assistance according to Articles 1 and 2 of this Chapter.
- C. An applicant seeking financial assistance through the Drinking Water Revolving Fund ~~Program~~ shall apply for financial assistance according to Articles 1 and 3 of this Chapter.
- D. An applicant seeking financial assistance through the Water Supply Development Revolving Fund Program shall apply for financial assistance according to Articles 1 and 4 of this Chapter.
- E. An applicant seeking technical assistance available through the technical assistance programs shall apply for technical assistance according to Articles 1 and 5 of this Chapter.
- F. An applicant seeking financial assistance through the Long-Term Water Augmentation Fund shall apply for financial assistance according to Articles 1 and 9.
- G. An applicant seeking a grant through the Water Conservation Grant Fund shall apply for financial assistance according to Articles 1 and 10.
- F.H. An applicant shall mark any confidential information with the words "confidential information" on each page of the material containing such information. A claim of confidential information may be asserted for a trade secret or information that, upon disclosure, would harm a person's competitive advantage. The Authority shall not disclose any information determined confidential. Upon receipt of a claim of confidential information, the Authority shall make one of the following written determinations:
 1. The designated information is confidential and the Authority shall not disclose the information except to those individuals deemed by the Authority to have a legitimate interest.
 2. The designated information is not confidential.
 3. Additional information is required before a final confidentiality determination can be made.

R18-15-104. General Financial Assistance Application Requirements

- A. The applicant shall provide in the financial assistance application the information in subsections (B), (C), (D), and (E).
- B. The applicant shall demonstrate the applicant is legally authorized to apply for long-term indebtedness, and is legally authorized to declare its intent to obligate a dedicated revenue source for repayment under subsection (C).
 1. If the applicant is a political subdivision and the long-term indebtedness is authorized through an election, the applicant shall provide all of the following:
 - a. One copy of the sample election ballot and election pamphlet, if applicable;
 - b. One copy of the governing body resolution calling for the election;
 - c. Official evidence of the election results following the election.
 2. If the applicant is a political subdivision and the long-term indebtedness is not required by law to be authorized through an election, the applicant shall provide one copy of the approved governing body resolution authorizing the application for long-term indebtedness and an identification of the dedicated revenue source.
 3. If the applicant is a political subdivision and the long-term indebtedness is authorized through a special taxing district creation process, the applicant shall provide one copy of the final documentation, notices, petitions, and related information authorizing the long-term indebtedness.
 4. If the applicant is regulated by the Arizona Corporation Commission, the applicant shall provide evidence that ~~the financial assistance from the Authority to the applicant is authorized by the Arizona Corporation Commission~~ authorized the financing decision.
 5. All other applicants shall demonstrate that a majority of the beneficiaries consent to apply to the Authority for financial assistance. The Authority shall assist each applicant to devise a process by which this consent is documented.
- C. The applicant shall identify a dedicated revenue source for repayment of the financial assistance and demonstrate that the dedicated revenue source is sufficient to repay the financial assistance.
 1. The applicant shall provide the following information:
 - a. Amount of the financial assistance requested;
 - b. One copy of each financial statement, audit, or comprehensive financial statement from at least the previous ~~three~~ five financial operating years (fiscal or calendar);
 - c. One copy of each budget, business plan, management plan, or financial plan from the current financial operating years (fiscal or calendar);
 - d. One copy of the proposed budget, business plan, management plan, or financial plan for the next financial operating year (fiscal or calendar);
 - e. Documentation of current rates and fees for drinking or wastewater services including, as applicable, any resolutions related to rates and fees passed by the governing body of a political subdivision; and
 - f. Copies of documentation relating to outstanding indebtedness pledged to the dedicated source for repayment, including official statements, financial assistance agreements, and amortization schedules.
 2. If any of the required information listed in subsection (C)(1) is not available, the Authority may assist the applicant in determining alternative documentation to support the applicant's financial capability.
 3. The Authority may ask for additional financial information as necessary to evaluate the applicant's financial capability.
- D. The applicant shall demonstrate the applicant is technically capable to construct, operate, and maintain the proposed project.

1. The applicant shall provide the following information:
 - a. An estimate of the project costs in as much detail as possible, including an estimate of applicable planning, design, construction, and material costs;
 - b. The number of connections to be served by the proposed project;
 - c. The most recent version of the applicant's capital improvement plan or other plan explaining proposed infrastructure investments;
 - d. One copy of each feasibility study, engineering report, design memorandum, set of plans and specifications, and other technical documentation related to the proposed project and determined applicable by the Authority for the stage of project completion;
 - e. Biographies or related information of the certified operators, system employees, or contractors employed by the applicant to operate and maintain the existing facilities and the proposed project;
 - f. A description of the service area, including maps and system schematics; and
 - g. A description of the existing physical facilities.
 2. The Authority may ask for additional information as necessary to evaluate the applicant's technical capability. If any of the required information listed in subsection (D)(1) is not available, the Authority may assist the applicant in determining alternative documentation to support the applicant's technical capability.
- E. The applicant shall demonstrate the applicant is capable of managing the system and the proposed project.
1. The applicant shall provide the following information:
 - a. Years of experience and related information regarding the owners, managers, chief elected officials, and governing body members of the applicant; and
 - b. A list of professional and outside services retained by the applicant.
 2. If any of the required information listed in subsection (E)(1) is not available, the Authority may assist the applicant in determining alternative documentation to support the applicant's managerial capability.
 3. The Authority may ask for additional information as necessary to evaluate the applicant's managerial capability.

R18-15-105. General Financial Assistance Conditions

- A. The Authority shall not execute a financial assistance agreement with an applicant until the applicant provides all documentation specified by the Authority.
- B. The documentation required prior to execution of the financial assistance agreement shall at a minimum include:
1. If there is a governing body, one copy of the governing body resolution approving the execution of the financial assistance agreement;
 2. A project budget, ~~and~~;
 3. An estimated disbursement schedule; ~~and~~
 4. A legal opinion of the local borrower's counsel concurrent with closing date of the financial assistance agreement.
- C. The financial assistance agreement between the recipient and the Authority shall at a minimum specify:
1. Rates of interest, fees, and any costs as determined by the Authority;
 2. Project details;
 3. The maximum amount of principal and interest due on any payment date;
 4. Debt service coverage requirements;
 5. Reporting requirements;
 6. Debt service reserve fund and repair and replacement reserve fund requirements;
 7. The dedicated source for repayment and pledge;
 8. The requirement that the recipient comply with applicable federal, state and local laws;
 9. A schedule for repayment; and
 10. Any other agreed-upon conditions.
- D. The Authority may require a recipient to pay a proportionate share of the expenses of the Authority's operating costs.
- E. The recipient shall maintain the project account in accordance with generally accepted government accounting standards. After reasonable notice by the Authority, the recipient shall make available any project records reasonably required to determine compliance with the provisions of this Chapter and the financial assistance agreement. For purposes of this section, "project account" means the account in which the financial assistance is held or maintained.
- F. The Authority shall release loan proceeds subject to a disbursement request if the request is consistent with the financial assistance agreement ~~and the disbursement schedule.~~
1. The applicant shall submit each disbursement request on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, a cost-incurred report, and a DBE report. The Authority shall not process a disbursement until the applicant provides a completed disbursement form.
 2. The applicant shall include copies of invoices, or other documents that show proof of eligible costs incurred with each disbursement request.
- G. The recipient shall make repayments according to an agreed-upon schedule in the financial assistance agreement. The Authority may charge a late fee for any loan repayment not paid when due. The Authority may refer any loan repayment past due to the Office of the Attorney General for appropriate action.

R18-15-107. Disputes

- A. Any interested party having a substantial financial interest in or suffering a substantial adverse financial impact from an action taken under this Chapter, excluding actions taken under R18-15-503, R18-15-504, and R18-15-505, may file a formal letter of dispute with the ~~executive director~~ Director according to subsections (B), (C), (D), and (E). Any interested party having a substantial financial interest in or suffering a substantial adverse financial impact from an action taken under R18-15-503, R18-15-504 or R18-15-505 shall proceed under R18-15-503(H), R18-15-504(H) or R18-15-505(H), as applicable.

- B. The interested party shall file the formal letter of dispute with the ~~executive director~~ Director within 30 days of the action and provide a copy to each member of the Board. The formal letter of dispute shall include the following information:
1. The name, address, and telephone number of the interested party;
 2. The signature of the interested party or the interested party's representative;
 3. A detailed statement of the legal and factual grounds of the dispute including:
 - a. Copies of relevant documents, and
 - b. The nature of the substantial financial interest or the nature of the substantial adverse financial impact of the interested party; and
 4. The form of relief requested.
- C. Within 30 days of receipt of a dispute letter, the Authority shall issue a preliminary decision in writing, to be forwarded by certified mail to the party.
- D. Any party filing a dispute under subsection (B) that disagrees with a preliminary decision of the Authority may file a formal letter of appeal, explaining why the party disagrees with the preliminary decision, with the Board, provided the letter is received by the ~~executive director~~ Director not more than 15 days after the receipt by the party of the preliminary decision.
- E. The Board shall issue a final decision on issues appealed under subsection (D) not more than 60 days after receipt of the formal letter of appeal.

ARTICLE 4. WATER SUPPLY DEVELOPMENT REVOLVING FUND

R18-15-401. Water Supply Development Revolving Fund Financial Assistance Eligibility Criteria

- A. To be eligible to receive financial assistance from the Water Supply Development Revolving Fund, the applicant shall demonstrate the applicant is ~~a water provider as defined by A.R.S. § 49-1201(13)~~ an eligible entity as defined by A.R.S. § 49-1270(1); is requesting financial assistance for a purpose as defined in A.R.S. § 49-1273(A); the water provider meets the requirements of A.R.S. § 49-1273(C); and the proposed project appears on the Water Supply Development Revolving Fund ~~project list~~ Project Priority List developed under R18-15-402.
- B. Financial assistance from the Water Supply Development Revolving Fund may include loans, grants, other financial assistance, or a combination of any thereof.

R18-15-402. Water Supply Development Revolving Fund Project Priority List

- A. The Authority annually shall prepare a Water Supply Development Revolving Fund ~~project list~~ Project Priority List. The Authority is not required to prepare a Water Supply Development Revolving Fund ~~project list~~ Project Priority List if funds are not adequate to assist any projects or if the Board determines that no financial assistance will be offered for the annual funding cycle.
- B. An applicant pursuing financial assistance from the Authority for a water supply development project shall request to have the project included on the Water Supply Development Revolving Fund ~~project list~~ Project Priority List. The applicant may request that multiple projects be placed on the Water Supply Development Revolving Fund ~~project list~~ Project Priority List. An applicant shall make a request for placement of a project on the Water Supply Development Revolving Fund ~~project list~~ Project Priority List on or before a date specified by the Authority and in an application format specified by the Authority. The Authority shall include with the ~~project list~~ Project Priority List application form the criteria under each ranking category in R18-15-403(A) by which the project will be evaluated and the relative importance of each of the criterion.
- C. In preparing the Water Supply Development Revolving Fund ~~project list~~ Project Priority List, the Authority shall consider all ~~project list~~ Project Priority List applications submitted under subsection (B). The Authority shall evaluate the merits of each project with respect to water supply development issues and determine the order and priority of each project according to R18-15-403. At a minimum, the Water Supply Development Revolving Fund ~~project list~~ Project Priority List shall identify:
1. The applicant;
 2. Project title;
 3. A project description;
 - ~~3-4.~~ Population of the water provider's service area served;
 - ~~4-5.~~ The amount requested for financial assistance; and
 - ~~5-6.~~ The order and priority of each project, determined according to R18-15-403.
- D. The Authority shall provide for a public comment period of the draft Water Supply Development Revolving Fund ~~project list~~ Project Priority List for a minimum of 14 calendar days. The Authority shall summarize all written comments submitted and prepare responses for Board review. After review of the summary, the Board shall make any appropriate changes to the ~~project list~~ Project Priority List and then adopt the Water Supply Development Revolving Fund ~~project list~~ Project Priority List at a public meeting.
- E. After adoption of the annual ~~project list~~ Project Priority List, the ~~Board~~ Authority may allow:
1. Updates and corrections to the adopted Water Supply Development Revolving Fund ~~project list~~ Project Priority List, if the updates and corrections are adopted by the ~~Board~~ Authority after an opportunity for public notice; or
 2. Additions to the Water Supply Development Revolving Fund ~~project list~~ Project Priority List, if the additions are adopted by the ~~Board~~ Authority after an opportunity for public notice.
- F. After an opportunity for public notice, the ~~Board~~ Authority may remove a project from the Water Supply Development Revolving Fund ~~project list~~ Project Priority List under one or more of the following circumstances:
1. The recipient has received all financial assistance identified in the executed financial assistance agreement with the Authority;
 2. The project was financed from another source;
 3. The project is no longer an eligible project;
 4. The applicant requests removal; or
 5. The applicant is no longer an eligible applicant; ~~or~~
 6. ~~The applicant did not update, modify, correct or resubmit a project from the project list developed for the previous funding cycle.~~

R18-15-403. Water Supply Development Revolving Fund ~~Project List Ranking Order and Priority~~

- A. The Authority shall consider the ~~following categories~~ evaluative criteria listed in A.R.S. § 49-1274(B)(3) to determine the order and priority of each project on the Water Supply Development Revolving Fund ~~project list~~ Project Priority List.
- ~~1. The Authority shall evaluate the existing, near term, and long term water demands of the water provider as compared to the existing water supplies of the water provider.~~
 - ~~2. The Authority shall evaluate the existing and planned conservation and water management programs of the water provider.~~
 - ~~3. The Authority shall evaluate the current conditions of the water provider's facilities and the water provider's water supply needs, and evaluate how effectively the project will benefit the infrastructure or water supply needs.~~
 - ~~4. The Authority shall evaluate the sustainability of the water supply to be developed through the project.~~
 - ~~5. The Authority shall evaluate the applicant's need for financial assistance.~~
- B. Two or more projects may receive the same total points. If sufficient water supply development revolving loan funds are not available to fund the tied projects, ~~the Authority shall give priority to the project with the highest water demand score under subsection (A)(1).~~ If projects remain tied, priority will be given to the project with the highest conservation and water management score under subsection (A)(2). If projects remain tied, this process shall continue through the categories under subsections (A)(3) through (5), sequentially. ~~If projects continue to remain tied, the Board shall determine the priority of the tied projects.~~

R18-15-404. Water Supply Development Revolving Fund Application for Financial Assistance

- A. The Authority shall accept an application for financial assistance from an eligible applicant for a project that appears on the Water Supply Development Revolving Fund ~~project list~~ Project Priority List. At the Authority's discretion, the Authority may accept an application for financial assistance prior to the project appearing on a Board-adopted Water Supply Development Revolving Fund ~~project list~~ Project Priority List.
- B. The Authority shall not ~~forward~~ present an application for financial assistance to the Board for consideration until all the following conditions are met:
- ~~1. The water supply development project has been prioritized~~ project is on the Water Supply Development Revolving Fund Project Priority List;
 2. The applicant has provided supporting documentation according to R18-15-104;
 3. The applicant has demonstrated legal capability, financial capability, technical capability, and managerial capability under R18-15-104; and
 4. The applicant has demonstrated the ability to meet any applicable environmental requirements imposed by federal, state, or local agencies.

R18-15-405. Water Supply Development Revolving Fund Application Review for Financial Assistance

- A. The Authority shall evaluate and summarize each application for financial assistance received and develop an analysis that provides recommendations to the Board. The analysis shall include:
1. The scope, size, and budget of the proposed project, including as much cost detail as possible;
 2. A summary of the applicant's legal capability including authorization to enter into long-term indebtedness and to pledge the specified dedicated revenue source for repayment;
 3. A summary of the applicant's technical capability, including its ability to construct, operate and maintain the proposed project;
 4. A summary of the applicant's managerial capability, including the experience of elected officials and management team in managing similar organizations and similar projects;
 5. A summary of the applicant's financial capability, including:
 - a. The amount of money collected through the dedicated revenue source for repayment for each of the previous ~~three~~ five financial operating years (fiscal or calendar);
 - b. An estimate of the amount of money that will be collected through the dedicated revenue source for repayment for the current financial operating year (fiscal or calendar); and
 - c. A projection of the amount of money that will be collected through the dedicated revenue source for repayment for each of the next five financial operating years (fiscal or calendar);
 6. A summary of any previous assistance provided by the Authority to the applicant; ~~and~~
 7. A summary of the applicant's ability to meet any applicable permitting and environmental requirements imposed by federal, state, or local agencies;
 8. A recommendation of what type and amount of financial assistance to provide; and
 9. Any other information deemed necessary by the Authority.
- ~~B.~~ If any of the required information listed in subsection (A)(5) is not available, the Authority may assist the applicant in determining alternative documentation to support the applicant's financial capability.
- ~~BC.~~ The Board shall make a determination regarding the applicant's request for financial assistance at a public meeting. The Board shall base this determination on the information provided in the application, the analysis prepared by the Authority, and any other information provided at the public meeting. The Authority shall inform the applicant of the Board's determination, which may include recommended modifications to any of the following:
1. The scope of the proposed project;
 2. The applicant's legal structure and organization;
 3. The dedicated revenue source for repayment; or
 4. The structure of the financial assistance request.
- ~~D.~~ The Authority shall provide an opportunity for public comment prior to the Board's determination regarding the applicant's request for financial assistance. The opportunity for public comment does not need to occur at the same meeting in which the Board makes its determination regarding the applicant's request for financial assistance.
- ~~CE.~~ If the Board determines at any time during a funding cycle that funds are limited or are not available to provide financial assistance, the Authority shall notify applicants on the current Water Supply Development Revolving Fund ~~project list~~ Project Priority List that

the Authority is no longer accepting applications. The Board shall determine the amount of funding available, if any, to provide financial assistance for the applications by the Authority. The Board shall consider each application in the order the project appears on the current Water Supply Development Revolving Fund ~~project list~~ Project Priority List. The Board shall make a determination as described in subsection (BC) on each application until the available funds are committed.

- DE.** Upon ~~Board~~ approval of the applicant's request for financial assistance, the Authority shall prepare a financial assistance agreement for execution by the applicant and the Authority.

ARTICLE 9. LONG-TERM WATER AUGMENTATION FUND

R18-15-901. Long-Term Water Augmentation Fund Financial Assistance Eligibility Criteria

To be eligible to receive financial assistance from the Long-Term Water Augmentation Fund, the applicant shall demonstrate the applicant is an eligible entity as defined by A.R.S. § 49-1301(1), and is requesting financial assistance for a purpose as defined in A.R.S. § 49-1303(A)(6) or (7).

R18-15-902. Long-Term Water Augmentation Fund Request for Applications

- A.** The Authority shall commence a funding cycle for financial assistance from the Long-Term Water Augmentation Fund by issuing a Request for Applications.
- B.** Adequate public notice of the request for applications shall be given at least thirty days before the due date for the submittal of applications.
- C.** A Request for Applications shall include at least the following information:
1. A description of the Water Supply Development Projects eligible to apply;
 2. The total amount of available funds;
 3. Whether a single award or multiple awards may be made;
 4. Any additional information required by the applications;
 5. The criteria or factors under which applications will be evaluated for award and the relative importance of each criteria or factor; and
 6. The due date for submittal of applications and the anticipated time the awards may be made.
- D.** The Authority may hold a preapplication conference before the due date for submittal of applications to explain the application requirements. Preapplication Conferences shall be open to the public.
- E.** Applicants to the Long-Term Water Augmentation Fund shall submit applications in a form acceptable to the Authority.

R18-15-903. Long-Term Water Augmentation Fund Order and Priority

- A.** The Authority shall determine the Order and Priority of applications by applying the evaluative criteria listed in:
1. A.R.S. § 49-1304(A); and
 2. The Request for Applications.
- B.** For each funding cycle, the Authority shall evaluate and summarize each application received and develop an analysis that provides recommendations to the Long-Term Water Augmentation Committee. The analysis shall include, as applicable:
1. The scope, size, and budget of the proposed project, including as much cost detail as possible;
 2. A summary of the applicant's legal capability including authorization to enter into long-term indebtedness and to pledge the specified dedicated revenue source for repayment;
 3. A summary of the applicant's technical capability, including its ability to construct, operate and maintain the proposed project;
 4. A summary of the applicant's managerial capability, including the experience of elected officials and management team in managing similar organizations and similar projects;
 5. A summary of the applicant's financial capability, including:
 - a. The amount of money collected through the dedicated revenue source for repayment for each of the previous five financial operating years (fiscal or calendar);
 - b. An estimate of the amount of money that will be collected through the dedicated revenue source for repayment for the current financial operating year (fiscal or calendar); and
 - c. A projection of the amount of money that will be collected through the dedicated revenue source for repayment for each of the next five financial operating years (fiscal or calendar);
 6. A summary of any previous assistance provided by the Authority to the applicant;
 7. A summary of the applicant's ability to meet any applicable permitting and environmental requirements imposed by federal, state, or local agencies; and
 8. Any other information deemed necessary by the Authority.
- C.** If any of the required information listed in subsection (B)(5) is not available, the Authority may assist the applicant in determining alternative documentation to support the applicant's financial capability.
- D.** The Long-Term Water Augmentation Committee shall review all eligible applications received during a given funding cycle and provide recommendations to the Board regarding the order and priority of the applications. Specific numeric ranking is not required.
- E.** The Long-Term Water Augmentation Committee may recommend the adjustment of the budgets of the applications received individually or collectively.
- F.** The Long-Term Water Augmentation Committee may require an Applicant to provide additional information before making a recommendation to the Board.
- G.** The Authority may remove an application from consideration under a given funding cycle under one or more of the following circumstances:
1. The project was financed from another source;
 2. The proposed project is no longer an eligible project;
 3. The applicant requests removal;
 4. The applicant is no longer an eligible applicant; or

5. The applicant did not update, modify, correct or resubmit an Application Form in Response to a Request from the Authority.

R18-15-904. Long-Term Water Augmentation Fund Application for Financial Assistance

The Authority shall not present an application for consideration unless all of the following conditions are met:

1. The Application meets all requirements listed in the Request for Applications; and
2. The applicant has demonstrated legal capability, financial capability, technical capability, and managerial capability under R18-15-104.

R18-15-905. Long-Term Water Augmentation Fund Application Review For Financial Assistance

A. After an opportunity for public comment, the Board shall consider the Long-Term Water Augmentation Committee's recommendations and make a determination regarding applications for financial assistance at a public meeting. The Board shall base this determination on the information provided in the application, analysis prepared by the Authority, recommendation of the Long-Term Water Augmentation Committee; and any other information provided at the public meeting. The Authority shall inform the applicant of the Board's determination, which may include recommended modifications to any of the following:

1. The scope of the proposed project;
2. The applicant's legal structure and organization;
3. The dedicated revenue source for repayment; or
4. The structure of the financial assistance request.

B. The opportunity for public comment required under subsection (A) does not need to be at the same meeting in which the Board makes its determination regarding the applicant's request for financial assistance.

C. The Board may require an Applicant to provide additional information before making a determination regarding a request for financial assistance.

D. The Board may award financial assistance to an application regardless of the recommended order and priority of applications, provided the Board documents the specific justifications for the action taken during a public meeting.

E. If the Board determines at any time during a funding cycle that funds are limited or are not available to provide financial assistance, the Authority shall notify applicants with pending applications. The Board shall determine the amount of funding available, if any, to make available for the remaining applications received under a given funding cycle. The Board shall make a determination as described in subsection (C) on each application until the available funds are committed.

F. Upon approval of an application, the Authority shall prepare an agreement for execution by the applicant and the Authority. The terms of the agreement shall be determined by the Authority.

R18-15-906. Long-Term Water Augmentation Fund Requirements

The duly authorized agent, principal or officer of the applicant shall certify the applicant has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practices relating to or in connection with facilities planning, design, or construction work on a project.

ARTICLE 10. WATER CONSERVATION GRANT FUND

R18-15-1001. Water Conservation Grant Fund Eligibility Criteria

A. To be eligible to receive financial assistance from the Water Conservation Grant Fund, the applicant shall demonstrate the applicant is an eligible entity as defined by A.R.S. § 49-1301 or has partnered with an eligible entity as defined in A.R.S. § 49-1301 pursuant to A.R.S. § 49-1333(A), and is requesting a grant for a purpose as defined in A.R.S. § 49-1332(B).

B. An applicant shall commit to a matching contribution toward the total program or project cost as specified in A.R.S. § 49-1333(B)(4). The matching contribution may include cash contributions or in-kind contributions. The matching contribution may not include any monies provided by the Authority.

R18-15-1002. Water Conservation Grant Fund Request for Grant Applications

A. The Authority shall commence a funding cycle for financial assistance from the Water Conservation Grant Fund by issuing a Request for Grant Applications.

B. Adequate public notice of the Request for Grant Applications shall be given at least thirty days before the due date for the submittal of applications.

C. A Request for Grant Applications shall include at least the following information:

1. A description of the nature of the grant project, including the scope of the work to be performed by an awardee;
2. An identification of the funding source and the total amount of available funds;
3. Whether a single award or multiple awards may be made;
4. Encouragement of collaboration by entities for community partnerships, if appropriate;
5. Any additional information required by the applications;
6. The criteria or factors under which applications will be evaluated for award and the relative importance of each criteria or factor; and
7. The due date for submittal of applications.

D. The Authority may hold a preapplication conference before the due date for submittal of applications to explain the grant application requirements. Preapplication Conferences shall be open to the public.

E. Applicants to the Water Conversation Grant Fund shall submit applications in a form acceptable to the Authority.

R18-15-1003. Water Conservation Grant Fund Order and Priority

A. The Authority shall determine the Order and Priority of applications by applying the evaluative criteria listed in:

1. A.R.S. § 49-1334; and
2. The Request for Grant Applications.

- B.** For each funding cycle, the Authority shall evaluate and summarize each Grant application received and develop an analysis that provides recommendations to the Water Conservation Grant Committee. The analysis shall include, as applicable:
1. The scope, size, and budget of the proposed Program or project, including as much cost detail as possible;
 2. The estimated water savings of the Proposed Program or Project;
 3. A summary of any previous assistance provided by the Authority to the applicant; and
 4. Any other information deemed necessary by the Authority.
- C.** In evaluating applications to the Water Conservation Grant Fund, the Authority shall apply following definitions:
1. "Program" means activities that occur in multiple phases over an established timeframe, and that may result in multiple deliverables.
 2. "Project" means activities that are confined to a particular time and place, and that result in a single deliverable.
- D.** The Water Conservation Grant Committee shall review all eligible Grant applications received during a given funding cycle and provide recommendations to the Board regarding the order and priority of the Grant applications. Specific numeric ranking is not required.
- E.** The Water Conservation Grant Committee shall provide an opportunity for public comment on the applications during a public meeting.
- F.** The Water Conservation Grant Committee may recommend the adjustment of the budgets of the applications received individually or collectively.
- G.** The Water Conservation Grant Committee may require an Applicant to provide additional information before making a recommendation to the Board.
- H.** The Authority may remove an application from consideration under a given funding cycle under one or more of the following circumstances:
1. The project was financed from another source;
 2. The proposed project is no longer an eligible project;
 3. The applicant requests removal;
 4. The applicant is no longer an eligible applicant; or
 5. The applicant did not update, modify, correct, or resubmit an Application Form in Response to a Request from the Authority.

R18-15-1004. Water Conservation Grant Fund Application for Financial Assistance

The Authority shall not present an application for consideration unless all the following conditions are met:

1. The application meets all requirements listed in the Request for Grant Applications; and
2. The applicant has demonstrated to the satisfaction of the Authority, an ability to timely perform the program or project.

R18-15-1005. Water Conservation Grant Fund Awards

- A.** After an opportunity for public comment, the Board shall consider the Water Conservation Grant Committee's recommendations and shall determine grant awards during a public meeting.
- B.** The Board may make modifications to recommendations from the Water Conservation Grant Committee including:
1. Adjustment of an application's budget by an amount or percentage;
 2. Adjustment of the order and priority of an individual application or a collective group of applications; or
 3. Any other modifications deemed necessary by the Board.
- C.** If the Board does not affirm the recommendations of the Water Conservation Grant Fund, the Board shall document the specific justifications for the action taken during a public meeting.
- D.** The opportunity for public comment required under subsection (A) does not need to be at the same meeting in which the Board makes its determination regarding grant awards.
- E.** The Board may require an Applicant to provide additional information before making a determination regarding a grant award.
- F.** After Board approval of a grant application, the Authority shall enter into a grant agreement with the grant recipient. The terms of the grant agreement shall be determined by the Authority.

R18-15-1006. Water Conservation Grant Fund Requirements

The duly authorized agent, principal or officer of the applicant shall certify the applicant has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practices relating to or in connection with the submission of a grant application to the Water Conservation Grant Fund.

NOTICES OF FINAL EXPEDITED RULEMAKING

This section of the Arizona Administrative Register contains Notices of Final Expedited Rulemakings. An agency prepares these notices under A.R.S. § 41-1013(9).

Expedited rulemaking is an accelerated rulemaking process that does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. Other requirements to conduct expedited rulemaking are listed under A.R.S. § 41-1027.

Under the law an agency is required to file a Notice of Proposed Expedited Rulemaking for review. The notices in

this section include Register publication dates where the Notices of Proposed Expedited Rulemaking were published.

The Office of the Secretary of State is the filing office and publisher of these rules.

Questions about the interpretation of expedited rules should be addressed to the agency promulgating the rules.

Refer to item 4 to contact the person charged with the rulemaking.

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 2. DEPARTMENT OF HEALTH SERVICES
TOBACCO-RELATED PROGRAMS

[R24-12]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action
2. Citations to the agency's statutory authority for the rulemaking to include the authorizing statute (general) and the implementing statute (specific):
3. The effective date of the rules:
4. Citations to all related notices published in the Register that pertain to the record of the final expedited rulemaking:
5. The agency's contact person who can answer questions about the rulemaking:
6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027, to include an explanation about the rulemaking:

able; correct cross-references; remove redundant language; and clarify language without changing the effect of the rule, specifically in regards to the type of documentation a retail tobacco store submits to the Department to show that at least 51% of the retail tobacco store’s gross income sales are on tobacco products and accessories. This rulemaking is expected to benefit the general public as well as businesses that identify as a retail tobacco store.

7. 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:

The Department did not review or rely on any study for this rulemaking.

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:

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

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

Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the rulemaking.

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

No comments were received about 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:

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 the issuance of a regulatory permit. Therefore, a general permit is not applicable.

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

Federal laws do not apply to the rule.

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 such 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 rules:

None

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 as an emergency rule.

15. The full text of the rule follows:

**TITLE 9. HEALTH SERVICES
CHAPTER 2. DEPARTMENT OF HEALTH SERVICES
TOBACCO-RELATED PROGRAMS**

ARTICLE 1. SMOKE-FREE ARIZONA

Section	
R9-2-101.	Definitions
R9-2-107.	Retail Tobacco Store
R9-2-110.	Determination of Violation

ARTICLE 1. SMOKE-FREE ARIZONA

R9-2-101. Definitions

In addition to the definitions in A.R.S. § 36-601.01(A), the following definitions apply in this Article unless otherwise specified:

1. “Adult day care” means “adult day health care facility” as defined in A.R.S. § 36-401.
2. “Ashtray” means any receptacle that is designed for disposing of the debris from smoking materials such as ash, cigarette butts or filters, or cigar stubs.
3. “Calendar quarter” means a period from:
 - a. January 1 through March 31,
 - b. April 1 through June 30,
 - c. July 1 through September 30, or

- d. October 1 through December 31.
4. “Child care facility” has the meaning in A.R.S. § 36-881.
5. “Child care group home” has the meaning in A.R.S. § 36-897.
6. “Complaint” means a written or oral statement of a possible violation of A.R.S. § 36-601.01.
7. “Contiguous area” means a place that:
 - a. Is physically attached to a public place or non-vehicle place of employment; or
 - b. Is separated from the public place or non-vehicle place of employment only by other places controlled by the proprietor of the public place or non-vehicle place of employment.
8. “Controlled” means under the authority and responsibility of a proprietor.
9. “Department” means the Arizona Department of Health Services.
10. “Department’s designee” means a state agency or political subdivision to which the Department delegates any functions, powers, or duties under A.R.S. § 36-601.01.
11. “Drift” means the physical movement of tobacco smoke, regardless of cause, into any area where smoking is prohibited by A.R.S. § 36-601.01.
12. “Emergency exit” means a doorway in a building or facility used for egress to the outdoors only when there is an immediate threat to the health or safety of an individual.
13. “Entering” means an individual going into or leaving a building or facility.
14. “Entrance” means a doorway in a building or facility that:
 - a. Is used by an individual for ingress from the outdoors or egress to the outdoors, and
 - b. Excludes:
 - i. An emergency exit, and
 - ii. A doorway for outdoor patio patrons.
15. “Health care institution” means a building or facility regulated under A.R.S. Title 36, Chapter 4.
16. “Health care professional” means one of the following individuals regulated under A.R.S. Title 32 or A.R.S. Title 36, Chapter 6, Article 7 or Chapter 17, including:
 - a. A podiatrist;
 - b. A doctor of chiropractic or chiropractic assistant;
 - c. A dentist, dental consultant, dental hygienist, or denturist;
 - d. A doctor of medicine;
 - e. A doctor of naturopathic medicine or naturopathic medical assistant;
 - f. A registered nurse practitioner, registered nurse, practical nurse, registered or practical nurse licensed by a state other than Arizona and practicing in Arizona according to the Nurse Licensure Compact, ~~A.R.S. § 32-1668~~ A.R.S. § 32-1660, or nursing assistant;
 - g. A dispensing optician;
 - h. An optometrist;
 - i. A doctor of osteopathic medicine;
 - j. A pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee;
 - k. A physical therapist or physical therapist assistant;
 - l. A psychologist;
 - m. A veterinarian or veterinary technician;
 - n. A physician assistant;
 - o. A radiologic technologist, including a practical radiologic technologist in podiatry, unlimited practical radiologic technologist, nuclear medicine technologist, or practical technologist in bone densitometry;
 - p. A homeopathic physician or a medical assistant employed by a homeopathic physician;
 - q. A behavioral health professional, including a baccalaureate social worker, master social worker, clinical social worker, professional counselor, associate counselor, marriage and family therapist, associate marriage and family therapist, associate substance abuse counselor, independent substance abuse counselor, or substance abuse technician;
 - r. An occupational therapist or occupational therapy assistant;
 - s. A respiratory therapist or respiratory therapy technician;
 - t. An acupuncturist;
 - u. An athletic trainer;
 - v. A massage therapist;
 - w. A midwife;
 - x. A hearing aid dispenser;
 - y. An audiologist; or
 - z. A speech-language pathologist or speech-language pathology assistant.
17. “Open to the general public” means when the proprietor of a veterans or fraternal club permits an individual who is not a member, an employee, or a bona fide guest as defined in A.R.S. § 4-101 to be present in the veterans or fraternal club.
18. “Outdoor patio” means an area designated by a proprietor according to R9-2-108(A).
19. “Outdoor patio patron” means an individual who is occupying an outdoor patio.
20. “Permeable” means permitting tobacco smoke to pass through.
21. “Private residence” means a structure, other than a health care institution, where an individual lives and sleeps.
22. “Proprietor” means an owner, operator, manager or other person in control of a public place or a place of employment.
23. “Reasonable distance” means the distance that meets the requirements in R9-2-102(A).
24. “Tobacco products and accessories” means:
 - a. Smoking materials such as cigars, cigarettes, or pipe tobacco; and

- b. Smoking-related materials such as lighters, humidors, pipes, or cigarette cases.
- 25. "Vehicle" means motor vehicle as defined in A.R.S. § 28-101.
- 26. "Ventilation system" means the natural or mechanical means of supplying air to, or removing air from a space.

R9-2-107. Retail Tobacco Store

- A. A proprietor may permit smoking in a retail tobacco store only if the retail tobacco store meets the definition in A.R.S. § 36-601.01(A)(10) and the requirements in A.R.S. § 36-601.01(B)(3) and this Section.
- B. The proprietor of a retail tobacco store where smoking is permitted and that begins operating after January 1 of a calendar year shall complete, by the retail tobacco store's first day of operation, an affidavit that contains:
 - 1. The name of the proprietor of the retail tobacco store,
 - 2. The name and address of the retail tobacco store,
 - 3. A statement that the proprietor of the retail tobacco store has personal knowledge of the facts supporting the affidavit,
 - 4. A statement that the retail tobacco store expects to derive at least 51 percent of its gross income during each calendar year from the sale of tobacco products and accessories as required by A.R.S. § 36-601.01,
 - 5. A statement describing the documents that contain the facts supporting the statement in subsection (B)(4),
 - 6. The signature of the proprietor of the retail tobacco store,
 - 7. An Arizona notary's signature certifying that the proprietor swore to or affirmed the truthfulness of the statements in the affidavit, and
 - 8. The date of the Arizona notary's signature.
- C. The proprietor of a retail tobacco store where smoking is permitted and that has been in operation for at least an entire calendar year shall complete, by January 31 of each year, an affidavit that contains:
 - 1. The name of the proprietor of the retail tobacco store;~~;~~
 - 2. The name and address of the retail tobacco store;~~;~~
 - 3. A statement that the proprietor of the retail tobacco store has personal knowledge of the facts supporting the affidavit;~~;~~
 - 4. A statement that the retail tobacco store derived at least 51 percent of its gross income during the previous calendar year from the sale of tobacco products and accessories;~~;~~
 - 5. A statement describing the documents that contain the facts supporting the statement in subsection (C)(4), supporting documentation may include sales slips, invoices, receipts, and deposit slips;
 - 6. The signature of the proprietor of the retail tobacco store;~~;~~
 - 7. An Arizona notary's signature certifying that the proprietor swore to or affirmed the truthfulness of the statements in the affidavit;~~;~~ and
 - 8. The date of the Arizona notary's signature.
- D. If the Department or the Department's designee receives a complaint under R9-2-109(A) about a retail tobacco store where smoking is permitted, the proprietor of the retail tobacco store shall provide to the Department or the Department's designee:
 - 1. The affidavit under subsection (B) or the most current affidavit under subsection (C), whichever is appropriate; and
 - 2. Documents that enable the Department or the Department's designee to determine the percent of gross income derived from the sale of tobacco products and accessories:
 - a. For the calendar quarter immediately preceding the date of the complaint; or
 - b. If the retail tobacco store was not in operation for the entire calendar quarter immediately preceding the date of the complaint, for the period beginning on the date the retail tobacco store opened and ending on the date of the complaint.
- E. The proprietor of a retail tobacco store where smoking is permitted shall retain on the premises of the retail tobacco store and make available to the Department or the Department's designee upon request:
 - 1. The affidavit under subsection (B) or the most current affidavit under subsection (C), whichever is appropriate; and
 - 2. The documents:
 - a. Identified under subsection (B)(5) or subsection (C)(5), whichever is appropriate; and
 - b. Required under subsection (D)(2).

R9-2-110. Determination of Violation

In determining whether a violation of A.R.S. § 36-601.01 has occurred, the Department or the Department's designee shall consider the following:

- 1. The presence of an ashtray in an area where smoking is prohibited;
- 2. The lack of a sign that is required under A.R.S. § 36-601.01(E) or the presence of a sign that does not meet the requirements of R9-2-105;
- 3. The presence of smoking in an area where smoking is prohibited;
- 4. The presence of tobacco ashes, cigarette butts or filters, or cigar stubs in an area where smoking is prohibited;
- 5. The presence of tobacco smoke that drifts into a place of employment or public place through entrances, windows, ventilation systems, or other means; and
- 6. Except as provided in R9-2-108(D) and R9-2-108(E), the presence of tobacco smoke within a reasonable distance from entrances, open windows, or ventilation systems.

NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

[R24-13]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action**
- | | |
|----------|-------|
| R9-8-118 | Amend |
| R9-8-403 | Amend |
| R9-8-701 | Amend |
| R9-8-702 | Amend |
| R9-8-703 | Amend |
| R9-8-705 | Amend |
| R9-8-706 | Amend |
| R9-8-707 | Amend |
| R9-8-708 | Amend |
| R9-8-711 | Amend |
| R9-8-801 | Amend |
- 2. Citations to the agency's statutory authority for the rulemaking to include the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statute: A.R.S. §§ 36-132(A)(1) and A.R.S. § 36-136(G)
 Implementing statute: A.R.S. § 36-136(Q), as amended by Laws 2021, Ch. 118
- 3. The effective date of the rules:**
 January 10, 2024 (*upon filing with the Office of the Secretary of State*)
- 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 expedited rulemaking:**
 Notice of Rulemaking Docket Opening: 28 A.A.R. 2169, September 15, 2023
 Notice of Proposed Expedited Rulemaking: 29 A.A.R. 2157, September 15, 2023
- 5. The agency's contact person who can answer questions about the expedited rulemaking:**
- Name: Jennifer Botsford, Bureau Chief
 Address: Department of Health Services
 Division of Public Health Services, Public Health Preparedness,
 Bureau of Environmental Health Services
 150 N. 18th Ave., Suite 220
 Phoenix, AZ 85007
 Telephone: (602) 364-3142
 Fax: (602) 364-3146
 Email: Jennifer.Botsford@azdhs.gov
- or
- Name: Myrna Motta, Office Chief
 Address: Department of Health Services
 Division of Public Health Services, Public Health Preparedness,
 Bureau of Environmental Health Services
 Office of Food Safety and Environmental Services
 150 N. 18th Ave., Suite 220
 Phoenix, AZ 85007
 Telephone: (602) 364-0929
 Fax: (602) 364-3146
 Email: Myrna.Motta@azdhs.gov
- or
- Name: Stacie Gravito, Interim Office Chief
 Address: Department of Health Services
 Office of Administrative Counsel and Rules
 150 N. 18th Ave., Suite 200
 Phoenix, AZ 85007-3232
 Telephone: (602) 542-1020
 Fax: (602) 364-1150
 Email: Stacie.Gravito@azdhs.gov

6. **An agency's justification and reason why a rule should be made, amended, repealed or renumbered, under A.R.S. § 41-1027, to include an explanation about the rulemaking:**
 Arizona Revised Statutes (A.R.S.) § 36-136, as amended by Laws 2021, Ch. 118, requires the Arizona Department of Health Services (Department) to add exemption requirements for small businesses licensed by the Department of Liquor Licenses and Control as a microbrewery, farm winery or craft distillery. The Department plans to amend the rules in Chapter 8, Article 1 to comply with the statutory changes made by Laws 2021, Ch. 118. The Department also plans to amend Article 4, as authorized by A.R.S. Title 36, Chapter 39, and Article 8, as authorized by A.R.S. § 36-136(I)(10). In addition, the Department plans to amend the rules in Article 7, as specified in A.R.S. § 36-136(I)(9), to correct cross-references and clarify language in the rules. After obtaining an exception from the Governor's rulemaking moratorium established under Executive Order 2022-01, and rulemaking approval pursuant to A.R.S. § 41-1039, the Department is making changes to the rules in 9 A.A.C. 8 to comply with the legislative requirement; improve the effectiveness of the rules, and make them less burdensome; correct cross-references; amend rules that are outdated, redundant, or otherwise no longer necessary; and make the rules clearer, more concise, and more understandable. The changes to be made will not increase the cost of regulatory compliance, increase a fee, or reduce the procedural rights of persons regulated, but reduce a burden due to outdated requirements without compromising health and safety.
7. **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:**
 The Department did not review or rely on any study for this rulemaking.
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:**
 Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.
10. **A description of any changes between the proposed expedited rulemaking, including supplemental notices, and the final expedited rulemaking:**
 Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the rulemaking.
11. **Agency's summary of the public or stakeholder comments or objections made about the rulemaking and the agency response to the comments:**
 The Department did not receive public or stakeholder comments about the 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:**
 There are no other matters prescribed by statute applicable specifically to the Department or this specific rulemaking.
 - 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 the issuance of a regulatory permit. Therefore, a general permit is not applicable.
 - 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:**
 There are no federal rules applicable to the subject of the rule.
 - 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 business competitiveness analysis was submitted to the Department.
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. **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 as an emergency rule.
15. **The full text of the rule follows:**

TITLE 9. HEALTH SERVICES
 CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
 FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

ARTICLE 1. FOOD ESTABLISHMENTS

Section
 R9-8-118. Exempt from Requirements and Inspections

ARTICLE 4. CHILDREN'S CAMPS

Section
R9-8-403. Time-frames

ARTICLE 7. PUBLIC SCHOOLS

Section
R9-8-701. Definitions
R9-8-702. General Provisions
R9-8-703. Restroom, Bathroom, and Shower Room Requirements
R9-8-705. Indoor Areas
R9-8-706. Water Supply
R9-8-707. Sewage Disposal
R9-8-708. Refuse Management
R9-8-711. Inspections

ARTICLE 8. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND BATHING PLACES

Section
R9-8-801. Definitions

ARTICLE 1. FOOD ESTABLISHMENTS**R9-8-118. Exempt from Requirements and Inspections**

- A.** Except as provided in subsection (B), this Article applies to any FOOD ESTABLISHMENT.
- B.** This Article does not apply to the following, which are not subject to routine inspection or other regulatory activities by a REGULATORY AUTHORITY:
1. The beneficial use of wildlife meat authorized in A.R.S. § 17-240 and 12 A.A.C. 4, Article 1;
 2. Group homes, as defined in A.R.S. § 36-551;
 3. Child care group homes, as defined in A.R.S. § 36-897 and licensed under 9 A.A.C. 3;
 4. Residential group care facilities, as defined in A.A.C. R6-5-7401 that have 20 or fewer clients;
 5. Assisted living homes, as defined in A.R.S. § 36-401(A) and licensed under 9 A.A.C. 10, Article 8;
 6. Adult day health care facilities, as defined in A.R.S. § 36-401(A) and licensed under 9 A.A.C. 10, Article 11, that are authorized by the Department to provide services to 15 or fewer participants;
 7. Behavioral health residential facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 7, that are authorized by the Department to provide services to 10 or fewer residents;
 8. Hospice inpatient facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 6, that are authorized by the Department to provide services for 20 or fewer patients;
 9. Substance abuse transitional facilities, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 14, that are authorized by the Department to provide services to 10 or fewer participants;
 10. Behavioral health respite homes, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 16;
 11. Adult behavioral health therapeutic homes, as defined in A.A.C. R9-10-101 and licensed under 9 A.A.C. 10, Article 18;
 12. FOOD that is:
 - a. Served at a noncommercial social event, such as a potluck;
 - b. Prepared at a cooking school if:
 - i. The cooking school is conducted in the kitchen of an owner-occupied home,
 - ii. Only one meal per day is prepared and served by students of the cooking school,
 - iii. The meal prepared at the cooking school is served to not more than 15 students of the cooking school, and
 - iv. The students of the cooking school are provided with written notice that the FOOD is prepared in a kitchen that is not regulated or inspected by a REGULATORY AUTHORITY;
 - c. Not ~~potentially hazardous~~ time/temperature control for safety food and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes;
 - d. Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising, or an employee social event;
 - e. A demonstration of FOOD preparation or cooking class offered by:
 - i. A culinary school or educational institution and all FOOD prepared is consumed by attending students;
 - ii. A school or business and samples are not offered for human consumption; and
 - iii. A business where an individual provides, prepares, cooks, and consumes their own FOOD.
 - f. Offered at a child care facility and limited to commercially pre-packaged FOOD that is not ~~potentially hazardous~~ time/temperature control for safety food and whole fruits and vegetables that are washed and cut onsite for immediate consumption; or
 - g. Offered at locations that sell only commercially pre-packaged FOOD that is not ~~potentially hazardous~~ time/temperature control for safety food;
 13. A cottage FOOD product, as defined in A.R.S. § 36-136(Q), prepared for commercial purposes that:
 - a. Is not ~~potentially hazardous~~ time/temperature control for safety food as defined in A.R.S. § 36-136(I)(4)(g); or
 - b. Is not a FOOD that requires time and temperature control for safety to limit pathogenic microorganism growth or toxin formation; and
 - c. Is prepared in the kitchen of a home by a food preparer or under the supervision of an individual who:
 - i. Has a certificate of completion from completing a food handler training course from an accredited program;

- ii. Maintains an active certification of completion; and
- iii. If a food preparer, is registered with the Department, as required in A.R.S. § 36-136(I)(4)(g) and specified in subsection (D); and
- d. Is PACKAGED at the home with an attached label that includes:
 - i. The name, and registration number of the food preparer registered with the Department as specified in subsection (D);
 - ii. A list of the ingredients in the cottage FOOD;
 - iii. The date the cottage FOOD was prepared; and
 - iv. The statement: This product was produced in a home kitchen that may process common FOOD allergens and is not subject to public health inspection; and
 - v. If applicable, a statement that the cottage FOOD was prepared in the home kitchen of a facility for individuals with developmental disabilities.
- 14. Fruits and vegetables grown in a garden at a public school, as defined in A.R.S. § 15-101, that are washed and cut on-site for immediate consumption.
- 15. Microbreweries, farm wineries, or craft distilleries licensed by the Department of Liquor Licenses and Control that sell only commercially prepackaged wrapped foods, crackers, or pretzels that are not time or temperature controlled and are served for immediate consumption.
- 16. Spirituos liquor, as defined in A.R.S. § 4-101, produced on the premises licensed by the Department of Liquor Licenses and Control including the area in which production and manufacturing of spirituous liquor occurs and does not provide, allow, or expose a common use cup, glass, or other receptacle used for drinking purposes without the receptacle being thoroughly cleansed and sanitized between consecutive uses, as specified in A.R.S. § 36-136.
- C. A food preparer who meets the requirements in subsection (B)(13) is authorized to prepare cottage FOOD for commercial purpose.
- D. To be exempt from the requirements in this Article, a food preparer identified in subsection (C) shall:
 - 1. Complete a food handler training course from an accredited program;
 - 2. Register with the Department by submitting:
 - a. An application in a Department-provided format that includes:
 - i. The food preparer's name, address, telephone number, and e-mail address;
 - ii. If the food preparer is supervised, the supervisor's name, address, telephone number, and e-mail address;
 - iii. The address, including the county, of the home where the cottage FOOD is prepared;
 - iv. Whether the home where the cottage FOOD is prepared is a facility for developmentally disabled individuals; and
 - v. A description of each cottage FOOD prepared for commercial purposes;
 - b. A copy of the food preparer's certificate of completion for the completed food handler training course;
 - c. If the food preparer is supervised, the supervisor's certificate of completion for the completed food handler training course; and
 - d. An attestation in a Department-provided format that the food preparer:
 - i. Has reviewed Department-provided information on FOOD safety and safe FOOD handling practices;
 - ii. Based on the Department-provided information, believes that the cottage FOOD prepared for commercial purposes is not ~~potentially hazardous~~ time/temperature control for safety food or is not a FOOD that requires time or temperature control for safety to limit pathogenic microorganism growth or toxin formation; and
 - iii. Includes the food preparer's printed name and date.
 - 3. Maintain an active certification of completion for the completed food handler training course;
 - 4. Renew the registration in subsection (D)(2) every three years;
 - 5. Submit any change to the information or documents provided according to subsection (D)(2)(a) through (c) to the Department within 30 calendar days after the change; and
 - 6. Display the food preparer's certificate of registration when operating as a temporary FOOD ESTABLISHMENT and selling cottage FOOD.
- E. Food establishments shall have until January 31, 2022 to comply with the certified food protection manager requirement specified in this Article.

ARTICLE 4. CHILDREN'S CAMPS

R9-8-403. Time-frames

- A. The overall time-frame described in A.R.S. § 41-1072 for an initial or a renewal license granted by the Department or county is 60 days. The applicant and the Department or a county may agree in writing to extend the substantive review time-frame and the overall time-frame. An extension of the substantive time-frame and the overall time-frame shall not exceed 25% of the overall time-frame.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072 for an initial or a renewal license granted by the Department or a county is 30 days and begins on May 1 of each year or on the date the application is received if after May 1.
 - 1. The Department or a county shall ~~mail~~ provide written notice of administrative completeness or deficiencies to the applicant within the administrative completeness review time-frame.
 - a. A notice of deficiencies shall list each deficiency and the information and documentation needed to complete the license application.
 - b. If the Department or a county issues a notice of deficiencies within the administrative completeness review time-frame, the administrative completeness review time-frame and the overall time-frame are suspended from the date that the notice is issued until the date the Department or a county receives the missing information from the applicant.
 - c. If the applicant fails to submit to the Department or a county all the information and documents listed in the notice of deficiencies within 60 days of the date the Department or a county ~~mailed~~ provided the notice of deficiencies, the Department or county deems the license application withdrawn.

2. If the Department or a county issues a license to the applicant during the administrative completeness review time-frame, the Department or a county does not issue a separate written notice of administrative completeness.
- C. The substantive review time-frame described in A.R.S. § 41-1072 is 30 days and begins on the date the notice of administrative completeness is ~~mailed~~ provided to the applicant.
1. The Department or a county shall ~~mail~~ provide a children's camp license or a written notification of denial of the license application to the applicant within the substantive review time-frame.
 2. As part of the substantive-review time-frame for a children's camp license, the Department or a county may conduct an inspection of the children's camp to determine whether the children's camp has complied with the applicable requirements in subsection (C)(4) or (C)(5).
 3. If the Department or a county issues a comprehensive written request or supplemental request for information, the substantive review time-frame and the overall time-frame are suspended from the date the Department or a county issues the request until the date the Department or a county receives all of the information.
 4. If an applicant applying to the Department meets all the requirements under ~~A.R.S. Title 8, Chapter 6, Article 1~~ A.R.S. Title 36, Chapter 39, Article 1, and these rules, the Department shall issue a license to the applicant.
 5. If an applicant applying to a county meets all the requirements under ~~A.R.S. Title 8, Chapter 6, Article 1~~ A.R.S. Title 36, Chapter 39, Article 1, these rules, and county requirements consistent with A.R.S. Title 8, Chapter 6, Article 1, a county shall issue a license to the applicant.
 6. If the Department or a county disapproves a license application, the Department or a county shall send the applicant a written notice of disapproval setting forth the reasons for disapproval and all other information required in A.R.S. § 41-1076.
- D. If a time-frame's last day is on a Saturday, Sunday, or legal holiday, the Department or a county considers the next business day as the time-frame's last day.

ARTICLE 7. PUBLIC SCHOOLS

R9-8-701. Definitions

In this Article, unless otherwise specified:

1. ~~"Ample water supply" means sufficient water quantity and water pressure to operate all of a school's drinking fountains, bathtubs, showers, lavatories, water closets, and urinals at all times from:~~
 - a. ~~A public water system that complies with 18 A.A.C. 4; or~~
 - b. ~~An underground water source that complies with 18 A.A.C. 11, Articles 4 and 5 or with A.R.S. § 45-811.01.~~
2. 1. "Animal" means a mammal, bird, reptile, amphibian, fish or invertebrate, such as an insect, spider, worm, snail, clam, crab, or starfish.
3. ~~"Aquifer" means the same as in A.R.S. § 49-201.~~
4. 2. "Bathroom" means a restroom that contains a shower head or bathtub.
5. 3. "Bathtub" means a receptacle, in which a user sits, with a faucet that supplies hot and cold water, or warm water, for filling the receptacle and a drain connected to a ~~sanitary sewer~~ sewage collection system.
6. 4. "Bottled water" means the same as in R9-8-201.
7. 5. "Bottled water cooler" means a device that is not connected to a plumbing system and provides a vertically falling stream of drinking water from a source approved by the Department under 9 A.A.C. 8, Article 2, or that complies with 18 A.A.C. 4; 18 A.A.C. 11, Articles 4 and 5, or A.R.S. § 45-811.01.
8. ~~"Calendar year" means January 1 through December 31.~~
9. 6. "Classroom" means an interior area of a school used primarily for instruction of students.
10. 7. "Clean" means ~~free of dirt or debris; free of dirt, litter, or the remains of something that has been broken or torn into pieces.~~
11. 8. "Cold water" means water with a temperature from 33° F to 74° F.
12. 9. "Common drinking cup" means a hand-held container not connected to a plumbing system that:
 - a. Holds liquid for human consumption,
 - b. Comes into contact with a user's mouth, and
 - c. Is used by more than one individual.
13. ~~"Complaint" means information indicating the need for inspection due to possible violations of this Article.~~
14. ~~"Constructed underground storage facility" means the same as in A.R.S. § 45-802.01.~~
15. ~~"Debris" means litter or the remains of something that has been broken or torn into pieces.~~
16. 10. "Department" means the Arizona Department of Health Services.
17. 11. "Device" means a piece of equipment that performs a specific function.
18. 12. "Drinking fountain" means a fixture connected to a plumbing system that provides a non-vertical stream of drinking water from an opening and drains into a ~~sanitary sewer~~ sewage collection system.
19. 13. "Drinking water" means water for human consumption that meets the requirements of 18 A.A.C. 4, or 18 A.A.C. 11, Article 4.
20. 14. "Dumpster" means a container designed for mechanical lifting and dumping by a refuse collection vehicle that transports the container's contents.
21. 15. "Faucet" means a fixture connected to a plumbing system that provides and regulates the flow of drinking water from the plumbing system.
22. 16. "Fixture" means a permanent attachment to a structure.
23. 17. "Floor drain" means an opening in a floor surface that leads to a ~~sanitary sewer~~ sewage collection system.
24. 18. "Food establishment" means an entity that stores, prepares, packages, serves, or otherwise provides food for human consumption directly to a consumer or indirectly through a delivery service.
25. 19. "Habitat" means a place where an animal is kept while on school grounds.
26. 20. "Hot water" means water with a temperature from 95° F to 120° F.

- ~~27-21.~~ “Human consumption” means an individual’s use of water for activities such as drinking, bathing, showering, handwashing, cooking, dishwashing, laundering, cleaning, or using a water closet.
- ~~28.~~ “Hydration” means the process of replacing fluids lost by a human body.
- ~~29-22.~~ “Lavatory” means a sink or a basin with a faucet that supplies hot and cold water, or warm water, and with a drain connected to a sanitary sewer sewage collection system.
- ~~30.~~ “Local health department” means:
- ~~a.~~ The administrative division of an Arizona county, city, or town that manages environmental and health-related issues; or
 - ~~b.~~ A public health services district under A.R.S. Title 48, Chapter 33.
- ~~31.~~ “Managed underground storage facility” means the same as in A.R.S. § 45-802.01.
- ~~32-23.~~ “Non-absorbent” means not capable of absorbing or soaking up liquids.
- ~~33-24.~~ “Non-classroom” means an indoor area in a school, such as the school office, nurse’s office, library, or cafeteria, that are not used primarily for instruction of students.
- ~~34-25.~~ “Overflow rim” means the raised edge around a drinking fountain’s basin.
- ~~35-26.~~ “Participant” means:
- a. A member of the staff or a student of a school, or
 - b. A member of the staff or a student from another school, when the individual is present on the grounds of the school specified in subsection (a) for a school-organized activity.
- ~~36-27.~~ “Plumbing system” means fixtures, pipes, and related parts assembled to carry drinking water into a structure and carry sewage out of the structure.
- ~~37-28.~~ “Portable water container” means any type of device, not connected to a plumbing system, provided by a school, such as a bottle, cup, pitcher, or insulated cylindrical cooler, in which drinking water is held or carried.
- ~~38-29.~~ “Private school” means the same as in A.R.S. § 15-101.
- ~~39-30.~~ “Public water system” means the same as in A.R.S. § 49-352.
- ~~40-31.~~ “Refuse” means the same as in A.A.C. R18-13-302.
- ~~41-32.~~ “Refuse container” means a portable receptacle used for refuse storage until the refuse is placed into a dumpster.
- ~~33.~~ “Regulatory authority” means:
- a. The Arizona Department of Health Services; or
 - b. One of the following entities as specified in A.R.S. § 36-136(E):
 - i. A local health department;
 - ii. A county environmental department; or
 - iii. A public health services district.
- ~~42-34.~~ “Responsible person” means:
- a. For an accommodation school defined in A.R.S. § 15-101, the county school superintendent with the powers and duties prescribed in A.R.S. Title 15, Chapter 3, Article 1;
 - b. For a charter school defined in A.R.S. § 15-101, the governing board defined in A.A.C. R7-2-1401;
 - c. For the Arizona State Schools for the Deaf and the Blind, the board of directors for the Arizona State Schools for the Deaf and the Blind established under A.R.S. Title 15, Chapter 11, Article 2;
 - d. For a school operated by a school district, the school district’s governing board defined in A.R.S. § 15-101.
- ~~43-35.~~ “Restroom” means a structure or room that contains at least one lavatory and water closet or at least one lavatory, water closet, and urinal.
- ~~44.~~ “Sanitary sewer” means the same as in A.R.S. § 45-101.
- ~~45-36.~~ “Sanitize” means the same as in A.A.C. R9-5-101 using heat, chemical agents, or germicidal solutions to disinfect and reduce pathogen counts, including bacteria, viruses, mold, and fungi.
- ~~46-37.~~ “School” means an institution offering instruction:
- a. That is:
 - i. An accommodation school defined in A.R.S. § 15-101;
 - ii. The Arizona State Schools for the Deaf and the Blind established under A.R.S. Title 15, Chapter 11, Article 1;
 - iii. A charter school defined in A.R.S. § 15-101; or
 - iv. A school operated by a school district defined in A.R.S. § 15-101; and
 - b. That is not a private school.
- ~~47-38.~~ “Sewage” means the same as in A.A.C. R18-13-1102.
- ~~39.~~ “Sewage collection system” means a system of pipelines, conduits, manholes, pumping stations, force mains, and all other structures, devices, and appurtenances that collect, contain, and convey sewage from its sources to the entry of a sewage treatment facility or on-site wastewater treatment facility serving sources other than a single-family dwelling.
- ~~48-40.~~ “Shower head” means a fixture connected to a plumbing system that allows drinking water to fall on a user’s body.
- ~~49-41.~~ “Shower room” means a structure or room that contains at least one shower head and one floor drain, but does not contain a bathtub, lavatory, water closet, or urinal.
- ~~50-42.~~ “Underground water source” means:
- a. An aquifer, An aquifer defined in A.R.S. § 49-201;
 - b. A constructed underground storage facility, or A constructed underground storage facility defined in A.R.S. § 45-802.01; or
 - c. A managed underground storage facility, A managed underground storage facility defined in A.R.S. § 45-802.01.
- ~~51-43.~~ “Urinal” means the same as in A.R.S. § 45-311.
- ~~52-44.~~ “Warm water” means water with a temperature from 75° F to 94° F.
- ~~53-45.~~ “Water closet” means the same as in A.R.S. § 45-311.

~~54.46.~~ “Water cooler” means a fixture connected to a plumbing system for cooling water and dispensing a vertically falling stream of drinking water.

R9-8-702. General Provisions

- A. A responsible person shall ensure that a school complies with the provisions of this Article and with federal and state statutes and rules and local ordinances governing subjects included in ~~A.R.S. § 36-136(H)(9)~~ A.R.S. § 36-136(I)(9).
- B. A violation of this Article is a public nuisance under A.R.S. § 36-601.

R9-8-703. Restroom, Bathroom, and Shower Room Requirements

- A. A responsible person shall ensure that a school provides restrooms or bathrooms that:
1. Are clean; and
 2. Have:
 - a. Floors of a non-absorbent material;
 - b. Floors that slope to a drain connected to a ~~sanitary sewer~~ sewage collection system;
 - c. Water closets with seats of the split or U-shaped type made of non-absorbent material;
 - d. Interior surfaces that are clean, washable, and free from gaps;
 - e. Toilet paper at all water closets; and
 - f. Soap and single-use paper towels or air hand dryers at all lavatories.
- B. If a school provides a shower room, the responsible person shall ensure that the shower room:
1. Is clean;
 2. Does not have a school-provided cloth towel unless, after each use, the cloth towel is machine washed with detergent and machine dried; and
 3. Has:
 - a. Hot and cold, or warm water from all shower heads;
 - b. Floors of a non-absorbent material;
 - c. Floors that slope to a drain connected to a ~~sanitary sewer~~ sewage collection system; and
 - d. Interior surfaces that are clean, washable, and free of gaps.
- C. A responsible person shall ensure that restrooms, bathrooms, and shower rooms are maintained to avoid odors.

R9-8-705. Indoor Areas

A responsible person shall ensure that:

1. Indoor classroom and non-classroom areas are clean; and
2. If a classroom has a lavatory in it, the lavatory has soap and single-use paper towels or ~~air hand dryers~~ an air hand dryer.

R9-8-706. Water Supply

- A. A responsible person shall ensure that a school has an ample water supply: ~~that:~~
1. Maintains water quality and water pressure, and water temperature as specified in R9-8-703(B)(3)(a), for the school’s drinking fountains, showers, lavatories, water closets, and urinals at all times, and
 2. Is provided by an approved water supplier in accordance with 18 A.A.C. 4.
- B. A responsible person shall ensure that a school’s drinking water is dispensed from:
1. A clean drinking fountain that:
 - a. Provides, from an opening, a stream of water that does not touch anything before reaching a user’s mouth;
 - b. Has an opening that is higher than the overflow rim to prevent the opening’s submersion; and
 - c. Has a device to prevent a user’s mouth from touching the opening from which the water streams;
 2. A clean and sanitized water cooler;
 3. A clean and sanitized bottled water cooler;
 4. A clean and sanitized lavatory faucet; or
 5. A clean and sanitized portable water container.
- C. If a portable water container or the bottle from a school’s bottled water cooler is to be refilled, a responsible person shall ensure that the portable water container or the bottle is:
1. ~~Washed, rinsed, and sanitized, as specified in 9 A.A.C. 8, Article 1; Maintained by a food establishment regulated by 9 A.A.C. 8, Article 1; and~~
 2. Stored in a clean area; and Filled with water from an approved water supplier specified in subsection (A).
 3. ~~Refilled with drinking water from any of the sources of drinking water specified in subsection (B).~~
- D. A responsible person shall ensure that a school does not provide a common drinking cup to students, unless the common drinking cup is washed, rinsed, and sanitized, as specified in 9 A.A.C. 8, Article 1, after each use.
- E. A responsible person shall ensure that a school provides:
1. Drinking fountains, water coolers, or bottled water coolers according to Tables 1 and 2; and
 2. At least one drinking fountain, water cooler, or bottled water cooler on each floor of the school that contains a classroom, regardless of the number of students.

Table 1. Kindergarten to Eighth Grade

Number of Students	Minimum Number of Drinking Fountains, Water Coolers, or Bottled Water Coolers*
1-50	1
51-100	2
101-150	3
151-200	4
201-250*	5

*For each additional 1-50 students, another drinking fountain, water cooler, or bottled water cooler is required.

Table 2. Ninth Grade to Twelfth Grade

Number of Students	Minimum Number of Drinking Fountains, Water Coolers, or Bottled Water Coolers*
1-100	1
101-200	2
201-300	3
301-400	4
401-500*	5

*For each additional 1-100 students, another drinking fountain, water cooler, or bottled water cooler is required.

- F. A responsible person shall ensure a school provides drinking water that is:
1. Accessible from the school grounds; and
 2. Sufficient to maintain the hydration of all participants at school-organized outdoor activities.

R9-8-707. Sewage Disposal

A responsible person shall ensure that a school’s:

1. Water closets and urinals flush sewage to a ~~sanitary sewer~~ sewage collection system;
2. Lavatories, showers, bathtubs, and other plumbing fixtures drain sewage to a ~~sanitary sewer~~ sewage collection system; and
3. ~~Sanitary sewer lines~~ Sewage collection systems are maintained in accordance with the recommendations of the ~~local health department~~ regulatory authority.

R9-8-708. Refuse Management

A responsible person shall ensure that a school:

1. Stores refuse in durable, non-absorbent, and washable containers;
2. Provides:
 - a. Indoor refuse containers in each classroom and in each non-classroom area; and
 - b. Accessible outdoor refuse containers;
3. Maintains refuse containers so that refuse does not accumulate in school buildings or on school grounds; and
4. Disposes of refuse by using an approved collection agency and approved disposal sites that are maintained and operated according to 18 A.A.C. 13, Article 3.

R9-8-711. Inspections

The ~~Department~~ regulatory authority shall inspect:

1. A school for compliance with this Article at least once each calendar year, January 1 through December 31, and
2. Areas of a school pertinent to the details of a complaint upon receipt of the complaint.

ARTICLE 8. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND BATHING PLACES

R9-8-801. Definitions

In this Article, unless otherwise specified:

1. “Artificial lake” has the same meaning as in A.A.C. R18-5-201.
2. “Backwash” has the same meaning as in A.A.C. R18-5-201.
3. “Bathing place” means a volume of water that is used for water contact recreation.

4. "Clean" means free from slime, scum, dirt, or other debris.
5. "Deck" has the same meaning as in A.A.C. R18-5-201.
6. "Department" means the Arizona Department of Health Services.
7. "Incontinent" means unable to restrain a bowel movement.
8. "Local health department" has the same meaning as in ~~R9-18-101~~ A.R.S. § 36-671.
9. "Maximum bathing load" has the same meaning as in A.A.C. R18-5-201.
10. "Natural bathing place" has the same meaning as in A.A.C. R18-5-201.
11. "Operate" has the same meaning as in A.A.C. R18-5-201.
12. "Operator" means an individual who owns, runs, maintains, or otherwise controls or directs the functioning of a bathing place.
13. "Oxidation-reduction potential" means the measurement in millivolts of the potential for transfer of electrons from one atom or molecule to another in water.
14. "Potable water" has the same meaning as in A.A.C. R18-5-201.
15. "Ppm" means parts per million.
16. "Private residential spa" has the same meaning as in A.A.C. R18-5-201.
17. "Private residential swimming pool" has the same meaning as in A.A.C. R18-5-201.
18. "Public health services district" has the same meaning as "district" in A.R.S. § 48-5801.
19. "Public spa" has the same meaning as in A.A.C. R18-5-201.
20. "Public swimming pool" has the same meaning as in A.A.C. R18-5-201.
21. "Regulatory authority" means the Department or a local health department or public health services district operating under a delegation of authority from the Department.
22. "Sanitary facility" means a designated area that includes a toilet, urinal, sink, or shower.
23. "Scum" means a film that forms on the surface of water.
24. "Semi-artificial bathing place" means a lake, pond, river, stream, swimming hole, or hot spring that is modified to be used for water contact recreation.
25. "Semipublic spa" has the same meaning as in A.A.C. R18-5-201.
26. "Semipublic swimming pool" has the same meaning as in A.A.C. R18-5-201.
27. "Shallow area" has the same meaning as in A.A.C. R18-5-201.
28. "Shock treatment" means adding chlorine to water to elevate the free chlorine residual to 20 ppm and destroy ammonia and nitrogenous and organic contaminants in the water.
29. "Slime" means a glutinous or viscous liquid matter.
30. "Spa" has the same meaning as in A.A.C. R18-5-201.
- ~~31.~~ "Surface water" has the same meaning as in A.A.C. R18-11-101.
- ~~32-31.~~ "Swimming pool" has the same meaning as in A.A.C. R18-5-201.
- ~~33-32.~~ "Turnover rate" has the same meaning as in A.A.C. R18-5-201.
- ~~34-33.~~ "Wading pool" has the same meaning as in A.A.C. R18-5-201.
- ~~35-34.~~ "Water circulation system" has the same meaning as in A.A.C. R18-5-201.
- ~~36-35.~~ "Water circulation system components" has the same meaning as in A.A.C. R18-5-201.
- ~~37-36.~~ "Water fountain" means a bathing place that functions by using mechanical means to propel a stream of water out of an opening or structure.
- ~~38-37.~~ "Water contact recreation" means an activity for enjoyment in which an individual wets all or part of the individual's body with water.

NOTICES OF RULEMAKING DOCKET OPENING

This section of the *Arizona Administrative Register* contains Notices of Rulemaking Docket Opening under A.R.S. § 41-1021.

A docket opening is the first part of the administrative rulemaking process. It is an “announcement” that an agency intends to work on its rules.

When an agency opens a rulemaking docket to consider rulemaking, the Administrative Procedure Act (APA) requires publication of the Notice of Rulemaking Docket Opening in the Register.

Under the APA, effective January 1, 1995, agencies must submit a Notice of Rulemaking Docket Opening before beginning the formal rulemaking process. An agency may file the Notice of Rulemaking Docket Opening along with the Notice of Proposed Rulemaking.

The Office of the Secretary of State is the filing office and publisher of these notices. Questions about the interpretation of this information should be directed to the agency contact person listed in item #4 of this notice.

NOTICE OF RULEMAKING DOCKET OPENING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

[R24-14]

- 1. Title and its heading:** 4, Professions and Occupations
- Chapter and its heading:** 11, State Board of Dental Examiners
- Article and its heading:** 1, Definitions
- 3, Examinations, Licensing Qualification, Application and Renewal, Time-Frames
- 4, Fees
- 12, Continuing Dental Education and Renewal Requirements
- 13, General Anesthesia and Sedation
- Section number:** R4-11-101, R4-11-305, R4-11-406, R4-11-1203, and R4-11-1301 through R4-11-1307 (*Sections may be added, deleted, or further modified as necessary.*)

2. The subject matter of the proposed rule:
The Board needs to amend its rules to address permitting requirements for several types of anesthesia and sedation permits.

3. A citation to all published notices relating to the proceeding:
Not applicable

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

Name: Ryan Edmonson, Executive Director
 Address: State Board of Dental Examiners
 1740 W. Adams St., Suite 2470
 Phoenix, AZ 85007
 Telephone: (602) 542-4493
 Email: ryan.edmonson@dentalboard.az.gov

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:

Information regarding an oral proceeding will be provided in the Notice of Proposed Rulemaking in an upcoming issue of the *Register*.

6. A timetable for agency decisions or other action on the proceeding, if known:
To be determined.

NOTICE OF RULEMAKING DOCKET OPENING**TITLE 18. ENVIRONMENTAL QUALITY****CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA**

[R24-15]

- 1. Title and its heading:** 18, Environmental Quality
- Chapter and its heading:** 15, Water Infrastructure Finance Authority of Arizona
- Article and its heading:** 1, General Provisions
- 4, Water Supply Development Revolving Fund
- 9, Long-Term Water Augmentation Fund
- 10, Water Conservation Grant Fund
- Section numbers:** R18-15-101 through R18-15-105, R18-15-107; R18-15-401 through R18-15-405; R18-15-901 through R18-15-906; R18-15-1001 through R18-15-1006

2. The subject matter of the proposed rule:

The purpose of this Water Infrastructure Finance Authority of Arizona (“WIFA”) rulemaking is to amend A.A.C. Title 18, Chapter 15 by:

- Amending Article 1 – General Provisions;
- Amending Article 4 – Water Supply Development Revolving Fund;
- Adding Article 9 – Long-Term Water Augmentation Fund; and
- Adding Article 10 – Water Conservation Grant Fund.

The proposed changes are necessary to comply with a proposed course of action outlined by WIFA in its Five-Year Review Report, approved by the Governor’s Regulator Review Council on November 7, 2023, and are necessary to comply with statutory changes enacted by the legislature in Arizona Senate Bill 1740 (Fifty-fifth Legislature, Second Regular Session (2022)).

3. A citation to all published notices relating to the proceeding:

Notice of Proposed Expedited Rulemaking: 30 A.A.R. 221, February 2, 2024 (*in this issue*)

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

Name: Joe Citelli, General Counsel
 Address: Water Infrastructure Finance Authority of Arizona
 100 N. 7th Ave., Suite 130
 Phoenix, AZ 85007
 Telephone: (602) 364-1314
 Email: JCitelli@azwifa.gov

5. The time during which the agency will accept written comments and the time and place where oral comments may be made.

Written or emailed comments related to this proposed rulemaking may be submitted at any time during the public comment period to the person referenced in Item 4 above. Close of comment period will occur on the date of proceeding (listed below) at 4:00 p.m. Additionally, the Authority has scheduled the following oral proceeding to receive oral comments on the proposed rules in accordance with A.R.S. § 41-1023; the date, time, location, and nature of the proceeding are listed below:

Date of proceeding: March 4, 2024, at 1:00 p.m.
 Time: 1:00 p.m. MST.
 Location: Virtual (Via Microsoft Teams)
<https://azcommerce.zoom.us/j/91752825332>
 Webinar ID: 917 5282 5332
 Telephone: +1 719 359 4580

Close of record: March 4, 2024, at 4:00 p.m.
 Nature: Oral proceeding on the proposed rules, with opportunity for formal comments on the record.

The Authority will take reasonable measures to provide access to Authority services to individuals with limited ability to speak, write, or understand English and to those with disabilities. Requests for language interpretation, ASL interpretation, CART captioning services, or disability accommodations must be made at least 48 hours in advance by contacting the individual referenced in item 4.

6. A timetable for agency decisions or other action on the proceeding, if known:

The Authority anticipates submitting the proposed rules to the Governor’s Regulatory Review Council by March 19, 2024 after the close of record on March 4, 2024.

NOTICE OF RULEMAKING DOCKET OPENING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R24-16]

- 1. Title and its heading:** 20, Commerce, Financial Institutions, and Insurance
- Chapter and its heading:** 5, Industrial Commission of Arizona
- Article and its heading:** 6, Occupational Safety and Health Standards
- Section number:** R20-5-608 through R20-5-611, R20-5-613 through R20-5-615, R20-5-617 through R20-5-619, R20-5-621 through R20-5-627, R20-5-629, R20-5-650, R20-5-652, R20-5-654 through R20-5-659, R20-5-661, R20-5-663 through R20-5-667, R20-5-669, R20-5-680 through R20-5-683

- 2. The subject matter of the proposed rule:**
Pursuant to A.R.S. § 23-405, the Industrial Commission of Arizona (the “Commission”) is required to “promulgate standards and regulations as required, pursuant to section 23-410, and promulgate such other rules and regulations as are necessary for the efficient functioning of the division” and has the authority to “issue reasonable temporary, experimental and permanent variances pursuant to sections 23-411 and 23-412.”

- 3. A citation to all published notices relating to the proceeding:**
Notice of Proposed Rulemaking: 30 A.A.R. 197, February 2, 2024 (*in this issue*)

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

Name: Afshan Peimani, Chief Counsel
 Address: Industrial Commission of Arizona
 800 W. Washington St., Suite 303
 Phoenix, AZ 85007
 Telephone: (602) 542-5905
 Fax: (602) 542-6783
 Email: Afshan.peimani@azica.gov

- 5. The time during which the agency will accept written comments and the time and place where oral comments may be made:**
The Commission will accept written comments during a public comment period that is noticed in the Notice of Proposed Rulemaking in this issue. Information regarding an oral proceeding is included in the Notice of Proposed Rulemaking.

- 6. A timetable for agency decisions or other action on the proceeding, if known:**
To be determined.

NOTICE OF RULEMAKING DOCKET OPENING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R24-17]

- 1. Title and its heading:** 20, Commerce, Financial Institutions, and Insurance
- Chapter and its heading:** 5, Industrial Commission of Arizona
- Article and its heading:** 8, Occupational Safety and Health Rules of Procedure Before the Industrial Commission of Arizona
- Section numbers:** R20-5-801 through R20-5-815, R20-5-817 through R20-5-829

- 2. The subject matter of the proposed rule:**
Pursuant to A.R.S. § 23-405, the Industrial Commission of Arizona (the “Commission”) is required to “promulgate such other rules and regulations as are necessary for the efficient functioning of the division” and has the authority to “(e)xercise such other powers as are necessary to carry out the duties and requirements of this article.” Additionally, A.R.S. § 23-417 sets forth the enforcement procedures, and A.R.S. § 23-420 sets forth the hearing rights and procedures.

- 3. A citation to all published notices relating to the proceeding:**
Notice of Proposed Rulemaking: 30 A.A.R. 210, February 2, 2024 (*in this issue*)

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

Name: Afshan Peimani, Chief Counsel

Address: Industrial Commission of Arizona
800 W. Washington St., Suite 303
Phoenix, AZ 85007

Telephone: (602) 542-5905

Fax: (602) 542-6783

Email: Afshan.peimani@azica.gov

5. The time during which the agency will accept written comments and the time and place where oral comments may be made:

The Commission will accept written comments during a public comment period that is noticed in the Notice of Proposed Rulemaking in this issue. Information regarding an oral proceeding is included in the Notice of Proposed Rulemaking.

6. A timetable for agency decisions or other action on the proceeding, if known:

To be determined.

NOTICE OF RULEMAKING DOCKET OPENING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R24-18]

- 1. Title and its heading:** 20, Commerce, Financial Institutions, and Insurance
- Chapter and its heading:** 5, Industrial Commission of Arizona
- Article and its heading:** 9, Youth Employment
- Section numbers:** R20-5-901 through R20-5-908
- 2. The subject matter of the proposed rule:**
A.A.C. Title 20, Chapter 5, Article 9 creates rules, as required by A.R.S. § 23-240 to carry out the provisions of Title 23, Chapter 2, Article 3, Youth Employment.
- 3. A citation to all published notices relating to the proceeding:**
Notice of Proposed Rulemaking: 30 A.A.R. 217, February 2, 2024 (*in this issue*)
- 4. The name and address of agency personnel with whom persons may communicate regarding the rule:**
- Name: Afshan Peimani, Chief Counsel
- Address: Industrial Commission of Arizona
800 W. Washington St., Suite 303
Phoenix, AZ 85007
- Telephone: (602) 542-5905
- Fax: (602) 542-6783
- Email: Afshan.peimani@azica.gov
- 5. The time during which the agency will accept written comments and the time and place where oral comments may be made:**
The Commission will accept written comments during a public comment period that is noticed in the Notice of Proposed Rulemaking in this issue. Information regarding an oral proceeding is included in the Notice of Proposed Rulemaking.
- 6. A timetable for agency decisions or other action on the proceeding, if known:**
To be determined.

REGISTER INDEXES

The *Register* is published by volume in a calendar year (See “General Information” in the front of each issue for more information).

Abbreviations for rulemaking activity in this Index include:

PROPOSED RULEMAKING

PN = Proposed new Section
 PM = Proposed amended Section
 PR = Proposed repealed Section
 P# = Proposed renumbered Section

SUPPLEMENTAL PROPOSED RULEMAKING

SPN = Supplemental proposed new Section
 SPM = Supplemental proposed amended Section
 SPR = Supplemental proposed repealed Section
 SP# = Supplemental proposed renumbered Section

FINAL RULEMAKING

FN = Final new Section
 FM = Final amended Section
 FR = Final repealed Section
 F# = Final renumbered Section

SUMMARY RULEMAKING

PROPOSED SUMMARY

PSMN = Proposed Summary new Section
 PSMM = Proposed Summary amended Section
 PSMR = Proposed Summary repealed Section
 PSM# = Proposed Summary renumbered Section

FINAL SUMMARY

FSMN = Final Summary new Section
 FSMM = Final Summary amended Section
 FSMR = Final Summary repealed Section
 FSM# = Final Summary renumbered Section

EXPEDITED RULEMAKING

PROPOSED EXPEDITED

PEN = Proposed Expedited new Section
 PEM = Proposed Expedited amended Section
 PER = Proposed Expedited repealed Section
 PE# = Proposed Expedited renumbered Section

SUPPLEMENTAL EXPEDITED

SPEN = Supplemental Proposed Expedited new Section
 SPEM = Supplemental Proposed Expedited amended Section
 SPER = Supplemental Proposed Expedited repealed Section
 SPE# = Supplemental Proposed Expedited renumbered Section

FINAL EXPEDITED

FEN = Final Expedited new Section
 FEM = Final Expedited amended Section
 FER = Final Expedited repealed Section
 FE# = Final Expedited renumbered Section

EXEMPT RULEMAKING

EXEMPT

XN = Exempt new Section
 XM = Exempt amended Section
 XR = Exempt repealed Section
 X# = Exempt renumbered Section

EXEMPT PROPOSED

PXN = Proposed Exempt new Section
 PXM = Proposed Exempt amended Section
 PXR = Proposed Exempt repealed Section
 PX# = Proposed Exempt renumbered Section

EXEMPT SUPPLEMENTAL PROPOSED

SPXN = Supplemental Proposed Exempt new Section
 SPXR = Supplemental Proposed Exempt repealed Section
 SPXM = Supplemental Proposed Exempt amended Section
 SPX# = Supplemental Proposed Exempt renumbered Section

FINAL EXEMPT RULEMAKING

FXN = Final Exempt new Section
 FXM = Final Exempt amended Section
 FXR = Final Exempt repealed Section
 FX# = Final Exempt renumbered Section

EMERGENCY RULEMAKING

EN = Emergency new Section
 EM = Emergency amended Section
 ER = Emergency repealed Section
 E# = Emergency renumbered Section
 EEXP = Emergency expired

RECODIFICATION OF RULES

RC = Recodified

REJECTION OF RULES

RJ = Rejected by the Attorney General

TERMINATION OF RULES

TN = Terminated proposed new Sections
 TM = Terminated proposed amended Section
 TR = Terminated proposed repealed Section
 T# = Terminated proposed renumbered Section

RULE EXPIRATIONS

EXP = Rules have expired
 See also “emergency expired” under emergency rulemaking

CORRECTIONS

C = Corrections to Published Rules

R4-23-303.	FR-155	Regulatory Board of Physician	R4-17-401.	FXN-63
R4-23-304.	FR-155	Assistants, Arizona	R4-17-402.	FXN-63
R4-23-305.	FR-155			

OTHER NOTICES AND PUBLIC RECORDS INDEX

Other legal notices required to be published under the Administrative Procedure Act, such as Rulemaking Docket Openings, are included in this Index by volume page number. Notices of Agency Ombudsman, Substantive Policy Statements, Proposed Delegation Agreements, and other applicable public records as required by law are also listed in this Index by volume page number.

THIS INDEX INCLUDES OTHER NOTICE ACTIVITY THROUGH ISSUE 4 OF VOLUME 30.

Docket Opening, Notices of Rulemaking

- Administrative Hearings, Office of; 2 A.A.C. 19; p. 142
- Conservation Commission, Oil and Gas; 12 A.A.C. 7; p. 180
- Health Services, Department of - Health Care Institutions: Licensing; 9 A.A.C. 10; pp. 34-35

Governor’s Office

- Governor’s Regulatory Review Council**
- Notices of Action Taken at Monthly Meetings: p. 192

Ombudsman, Notices of Agency

- Dental Examiners, State Board of; p. 39
- Physical Therapy, Board of; p. 143
- Psychologist Examiners, Board of; p. 184
- State Retirement System, Arizona; p. 39
- Transportation, Department of; p. 143
- Water Resources, Department of; p. 76

Substantive Policy Statement, Notices of

- Corporation Commission, Arizona; pp. 36-38, 73-75, 181-183

2024 RULES EFFECTIVE DATES CALENDAR

A.R.S. § 41-1032(A), as amended by Laws 2002, Ch. 334, § 8 (effective August 22, 2002), states that a rule generally becomes effective 60 days after the day it is filed with the Secretary of State's Office. The following table lists filing dates and effective dates for rules that follow this provision. Please also check the rulemaking Preamble for effective dates.

January		February		March		April		May		June	
Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date
1/1	3/1	2/1	4/1	3/1	4/30	4/1	5/31	5/1	6/30	6/1	7/31
1/2	3/2	2/2	4/2	3/2	5/1	4/2	6/1	5/2	7/1	6/2	8/1
1/3	3/3	2/3	4/3	3/3	5/2	4/3	6/2	5/3	7/2	6/3	8/2
1/4	3/4	2/4	4/4	3/4	5/3	4/4	6/3	5/4	7/3	6/4	8/3
1/5	3/5	2/5	4/5	3/5	5/4	4/5	6/4	5/5	7/4	6/5	8/4
1/6	3/6	2/6	4/6	3/6	5/5	4/6	6/5	5/6	7/5	6/6	8/5
1/7	3/7	2/7	4/7	3/7	5/6	4/7	6/6	5/7	7/6	6/7	8/6
1/8	3/8	2/8	4/8	3/8	5/7	4/8	6/7	5/8	7/7	6/8	8/7
1/9	3/9	2/9	4/9	3/9	5/8	4/9	6/8	5/9	7/8	6/9	8/8
1/10	3/10	2/10	4/10	3/10	5/9	4/10	6/9	5/10	7/9	6/10	8/9
1/11	3/11	2/11	4/11	3/11	5/10	4/11	6/10	5/11	7/10	6/11	8/10
1/12	3/12	2/12	4/12	3/12	5/11	4/12	6/11	5/12	7/11	6/12	8/11
1/13	3/13	2/13	4/13	3/13	5/12	4/13	6/12	5/13	7/12	6/13	8/12
1/14	3/14	2/14	4/14	3/14	5/13	4/14	6/13	5/14	7/13	6/14	8/13
1/15	3/15	2/15	4/15	3/15	5/14	4/15	6/14	5/15	7/14	6/15	8/14
1/16	3/16	2/16	4/16	3/16	5/15	4/16	6/15	5/16	7/15	6/16	8/15
1/17	3/17	2/17	4/17	3/17	5/16	4/17	6/16	5/17	7/16	6/17	8/16
1/18	3/18	2/18	4/18	3/18	5/17	4/18	6/17	5/18	7/17	6/18	8/17
1/19	3/19	2/19	4/19	3/19	5/18	4/19	6/18	5/19	7/18	6/19	8/18
1/20	3/20	2/20	4/20	3/20	5/19	4/20	6/19	5/20	7/19	6/20	8/19
1/21	3/21	2/21	4/21	3/21	5/20	4/21	6/20	5/21	7/20	6/21	8/20
1/22	3/22	2/22	4/22	3/22	5/21	4/22	6/21	5/22	7/21	6/22	8/21
1/23	3/23	2/23	4/23	3/23	5/22	4/23	6/22	5/23	7/22	6/23	8/22
1/24	3/24	2/24	4/24	3/24	5/23	4/24	6/23	5/24	7/23	6/24	8/23
1/25	3/25	2/25	4/25	3/25	5/24	4/25	6/24	5/25	7/24	6/25	8/24
1/26	3/26	2/26	4/26	3/26	5/25	4/26	6/25	5/26	7/25	6/26	8/25
1/27	3/27	2/27	4/27	3/27	5/26	4/27	6/26	5/27	7/26	6/27	8/26
1/28	3/28	2/28	4/28	3/28	5/27	4/28	6/27	5/28	7/27	6/28	8/27
1/29	3/29	2/29	4/29	3/29	5/28	4/29	6/28	5/29	7/28	6/29	8/28
1/30	3/30			3/30	5/29	4/30	6/29	5/30	7/29	6/30	8/29
1/31	3/31			3/31	5/30			5/31	7/30		

July		August		September		October		November		December	
Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date	Date Filed	Effective Date
7/1	8/30	8/1	9/30	9/1	10/31	10/1	11/30	11/1	12/31	12/1	1/30
7/2	8/31	8/2	10/1	9/2	11/1	10/2	12/1	11/2	1/1	12/2	1/31
7/3	9/1	8/3	10/2	9/3	11/2	10/3	12/2	11/3	1/2	12/3	2/1
7/4	9/2	8/4	10/3	9/4	11/3	10/4	12/3	11/4	1/3	12/4	2/2
7/5	9/3	8/5	10/4	9/5	11/4	10/5	12/4	11/5	1/4	12/5	2/3
7/6	9/4	8/6	10/5	9/6	11/5	10/6	12/5	11/6	1/5	12/6	2/4
7/7	9/5	8/7	10/6	9/7	11/6	10/7	12/6	11/7	1/6	12/7	2/5
7/8	9/6	8/8	10/7	9/8	11/7	10/8	12/7	11/8	1/7	12/8	2/6
7/9	9/7	8/9	10/8	9/9	11/8	10/9	12/8	11/9	1/8	12/9	2/7
7/10	9/8	8/10	10/9	9/10	11/9	10/10	12/9	11/10	1/9	12/10	2/8
7/11	9/9	8/11	10/10	9/11	11/10	10/11	12/10	11/11	1/10	12/11	2/9
7/12	9/10	8/12	10/11	9/12	11/11	10/12	12/11	11/12	1/11	12/12	2/10
7/13	9/11	8/13	10/12	9/13	11/12	10/13	12/12	11/13	1/12	12/13	2/11
7/14	9/12	8/14	10/13	9/14	11/13	10/14	12/13	11/14	1/13	12/14	2/12
7/15	9/13	8/15	10/14	9/15	11/14	10/15	12/14	11/15	1/14	12/15	2/13
7/16	9/14	8/16	10/15	9/16	11/15	10/16	12/15	11/16	1/15	12/16	2/14
7/17	9/15	8/17	10/16	9/17	11/16	10/17	12/16	11/17	1/16	12/17	2/15
7/18	9/16	8/18	10/17	9/18	11/17	10/18	12/17	11/18	1/17	12/18	2/16
7/19	9/17	8/19	10/18	9/19	11/18	10/19	12/18	11/19	1/18	12/19	2/17
7/20	9/18	8/20	10/19	9/20	11/19	10/20	12/19	11/20	1/19	12/20	2/18
7/21	9/19	8/21	10/20	9/21	11/20	10/21	12/20	11/21	1/20	12/21	2/19
7/22	9/20	8/22	10/21	9/22	11/21	10/22	12/21	11/22	1/21	12/22	2/20
7/23	9/21	8/23	10/22	9/23	11/22	10/23	12/22	11/23	1/22	12/23	2/21
7/24	9/22	8/24	10/23	9/24	11/23	10/24	12/23	11/24	1/23	12/24	2/22
7/25	9/23	8/25	10/24	9/25	11/24	10/25	12/24	11/25	1/24	12/25	2/23
7/26	9/24	8/26	10/25	9/26	11/25	10/26	12/25	11/26	1/25	12/26	2/24
7/27	9/25	8/27	10/26	9/27	11/26	10/27	12/26	11/27	1/26	12/27	2/25
7/28	9/26	8/28	10/27	9/28	11/27	10/28	12/27	11/28	1/27	12/28	2/26
7/29	9/27	8/29	10/28	9/29	11/28	10/29	12/28	11/29	1/28	12/29	2/27
7/30	9/28	8/30	10/29	9/30	11/29	10/30	12/29	11/30	1/29	12/30	2/28
7/31	9/29	8/31	10/30			10/31	12/30			12/31	3/1

REGISTER PUBLISHING DEADLINES

The Secretary of State’s Office publishes the Register weekly. There is a three-week turnaround period between a deadline date and the publication date of the Register. The weekly deadline dates and issue dates are shown below. Council meetings and Register deadlines do not correlate. Also listed are the earliest dates on which an oral proceeding can be held on proposed rulemakings or proposed delegation agreements following publication of the notice in the Register.

Deadline Date Friday, 5:00 p.m. <i>(*earlier date due to holiday)</i>	Register Publication Date	Oral Proceeding may be scheduled on or after
November 17, 2023	December 8, 2023	January 8, 2024
November 24, 2023	December 15, 2023	January 16, 2024
December 1, 2023	December 22, 2023	January 22, 2024
December 8, 2023	December 29, 2023	January 29, 2024
December 15, 2023	January 5, 2024	February 5, 2024
December 22, 2023	January 12, 2024	February 12, 2024
December 29, 2023	January 19, 2024	February 20, 2024
January 5, 2024	January 26, 2024	February 26, 2024
January 12, 2024	February 2, 2024	March 4, 2024
January 19, 2024	February 9, 2024	March 11, 2024
January 26, 2024	February 16, 2024	March 18, 2024
February 2, 2024	February 23, 2024	March 25, 2024
February 9, 2024	March 1, 2024	April 1, 2024
February 16, 2024	March 8, 2024	April 8, 2024
February 23, 2024	March 15, 2024	April 15, 2024
March 1, 2024	March 22, 2024	April 22, 2024
March 8, 2024	March 29, 2024	April 29, 2024
March 15, 2024	April 5, 2024	May 6, 2024
March 22, 2024	April 12, 2024	May 13, 2024
March 29, 2024	April 19, 2024	May 20, 2024
April 5, 2024	April 26, 2024	May 28, 2024
April 12, 2024	May 3, 2024	June 3, 2024
April 19, 2024	May 10, 2024	June 10, 2024
April 26, 2024	May 17, 2024	June 17, 2024
May 3, 2024	May 24, 2024	June 24, 2024

GOVERNOR’S REGULATORY REVIEW COUNCIL DEADLINES

The following deadlines apply to all Five-Year Review Reports and any adopted rule submitted to the Governor’s Regulatory Review Council. Council meetings and Register deadlines do not correlate. We publish these deadlines under A.R.S. § 41-1013(B)(15).

All rules and Five-Year Review Reports are due in the Council office by 5 p.m. of the deadline date. The Council’s office is located at 100 N. 15th Ave., Suite 305, Phoenix, AZ 85007. For more information, call (602) 542-2058 or visit <https://grrc.az.gov>.

GOVERNOR’S REGULATORY REVIEW COUNCIL DEADLINES FOR 2024
(MEETING DATES ARE SUBJECT TO CHANGE)

[M23-72]

* Materials must be submitted by **5 PM** on dates listed as a deadline for placement on a particular agenda. Placement on a particular agenda is not guaranteed.

DEADLINE FOR PLACEMENT ON AGENDA*	FINAL MATERIALS SUBMITTED TO COUNCIL	DATE OF COUNCIL STUDY SESSION	DATE OF COUNCIL MEETING
Tuesday December 19, 2023	Tuesday January 23, 2024	Tuesday January 30, 2024	Tuesday February 6, 2024
Tuesday January 23, 2024	Tuesday February 20, 2024	Tuesday February 27, 2024	Tuesday March 5, 2024
Tuesday February 20, 2024	Tuesday March 19, 2024	Tuesday March 26, 2024	Tuesday April 2, 2024
Tuesday March 19, 2024	Tuesday April 23, 2024	Tuesday April 30, 2024	Tuesday May 7, 2024
Tuesday April 23, 2024	Tuesday May 21, 2024	Wednesday May 29, 2024	Tuesday June 4, 2024
Tuesday May 21, 2024	Tuesday June 18, 2024	Tuesday June 25, 2024	Tuesday July 2, 2024
Tuesday June 18, 2024	Tuesday July 23, 2024	Tuesday July 30, 2024	Tuesday August 6, 2024
Tuesday July 23, 2024	Tuesday August 20, 2024	Tuesday August 27, 2024	Wednesday September 4, 2024
Tuesday August 20, 2024	Tuesday September 17, 2024	Tuesday September 24, 2024	Tuesday October 1, 2024
Tuesday September 17, 2024	Tuesday October 22, 2024	Tuesday October 29, 2024	Tuesday November 5, 2024
Tuesday October 22, 2024	Tuesday November 19, 2024	Tuesday November 26, 2024	Tuesday December 3, 2024
Tuesday November 19, 2024	Tuesday December 24, 2024	Tuesday December 31, 2024	Tuesday January 7, 2025
Tuesday December 24, 2024	Tuesday January 21, 2025	Tuesday January 28, 2025	Tuesday February 4, 2025