

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 4. PROFESSIONS AND OCCUPATIONS

#### CHAPTER 46. BOARD OF APPRAISAL

#### PREAMBLE

- 1. Sections Affected**

R4-46-101	Amend
R4-46-301	Amend
R4-46-302	Amend
R4-46-303	Amend
R4-46-306	New Section
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statutes: A.R.S. §§ 32-3605(B) and 32-3631  
Implementing statutes: A.R.S. §§ 32-3605(B)(10), 32-3605(B)(11), and 32-3631
- 3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 10 A.A.R. 1318, April 2, 2004
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Deborah G. Pearson, Executive Director  
Address: Board of Appraisal  
1400 W. Washington, Suite 360  
Phoenix, AZ 85007  
Telephone: (602) 542-1539  
Fax: (602) 542-1598  
E-mail: deborah.pearson@appraisal.state.az.us
- 5. An explanation of the rules, including the agency's reasons for initiating the rules:**

The rules were initiated by the Board to better define and explain the steps associated with the administrative procedures for the disciplinary process pursuant to A.R.S. § 32-3605(B)(10), and to implement better communication of useful information to the public and appraisers relating to actions for violations pursuant to A.R.S. § 32-3605(B)(11).
- 6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, any analysis of each study and other supporting material:**

None
- 7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules 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 rules will better define and explain the steps associated with the administrative procedures for the disciplinary process, and provide for better communication of useful information to the public and appraisers relating to actions for violations. The Board, licensed and certified appraisers, property tax agents and the public should not experience an economic impact based on the clarification and improved communication.

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**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Deborah G. Pearson, Executive Director  
Address: Board of Appraisal  
1400 W. Washington, Suite 360  
Phoenix, AZ 85007  
Telephone: (602) 542-1539  
Fax: (602) 542-1598  
E-mail: deborah.pearson@appraisal.state.az.us

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

Date: January 20, 2005  
Time: 9:00 a.m.  
Location: 1400 W. Washington  
Basement Conference Room B-2  
Phoenix, AZ

Nature: The Board will hold an open meeting to hear opinions and suggestions, and to adopt, amend or repeal the rules. The Agenda for this Board meeting will be available to the public the day before the meeting. It may be obtained by contacting the Board office at (602) 542-1539. In addition, written comment will be accepted at the Board office, 1400 West Washington, Suite 360, Phoenix, Arizona 85007 between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday through January 19, 2005.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rules or class of rules:**

None

**12. Incorporation by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 46. BOARD OF APPRAISAL**

**ARTICLE 1. GENERAL PROVISIONS**

Section  
R4-46-101. Definitions

**ARTICLE 3. HEARINGS AND DISCIPLINARY PROCEEDINGS**

Section  
R4-46-301. Complaints; Investigations; Informal Proceedings; Summary Suspensions; Refusal to Appear  
R4-46-302. Formal Hearing Procedures  
R4-46-303. Rehearing or Review of the Board's Decisions  
R4-46-306. Complaint Information Availability

**ARTICLE 1. GENERAL PROVISIONS**

**R4-46-101. Definitions**

In these rules, unless the context otherwise requires:

“Arizona or State Certified General Appraiser” means ~~the~~ a person classified by the Board as a State Certified General Real Estate Appraiser classification set forth in accordance with A.R.S. § 32-3612(A)(1), and corresponds to the Certified General Real Property Appraiser classification of the Appraisal Foundation.

“Arizona or State Certified Residential Appraiser” means ~~the~~ a person classified by the Board as a State Certified Resi-

~~dential Real Estate Appraiser classification set forth in accordance with A.R.S. § 32-3612(A)(2), and corresponds to the Certified General Real Property Appraiser classification of the Appraisal Foundation.~~

~~“Arizona or State Licensed Appraiser” means ~~the~~ a person classified by the Board as a State Licensed Real Estate Appraiser classification set forth in accordance with A.R.S. § 32-3612(A)(3), and corresponds to the Certified General Real Property Appraiser classification of the Appraisal Foundation.~~

~~“Appraisal Foundation” means the educational organization, defined in A.R.S. § 32-3601(3), which is the parent organization of the Appraiser Qualifications Board and the Appraisal Standards Board. The Appraisal Foundation is located at 1029 Vermont Ave., N.W. Ste. 900, Washington, D.C. 20005.~~

~~“Appraiser” means an Arizona Licensed Appraiser, an Arizona Certified Residential Appraiser, or an Arizona Certified General Appraiser. a person licensed or certified by the Board to complete real estate appraisals or consulting assignments in accordance with A.R.S. § 32-3612(A)(1), (2), and (3).~~

~~“Board” means the Arizona Board of Appraisal established by A.R.S. § 32-3604. For the purposes of Article 3, the term “Board” includes any administrative law judge used or contracted for by the Board.~~

~~“Board counsel” means the assistant attorney general or any other attorney retained by the Board to provide legal advice to the Board.~~

~~“Board staff” means the executive director and the executive director’s designees.~~

~~“Complaint” means a verbal or written communication to the Board that meets the minimum criteria established in R4-46-301(A)(1) and alleges violations of A.R.S. Title 32, Chapter 36 or this Chapter.~~

~~“Consent agreement” means a written agreement between the Board and a respondent that concerns disciplinary or remedial action.~~

~~“Consulting assignment” means a real estate appraisal consulting assignment, the purpose of which is to develop, without advocacy, an analysis, recommendation, or opinion where at least one opinion of value is a component of the analysis leading to the assignment results.~~

~~“Conviction” means a judgment by any state or federal court of competent jurisdiction in a criminal case, regardless of whether an appeal is pending or could be taken, and includes any judgment or order based upon a plea of no contest.~~

~~“Course ~~Provider~~ provider” means any organization or individual offering prerequisite ~~that offers~~ qualifying or continuing education courses.~~

~~“Disciplinary action” means any regulatory sanction imposed by the Board, including a letter of due diligence, a consent agreement, probation, suspension, revocation, or an acceptance of surrender of a license or certificate.~~

~~“Dismissal” means termination of a complaint without further hearing.~~

~~“Due diligence” means the diligence reasonably expected from, and ordinarily exercised by, a person regulated by the Board, in accordance with A.R.S. Title 32, Chapter 36 and this Chapter.~~

~~“Formal ~~Complaint~~ complaint” means a notice of allegations issued by the Board pursuant to ~~under~~ R4-46-302.~~

~~“Formal hearing” means an adjudication of a disputed matter, conducted by the Office of Administrative Hearings (OAH) or the Board, under R4-46-302.~~

~~“Informal hearing” means a voluntary hearing before the Board in which a respondent is requested to respond to a complaint under R4-46-301(D).~~

~~“Informational interview” means a voluntary appearance by a respondent at a public meeting before the Board to discuss a complaint that has been filed against the respondent.~~

~~“Initial review” means the Board’s first review of a complaint, the response to the complaint, if any, the relevant appraisal~~

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report or work product, and workfile.

“Investigation” means a fact-finding process initiated by a complaint concerning the practice of a named respondent.

“Investigator” means an appraiser or property tax agent operating under a contract with the Board to carry out independent investigations of allegations of violations.

“Jurisdictional criteria” means the statutory standards used by the Board to determine whether a complaint falls within the Board’s jurisdiction.

“Letter of concern” means a nondisciplinary advisory letter to notify a respondent that the action that is the basis of a complaint does not warrant disciplinary action, but is nonetheless cause for concern on the part of the Board and that its continuation may result in disciplinary action.

“Letter of due diligence” means a disciplinary letter of agreement between the Board and a respondent when minor violations of A.R.S. Title 32, Chapter 36 or Articles 1, 2 or 3 of this Chapter have been found that may or may not include remedial action.

“Letter of remedial action” means a nondisciplinary letter issued by the Board when any minor violation of A.R.S. Title 32, Chapter 36 or Articles 1, 2 or 3 of this Chapter have been found that requires respondent to take remedial action.

“Mentor” means a certified appraiser authorized by the Board to supervise the work product of an appraiser subject to disciplinary action.

“Order” means an administrative order that contains findings of fact, conclusions of law, and disciplinary action, issued by the Board after a formal hearing or by consent.

“Party” No change

“Probation” means a term of oversight by the Board, imposed upon a respondent as part of a disciplinary action, which may include submission of logs, working under the supervision of a mentor, or other conditions intended to protect the public and educate the respondent.

“Property tax agent” has the meaning in A.R.S. § 32-3651.

“Remedial action” means any corrective remedy ordered by the Board that is designed to assist the respondent in improving the respondent’s professional practice.

“Respondent” means Appraiser, Course Provider, Property Tax Agent, appraiser, course provider, property tax agent, or any other party responding to a motion or a proceeding before the Board.

“Rules” means the requirements ~~set forth~~ established under A.R.S. Title 32, Chapter 36, and found in the Arizona Administrative Code (A.A.C.), Title 4, Chapter 46.

“Summary suspension” means an immediate suspension of a license, certificate or registration by the Board based on a finding that the public health, safety or welfare imperatively requires emergency action.

“USPAP” means the Uniform Standards of Professional Appraisal Practice, issued and updated by The Appraisal Foundation and incorporated by reference in the rules of the Board.

“Workfile” means the documentation necessary to support the analysis, opinions, and conclusions of an appraisal, a consulting assignment, or a tax appeal.

**ARTICLE 3. HEARINGS AND DISCIPLINARY PROCEEDINGS**

**R4-46-301. Complaints, Investigations; Informal Proceedings; Summary Suspensions; Refusal to Appear**

**A. Complaints**

1. The Board shall investigate a ~~written~~ complaint, including an anonymous complaint, and a complaint made on the Board’s own motion alleging violations of A.R.S. Title 32, Chapter 36, or any of these rules, this Chapter, if the com-

plaint meets the minimum criteria. Minimum criteria for a complaint shall include but not be limited to:

- a. The name of the respondent, against whom allegations are being made;
- b. The action that is the basis of the complaint;
- c. The time-frame in which the action occurred;
- d. Each violation alleged to have been committed by the respondent; and
- e. If the complaint includes allegations concerning an appraisal, consulting assignment, or property tax appeal, an identification of the subject property.

2. Upon receipt of a complaint:

- a. Board staff shall review the complaint and determine, in consultation with Board counsel if necessary, whether the complaint meets jurisdictional criteria and if so, which edition of USPAP is applicable.
- b. Within 14 days after receipt of a complaint the Board shall notify the Respondent and provide the Respondent the opportunity to submit response, as prescribed in A.R.S. § 41-1092.04, of the complaint and the requirement that the respondent file a written response within 21 30 days from the date of on the notice of the complaint. The notice shall include Board shall provide a copy of the complaint with the notice and request that the respondent address the issues referred to in the complaint. In the notice, the Board shall require that the respondent additionally provide all of the following to the Board: the appraisal, review, consulting assignment, or tax appeal at issue; and the workfile.
- c. The Respondent may request and If the respondent requests more time to respond, the Board may shall grant a continuance a single extension of time not to that does not exceed 30 days, upon a showing of good cause.

B. Initial Review and Investigation

1. After receipt of the response or expiration of 21 days, as extended, whichever is earlier, Within 75 days after receipt of a response or expiration of the time for response, the Board shall conduct an initial review of the complaint matter to determine if whether further investigation is necessary. If the Board determines further investigation is necessary the Board may employ an investigator or investigators and shall notify the Respondent respondent of the pending investigation.
2. When If a Respondent's respondent's name appears is placed on an a public meeting agenda, the Respondent shall be notified according to A.R.S. Title 38, Chapter 3, Article 3-1. Board shall attempt to contact the respondent before the scheduled meeting by letter, providing the respondent with a copy of the posted notice of the public meeting.
3. If a matter is not resolved within 18 months of receipt of the response, it will be scheduled for review to determine if good cause exists to continue the investigation further. R4 46 301(B) is not retroactive. R4 46 301(B) only applies to investigations commenced after October 1, 1998. If, after completing its investigation, the Board finds that further action against the Respondent is not merited, the matter shall be dismissed. If the respondent is present at the initial review, the Board may request that the respondent participate in an informational interview. The Board may use any information presented at the informational interview in other proceedings related to the complaint.
4. At the initial review, the Board shall consider the complaint; any response; the appraisal, review, consulting assignment, or tax appeal; and the workfile. The Board may dismiss the matter, request or subpoena additional information, order a limited or full investigation, or invite the respondent to an informal hearing, based on the information reviewed.
5. Board staff shall assign each investigator according to the investigator's experience, expertise, contract terms and availability. Board staff shall select an investigator who is not associated with the respondent. Each investigative report shall contain the signed certification specified in subsection (B)(6). An investigator's draft report is considered work product and is, therefore, confidential. The Board may ask for clarification or additional information after review of a draft report. Upon acceptance by the Board, an investigative report is considered final. The Board may adopt any or all of the findings in the final report at a public meeting and may consider any additional, relevant information that is discovered before the matter is resolved. The investigative report becomes nonconfidential upon resolution of the complaint involved.
6. The following certification shall be included in every investigative report prepared for the Board and signed by the investigator:

I certify that, to the best of my knowledge and belief:

- a. The statements of fact contained in this report are true and correct.
- b. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and they are my personal, impartial and unbiased professional analyses, opinions, conclusions, and recommendations.
- c. I have no present or prospective interest in the property that is the subject of this investigation, and I have no personal interest with respect to the parties involved in this investigation.
- d. I have no bias with respect to any property that is the subject of this investigation or to the parties involved in this investigation.
- e. My engagement for this investigation was not contingent upon developing or reporting any predetermined result or outcome.

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- f. My compensation for this investigation is not contingent upon the development or reporting of any predetermined result or outcome nor have I been instructed as to any predetermined result or outcome by the Board, the Board staff, or other parties.
- g. I have (or have not) made a personal inspection of the property that is the subject of this investigation.

C. Settlement

Any time after a complaint has been filed against a Respondent, ~~respondent~~, but not later than 15 days prior to a scheduled formal hearing, the matter may be resolved by a settlement in which the Respondent ~~respondent~~ agrees to accept discipline disciplinary or remedial action by consent in lieu of a disciplinary order. Discipline may include, but is not limited to, surrender or suspension of a license or certificate, a requirement that the Respondent successfully complete education courses, a requirement that the Respondent limit his or her scope of practice, or a requirement that the Respondent submit work product for professional peer review. If the Board determines that the proposed settlement will adequately protect the public, the Board may accept the offer, ~~with or without admissions~~, and enter an order of discipline ~~consented to by~~ into a consent agreement with the Respondent, respondent, incorporating the proposed settlement into the agreement. ~~Statements~~ A statement made for the purpose of settlement ~~are~~ is not admissible in a formal hearing.

D. Informal Hearing; Disciplinary Action

1. If, after evaluation of the complaint and any written response, in the opinion of the Board, it appears based on the initial review or its review of the investigative report, the Board determines that the Respondent respondent is or may be in violation of the Board's rules or statutes, statutes or rules, the Board may request an a voluntary informal hearing with the Respondent respondent. The Board shall provide the Respondent respondent with 20 days a copy of any final investigative report in the matter, any supporting documentation, and notice of the date, and time, and location of the informal hearing, from the date notice is mailed via certified mail or otherwise served as provided in the Arizona Rules of Civil Procedure, as prescribed in A.R.S. § 41-1092.04, at least 30 days before the informal hearing. The notice of informal hearing shall include all of the following:
  - a. A statement of the matters asserted and issues involved;
  - b. Any request for additional information needed by the Board to prepare for the hearing;
  - c. An explanation of the Respondent's respondent's right to appear voluntarily with or without legal counsel; and
  - d. An explanation of the Respondent's respondent's right to a formal hearing, held pursuant to under R4-46-302.
2. The Board shall provide a copy of the informational material, "Introduction to Informal Hearing", which explains the rights and responsibilities of the Board and respondent during the informal hearing. (A copy is also available at the Board office).
3. The Respondent respondent may request and the Board may grant a continuance not to that does not exceed 30 days upon a showing of good cause. During the informal hearing the Board shall swear witnesses, question the Respondent respondent and witnesses, and deliberate. The respondent may respond to the Board's questions, present witnesses, and ask questions of the Board regarding the matter before it.
4. If the Board finds a violation of the rules or statutes, statutes or rules, but the violation is not of sufficient seriousness to merit suspension or revocation, it may take any or all one or more of the following actions:
  - a. Submit to an examination;
  - 1-a. Issue a decree of censure letter of concern;
  - 2-b. Issue a letter of remedial action;
  - c. Issue a letter of due diligence, which may or may not include remedial action;
  - d. Set a time period and terms of probation sufficient to protect the public welfare and safety and to educate the Respondent concerned respondent. The Board may require the Respondent to: one or more of the following as terms of probation:
    - b-i. Obtain training Training or education;
    - e-ii. Submit to supervision or peer Supervision or mentor review; or
    - d-iii. Accept restrictions Restriction on the nature and scope of the Respondent's respondent's practice; or
    - iv. Other reasonable measures designed to protect the public and educate the respondent.
5. For any Board action other than a letter of concern or a letter of due diligence, the Board shall request that the respondent sign a consent agreement, which may include findings of fact and conclusions of law, depending on the severity of the violation, but shall identify and explain each violation found. If the respondent is aggrieved by the outcome of the informal hearing, the respondent may request a formal hearing in writing, within 30 days from the date the written notice of the outcome of the informal hearing is mailed or otherwise served.
6. In resolving a complaint, the Board shall consider mitigating and aggravating circumstances, including but not limited to:
  - a. Whether a violation is intentional.
  - b. Whether the respondent has a prior disciplinary history.
  - c. The time that has elapsed since the violation, and any prior violation.
  - d. Whether any prior violation is similar to the present violation.
  - e. The complexity of the assignment.

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- f. Whether the assignment was outside the respondent's competence; and
- g. Whether the respondent has taken courses after a violation to prevent future violations.

**E. Summary Suspension**

If the Board finds that the public ~~health, safety or welfare~~ ~~or safety~~ imperatively requires emergency action, and incorporates a finding to that effect in its order, the Board may order a summary suspension pending proceedings for revocation or other action. If an order of summary suspension is issued, the Board shall serve the ~~Respondent~~ respondent with a written notice of summary suspension and formal hearing, listing the charges against the ~~Respondent~~ respondent and setting a the date for the formal hearing within 30 days, as soon as is reasonably possible, but in no event more than 60 days from service of the written notice.

**F. Refusal to Appear**

A ~~Respondent~~ respondent may refuse a request to appear at an informal hearing. If the respondent does not appear, the Board may schedule the matter for a formal hearing.

**G. 12-Month Review**

If a matter is not resolved within 12 months from receipt of the response, the Board shall schedule the matter for review at each regularly scheduled Board meeting to determine if good cause exists to continue the investigation. If, after completing its investigation, the Board finds that further action against the respondent is not warranted, the Board shall dismiss the matter.

**R4-46-302. Formal Hearing Procedures**

- A. The Board may issue a notice of hearing and formal complaint for formal disciplinary proceedings if:
  - 1. The ~~Respondent~~ respondent refuses ~~an invitation to a request to appear~~ at an informal hearing;
  - 2. After an informal hearing, the Board determines that suspension or revocation may be warranted;
  - 3. The ~~Respondent~~ respondent is aggrieved by the Board's decision in an informal hearing; or
  - 4. After completing its investigation, the Board finds that suspension or revocation may be warranted.
- B. Except as provided in R4-46-301(E), the Board shall provide notice of a formal hearing to a ~~Respondent~~ respondent at least 30 days ~~prior to~~ before the date set for the hearing. The Board shall notify the ~~Respondent~~ respondent by certified mail or personal service at the ~~Respondent's~~ respondent's last known address of record. Unless otherwise specified, any notice provided for in these rules is complete upon deposit in the U.S. mail or by service as permitted under ~~the Arizona Rules of Civil Procedure, A.R.S. § 41-1092.04.~~
- C. On its own motion or a the motion of a party, ~~and a showing of good cause,~~ the Board may hear a case or have the case heard by an administrative law judge. ~~The Board shall not deny the motion without good cause.~~ The Board may accept, reject, or modify the administrative law judge's recommended decision as prescribed by A.R.S. § 41-1092.08, and shall issue a final order.
- D. Board Hearings:
  - 1. The Board may conduct a hearing without adherence to the rules of evidence used in civil proceedings. The Board shall include the ~~Respondent's~~ respondent's application and disciplinary records as evidence in the hearing record.
  - 2. In all hearings required or permitted by statute, order of the Board, or these rules, the Party ~~party~~ seeking relief has the burden of proof and will present evidence first.
  - 3. The Board shall conduct each formal hearing according to A.R.S. Title 41, Chapter 6, Article 10.
- E. Failure to answer or appear Answer or Appear:
  - 1. Upon the motion of the state, the failure of a ~~Respondent~~ respondent to answer within ~~20~~ 30 days of ~~the date on~~ the notice of a formal complaint without good cause may be deemed an admission by the ~~Respondent~~ respondent of the commission of the acts charged in the formal complaint. ~~The Respondent shall answer and defend within 10 days of the filing of the motion to default. Any response to the State's motion by the respondent together with an answer to the formal complaint shall be filed within 10 calendar days from the date the motion for default is filed. The Board shall deny the State's motion for default only upon a showing of good cause by the respondent. In the absence of an response and answer, or response the Board may shall grant the motion for default, vacate the formal hearing, and impose any sanction provided by this Article.~~
  - 2. ~~The failure of~~ If a Party ~~party fails~~ to appear for a formal hearing without good cause, the Board shall ~~leave the Board free to act upon the evidence and other information at hand without further notice.~~
- F. The Board shall make and keep a record of a ~~the~~ hearing and in the case of disciplinary hearings or ~~where~~ if requested by a Party or ordered by the Board, a transcript shall be prepared and filed with the Board. If the transcript is prepared at the request of a Party, ~~the cost of party, the party making the request shall pay for the transcript, shall be paid by the Party making the request,~~ unless the Board, for good cause shown waives assessment of this cost.
- G. A Party ~~party~~ may request and the Board may grant a continuance of a hearing date or any other deadline imposed by R4-46-302 upon a showing of good cause.

**R4-46-303. Rehearing or Review of the Board's Decision**

- A. ~~Except as provided in subsection (H) of this Section, any Party~~ Any party in a contested case before the Board may file a motion for rehearing or review within 30 days after service of the final administrative decision. Service is complete upon

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personal service or five days after the date the decision is mailed to the Party's party's last known address. The Party party shall attach a full supporting memorandum specifying the grounds for the motion. For the purposes of this subsection, a decision is deemed to have been served when personally delivered or mailed by certified mail to the Party's party's last known address of record.

- B. The opposing Party party may file a response within 15 days after service of the motion for rehearing or review, or by a date ordered by the Board, whichever is later. The Party party shall support the response with a memorandum discussing legal and factual issues.
C. Either Party party may request or the Board may order oral argument.
D. The Board may grant rehearing or review for any of the following causes materially affecting a Party's party's rights:
1. Irregularity in the administrative proceedings of the Board or any other abuse of discretion which deprived the moving Party party of a fair hearing;
2. Misconduct of the Board or any Party; party;
3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
5. Excessive or insufficient sanction;
6. Error in the admission or rejection of evidence or other errors of law at the administrative hearing or during the progress of the proceedings or;
7. Unjustified decision based upon the evidence, or a decision that is contrary to law.
E. The Board may affirm or modify the decision or grant a rehearing to any Party party on all or part of the issues for any of the reasons set forth in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order. The rehearing, if granted, shall be limited to matters specified by the Board.
F. Not later than 30 days after a decision is rendered, the Board may order a rehearing or review on its own initiative, for any reason which it might have granted relief on motion of a Party; party.
G. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing Party party may submit opposing affidavits with the response. Reply affidavits may be permitted.

R4-46-306. Complaint Information Availability

- A. Every six months, the Board shall generate a report for publication on the Board's web site or in a newsletter that indicates for that period the number of:
1. Complaints received.
2. Complaints dismissed.
3. Complaints referred for investigation, and
4. Complaints referred for informal or formal hearing.
B. In preparing the report, the Board shall include the severity of violations found; the suggested complaint resolution according to the Board Complaint Resolution Chart (a copy is available at the Board office); the actual complaint resolution implemented by the Board; and any other information that the Board deems useful to appraisers, property tax agents, and the public.

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TITLE 9. HEALTH SERVICES

CHAPTER 26. ARIZONA COMMISSION FOR THE DEAF AND HARD OF HEARING

PREAMBLE

Table with 2 columns: Sections Affected and Rulemaking Action. Rows include Article 5, R9-26-501, R9-26-502, R9-26-503, R9-26-504, R9-26-505, R9-26-506, R9-26-507, R9-26-508, R9-26-509 and their corresponding actions like Amend, Repeal, New Section.



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R9-26-510	Repeal
R9-26-510	New Section
R9-26-511	Amend
R9-26-512	New Section
R9-26-513	New Section

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

Authorizing statute: A.R.S. § 36-1946(1)

Implementing statute: A.R.S. § 36-1946

**3. List of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 10 A.A.R. 4600, November 12, 2004

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

Name: Rob Voreck, Licensing & Certification Coordinator  
Address: Arizona Commission for the Deaf and Hard of Hearing  
1400 W. Washington, Room 126  
Phoenix, AZ 85007  
Telephone: (602) 542-3286  
Fax: (602) 542-3380

**5. Explanation of the rules, including the agency's reasons for initiating the rules:**

The Arizona Commission for the Deaf and Hard of Hearing is updating Title 9, Chapter 26, Article 5, to reflect new licensing requirements, application and complaint procedures as well as utilizing current rulewriting techniques to make the rules more clear, concise, and understandable.

**6. Study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

None

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

Not applicable

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

The rules on application procedures are an administrative burden on the Commission and licensees. The standards required in the rules for legal interpreters are minimal and obsolete and needs to be raised and updated to reflect current interpreting standards. The economic impact on small businesses and consumers is expected to be minimal in terms of costs. The economic impact on other state agencies, such as the Office of the Secretary of State and the Governor's Regulatory Review Council, is expected to be minimal.

**9. Name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Robin Voreck, Licensing & Certification  
Address: 1400 W. Washington, Room 126  
Phoenix, AZ 85007  
Telephone: (602) 542-3286  
Fax: (602) 542-3380

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

The Commission will accept written comments Monday through Friday, 8:00 a.m. to 5:00 p.m. at 1400 West Washington Room 126, Phoenix, Arizona, 85007 until 5 p.m., January 14, 2005. E-mail comments will not be accepted. The Commission will hold a public hearing where oral comments can be made on January 14, 2005 at 2:00 p.m. at 1400 West Washington, Room 126

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

NAD Code of Ethics R9-26-502(B)

RID Code of Ethics	R9-26-502(B)
NCRA Code of Professional Ethics	R9-26-502(B)

**13. The full text of the rules:**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 26. ARIZONA COMMISSION FOR THE DEAF AND HARD OF HEARING**

**ARTICLE 5. ~~INTERPRETER CERTIFICATION~~ LEGAL INTERPRETER LICENSURE**

Section

R9-26-501.	Definitions
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R9-26-505.	<del>Expired Deaf</del> <u>Legal Interpreter Licensure</u>
R9-26-506.	<u>Oral Interpreter Certification</u> <u>Licensure</u>
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R9-26-508.	License Application <del>Time-frames; Processing Procedures; Issuance; Denial</del>
R9-26-509.	<u>Certification Renewal</u> <u>License Denial, Suspension, and Revocation</u>
R9-26-510.	<del>Certification Revocation</del> <u>Complaint Procedures</u>
R9-26-511.	Rehearing or Review of Decisions
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<u>R9-26-513.</u>	<u>Grandfathering of Legal Interpreters</u>

**ARTICLE 5. ~~INTERPRETER CERTIFICATION~~ LEGAL INTERPRETER LICENSURE**

**R9-26-501. Definitions**

The following definitions apply in this Article ~~In this Article, unless otherwise specified:~~

1. "Accredited" means approved by the:
  - a. New England Association of Schools and Colleges.
  - b. Middle States Association of Colleges and Secondary Schools.
  - c. North Central Association of Colleges and Schools.
  - d. Northwest Association of Schools and Colleges.
  - e. Southern Association of Colleges and Schools, or
  - f. Western Association of Schools and Colleges.
- 1-2. "Applicant" means an individual seeking licensure by the Commission who submits a completed application, and documentation to the Council to obtain a certificate of competency.
- 2-3. "Application" means the forms and documents the Commission requires an applicant for licensing to submit or have submitted on the applicant's behalf a form provided to applicants by the Council, requiring the following information:
  - a. A photograph, measuring not less than 1 inch by 1 inch, of the applicant that was taken within five years of the date of filing the application;
  - b. The applicant's full current name and any former names;
  - e. The applicant's current address and telephone number;
  - d. The applicant's social security number;
  - e. Whether the applicant previously has applied for a certificate of competency;
  - f. The applicant's notarized signature, attesting to the truthfulness of the information provided by the applicant; and
  - g. The documentation required by this Article.
3. "ASL" means American Sign Language, the visual language used by deaf persons in the United States to communicate.
4. "CCP" means an NCRA certified Communication Access Real Time provider certificate.
- 4-5. "CDI" means ~~a~~ an RID certified deaf interpreter certificate, a certification issued by RID, evidencing that the certificate holder is deaf or hard of hearing, and performs at or above RID standards for deaf interpreters, but provides interpretation services with a hearing qualified interpreter.
- 5-6. "Certificate of competency" means a ~~certificate~~ document issued by the Council Commission indicating that the certificate holder has met the criteria set forth in this Article for the provision of interpretation services to deaf persons in court proceedings, government entity proceedings, and law enforcement encounters.
6. "Certification" means a currently valid card issued by RID, with the word "certified", and the categories in which the

- cardholder is certified, listed under the cardholder's name.
7. "Certified copy" means having a copy of the original document notarized as being a true and accurate copy of the original.
  - 8-7. "CI" means certificate of interpretation; issued by RID, evidencing that the certificate holder performs at or above RID standards for sign language interpreters who interpret between ASL and English in both sign-to-voice and voice-to-sign.
  8. "Commission" means the Arizona Commission for the Deaf and the Hard of Hearing.
  9. "Commission Board" means the Arizona Commission for the Deaf and the Hard of Hearing Board.
  - 9-10. "Continuing legal education" means a course, workshop, program, or educational activity that is relevant to the practice of legal interpreting seminars sponsored by a bar association, law firm, law department, or government entity, at which attendance is not limited to members of the association, firm, department, or entity, and that constitute an organized program of learning, dealing with matters directly related to the practice of law, and following an agenda defined by written materials or exercises distributed as part of the program.
  10. "Council" means the Council for the Hearing Impaired.
  11. "Court" means a place where people are officially assembled for the administration of justice, including all proceedings before every Grand Jury, Municipal Court, Justice Court, Magistrate Court, Superior Court, Court of Appeals, and Supreme Court in Arizona.
  - 12-11. "CRR" means a an NCRA certified realtime reporter certificate certification issued by the NCRA, reflecting that the certificate holder has the training, experience, skills, and equipment to provide realtime on-screen translation, with at least 96% accuracy, for a deaf person in a proceeding.
  - 13-12. "CSC" means a comprehensive skills certificate issued by RID, evidencing that the certificate holder performs at or above RID standards for sign language interpreters who interpret between ASL and English, and convert spoken English to an English-based sign system, in both sign-to-voice and voice-to-sign.
  - 14-13. "CT" means a certificate of transliteration issued by RID and evidencing that the certificate holder performs at or above RID standards for sign language interpreters who convert spoken or written English to an English-based sign system, in both sign-to-voice and voice-to-sign.
  14. "Grievance committee" means a Commission-appointed committee comprised of the following:
    - a. Two licensed legal interpreters;
    - b. Two deaf individuals with knowledge of interpreting issues, and
    - c. The interpreter representatives of the Commission Board.
  15. "Custody" means that a person in a law enforcement encounter is not free to leave. "Interpreter" means a person who provides interpreting or realtime reporting services.
  16. "Deaf person" means a person who is unable to fully process linguistic information through hearing, including any person who has an average pure tone decibel loss greater than 20dB in the better ear, any person who is observed by a court, government entity, or law enforcement personnel, without an interpreter, to need communication assistance to effectively participate in the proceeding, or any person who is hard of hearing, regardless of whether they wear hearing aids. "Interpreting" means conveying a spoken message into sign language and conveying a message in sign language into the spoken word or utilizing a computer-assisted method of simultaneously keying, translating, and displaying words as they are spoken.
  17. "English-based sign system" means using conceptually accurate American signs in English syntax. This is distinguishable from finger spelling using the alphabet, and from ASL, which also uses Americans signs, but not necessarily in conceptually accurate English syntax. "Legal interpreter" means a person who has a legal interpreter license.
  18. "Executive Secretary" means the executive officer of the Council who is responsible for implementing the Council's programs and activities, under A.R.S. § 36-1942. "Legal interpreter license" means a certificate of competency issued under A.R.S. § 36-1946.
  19. "Government entity" means any department, board, commission, agency, or licensing authority of Arizona, or a political subdivision of Arizona. "Legal interpreting" means providing interpreting services in a setting specified in A.R.S. § 12-242(A) through (D).
  20. "Intermediary interpreter" means a person holding a CDI certificate, an RSC certificate, or any person that a deaf person chooses to assist with interpretation services between the deaf person and a qualified interpreter. "Legal training" means a structured program or workshop providing instruction and information on but not limited to:
    - a. A.R.S. § 12-242;
    - b. The structure of the judiciary system of this state;
    - c. The judiciary process of this state;
    - d. Administrative procedures;
    - e. Law enforcement procedures related to interpreting; and
    - f. Commonly used legal terms.
  21. "Law enforcement encounter" means any situation where a deaf person is questioned, arrested, or taken into custody for any alleged violation of Arizona criminal law, by any law enforcement personnel. "Licensee" means a person who

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- has a legal interpreter license.
22. “Mediation” means a meeting involving only the following individuals:
- The complainant;
  - The applicant or licensee, as applicable;
  - A mediator; and
  - An interpreter to provide interpreting services, if necessary.
23. “Mediator” means an individual who has completed at least 40 hours of training approved by the Arizona Dispute Resolution Association.
24. “NAD” means the National Association of the Deaf.
25. “NAD Level 5” means a master interpreting certificate issued by NAD.
- 22-26. “NCRA” means the National Court Reporters Association.
23. “OIC” means an oral interpretation certificate issued by RID, evidencing that the certificate holder performs at or above RID standards for oral interpreters.
24. “Oral Interpreter” means a person who mouths a spoken message so that a deaf person can accurately speech read and understand the intent of the spoken message, and who accurately verbalizes the message and intent of the deaf person’s speech and mouth movements.
25. “Party” means a deaf person who is a parent of a juvenile, a witness, complainant, defendant, or attorney in a court proceeding; a deaf person who is a principal party of interest, or a witness in a government entity proceeding; or a deaf person who is a defendant, or a criminal suspect in a law enforcement encounter.
26. “Proceeding” means any civil, criminal, or grand jury proceeding; any government entity proceeding; or any law enforcement encounter.
27. “Qualified interpreter” means a person who has a certificate of competency issued by the Council, and who is a court reporter who provides realtime translation, a sign language interpreter, or an oral interpreter “Oral interpreting” means rendering visible or audible language from a deaf person and conveying it in speech understandable by a non-deaf person and, using verbal and non-verbal support techniques, conveying spoken language to the deaf person.
28. “Realtime translation” means a court reporter’s computer-aided method of accurately and simultaneously translating and displaying spoken words, including punctuation, in live proceedings, within five seconds of steno-type input, for a deaf person to read “OTC” means an oral transliteration certificate issued by RID.
29. “Realtime reporting” means a court reporter’s computer-assisted method of simultaneously keying, translating, and displaying words as they are spoken.
- 29-30. “RID” means Registry of Interpreters for the Deaf.
30. “RSC” means a reverse skills certificate, which is the prior name of a CDI, and is synonymous with CDI “RPR” means registered professional reporter certification issued by NCRA.
31. “SC:L” means specialist certificate: legal issued by RID, evidencing that the certificate holder has specialized knowledge of the legal system, and performs at or above RID standards for interpreting in proceedings.
32. “Sign language interpreter” means a visual language used by deaf persons to communicate person who has a: (1) CI and CT; (2) CSC; (3) CDI; (4) RSC; or (5) SC:L certification from RID.
33. “Speech read” means determining what a person is saying by the person’s mouth movements, body language, and the context of the conversation.
34. “Supervision” means that the supervising qualified interpreter has direct, in-person contact with the interpreter that he or she is supervising, and provides orientation information to the supervisee about providing interpreter services in proceedings, observes the supervisee providing interpretation services in proceedings, has the supervisee observe the supervisor providing interpretation services in proceedings, and provides feedback to the supervisee about the supervisee’s performance.

**R9-26-502. Process for Obtaining Interpreters Application**

- A.** The court, government entity, or law enforcement personnel responsible for obtaining a qualified interpreter in any proceeding where a deaf person is a party, shall follow the steps stated in subsection (B).
- B.** The court, government entity, or law enforcement personnel shall:
- Determine whether a party is a deaf person, either based on the party’s request, or on the observation of the court, governmental entity, or law enforcement personnel;
  - Once a party is determined to be deaf, determine from the deaf person whether the deaf person needs sign language interpretation, oral interpretation, court reporter realtime translation, or a combination of interpretation services;
  - Determine, for sign language interpretation services, whether the deaf person needs ASL or an English-based sign system;
  - Arrange for a qualified interpreter to provide interpretation services; and
  - Determine from the deaf person whether the qualified interpreter meets the deaf person’s communication needs at the outset of the proceeding or encounter, either upon complaint by the deaf person, or by observation of the court, government entity, or law enforcement personnel.

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- C. The deaf person may object to the qualified interpreter because the interpreter cannot meet the deaf person's communication needs. The court, government entity, or law enforcement personnel shall then appoint either an intermediary interpreter to work with the qualified interpreter or may provide another qualified interpreter that can meet the deaf person's communication needs.
- A. An applicant for licensure as a legal interpreter shall submit to the Commission documentation of compliance with the requirements of R9-26-503, R9-26-504, R9-26-505, R9-26-506, or R9-26-507, as applicable, and an application form that provides the following information:
  - 1. The applicant's name, current home address, business address, and home and business telephone numbers;
  - 2. If applicable, the name of the applicant's employer and the employer's current business address and telephone number;
  - 3. A list of all states and countries in which the applicant is or has been licensed or certified as an interpreter;
  - 4. A statement that the applicant holds, at a minimum, an associate of the arts degree awarded by an accredited academic institution in any academic field or documentation of 60 credit hours or the equivalent of 60 credit hours from an accredited academic institution;
  - 5. A statement of whether the applicant has ever been convicted of a felony or a misdemeanor in this state or any other state;
  - 6. A statement of any disciplinary action, consent order, or settlement agreement that is pending or has been imposed by any state, country, or organization upon the applicant's interpreter license or interpreter certification;
  - 7. A statement of whether the applicant has been found negligent in any civil litigation in providing interpreting services;
  - 8. A statement of whether the applicant has a physical or mental condition that may impair the applicant's ability to act as a legal interpreter;
  - 9. A statement that the applicant will comply with the NAD Code of Ethics, RID Code of Ethics, or NCRA Code of Professional Ethics, as applicable; and
  - 10. A statement signed by the applicant verifying the truthfulness of the information provided by the applicant.
- B. The codes of ethics cited in (A)(9) of this Section are incorporated herein by reference and on file with the Commission. This incorporation by reference contains no future editions or amendments.

**R9-26-503. Sign Language Legal Interpreter Certification Licensure**

- A. ~~The Council may issue a certificate of competency to an applicant who files an application with the Council, and submits all of the following:~~
  - 1. ~~A certified copy of the applicant's sign language interpreter RID certification;~~
  - 2. ~~An affidavit signed by the applicant, and notarized, attesting whether the applicant:~~
    - a. ~~Is a CI and CT, CSC, or SC:L certificate holder and has at least 2,000 hours of sign language interpreting experience within the five years immediately preceding the date of filing the affidavit with the Council, or is a CDI or RSC certificate holder and has at least 50 hours of sign language interpreting experience within the five years immediately preceding the date of filing the affidavit with the Council;~~
    - b. ~~Has ever been disciplined, or is currently the subject of any disciplinary action, in any jurisdiction or before RID relating to providing interpreting services or adhering to the RID Code of Ethics, set forth in subsection (C);~~
    - c. ~~Has ever been named, or is currently named, as a defendant in any law suit alleging the applicant was negligent in providing the applicant's interpreter services or alleging that the applicant violated the RID Code of Ethics, set forth in subsection (C);~~
    - d. ~~Follows the RID Code of Ethics, set forth in subsection (C), including the obligation to be absolutely neutral in all proceedings;~~
    - e. ~~Understands that the applicant shall ensure that the applicant's interpreting skills meet the deaf person's communication needs, and that failure to do so may be grounds for revocation of the applicant's certificate of competency;~~
    - f. ~~Understands that the applicant shall complete the continuing education requirements necessary to maintain current RID certification in the category or categories in which the Council issued the applicant's certificate of competency;~~
    - g. ~~Understands that the applicant shall complete at least three clock hours of continuing legal education every year in addition to RID continuing education requirements, shall maintain accurate records of compliance with this subsection, and shall produce the records upon the Council's request; and~~
    - h. ~~Understands that the applicant shall obtain RID SC:L certification by January 1, 2005.~~
  - 3. ~~Documentation that the applicant has provided at least 20 hours of sign language interpretation services to a deaf person under the supervision of a qualified interpreter in proceedings.~~
- B. ~~After January 1, 2005, a RID SC:L certification shall be the only RID certification that shall satisfy subsection (A)(1).~~
- C. ~~Interpreters shall comply with the following RID Code of Ethics requirements:~~
  - 1. ~~Keep all interpreting assignment related information confidential;~~

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2. Render the message to accurately convey the content and spirit of the speaker, using language that the deaf person readily understands;
3. Not counsel, advise, or interject personal opinions;
4. Accept assignments using discretion with regard to their skills, the setting, and the deaf person involved;
5. Request compensation for services in a professional and judicious manner;
6. Maintain high professional standards in providing services, including maintaining absolute neutrality in all proceedings; and
7. Further their knowledge and skills by participating in workshops, professional meetings, interacting with professional colleagues, and reading current literature.

**A.** To be eligible for a sign language legal interpreter license, an applicant shall submit to the Commission the documentation in R9-26-502 and proof of the following:

1. Current RID SC:L certification.
2. Completion of a minimum of six hours of legal training, and
3. Completion of a minimum of 5,000 hours of experience in interpreting;

**B.** Individuals who do not have a sign language legal interpreter license shall not provide sign language legal interpreting services.

**R9-26-504. ~~Temporary Provisional Sign Language Legal Interpreter Certification Licensure~~**

**A.** ~~The Council may issue a temporary sign language interpreter certificate of competency to an applicant, who holds a CI and CT, CSC, or CDI RID certification, to provide interpretation services in proceedings under the supervision of a qualified interpreter for one year. This applicant shall file an application with the Council, and submit the following:~~

1. ~~A certified copy of the applicant's CI and CT, CSC, or CDI RID certification; and~~
2. ~~The names and addresses of the applicant's qualified interpreter supervisors.~~

**B.** ~~The temporary certificate of competency shall automatically expire one year after the date of issue. The temporary certificate holder shall provide 20 hours of sign language interpretation services during the year that the temporary certificate is valid. If the 20 hours are not obtained before the temporary certificate expires, the applicant shall apply for another temporary certificate.~~

**C.** ~~Beginning January 1, 2005, the Council shall no longer issue temporary certificates of competency.~~

**A.** To be eligible for a provisional sign language legal interpreter license, an applicant shall submit to the Commission the documentation in R9-26-502 and proof of the following:

1. Current NAD Level 5 certification, RID CSC, or RID CI and CT certification;
2. Completion of a minimum of six hours of legal training; and
3. Completion of a minimum of 3,000 hours of experience in interpreting.

**B.** A provisional license expires one calendar year after the date the license is issued or renewed.

**C.** A person holding a provisional sign language legal interpreter license shall obtain RID SC:L certification within one year of the date the license is issued. If the licensee does not obtain RID SC:L certification within one year, the licensee may submit a written request to the Commission for a second provisional license to complete the RID SC:L requirement. The Commission shall not grant more than one renewal unless the licensee shows good cause for failing to obtain RID SC:L certification.

**D.** Upon obtaining RID SC:L certification, the licensee shall submit to the Commission documentation affirming that the applicant has obtained RID SC:L certification.

**E.** Individuals who do not have a provisional sign language legal interpreter license shall not provide sign language interpreting services in settings proscribed under A.R.S. § 12-242.

**R9-26-505. ~~Expired Deaf Legal Interpreter Licensure~~**

**A.** To be eligible for a deaf legal interpreter license, an applicant shall submit to the Commission the documentation in R9-26-502 and proof of the following:

1. Current RID CDI certification; and
2. Completing a minimum of six hours of legal training.

**B.** Individuals who do not have a deaf legal interpreter license shall not provide sign language interpreting services in settings proscribed under A.R.S. § 12-242.

**R9-26-506. ~~Oral Interpreter Certification~~**

**A.** ~~The Council may issue an oral interpreter certificate of competency to an applicant who files an application with the Council, and submits the following:~~

1. ~~A certified copy of the applicant's RID OIC certification, or documentation indicating that the applicant has provided at least 360 hours of oral interpreter services within the three years immediately preceding the date the applicant filed the documentation with the Council;~~
2. ~~The information required in R9-26-503(A)(2)(b), (c), (d), (e), (f), and (g); and~~
3. ~~A statement on the applicant's affidavit that the applicant understands that the applicant shall obtain RID OIC certifi-~~

cation by January 1, 2005, if not already obtained, and shall complete the continuing education requirements necessary to maintain current RID certification.

- B.** After January 1, 2005, applicants for oral interpreter certificates of competency shall have an RID OIC certification to satisfy subsection (A)(1).
- A.** To be eligible for an oral legal interpreter license, an applicant shall submit to the Commission the documentation in R9-26-502 and proof of the following:
  - 1. Current RID OTC certification; and
  - 2. Completing of a minimum of six hours of legal training.
- B.** Individuals who do not have an oral legal interpreter license shall not provide oral interpreting services in settings requiring legal interpreting services.

**R9-26-507. Realtime Reporter Certification ~~Legal Interpreter Licensure~~**

- A.** The Council may issue a realtime reporter certificate of competency to an applicant who files an application with the Council, and submits the following:
  - 1. A certified copy of the applicant's Superior Court certification issued pursuant to A.R.S. § 12-222, and a notarized affidavit, signed by the applicant, attesting that the applicant has provided realtime translation in at least two trials in state or federal court; or
  - 2. A certified copy of the applicant's NCRA Registered Professional Reporter, Registered Merit Reporter, or Registered Diplomat Reporter certification, and a notarized affidavit, signed by the applicant, attesting that the applicant has provided realtime translation in at least two trials in state or federal court; or
  - 3. A certified copy of the applicant's CRR, and a notarized affidavit, signed by the applicant, attesting that the applicant follows the NCRA ethical requirements, set forth in subsection (C); and
  - 4. A statement on the applicant's affidavit that the applicant understands that the applicant shall obtain NCRA CRR certification by January 1, 2005, if not already obtained, and shall complete the continuing education requirements necessary to maintain current NCRA CRR certification.
- B.** After January 1, 2005, NCRA CRR certification shall be the only certification that shall satisfy subsection (A).
- C.** Realtime translators shall comply with the following NCRA Code of Professional Ethics, Section II: Realtime Reporter as Assistive Technology in Legal Proceeding requirements:
  - 1. Explain, before beginning realtime reporting, who has hired the reporter, what is to be reported, and that the realtime is to be used as assistive technology, not as a verbatim record of the proceeding;
  - 2. Determine, before beginning realtime reporting, who owns the residual computer file;
  - 3. Keep all assistive, assignment-related information confidential;
  - 4. Render as near a verbatim translation as possible, conveying the content and spirit of the speaker, using substitute language that is computer translatable for the deaf person to understand, and using parentheticals to describe to the deaf person all sounds during the proceeding;
  - 5. Maintain absolute neutrality in all proceedings, by not counseling, advising, or interjecting personal opinions;
  - 6. Accept assignments using discretion with regard to their skills, the setting, the deaf person being assisted, and accurately assessing the reporter's qualifications for realtime translation;
  - 7. Know how to operate the software and hardware being used, including being able to troubleshoot anticipated problems that occur with software and hardware;
  - 8. Further their knowledge and skills by participating in workshops, professional meetings, interaction with professional colleagues, reading current literature, and achieving additional state or national realtime certifications; and
  - 9. Save a hard copy or computer disk of the actual translation that the deaf person saw on screen. If the translation is saved on computer disk, it shall be in text, or American standard code for information interchange format.
  - 10. In addition to the ethical requirements in subsections (C)(1) through (9), realtime reporters shall not simultaneously act in a dual capacity as a realtime reporter for the benefit of a deaf person, and the stenographer who is recording the official verbatim record of the proceeding.
- A.** To be eligible for a realtime reporter legal interpreter license, an applicant shall submit to the Commission the documentation in R9-26-502 and proof of current NCRA RPR, CRR, or CCP certification.
- B.** Individuals who do not have a realtime reporter legal interpreter license shall not provide legal interpreting services.

**R9-26-508. License Application Time-frames; Processing Procedures; Issuance; Denial**

- A.** Within 15 calendar days of receiving an initial or renewal certificate of competency application of any type, the Council shall notify the applicant, in writing, that the application package is complete or incomplete. If the package is incomplete, the notice shall specify what information is missing.
- B.** An applicant with an incomplete package shall supply the missing information within 10 calendar days from the date of the notice. If the applicant fails to do so, the Council may close the file. An applicant whose file has been closed shall begin the application process anew.
- C.** Upon receipt of all missing information within 10 calendar days, the Council shall notify the applicant, in writing, that the

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application is complete.

- ~~D.~~ The Council shall not process a certificate of competency application until the applicant has fully complied with the requirements of this Article.
- ~~E.~~ The Council shall notify an applicant, in writing, whether the certificate of competency is granted or denied, no later than 30 calendar days after the postmark date of the notice advising the applicant that the package is complete.
- ~~F.~~ The Council may deny a certificate of competency for any of the following reasons:
  - 1. Failure to provide complete documentation;
  - 2. Providing false or misleading information; or
  - 3. Failure to meet the requirements stated in this Article.
- ~~G.~~ The notice of denial shall include the following:
  - 1. Reasons for the denial, with citations to the statutes or rules on which the denial is based;
  - 2. The applicant's right to request reconsideration pursuant to subsection (H); and
  - 3. The name and telephone number of an agency contact person who can answer questions regarding the application process.
- ~~H.~~ The following time frames shall apply for initial and renewal certificate of competency applications:
  - 1. Administrative completeness review time frame: 15 calendar days.
  - 2. Substantive review time frame: 30 calendar days.
  - 3. Overall time frame: 45 calendar days.
- ~~I.~~ Within 15 calendar days of the mailing date of the Council's notice of denial, the applicant may submit a request for reconsideration to the Council, setting forth the facts that justify reconsideration of the denial. The Council shall review all documentation, and interview any persons with information relevant to issuing or denying the applicant's certificate.
- ~~J.~~ Within 10 calendar days of receiving the applicant's request for reconsideration, the Council shall notify the applicant, in writing, whether the denial is upheld. If a denial is upheld, the Council's notice upholding the denial shall include the following:
  - 1. Reasons for the denial, with citations to the statutes or rules on which the denial is based;
  - 2. The applicant's right to appeal the denial, including the number of days in which the applicant has to file a request for hearing to challenge the denial, and the right to request an informal settlement conference pursuant to A.R.S. § 41-1092.06;
  - 3. The name and telephone number of an agency contact person who can answer questions regarding the appeal process.
- ~~K.~~ An applicant whose certificate is denied has a right to a hearing, an opportunity for rehearing, and, if the denial is upheld, judicial review pursuant to A.R.S. Title 41, Chapter 6, Articles 6 and 10, and A.R.S. Title 12, Chapter 7, Article 6.
- A. For a legal interpreter license application, the overall time-frame described in A.R.S. § 41-1072(2) is 45 days.
- B. For any legal interpreter license application, the administrative completeness review time-frame is 15 days and begins on the date the Commission receives an application packet.
  - 1. When the Commission receives a complete application packet, the Commission shall send a written notice of administrative completeness to the applicant.
  - 2. If an application packet is incomplete, the Commission shall send to the applicant a written notice of incompleteness that states each deficiency and the information or documents needed to complete the application packet. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice until the date the Commission receives a complete application packet.
  - 3. If the applicant does not submit a complete application packet within 30 days from the date the Commission sends a written notice of incompleteness to the applicant, the Commission shall consider the application withdrawn. If the applicant does not wish to have the application considered withdrawn, the applicant may request a denial in writing.
  - 4. If the Commission sends a written notice of approval to the applicant during the administrative completeness review time-frame, the Commission shall not provide a separate written notice of administrative completeness.
- C. For a legal interpreter license application, the substantive review time-frame described in A.R.S. § 41-1072(3) is 30 days and begins on the date the Commission sends written notice of administrative completeness to an applicant.
  - 1. If there is insufficient documentation for the Commission to determine whether an application meets the requirements of this Article, the Commission shall send to the applicant a written comprehensive request for additional information that states each statute and rule upon which the request is based. The substantive review time-frame and the overall time-frame are suspended from the date the written comprehensive request is sent until the date the Commission receives the requested information.
    - a. If an applicant does not submit the requested information within 30 days of the date the Commission sends the comprehensive written request to the applicant, the Commission shall consider the application withdrawn. If the applicant does not wish to have the application considered withdrawn, the applicant may request a denial in writing.
    - b. If the information submitted by the applicant does not meet the requirements of this Article, the Commission shall send a written notice of denial to the applicant including the basis for the denial and an explanation of the applicant's right to appeal under A.R.S. Title 41, Chapter 6, Article 10.



2. If an applicant meets the requirements of this Article, the Commission shall send written notice of approval to the applicant.

**R9-26-509. ~~Certification-Renewal~~ License Denial, Suspension, and Revocation**

~~Certification of competency holders shall renew their certificates on or before January 1 of every year. If January 1 is a Saturday, Sunday, or legal holiday, the renewal deadline is the first business day following the Saturday, Sunday, or legal holiday. To renew certificates of competency, the certificate holder shall file all the following documentation with the Council:~~

1. ~~A certified copy of the certificate holder's current RID, or NCRA, certification;~~
2. ~~A notarized affidavit, signed by the certificate holder, attesting that since the Council issued the certificate, whether the certificate holder:~~
  - a. ~~Has been disciplined or is currently the subject of any disciplinary action in any jurisdiction, or before RID or NCRA, as applicable, relating to providing interpretation or realtime reporting services, respectively, or adhering to the RID or NCRA ethical requirements of R9-26-503(C) or R9-26-507(C), respectively;~~
  - b. ~~Has been named as a defendant in any law suit alleging that the certificate holder was negligent in providing interpretation services, or alleging the certificate holder violated the RID ethical requirements of R9-26-503(C), or alleging the certificate holder was negligent in providing realtime reporting services, or alleging the certificate holder violated the NCRA ethical requirements of R9-26-507(C);~~
  - e. ~~Follows the RID ethical requirements of R9-26-503(C), or NCRA ethical requirements of R9-26-507(C), as applicable;~~
  - d. ~~Understands that it is the certificate holder's duty to ensure that the certificate holder's interpreting, or translating, skills meet the deaf person's communication needs, and that failure to do so may be grounds for revocation of the certificate holder's certificate of competency;~~
  - e. ~~Has completed the requirements necessary to maintain RID, or NCRA certification and understands the certificate holder shall continue to maintain current RID, or NCRA certification;~~
  - f. ~~Has completed at least three clock hours of continuing legal education since the effective date, or the last renewal date of the certificate of competency, whichever is more recent; and~~
  - g. ~~Has maintained accurate records of compliance with the continuing legal education requirements of this Article, and shall make these records available for examination upon this Council's request.~~
3. ~~The certificate holder's current name, address, and telephone number.~~

In determining whether to deny, suspend, or revoke a license, the Commission shall consider whether the applicant or licensee's actions affects the individual's ability to carry out the duties of a legal interpreter. The Commission may deny, suspend, or revoke a license for the following reasons:

1. The applicant or licensee provided false information on any documentation provided to the Commission;
2. The applicant or licensee has violated the RID, NAD, or NCRA Code of Ethics incorporated by reference in R9-26-502;
3. The applicant or licensee has been found negligent in any civil litigation in providing interpreting or realtime reporting services;
4. Disciplinary action, a consent order, or a settlement agreement has been imposed by a state, country, or organization upon the applicant's or licensee's interpreter license or interpreter certification;
5. The applicant or licensee has been convicted of a felony or misdemeanor;
6. The applicant or licensee has a mental or physical condition that may impair the applicant's or licensee's ability to act as a legal interpreter; or
7. The applicant or licensee failed to comply with the requirements of this Article.

**R9-26-510. ~~Certification-Revocation~~ Complaint Procedures**

**A.** ~~The Council may revoke a certificate of competency based on a complaint from any person alleging any of the following reasons:~~

1. ~~The certificate holder has falsified any application or renewal information; or~~
2. ~~The certificate holder has violated the RID or NCRA ethical requirements of R9-26-503(C) or R9-26-507(C), respectively.~~

**B.** ~~A complaint alleging any of the reasons for revocation shall be in writing, with the name, address, telephone number, and signature of the person filing the complaint. A complaint may be written by someone on behalf of the complainant, but also shall include the complainant's name, address, telephone number, and signature, indicating that the complaint is filed by the complainant. A complaint may be videotaped, with the complainant signing the complaint, but also shall include the complainant's name, address, and telephone number.~~

**C.** ~~Within 20 calendar days of receiving a complaint, the Council shall mail the complaint to the certificate holder, and request the certificate holder to respond.~~

**D.** ~~The certificate holder shall file a written response to the complaint with the Council, in writing, within 20 calendar days of the date that the complaint was mailed to the certificate holder.~~

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- ~~E.~~ The Council shall investigate the complaint and either dismiss the complaint, or send the matter to a formal hearing, within 60 calendar days of receiving the complaint. If no grounds are found to support the complaint, the Council shall dismiss the complaint.
- ~~F.~~ If the complaint is sent to a formal hearing, the hearing shall be conducted pursuant to A.R.S. Title 41, Chapter 6, Articles 6 and 10. A party to the hearing has an opportunity for rehearing or review, and judicial review pursuant to A.R.S. Title 41, Chapter 6, Article 10, and A.R.S. Title 12, Chapter 12, Article 6.
- A. If a complainant alleges a violation of R9-26-508, the complainant shall submit a complaint in writing or on videotape and the complaint shall contain the name, address, telephone number, and if written, signature of the complainant. A complaint may be written by someone else on behalf of the complainant. The complainant may request mediation or a grievance committee hearing.
- B. Within 20 calendar days of receiving a complaint, the Commission shall mail the complaint to the licensee.
- C. The licensee may file a written response to the complaint with the Commission within 20 calendar days of the date the Commission mails the complaint. The licensee may request mediation or a grievance committee hearing.
- D. If the Commission does not receive a written response from the licensee within 20 calendar days of the date postmarked on the complaint mailed by the Commission, the interpreter grievance committee shall hear the complaint within 60 calendar days from the last day the licensee could have filed a written response. The Commission shall provide written notice to the complainant and licensee of the date of the grievance committee hearing within 30 calendar days from the last day the licensee could have filed a written response.
- E. If the complainant and licensee request mediation, the Commission shall conduct a mediation meeting within 30 calendar days of receipt of the licensee's written response.
- F. If the complainant or licensee determines that mediation is not successful or mediation was not accepted by either party, the interpreter grievance committee shall hear the complaint within 60 calendar days from the date of the mediation meeting. The Commission shall provide written notice of the date of the grievance committee hearing to the complainant and licensee within 30 calendar days from the date of the mediation meeting.
- G. The Commission shall investigate the complaint and submit its findings to the grievance committee at least five calendar days before the grievance committee hearing.
- H. The grievance committee hearing shall submit its recommendation to the Commission Board within ten calendar days of the grievance committee hearing. The recommendation shall specify whether the applicant or licensee should be denied, suspended, revoked, or no action to be taken.
- I. The Commission Board may modify, affirm, or reject the grievance committee's recommendations.
- J. If the licensee does not accept the Commission Board's decision, the complaint will be sent to a formal hearing conducted by the Office of Administrative Hearings under A.R.S. Title 41, Chapter 6, Article 10.

**R9-26-511. Rehearing or Review of Decisions**

- ~~A.~~ If a party to an appealable agency action or contested case files a Motion for Rehearing or Review with the Council, it shall be filed not later than 30 calendar days after service of the decision, and shall specify the particular grounds for the motion. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party's last known residence or place of business.
- ~~B.~~ A rehearing or review may only be granted for any of the following reasons materially affecting the moving party's rights, or ability to receive a fair hearing:
  1. Any irregularity in the administrative hearing, any order or abuse of discretion by the administrative law judge or the Council;
  2. Misconduct of the Council, or the administrative law judge, or prevailing party;
  3. Accident or surprise which could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence which could not have been discovered with reasonable diligence and produced at the original hearing;
  5. Excessive or insufficient penalties;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing; or
  7. A decision which is not justified by the evidence or is contrary to law.
- ~~C.~~ Not later than 15 calendar days after the Council's receipt of a motion for rehearing or review, the Council may affirm or modify its decision, or grant a rehearing or review. After giving the parties or their counsel notice and an opportunity to be heard, the Council may grant a rehearing or review for a reason not stated in the party's motion. An order modifying a decision or granting a rehearing or review shall specify with particularity the ground or grounds on which the rehearing or review is granted. The rehearing or review shall cover only those matters so specified.
- ~~D.~~ Not later than 15 calendar days after a decision is rendered, the Council may on its own initiative order a rehearing or review for any of the reasons stated in subsection (B), after giving the parties or their counsel notice and an opportunity to be heard.
- ~~E.~~ When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party shall have 10 calendar days from the date of service to serve opposing affidavits. This period may be extended by the

Council for good cause up to 20 calendar days, or by written stipulation of the parties. If reply affidavits are permitted, they shall be served within five calendar days of service of the opposing affidavits.

- A.** A party to a case who wants to contest the Commission's final administrative decision may, within 30 days after the date of the service of the decision under A.R.S. § 41-1092.09(B), file with the Commission a written request for a rehearing or review of the decision. The request shall specify the particular grounds for the rehearing or review. The requesting party shall serve copies upon all other parties. A party may amend a request for rehearing or review under this Section at any time before it is ruled upon by the Commission.
- B.** The opposing party may file a response to the request for a rehearing or review within 15 days after the written request is received.
- C.** The Commission may grant a rehearing or review of the decision for any of the following causes that materially affect the requesting party's rights:
  - 1. Irregularity in the proceedings or any abuse of discretion that deprives the requesting party of a fair hearing;
  - 2. Misconduct of the hearing officer or the prevailing party;
  - 3. Accident or surprise that could not have been prevented by ordinary prudence;
  - 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;
  - 5. Excessive or insufficient penalties;
  - 6. Error in the admission or rejection of evidence or other errors of law occurring during the proceedings; or
  - 7. The decision is not supported by the evidence or is contrary to law.
- D.** Upon examination of a request for review and any response or after rehearing, the Commission may affirm or modify the decision, or order a rehearing. The order for a rehearing shall specify the grounds on which the rehearing is based.
- E.** Within 15 days after the Commission issues a final administrative decision, the Commission may, on its own initiative, order a rehearing or review of the decision for any reason for which a rehearing may be granted on motion of a party.
- F.** This Section applies only to licensure actions under this Article.

**R9-26-512. License Renewal**

- A.** A licensee, other than a license under R9-26-504, shall annually renew a license not earlier than 60 days before and not later than 30 days after the licensee's birthday by filing the following with the Commission:
  - 1. A notarized affidavit, signed by the licensee, stating:
    - a. The licensee's name, current home address, business address, and home and business telephone numbers;
    - b. If applicable, the name of the licensee's employer and the employer's current business address and telephone number;
    - c. A list of all states and countries in which the licensee is or has been licensed or certified as an interpreter since the effective date or the last renewal date of the license, whichever is more recent;
    - d. Whether the licensee has ever been convicted of a felony or misdemeanor in this state or any other state since the effective date or the last renewal date of the license, whichever is more recent;
    - e. Any disciplinary action, consent order, or settlement agreement that is pending or has been imposed by any state, country, or organization upon the licensee's interpreter license or interpreter certification since the effective date or the last renewal date of the license, whichever is more recent;
    - f. Whether the licensee has been found negligent in any civil litigation in providing interpreting services since the effective date or the last renewal date of the license, whichever is more recent;
    - g. Whether the licensee has a physical or mental condition that may impair the applicant's ability to act as a legal interpreter;
    - h. That the applicant shall continue to comply with the NAD Code of Ethics, RID Code of Ethics, or NCRA Code of Professional Ethics, as applicable;
    - i. That the licensee has completed at least five hours of continuing legal education since the effective date or the last renewal date of the license, whichever is more recent;
    - j. That the licensee has maintained accurate records of compliance with the continuing legal education requirements of this Article, and that the licensee understands that the licensee is required to make these records available for examination at the Commission's request;
    - k. That the licensee verifies the truthfulness of the information provided by the licensee.
- B.** If the licensee's birthday occurs within 180 days after the effective date of the license, the licensee shall not be required to renew until the licensee's birthday in the next calendar year.

**R9-26-513. Grandfathering of Legal Interpreters**

- A.** Upon the effective date of this Article, the Commission shall issue a sign language legal interpreter license, deaf legal interpreter license, or realtime reporter legal interpreter license to a person who holds a current and valid certificate of competency issued by the Commission without regard to the provisions of R9-26-502, R9-26-503, R9-26-504, R9-26-505, R9-26-506, or R9-26-507, as applicable.

- B.** A person who is granted a license under this Section shall renew the license under R9-26-511 and meet the requirements of R9-26-502, R9-26-503, R9-26-504, R9-26-505, R9-26-506, or R9-26-507, as applicable.
- C.** This Section expires on January 1, 2006.

## NOTICE OF PROPOSED RULEMAKING

### TITLE 18. ENVIRONMENTAL QUALITY

#### CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

##### PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|-----------------------------|--------------------------|
| R18-2-609                   | Amend                    |
| R18-2-612                   | Renumber                 |
| R18-2-612                   | New Section              |
| R18-2-613                   | New Section              |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing Statutes: A.R.S. §§ 49-104(A)(1) and (A)(11), 49-425  
Implementing Statutes: A.R.S. §§ 49-404 and 49-406
- 3. A list of all previous notices appearing in the Register addressing the final rules:**  
Notice of Rulemaking Docket Opening: 10 A.A.R. 3092, August 6, 2004
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- |            |   |
|------------|---|
| Name:      | Kevin Force   |
| Address:   | Department of Environmental Quality<br>1110 W. Washington Ave.<br>Phoenix, AZ 85007                                   |
| Telephone: | (602) 771-4480 (This number may be reached in-state by dialing 1-800-234-5677 and requesting the seven digit number.) |
| Fax:       | (602) 771-2366  |
- 5. An explanation of the rules, including the agency's reasons for initiating the rules:**
- Summary. These proposed rules would establish agricultural best management practices (BMPs) for the Yuma planning area in order to reduce emissions of PM<sub>10</sub> (particulate matter 10 or less micrometers in aerodynamic diameter) from regulated agricultural activities.
- Background. The Yuma planning area is a federally designated moderate PM<sub>10</sub> nonattainment area, corresponding roughly to the urban area of western Yuma County. It is about 456 square miles in size with a population of approximately 110,000. The boundaries of the Yuma planning area are listed in 40 CFR 81.303 and a map exists on ADEQ's Web site, at [www.azdeq.gov](http://www.azdeq.gov). The federal Clean Air Act requires state and local authorities to implement stricter particulate pollution controls in PM<sub>10</sub> nonattainment areas. Arizona currently has six other moderate PM<sub>10</sub> nonattainment areas, and one serious PM<sub>10</sub> nonattainment area (the Phoenix metropolitan planning area). Two other former PM<sub>10</sub> nonattainment areas have already been redesignated to attainment.
- History. EPA designated the Yuma area nonattainment for PM<sub>10</sub> in 1990, based upon violations that occurred from 1985 to 1990. ADEQ submitted a PM<sub>10</sub> State Implementation Plan (SIP) to EPA in 1994 that did not contain any rules affecting agricultural particulate pollution. EPA has not acted on that SIP submittal.
- On August 18, 2002, a dust storm caused a violation of the federal 24-hour ambient dust standard at the Yuma monitor. This was the first violation of either the annual or 24-hour standard in more than 10 years. The Yuma community and ADEQ developed a Natural Events Action Plan (NEAP) in order to prevent this and future natural events from causing the area to remain nonattainment. Under federal policy, NEAPs are required to include Best Available Control Measures (BACM) for sources contributing to the violation, which need to be implemented within eighteen months after plan submittal. The Yuma NEAP contained a commitment to work with local farmers to develop an Agricultural Best Management Practices (BMP) rule.
- An Agricultural BMP rule (R18-2-610 and R18-2-611) has been used in Maricopa County as a dust control measure with some success since May of 2000. Although agriculture in Yuma County is different from that in the Phoenix area, the Maricopa County Agricultural BMP rule was approved as BACM by EPA, and has been upheld in federal

court, which found the flexible format uniquely suited to widely varying farming situations. As the Court noted, “[a]gricultural sources are unlike other stationary sources and are unlike sources such as automobiles that have common design features and may be subject to a common or uniform control measure.” [*Vigil v. Leavitt*, (381 F.3d 826, Sept. 1, 2004)]. Agricultural BMPs, therefore, can be appropriate to Yuma County as they are in Maricopa County, so long as the BMP rule adapts to the unique farming conditions of Yuma County. Yuma’s topography, soil conditions, crops and irrigation methods differ substantially from Maricopa’s, and any Best Management Practices Rule would have to be able to adopt those differences in order to be effective.

Yuma agriculture. Agriculture in Yuma County, Arizona, is made possible primarily by large quantities of irrigation water from the Colorado River, including groundwater. Yuma agriculture employs some of the most sophisticated and unique systems of crop production in the world. Yuma area farming is so independent of rainfall, rain is sometimes considered a nuisance.

The three biggest crops in Yuma County are lettuce, broccoli, and cauliflower. (In Maricopa County, they are upland cotton, durum wheat, and alfalfa.) Yuma County is the nation’s winter salad bowl, producing 85-90% of the country’s winter vegetables. There are times during midwinter, and extending into early spring, when fully 90-95% of the iceberg lettuce crop for the United States and Canada comes from Yuma County fields. The cash receipts value for Yuma County crops during 2003 was well over half a billion dollars, nearly as much as the other 14 Arizona counties combined.

Section by Section explanation of proposed changes.

R18-2-609. Agricultural Practices. This Section is the general agricultural dust rule that applies throughout the state unless otherwise specified. It has been amended so that, in addition to not applying in the Phoenix PM<sub>10</sub> nonattainment area, it would not apply in the Yuma PM<sub>10</sub> nonattainment area.

R18-2-612. Definitions for R18-2-613. This Section contains definitions of the terms used in the Yuma Agricultural BMP rule. These definitions, including those of various BMPs, include terms specific to the unique circumstances of agriculture in Yuma County.

R18-2-613. Yuma PM<sub>10</sub> nonattainment areas; Agricultural Best Management Practices. This Section directs each commercial farmer to implement at least one BMP for each of three categories: tillage and harvest, noncropland, and cropland. It then lists a number of best management practices appropriate to each category which a farmer may choose to implement. R18-2-613 allows persons to develop different practices than those listed, and submit them to the Director for review. It then directs the farmer to maintain records demonstrating compliance with the BMP rule, and lists several elements that must be included in these records.

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

None

**7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules 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:**

**Rule Identification**

This rulemaking amends A.A.C. R18-2-609, “Agricultural Practices,” and adds A.A.C. R18-2-612, “Definitions for R18-2-613,” and A.A.C. R18-2-613 “Yuma PM<sub>10</sub> Nonattainment Area; Agricultural Best Management Practices.”

ADEQ is soliciting comments on the economic impacts of this rulemaking. If you provide information or data for ADEQ to evaluate, please explain your viewpoint and the assumptions you used in your evaluation, along with appropriate examples.

ADEQ will provide a more detailed evaluation of the small business and consumer impact statement in the final rulemaking. Appropriate examples that include assumptions will be included in the final evaluation.

**Costs**

In terms of compliance costs, ADEQ expects this rulemaking to have a minimal to moderate economic impact on commercial farmers. This is because farmers must implement a minimum of one best management practice (BMP) from each of three categories: tillage and harvest, noncropland, and cropland. Equipment modifications, track-out controls, and constructing wind barriers, representing examples of BMPs from each category, could result in increased costs to commercial farmers. Another compliance cost associated with this rulemaking is recordkeeping. Commercial farmers must demonstrate compliance with the rule by documenting which BMP is being implemented for tillage, harvest, cropland and noncropland.

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Because many of the BMPs listed in rule already are being used by farmers, costs associated with implementing those techniques would represent sunk costs; hence, they would not be considered incremental compliance costs under this rulemaking. Nonetheless, information provided by the Yuma Farm Bureau suggests that potential compliance costs could be as much as \$5.00 to \$10.00 per acre, depending on which BMPs are implemented. This estimate includes recordkeeping.

Although the number of acres farmed in the Yuma nonattainment area is not available at this time, ADEQ is approximating one-half of the 231,125 acres of farmland in Yuma County, in the nonattainment area. This proportion would represent about 40 percent of the total acreage in the Yuma PM<sub>10</sub> nonattainment area. It includes approximately 250 farms.

If the acres farmed in the Yuma nonattainment area total 115,562 the estimated cost would be, at most, \$577,810 to \$1,155,620. According to the Yuma Farm Bureau, commercial farmers already are complying with many of the proposed BMPs, and as such, compliance costs resulting solely from these rules would be considerably lower. Additionally, farmers can choose BMPs that would be the most economically feasible, which would tend to significantly reduce compliance costs. If the low end of the estimate is more probable, and the \$577,810 cost is to be divided among 250 farms, the cost per farm would average \$2,310. Most likely, it will not be feasible to pass on to consumers the increase in operating costs.

For ADEQ, the impact due to the review of records submitted by commercial farmers is expected to be very minimal. The current FTEs are expected to handle the increase in the workload.

Agricultural commodity groups may be impacted minimally as they educate and provide technical assistance to commercial farmers.

**Benefits**

The impact to businesses that provide services, supplies, or equipment needed to implement BMPs would represent an increase in revenues, or a benefit to those businesses. This also would increase sales taxes paid.

It is expected that the general public in the Yuma PM<sub>10</sub> nonattainment area will gain from this rulemaking through health-related benefits due to reduced PM<sub>10</sub> emissions from agricultural activities. PM not only causes irritation to the respiratory system, but it can cause damage, resulting in difficult breathing, inducement of bronchitis, and aggravation of existing respiratory diseases. Certain population subgroups are more susceptible to PM emissions, such as children, the elderly, and persons with respiratory and cardiovascular diseases. Other harmful effects include soiling, damage to materials and impairment of visibility. As a result, probable benefits are expected to exceed probable costs for implementing this rulemaking.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: David Lillie  
Address: ADEQ, Air Quality Planning Section  
1110 W. Washington  
Phoenix, AZ 85007  
Telephone: (602) 771-4461 (Any extension may be reached in-state by dialing 1-800-234-5677, and asking for a specific number.)  
Fax: (602) 771-2366  
E-mail: Lillie.David@azdeq.gov

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

1:30 PM, Wednesday, January 12, 2005  
City of Yuma Public Works Training Room  
155 West 14th Street, Suite A  
Yuma, AZ 85364

**11. Any other matter prescribed by statute that are applicable to the specific agency or to any other specific rule or class of rules:**

Not applicable

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY  
AIR POLLUTION CONTROL

ARTICLE 6. EMISSIONS FROM NEW AND EXISTING NONPOINT SOURCES

Section

- R18-2-609. Agricultural Practices  
R18-2-612. ~~Evaluation of Nonpoint Source Emissions~~ Definitions for R18-2-613  
R18-2-613. Yuma PM<sub>10</sub> Nonattainment Area; Agricultural Best Management Practices  
~~R18-2-612, R18-2-614.~~ Evaluation of Nonpoint Source Emissions

ARTICLE 6. EMISSIONS FROM EXISTING AND NEW NONPOINT SOURCES

**R18-2-609. Agricultural Practices**

A person shall not cause, suffer, allow, or permit the performance of agricultural practices outside the Phoenix and Yuma planning area areas, as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210, including tilling of land and application of fertilizers without taking reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne.

**R18-2-612. Definitions for R18-2-613**

1. "Access restriction" means restricting or eliminating public access to noncropland with signs or physical obstruction.
2. "Aggregate cover" means gravel, concrete, recycled road base, caliche, or other similar material applied to noncropland.
3. "Artificial wind barrier" means a physical barrier to the wind.
4. "Bed row spacing" means increasing or decreasing the size of the planting bed area thereby reducing the number of passes and soil disturbance by increasing plant density.
5. "Best management practice" means a technique verified by scientific research, that on a case-by-case basis is practical, economically feasible, and effective in reducing PM<sub>10</sub> emissions from a regulated agricultural activity.
6. "Chemical irrigation" means applying a fertilizer, pesticide, or other agricultural chemical to cropland through an irrigation system.
7. "Combining tractor operations" means performing two or more tillage, cultivation, planting, or harvesting operations with a single tractor or harvester pass.
8. "Commercial farm" means 10 or more contiguous acres of land used for agricultural purposes within the boundary of the Yuma PM<sub>10</sub> nonattainment area.
9. "Commercial farmer" means an individual, entity, or joint operation in general control of a commercial farm.
10. "Conservation irrigation" means conserving water through drips, sprinklers or underground lines, thereby reducing the weed population, the need for tillage, and soil compaction.
11. "Conservation tillage" means types of tillage that reduce the number of passes and the amount of soil disturbance.
12. "Cover crop" means plants or a green manure crop grown for seasonal soil protection or soil improvement.
13. "Critical area planting" means using trees, shrubs, vines, grasses, or other vegetative cover on noncropland.
14. "Cropland" means land on a commercial farm that:
  - a. Is within the time-frame of final harvest to plant emergence;
  - b. Has been tilled in a prior year and is suitable for crop production, but is currently fallow; or
  - c. Is a turn-row.
15. "Cross-wind ridges" means soil ridges formed by a tillage operation.
16. "Cross-wind strip-cropping" means planting strips of alternating crops within the same field.
17. "Cross-wind vegetative strips" means herbaceous cover established in one or more strips within the same field.
18. "Equipment modification" means modifying agricultural equipment to prevent or reduce particulate matter generation from cropland.
19. "Limited activity during a high-wind event" means performing no tillage or soil preparation activity when the measured wind speed at 6 feet in height is more than 25 mph at the commercial farm site.
20. "Manure application" means applying animal waste or biosolids to a soil surface.
21. "Mulching" means applying plant residue or other material that is not produced onsite to a soil surface.
22. "Multi-year crop" means a crop, pasture, or orchard that is grown, or will be grown, on a continuous basis for more than one year.
23. "Night farming" means performing regulated agricultural activities at night when moisture levels are higher and winds are lighter.

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24. “Noncropland” means any commercial farm land that:
  - a. Is no longer used for agricultural production;
  - b. Is no longer suitable for production of crops;
  - c. Is subject to a restrictive easement or contract that prohibits use for the production of crops; or
  - d. Includes a private farm road, ditch, ditch bank, equipment yard, storage yard, or well head.
25. “Permanent cover” means a perennial vegetative cover on cropland.
26. “Planting based on soil moisture” means applying water to soil before performing planting operations.
27. “Precision farming” means use of satellite navigation to calculate position in the field, thereby reducing overlap during field operations, and allowing operations to occur during nighttime and inclement weather, thus generating less PM<sub>10</sub>.
28. “Reduce vehicle speed” means operating farm vehicles or farm equipment on unpaved farm roads at speeds not to exceed 20 mph.
29. “Reduced harvest activity” means reducing the number of harvest passes using a mechanized method to cut and remove crops from a field.
30. “Regulated agricultural activity” means a commercial farming practice that may produce PM<sub>10</sub> within the Yuma PM<sub>10</sub> nonattainment area.
31. “Residue management” means managing the amount and distribution of crop and other plant residues on a soil surface.
32. “Sequential cropping” means growing crops in a sequence that minimizes the amount of time bare soil is exposed on a field.
33. “Surface roughening” means manipulating a soil surface to produce or maintain clods.
34. “Synthetic particulate suppressant” means a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, and polyacrylamide that is used to control particulate matter.
35. “Tillage and harvest” means any mechanical practice that physically disturbs cropland or crops on a commercial farm.
36. “Tillage based on soil moisture” means applying water to soil before or during tillage, or delaying tillage to coincide with precipitation.
37. “Timing of a tillage operation” means performing tillage operations at a time that will minimize the soil’s susceptibility to generate PM<sub>10</sub>.
38. “Transgenic crops” means the use of genetically modified crops such as “herbicide ready” crops, which reduces the need for tillage or cultivation operations, and reduces soil disturbance.
39. “Track-out control system” means a device to remove mud or soil from a vehicle before the vehicle enters a paved public road.
40. “Tree, shrub, or windbreak planting” means providing a woody vegetative barrier to the wind.
41. “Watering” means applying water to noncropland.
42. “Yuma PM<sub>10</sub> nonattainment area” means the Yuma PM<sub>10</sub> planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.

**R18-2-613. Yuma PM<sub>10</sub> Nonattainment Area; Agricultural Best Management Practices**

- A.** A commercial farmer shall comply with this Section by August 1, 2005.
- B.** A commercial farmer, who begins a regulated agricultural activity after August 1, 2005, shall comply with this Section within 60 days after beginning the regulated agricultural activity.
- C.** A commercial farmer shall implement at least one of the best management practices from each of the following categories at each commercial farm:
  1. Tillage and harvest, subsection (E);
  2. Noncropland, subsection (F); and
  3. Cropland, subsection (G).A commercial farmer may implement more than one best management practice for one or more of the categories.
- D.** A commercial farmer shall ensure that the implementation of each selected best management practice does not violate any other local, state, or federal law.
- E.** A commercial farmer shall implement at least one of the following best management practices to reduce PM<sub>10</sub> emissions from tillage and harvest:
  1. Bed row spacing,
  2. Chemical irrigation,
  3. Combining tractor operations,
  4. Conservation irrigation,
  5. Conservation tillage,
  6. Equipment modification.



7. Limited activity during a high-wind event.
  8. Multi-year crop.
  9. Night farming.
  10. Planting based on soil moisture.
  11. Precision farming.
  12. Reduced harvest activity.
  13. Tillage based on soil moisture.
  14. Timing of a tillage operation, or
  15. Transgenic crops.
- F.** A commercial farmer shall implement at least one of the following best management practices to reduce PM<sub>10</sub> emissions from noncropland:
1. Access restriction;
  2. Aggregate cover;
  3. Artificial wind barrier;
  4. Critical area planting;
  5. Manure application;
  6. Reduce vehicle speed;
  7. Synthetic particulate suppressant;
  8. Track-out control system;
  9. Tree, shrub, or windbreak planting; or
  10. Watering.
- G.** A commercial farmer shall implement at least one of the following best management practices to reduce PM<sub>10</sub> emissions from cropland:
1. Artificial wind barrier;
  2. Cover crop;
  3. Cross-wind ridges;
  4. Cross-wind strip-cropping;
  5. Cross-wind vegetative strips;
  6. Manure application;
  7. Mulching;
  8. Multi-year crop;
  9. Permanent cover;
  10. Planting based on soil moisture;
  11. Precision farming;
  12. Residue management;
  13. Sequential cropping;
  14. Surface roughening; or
  15. Tree, shrub, or windbreak planting.
- H.** A person may develop different practices not contained in subsections (E), (F), or (G) that reduce PM<sub>10</sub>. A person may submit practices that are proven effective through on-farm demonstration trials to the Director. The Director shall review the submitted practices.
- I.** A commercial farmer shall maintain records demonstrating compliance with this Section. The records shall be provided to the Director within two business days of notice to the commercial farmer. The records shall contain:
1. The name of the commercial farmer,
  2. The mailing address or physical location of the commercial farm, and
  3. The best management practices selected for tillage and harvest, noncropland, and cropland by the commercial farmer, and the date each best management practice was implemented.

**~~R18-2-612~~, R18-2-614. Evaluation of Nonpoint Source Emissions**

Opacity of an emission from any nonpoint source shall not be greater than 40% measured in accordance with the Arizona Testing Manual, Reference Method 9. Open fires permitted under R18-2-602 and R18-2-603 are exempt from this requirement.



**rules:**

None

**12. Any material incorporated by reference and its location in the rules:**

None

**13. The full text of the rule follows:**

**TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING**

**CHAPTER 1. DEPARTMENT OF LIQUOR LICENSES AND CONTROL**

**ARTICLE 1. STATE LIQUOR BOARD**

Section

R19-1-102. Granting a License for a Certain Location

**ARTICLE 1. STATE LIQUOR BOARD**

**R19-1-102. Granting a License for a Certain Location**

Local governing authorities and the Department may consider the following criteria in determining whether public convenience requires and that the best interest of the community will be substantially served by the issuance or transfer of a liquor license at a particular unlicensed location:

1. Petitions and testimony from persons in favor of or opposed to the issuance of a license who reside in, own or lease property in close proximity.
2. The number and series of licenses in close proximity.
3. Evidence that all necessary licenses and permits have been obtained from the state and all other governing bodies.
4. The residential and commercial population of the community and its likelihood of increasing, decreasing or remaining static.
5. Residential and commercial population density in close proximity.
6. Evidence concerning the nature of the proposed business, its potential market, and its likely customers.
7. Effect on vehicular traffic in close proximity.
8. The compatibility of the proposed business with other activity in close proximity.
9. The effect or impact of the proposed premises on businesses or the residential neighborhood whose activities might be affected by granting the license.
10. The history for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant has received a detailed report(s) of such activity as least 20 days before the hearing by the Board.
11. Comparison of the hours of operation of the proposed premises to the existing businesses in close proximity.
12. Proximity to licensed childcare facilities as defined by A.R.S. § 36-881.