

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 3. AGRICULTURE

CHAPTER 3. DEPARTMENT OF AGRICULTURE ENVIRONMENTAL SERVICES DIVISION

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 857.) The Governor's Office authorized the notice to proceed through the rulemaking process on March 1, 2012.

[R12-33]

PREAMBLE

- Article, Part, or Section Affected (as applicable)** **Rulemaking Action**
R3-3-208 Amend
- Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. § 3-107(A)(1)
Implementing statute: A.R.S. § 3-363
- Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
Notice of Rulemaking Docket Opening: 18 A.A.R. 850, April 6, 2012 (*in this issue*)
- The agency's contact person who can answer questions about the rulemaking:**
Name: Jack Peterson
Address: Arizona Department of Agriculture
1688 W. Adams St.
Phoenix, AZ 85007
Telephone: (602) 542-3575
Fax: (602) 542-0466
E-mail: jpeterson@azda.gov
or
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1688 W. Adams St.
Phoenix, AZ 85007
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Fax: (602) 542-5420
E-mail: casey.cullings@azag.gov
- An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

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The primary purpose of this rulemaking is to eliminate the requirement of having at least one unit of continuing education related to the use of fumigants for a raw agricultural commodity or on-farm burrowing rodent problem in order to renew fumigation certification. The rulemaking also reorders and clarifies the rule in several respects.

Former subsection (D) is being incorporated in subsection (B). Former subsection (F) is becoming subsection (D). Former subsection (H) is becoming subsection (F).

Current Subsection	Proposed Subsection
D	Part of B
E	E
F	D
G	G
H	F

The examination and renewal requirements for fumigation certification are being incorporated into the general subsections concerning examinations and renewal. The Department's abbreviations for commercial applicators and private applicators are being added. The language about the core exam for commercial applicator certification is being clarified since Appendix A, subsection (A) actually contains the core exam subjects as opposed to being in addition to the core exam subjects. Similarly, the language for private applicator certification will now specify that Rule 202 lists the core exam subjects. The renewal provisions are being amended to make clear that a person either needs to complete continuing education courses or retake the certification exam and that a person retaking the exam is limited to a one year renewal, which is the current Department practice. The provision that CEU requirements are not applicable when the initial certification was issued between October 1 and December 31 is being expanded to cover all certifications listed in this rule as opposed to just private applicator certifications, which actually will make the rule in line with current Department practice. Other sentences are being clarified and/or moved to a different subsection.

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

None

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

Not applicable

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

The rulemaking makes one change with an impact. It eliminates the need for people with fumigation certification to take a continuing education class related to the use of fumigants for a raw agricultural commodity or on-farm burrowing rodent problem without reducing the total number of required continuing education units. This requirement is being removed because there is only one class offered during the entire year that covers the subject, and that class is taught by the Department. No private businesses offer this class. The elimination of this particular class will therefore reduce the burden on the Department in providing the class and reduce the burden on licensees who were required to attend the once-a-year training class. The problem for licensees is the burden of ensuring time is available for a course that is only offered once a year, and this burden will continue if the rule is not changed. Since approximately 90% of continuing education classes are free, there will be no additional cost on licensees in finding a substitute course unless they really want to attend a class that has a fee. There are presently 33 people with fumigation certification that will be affected by this rule change.

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

Name: Jack Peterson
 Address: Arizona Department of Agriculture
 1688 W. Adams St.
 Phoenix, AZ 85007
 Telephone: (602) 542-3575
 Fax: (602) 542-0466
 E-mail: jpeterson@azda.gov

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

A person may request an oral proceeding on the proposed rules by contacting the individual identified in item 4 within 30 days of publication of this notice.

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

Pursuant to A.R.S. § 3-104(F), the Department will discuss this rulemaking with the ADA Advisory Council prior to adopting the rule.

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

The rule maintains the requirement for pesticide applicators to obtain certification. A general permit (i.e. certification) is not used because the issuance of a general permit would result in additional regulatory requirements being placed on the applicant. Every person who desires applicator certification must pass a core exam. A person who desires commercial applicator certified must additionally pass a category specific exam, such as agricultural pest control or seed treatment. "For example, practical knowledge of drift problems should be required of agricultural applicators but not of seed treatment applicators. The latter, however, should be particularly knowledgeable of the hazards of the misuse of treated seed and the necessary precautionary techniques." 40 CFR 171.4(c). There are eight categories of commercial certification plus a separate category for private fumigation certification. Under a general permit, an applicant would have to pass the core exam and all nine category specific tests (see 40 CFR 171.4 (requiring category specific exams)) whereas now private applicator certification does not require passing any category specific test and commercial applicator certification can be issued by passing one category specific exam.

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

Certification of pesticide applicators, as described in this rule, is subject to 40 CFR 171, particularly 40 CFR 171.4 and 171.5. Those federal regulations require: "State standards must conform and be at least equal to those prescribed herein." 40 CFR 171.4(a) and 171.5(a). This rule is not more stringent than federal law.

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

No

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

None

13. The full text of the rule follows:

TITLE 3. AGRICULTURE

**CHAPTER 3. DEPARTMENT OF AGRICULTURE
ENVIRONMENTAL SERVICES DIVISION**

ARTICLE 2. PERMITS, LICENSES, AND CERTIFICATION

Section

R3-3-208. Applicator Certification; Examination; Fee; Renewal

ARTICLE 2. PERMITS, LICENSES, AND CERTIFICATION

R3-3-208. Applicator Certification; Examination; Fee; Renewal

- A.** An individual shall not act as a private applicator or commercial applicator unless the individual is certified by the Department.
- B.** Application. An individual applying for either commercial or private applicator certification shall ~~provide~~ pay a \$50 fee and submit a completed application to the Department containing the following information on a form obtained from the Department:
- ~~Name~~ The applicant's name, address, e-mail address if applicable, daytime telephone number, social security Social Security number, and signature ~~of the applicant;~~
 - Date of the application;
 - ~~Address, e-mail address, if applicable, and daytime telephone number of the applicant;~~
 - ~~3-~~ 4-3 Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the applicant's employer, if applicable;
 - ~~5-4~~ Whether the application is for a commercial or private applicator certification;
 - 5- If applicable, an indication the applicant seeks private applicator fumigation certification;
 6. For commercial certification, the categories in which the applicant seeks to be certified;

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7. Whether the applicant has had a similar certification revoked, suspended, or denied in this or any other jurisdiction during the last three years, and the nature of the violation; and
 8. Certification renewal period.
- C.** Private applicator fumigation certification.
1. ~~An individual seeking fumigation~~ Fumigation certification must first be certified requires certification as a private applicator or a commercial applicator.
 2. Fumigation certification allows a private applicator or a commercial applicator acting as a private applicator to use, apply, or supervise the use or application of a fumigant to an on-farm raw agricultural commodity or on-farm burrowing rodent problem.
 3. ~~An applicant shall score at least 75 percent on a written fumigation examination administered by the Department;~~
 4. ~~If the fumigation certification is renewed with the private applicator certification or the commercial applicator certification, the private applicator or commercial applicator shall:~~
 - a. ~~Retake and pass the written fumigation examination; or~~
 - b. ~~Submit evidence of completing the number of CEUs required under subsection (H)(4)(a); and~~
 - e. ~~Submit evidence of completing at least three additional CEUs per year, at least one of which shall be related to the use of fumigants to a raw agricultural commodity or on-farm burrowing rodent problem.~~
- ~~**D.** An applicant shall submit a completed application to the Department accompanied by a \$50 fee.~~
- ~~**E.** Applicator certification is not transferable, expires on December 31, and is:~~
1. ~~Issued for one year as an initial certification;~~
 2. ~~Renewed for one or two years, depending on the renewal period selected by the applicant; and~~
 3. ~~Renewed for all categories of certification for the same renewal period.~~
- ~~**F.D.** Examinations. The Department shall administer examinations by appointment at every Environmental Services Division office. An applicant shall achieve a passing score of 75 percent in the applicable subject area in order to receive initial certification.~~
1. ~~Commercial applicator certification (PUC). In addition to the core examination required for an initial commercial applicator certification in by R3-3-202, an applicant shall demonstrate knowledge and understanding of the subjects listed in Appendix A, subsection (A) (B) for each commercial certification category sought.~~
 2. ~~Commercial certification categories.~~
 - a. ~~An individual may apply for commercial applicator certification in any of the following categories:~~
 - i. ~~a. Agricultural pest control;~~
 - ii. ~~b. Forest pest control;~~
 - iii. ~~c. Seed-treatment;~~
 - iv. ~~d. Aquatic pest control;~~
 - v. ~~e. Right-of-way pest control;~~
 - vi. ~~f. Public health pest control;~~
 - vii. ~~g. Regulatory pest control; M-44 or rodent, if a government employee; or~~
 - viii. ~~h. Demonstration and research pest control.~~
 - b. ~~An applicant shall demonstrate practical knowledge of the certification category subjects listed for the category in Appendix A, subsection (B).~~
 3. ~~Private applicator certification (PUP). An applicant shall demonstrate knowledge and understanding of the core examination subjects listed in Appendix A, subsection (C) R3-3-202.~~
 4. ~~Fumigation certification. An applicant seeking private applicator fumigation certification shall also pass a separate fumigation examination.~~
 - 4.5. ~~An individual who fails an examination may retake it no more than three times in a 12-month period, and shall not retake an examination until at least seven days have elapsed from the date of the last examination.~~
- ~~**E.** Applicator certification is not transferable, expires on December 31, and is:~~
1. ~~Issued for the remainder of the calendar year as an initial certification;~~
 2. ~~Renewed for one or two years, depending on the renewal period selected by the applicant; and~~
 3. ~~Renewed for all categories of certification for the same renewal period.~~
- ~~**G.** Renewal; expired license:~~
1. ~~An applicant may renew an expired license without retaking the written examinations under the following conditions:~~
 - a. ~~The applicant complies with the CEU requirements in subsection (H)(4);~~
 - b. ~~The applicant submits a completed application and fee within 30 days after the expiration date, and~~
 - e. ~~The applicant does not provide any pesticide related service from the date the license expired until the date the renewal is effective.~~
 2. ~~All other applicants for renewal shall retake the written examinations prescribed in subsections (F) or (C) and (F).~~
- ~~**H.F.** Renewal.~~
1. ~~The continuing education requirements in subsection (H)(4) are not applicable to an individual who passes the certification examination prescribed in subsections (C) or (F) or (C) and (F), and who applies for private applicator certification.~~

ation between October 1 and December 31 of the test year.

- ~~2-1.~~ An applicant for renewal of an applicator certification shall select a one or two-year renewal period.
- ~~3-2.~~ An applicant shall submit the completed application accompanied by a \$50 fee for ~~each year or portion of the year during which the certification is valid~~ a one-year renewal or \$100 for a two-year renewal.
- ~~4-3.~~ CEU requirements.
 - a. The Department shall not renew a private applicator certification unless, prior to the expiration of the current certification, the applicator completes three CEUs for each year ~~for which certification is sought or retakes and passes the written examinations prescribed in subsection (F)(3) or subsections (C) and (F)(3) of the renewal period.~~
 - b. The Department shall not renew a commercial applicator certification unless, ~~before~~ prior to expiration of the current certification, the applicator completes six CEUs for each year of the renewal period ~~or retakes and passes the written examinations prescribed in subsections (F)(1) and (2).~~
 - c. The Department shall not renew a fumigation certification unless, prior to the expiration of the current certification, the applicant qualifies to renew the applicant's private or commercial applicator certification under this subsection and completes three additional CEUs per year of the renewal period.
 - ~~e-d.~~ An applicator shall complete CEU credit ~~from January 1 through December 31~~ while the current certification period is in effect. CEU credits earned ~~in a year that are~~ in excess of the requirements do not carry forward for use in ~~future years~~ subsequent renewals.
 - ~~d-e.~~ To obtain credit, the applicant shall provide the Department with documentation of completion of the CEU course.
 - f. The CEU requirements are not applicable to an individual renewing an initial certification issued between October 1 and December 31.
4. Examination exception. An applicator who fails to complete the CEUs required for renewal may renew a certification, prior to expiration, for one year by submitting the completed application accompanied by a \$50 fee and retaking and passing the applicable certification examination prescribed in this Section.

G. Renewal: expired certification.

1. An applicant may renew an expired certification without retaking the written examinations provided the applicant:
 - a. Has satisfied the CEU requirements.
 - b. Submits a completed application and fee within 30 days after the expiration date, and
 - c. Does not provide any pesticide-related service from the date the certification expired until the date the renewal is effective.
2. All other applicants for renewal shall complete the requirements for initial certification, including retaking and passing the written examinations prescribed in this Section.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 18. NATUROPATHIC PHYSICIANS BOARD OF MEDICAL EXAMINERS

Editor's Note: The following Notice of Proposed Rulemaking was exempt from Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 857.)

[R12-35]

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R4-18-801 | Amend |
| Article 9 | New Article |
| R4-18-901 | New Section |
| R4-18-902 | New Section |
| R4-18-903 | New Section |
| R4-18-904 | New Section |
2. **Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. § 32-1504(A)(1)

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Implementing statutes: A.R.S. §§ 32-1501(15), 32-1504(A)(7), 32-1504(A)(8), 32-1526, 32-1527, 32-1530, 32-1581(A), 32-1581(G)

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

Notice of Rulemaking Docket Opening: 18 A.A.R. 851, April 6, 2012 (*in this issue*)

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

Name: Dr. Craig Runbeck, Executive Director

Address: 1400 W. Washington St., Suite 300
Phoenix, AZ 85007

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Fax: (602) 542- 8804

E-mail: craig.runbeck@aznd.gov

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

The Board is amending R4-18-801 to add a provision that specifies when the Board considers a procedure, medication, or device experimental.

A.R.S. § 32-1581(A) requires a naturopathic physician to obtain Board certification before dispensing a drug. A drug is defined in A.R.S. § 32-1501(15) to include the intravenous administration of minerals and nutrients. A.R.S. § 32-1581(G) requires the Board to adopt rules for the safe administration of minerals, including Board certification before a physician prescribes or dispenses. A.R.S. § 32-1504(A)(8) requires the Board to adopt rules for the safe administration of intravenous nutrients. Because of these statutes the Board is making a new Article 9 that contains rules for prescribing or dispensing drugs, including minerals or nutrients. These rules include the requirements for qualifications, application for a dispensing certificate, and renewal of a certificate. The Board is submitting this rulemaking to the Secretary of State's office in accordance with the exemption authorization under item 4 of Executive Order 2011-05, State Regulatory Rulemaking Moratorium.

6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on or not to 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:

The Board did not review or rely on any study.

7. A showing of good cause why the rulemaking is 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:

When used in the economic impact statement summary, annual cost/revenue are designated as minimal when less than \$5,000, moderate when between \$5,000 and \$10,000, and substantial when greater than \$10,000.

The Board will incur minimal expense to write the rules and enforce their requirements.

A naturopathic physician should not incur costs as a result of the clarifying changes in R4-18-801, which states when the Board considers a procedure, medication, or device experimental.

The requirements in R4-18-902 and R4-18-903 should not increase costs to applicants or naturopathic physicians because they are statutorily required to be certified to administer and dispense drugs. As a result, the rules are being made to codify the Board's current requirements for approvals to dispense. The costs for an application and the application fee are minimal. Most individuals meet the qualification requirements in R4-18-902 when they apply. However, the Board receives approximately two or three applications annually from individuals who do not meet the requirements in R4-18-902 and therefore must take a course. The course may be provided by any of the organizations in R4-18-902 and also may be available online. The costs for obtaining the course should be minimal, with the online course being offered free of charge. The application costs as stated in R4-18-903 should also be minimal to an applicant or naturopathic physician. In order to determine whether it is safe to prescribe or dispense a drug, it is standard practice for naturopathic physicians to perform physical examinations and laboratory tests. These requirements should not increase costs to naturopathic physicians.

Naturopathic physicians often form business groups of up to three persons. These businesses should not realize any increase in costs from the rules.

Consumers should not be expected to pay more for the physical examinations and laboratory tests conducted by the physicians for health and safety reasons.

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

Name: Dr. Craig Runbeck, Executive Director
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Phoenix, AZ 85007
Telephone: (602) 542-8242
Fax: (602) 542- 8804
E-mail: craig.runbeck@aznd.gov

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

An oral proceeding will be conducted by the Board at the following location in the state for the purpose of taking oral and written testimony on the proposed rules from members of the public:

Date: May 14, 2012
Time: 1:00 p.m.
Location: 1400 W. Washington St., Room 300

The public record on the proposed rulemaking will close at 5:00 p.m. on May 14, 2012.

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

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

Yes, the Board is issuing a certificate, which falls within the definition of general permit.

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

Federal law is not applicable to the subject of the rule.

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

The Board did not receive such an analysis from any person.

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

None

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 18. NATUROPATHIC PHYSICIANS MEDICAL BOARD

ARTICLE 8. EXPERIMENTAL MEDICINE

Section
R4-18-801. Experimental Medicine

ARTICLE 9. MINERALS AND NUTRIENTS

Section
R4-18-901. Definitions
R4-18-902. Qualifications for a Certificate to Dispense
R4-18-903. Application for a Certificate to Dispense; Renewal
R4-18-904. Prescribing or Dispensing Minerals or Nutrients

ARTICLE 8. EXPERIMENTAL MEDICINE

R4-18-801. Experimental Medicine

A procedure, medication, or device is experimental if:

Notices of Proposed Rulemaking

1. No change
2. The procedure, medication, or device is not generally considered to be within the accepted practice standards for the naturopathic profession; or
3. The procedure, medication, or device is not part of the curriculum at an approved school of naturopathic medicine or approved postdoctoral training.

ARTICLE 9. MINERALS AND NUTRIENTS

R4-18-901. Definitions

The following definitions apply in this Article:

1. "Applicant" means:
 - a. An individual applying for a license and a certificate, or
 - b. A licensee requesting a certificate only.
2. "Certificate" means an approval granted by the Board to prescribe or dispense a drug, including a mineral or nutrient.
3. "Dispense" means the same as in A.R.S. § 32-1581(H).
4. "Drug" means the same as in A.R.S. § 32-1501(15).
5. "Hour" means 50 minutes or more of participation.
6. "Medical record" means the same as in A.R.S. § 12-2291.
7. "Nutrient" means the same as in A.R.S. § 32-1501(15)(a)(iii).
8. "Physical examination" means to observe, test, or inspect an individual's body to evaluate health or determine cause of illness or disease.
9. "Practice address" means the location where a licensee performs the acts in A.R.S. § 32-1501(28).

R4-18-902. Qualifications for a Certificate to Dispense

- A. To qualify for a certificate to prescribe or dispense a drug, including a mineral or nutrient, an applicant shall have completed before the submission date of the application, Board approved training in the safe administration of drugs, including minerals or nutrients.
- B. The Board approves documentation of the following as evidence of completion of Board approved training in the safe administration of drugs, including minerals or nutrients:
 1. Graduation from an approved school of naturopathic medicine after January 1, 2005 as referenced in A.R.S. § 32-1525(B)(4); or
 2. Completion of a 60 hour or more pharmacological course on drugs, including minerals or nutrients, that is offered, approved, or recognized by one of the organizations in R4-18-205(B)(1) or (2).
- C. If a nutrient is to be administered intravenously, the Board approved training shall include administration of a nutrient by intravenous means.

R4-18-903. Application for a Certificate to Dispense; Renewal

- A. An applicant for a certificate to administer or dispense shall submit:
 1. An application to the Board that contains:
 - a. The applicant's:
 - i. Full name,
 - ii. Naturopathic license number, and
 - iii. Social Security number;
 - b. If a corporation, a statement of whether the corporation holds tax exempt status;
 - c. A statement of whether the applicant holds a drug enforcement number issued by the United States Drug Enforcement Administration, and if so, the drug enforcement number;
 - d. A statement of whether the applicant has ever had the authority to prescribe, dispense, or administer a drug limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law, and if so, an explanation that includes:
 - i. The name and address of the federal or state agency or court having jurisdiction over the matter, and
 - ii. The disposition of the matter;
 - e. A statement, signed by the applicant, that the applicant agrees to conform to all federal and statutes, regulations, and rules; and
 - f. The date of the application; and
 2. Unless exempted by A.R.S. § 32-1530, the fee required by the Board.
- B. An applicant for a naturopathic license may request a certificate as part of a license application. When this request is made, approval of the naturopathic license by the Board includes approval of the certificate.
- C. A certificate holder shall renew a certificate on or before July 1 of each year by submitting:
 1. An application to the Board that contains:
 - a. The applicant's full name;

- b. If a corporation, a statement of whether the corporation holds tax exempt status;
 - c. A statement of whether the applicant has had the authority to prescribe, dispense, or administer a drug limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law, during the one year period immediately preceding the renewal date and if so, an explanation that includes:
 - i. The name and address of the federal or state agency or court having jurisdiction over the matter, and
 - ii. The disposition of the matter; and
 - d. A statement, signed and dated by the applicant, verifying the information on the application is true and correct and the applicant is the licensee named on the application; and
2. Unless exempted by A.R.S. § 32-1530, the fee required by the Board.
- D.** The Board shall grant or deny the certificate or renewal of certificate according to the time-frames in Table 1.

R4-18-904. Prescribing or Dispensing Minerals or Nutrients

- A.** To prevent toxicity due to the excessive intake of a drug, including a mineral or nutrient, before prescribing or dispensing a mineral to an individual, a certified physician shall:
- 1. Conduct a physical examination of the individual,
 - 2. Conduct laboratory tests that determine the potential for toxicity of the individual, and
 - 3. Document the results of the physical examination and laboratory tests in the individual's medical record.
- B.** For the purposes of A.R.S. § 32-1504(A)(8), a substance is not considered a nutrient suitable for intravenous administration if it is:
- 1. Not manufactured and supplied for intravenous use by a manufacturer registered with the United States Food and Drug Administration or compounded by a pharmacy licensed in Arizona, another state, or United States territory; or
 - 2. One of the following:
 - a. Silver protein, or any substance that contains silver;
 - b. Cesium chloride;
 - c. Hydrazine sulfate; or
 - d. Lipid replacement as used in total parenteral nutrition.

NOTICE OF PROPOSED RULEMAKING

TITLE 6. ECONOMIC SECURITY

**CHAPTER 8. DEPARTMENT OF ECONOMIC SECURITY
AGING AND ADULT ADMINISTRATION**

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page XXX.) The Governor's Office authorized the notice to proceed through the rulemaking process on October 3, 2011.

[R12-30]

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R6-8-201 | Amend |
| R6-8-204 | Amend |
| R6-8-205 | Amend |
| R6-8-206 | Amend |
| R6-8-210 | Amend |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
- Authorizing statutes: A.R.S. § 41-1954
- Implementing statutes: A.R.S. §§ 46-451 through 46-459
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
- Notice of Rulemaking Docket Opening: 18 A.A.R. 633, March 9, 2012
- 4. The agency's contact person who can answer questions about the rulemaking:**
- Name: Beth Broeker

Notices of Proposed Rulemaking

Address: Department of Economic Security
P.O. Box 6123, Site Code 837A
Phoenix, AZ 85005
or
Department of Economic Security
1789 W. Jefferson St., Site Code 837A
Phoenix, AZ 85007
Telephone: (602) 542-6555
Fax: (602) 542-6000
E-mail: bbroeker@azdes.gov
Web site: <http://www.azdes.gov>

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

The Arizona Department of Economic Security administers the state Adult Protective Services program under the Arizona Revised Statutes, Title 46, Chapter 4.

Since the last rule revision the Adult Protective Services program has undergone changes due to legislation and changes in the Department's policy and procedures. To reflect those changes, the Department proposes the following:

- Remove subsection R6-8-201(13)(n), APS worker narrative, from the definition of "Personally identifiable information."
- Clarify subsection R6-8-204(A) and add subsection R6-8-204(B) to specify that the APS worker shall investigate reports that occurred on an Indian Reservation, upon written invitation by the Tribal Council.
- Change subsection R6-8-206(3) to more accurately reflect the appropriate response time to cases, depending on the priority levels.
- Delete subsection R6-8-206(B).
- Amend subsection R6-8-210(B) to change the location where the requester sends a request to obtain personally identifiable information.

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

Not applicable

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

Not applicable

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

The rulemaking itself will have no cost effect on employers, claimants, or the Department. The rulemaking will not adversely affect any legitimate business. The rulemaking will have no impact on state revenues.

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

Name: Beth Broeker
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Phoenix, AZ 85005
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10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Department does not plan to hold oral proceedings on this rule, unless a public hearing is requested within 30 days of the publication of this rule. All written comments on the rule and any requests for public hearing shall be made to the individual listed in item 4.

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

None

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

Not applicable

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

Not applicable

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

Not applicable

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

None

13. The full text of the rule follows:

TITLE 6. ECONOMIC SECURITY

CHAPTER 8. DEPARTMENT OF ECONOMIC SECURITY
AGING AND ADULT ADMINISTRATION

ARTICLE 2. ADULT PROTECTIVE SERVICES

Sections

R6-8-201.	Definitions
R6-8-204.	Jurisdiction
R6-8-205.	Classification
R6-8-206.	Investigation
R6-8-210.	Confidentiality

ARTICLE 2. ADULT PROTECTIVE SERVICES

R6-8-201. Definitions

No change

1. No change
2. No change
3. No change
4. No change
 - a. No change
 - b. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. No change
 - a. No change
 - b. No change
 - c. No change
13. No change
 - a. No change

Notices of Proposed Rulemaking

- b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 - i. No change
 - j. No change
 - k. No change
 - l. No change
 - m. No change
 - n. ~~APS worker narrative~~ Medical information, history, and diagnosis; or
 - o. Any other ~~identifier specific to~~ information that would reasonably lead to the identification of an individual.
- 14. No change
 - 15. No change
 - 16. No change
 - 17. No change
 - 18. No change
 - 19. No change
 - 20. "Work Business day" means 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding Arizona state holidays.

R6-8-204. Jurisdiction

- ~~A.~~ An APS worker shall not investigate reports of events ~~which that~~ occurred in another state; ~~or~~ foreign country; ~~or~~ Indian reservation.
- ~~B.~~ When the Department receives a report of alleged abuse, neglect, or exploitation of a person who is outside of the jurisdiction, the Department shall make a report to the appropriate state, international, or tribal government or social services agency.
- B.** An APS worker shall investigate reports that occurred on an Indian Reservation, upon written invitation by the Tribal Council.

R6-8-205. Classification

At intake, an APS worker shall classify the incoming communication into ~~1~~ one of the following ~~3~~ two categories:

- 1. Information and referral; ~~or~~
- 2. Report accepted for evaluation and investigation; ~~or,~~
- ~~3. Report accepted for evaluation, but not investigation.~~

R6-8-206. Investigation

~~A.~~ Reports Accepted for Evaluation and Investigation:

- 1. No change
 - a. No change
 - b. No change
 - c. No change
- 2. No change
- 3. An APS worker shall visit ~~a person~~ an individual who may be in need of adult protective services within ~~2 work days~~ after receipt of a report; the following established time-frames:
 - a. Priority 1. The APS worker shall initiate an assessment within one business day following a report of a qualifying problem with an imminent and substantial risk of life-threatening harm.
 - b. Priority 2. The APS worker shall initiate an assessment within two business days following a report of a qualifying problem with moderate aggravating circumstances.
 - c. Priority 3. The APS worker shall initiate assessment within five business days following a report of a qualifying problem with mitigating or no aggravating circumstances.
- 4. The APS worker shall investigate, determine and document in the record whether:
 - a. The allegations are ~~substantiated~~ proposed for substantiation.
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
- 5. No change

- a. No change
- b. No change
- c. No change
- d. No change
- e. No change
- f. No change
- g. No change
- h. No change
- i. No change
- j. No change
- k. No change
- l. No change
- m. No change
- n. No change
- o. No change
- p. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change

- B.** ~~Reports Accepted for Evaluation but not investigation. APS may classify a report as not accepted for investigation because of:~~
- 1. ~~Insufficient information;~~
 - 2. ~~Sufficient involvement of other resources;~~
 - 3. ~~The situation is known to APS and the report does not provide additional information; or~~
 - 4. ~~The client's need is for placement into a care facility only.~~

R6-8-210. Confidentiality

- A.** No change
- B.** The requester shall send a written request to the ~~APS program manager for the office where the requester believes the records are located;~~ Custodian of Records at the Department of Economic Security, Division of Aging and Adult Services, Adult Protective Services, Central Office, 1789 W. Jefferson, Site code 950A, Phoenix, Arizona 85007. The request shall include the following information:
- 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - a. No change
 - b. No change
 - c. No change
- C.** No change
- D.** No change
- E.** The Department shall respond to the requester within 15 ~~work~~ business days.
- F.** No change
- 1. No change
 - 2. No change
 - 3. No change