

**NOTICE OF PROPOSED EXPEDITED RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 36. DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT**

PREAMBLE

<u>1. Article, Part, or Sections Affected</u>	<u>Rulemaking Action</u>
R4-36-201	Amend
R4-36-301	Amend
R4-36-302	Amend
Exhibit A	Amend
R4-36-303	Amend
R4-36-304	Amend
R4-36-305	Repeal
R4-36-306	Repeal
R4-36-307	Repeal
R4-36-308	Repeal
R4-36-309	Repeal

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. 37-1302(A)(2)
Implementing Statute: A.R.S. 37-1383(A)(2)

3. Citations to all related notices published in the Register that pertain to the record of the proposed expedited rules:

None

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

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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 An agency’s justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking: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 Department needs to amend and repeal some rules consistent with its five-year review report that was approved by the Governor’s Regulatory Review Council in January 2020.

The Department proposed to amend its rules to adopt the 2018 edition of the International Fire Code (IFC 2018) as the minimum State Fire Code in order to better regulate fire hazards in Arizona and be more consistent with minimum national standards. The Department also needs to repeal some of its rules which are not necessary because it is adopting the IFC 2018 in its entirety.

In order to ensure that Arizona meets national standards for fire protection and prevention, the Department adopts the entirety of the International Fire Code (IFC), incorporated by reference. The IFC 2012 is incorporated by reference in R4-36-201 and needs to be replaced with the IFC 2018. In addition to the safety measures addressed in the IFC 2012, the IFC 2018 addresses several additional items of concern, such as battery storage facilities and facilities that produce cannabis products. Adopting the IFC 2018 will allow the state to enforce life safety protections relating to such additional items of concern.

Adopting the IFC 2018 will establish minimum requirements consistent with nationally recognized good practice for providing a reasonable level of life safety and property protection. Additionally, it will ensure a reasonable level of safety for fire fighters and emergency responders during emergency operations.

A.R.S. § 41-1027(A)(7) allows an agency to complete an expedited rulemaking if it “implements, without materials change, a course of action that is proposed in a five-year review report approved by the council.” In its 2020 five-year review report, the Department proposed to make these changes and the Council approved that proposed action in July 2020.

6. 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

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

None

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

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

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

Not applicable

10. When, where, and how persons may provide written comments on the proposed expedited rules:

Close of record: Friday May 28, 2021

A person may submit written comments on the proposed expedited rules no later than the close of record to the individual listed in item 3.

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

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

The Department issues specific permits for operations and construction. A general permit is not feasible because each permit must ensure that the applicant meets the specific requirements necessary for the applicant to operate safely in compliance with the IFC.

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

The National Fire Protection Association (NFPA) Codes and Standards apply to these rules, but these rules are not more stringent than the NFPA.

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

No analysis was submitted.

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

R4-36-201 incorporates by reference the IFC 2018.

13. The full text of the rules follows:

**TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 36. DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT
ARTICLE 2. ARIZONA STATE FIRE CODE**

Section

R4-36-201. Incorporation by Reference of the International Fire Code

ARTICLE 3. INTERNATIONAL FIRE CODE MODIFICATIONS AND ACCEPTED PRACTICES

Section

R4-36-301. Definitions

R4-36-302. Appendices

Exhibit A. Incorporated Appendices

R4-36-303. Permits

R4-36-304. Inspections and Enforcement

R4-36-305. ~~General Precautions Against Fire~~ Repealed

R4-36-306. ~~Emergency Planning and Preparedness~~ Repealed

R4-36-307. ~~Fire Service Features~~ Repealed

R4-36-308. ~~Building Services and Systems~~ Repealed

R4-36-309. ~~Fire Protection Systems~~ Repealed

ARTICLE 2. ARIZONA STATE FIRE CODE

R4-36-201. Incorporation by Reference of the International Fire Code

Unless otherwise provided by law, any person residing, doing business, or who is physically present within the state of Arizona shall comply with the provisions of the International Fire Code (~~2012-2018~~ 2018 Edition), including D102.1 and D107.1 of Appendix D and all provisions of Appendices B, C, E, F, G, H, I, ~~and J, and N,~~ which is published by the International Code Council, incorporated by reference as the State Fire Code, and modified by Article 3. The incorporated material does not include any later amendments or editions. Copies of the International Fire Code are available from the International Code Council, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795 and a copy is available for inspection at the Office of the State Fire Marshal.

ARTICLE 3. INTERNATIONAL FIRE CODE MODIFICATIONS AND ACCEPTED PRACTICES

R4-36-301. Definitions

The following terms as used in the International Fire Code, incorporated by reference at R4-36-201, apply to the State Fire Code established in this Chapter, unless the context otherwise requires:

1. “Department of fire prevention” means the State Fire Marshal or the State Fire Marshal’s designated representative.
- ~~1.2. Wherever the terms “fire chief” or~~ means the State Fire Marshal.
3. ~~“fire code official” are used in the International Fire Code, these terms include~~ means the State Fire Marshal or the State Fire Marshal’s designated representative, ~~unless the context otherwise requires.~~

~~2.4. Wherever the terms “fire Fire department” or “department of fire prevention” are used in the International Fire Code, these terms include means the State Fire Marshal or the State Fire Marshal’s designated representative unless the context otherwise requires.~~

~~3. Section 202, the definition of Occupancy Classification for R-3 within the Residential Group is modified to read: Residential occupancies where the occupancies are primarily permanent in nature and not classified as R-1, R-2, R-4, or I including:~~

~~a. Boarding houses (non-transient) with 16 or fewer occupants~~

~~b. Boarding houses (transient) with 10 or fewer occupants~~

~~c. Building that do not contain more than four dwelling units~~

~~d. Care facilities that provide accommodations for five or fewer persons receiving care~~

~~e. Congregate living facilities (non-transient) with 16 or fewer occupants~~

~~f. Congregate living facilities (transient) with 10 or fewer occupants~~

~~g. Care facilities within a dwelling. Care facilities for five or fewer persons receiving care that are within a single-family dwelling are permitted to comply with the International Residential Code provided an automatic sprinkler system is installed in accordance with Section 903.3.1.3 or Section P2904 of the International Residential Code.~~

R4-36-302. Appendices

The International Fire Code (~~2012~~ 2018 Edition), which is incorporated by reference at R4-36-201, is modified as shown in Exhibit A.

EXHIBIT A. Incorporated Appendices

Section 101.2.1 The following appendices are adopted as part of this Code:

B: Fire-Flow Requirements for Buildings

C: Fire Hydrant Locations and Distribution

D102.1 or the minimum requirement of the local fire response agency

D107.1 or the minimum requirement of the local building or subdivision authority

E: Hazard Categories

F: Hazard Ranking

G: Cryogenic Fluids – Weight and Volume Equivalents

H. Hazardous Materials Management Plan (HMMP) and Hazardous Materials Inventory

Statement (HMIS) Instructions

I. Fire Protection Systems – Noncompliant Conditions

J. Building Information Sign

N. Indoor Trade Shows and Exhibitions

R4-36-303. Permits

A. The following time-frames are established for permits issued under the State Fire Code:

1. The Office of the State Fire Marshal shall determine within five business days after receipt of a permit application and plan submission whether the permit application and plan are administratively complete and ready for review.
2. The Office of the State Fire Marshal shall either grant or deny the permit within 60 calendar days after the documents are determined to be administratively complete.
3. A permittee shall commence work within 180 days after the permit is issued or apply in writing for an extension from the State Fire Marshal. Without an extension, the permit is valid only for 180 days from the date of issuance.

- B.** The holder of an operational or construction permit is entitled to inspections as prescribed in this Chapter. The Office of the State Fire Marshal shall invoice a re-inspection caused by a violation or cancellation without 24-hours' notice at a rate established in the fee schedule and shall not conduct the re-inspection until the fee is paid.
- C.** ~~Section 105.1.1 is modified to read: Permits required. Any property owner or authorized agent that intends to conduct an operation or business, install or modify systems and equipment that are regulated by this code, or cause any such work to be done, shall first make application to the fire code official and obtain the required permit. The fire code official is authorized to waive the requirement for any permit listed in sections 105.6.1 through 105.6.46 and 105.7.1 through 107.16.~~
- D.** ~~Section 105.1.2 is modified to read: Types of permits. There shall be two types of permits as follows:~~
- ~~1. — Operational permit. An operational permit allows the applicant to conduct an operation for which a permit is required by Section 105.6 for a period that does not exceed 180 days from the date of issuance.~~
 - ~~2. — Construction permit. A construction permit allows the applicant to install or modify systems and equipment for which a permit is required by Section 105.7.~~
- E.** ~~Section 105.2.4, the first sentence is modified to read: The fire code official shall examine or cause to be examined each application for a permit or a permit amendment.~~
- F.** ~~Section 105.3.1, the first sentence is modified to read: An operational permit shall remain in effect until reissued, renewed, or revoked, or for 180 days.~~
- G.** ~~Section 105.3.3 is modified to read: Occupancy prohibited before approval. The building or structure shall not be occupied prior to the fire code official issuing a report indicating that applicable provisions of this code have been met.~~

R4-36-304. Inspections and Enforcement

- ~~A.~~ Section ~~108.1~~ 109.1 is modified to read: Board of appeals established. In order to ~~To~~ hear and decide appeals of orders, decisions, or other determinations made by the fire code official regarding application or interpretation of this code, the authority having jurisdiction may establish a board of appeals. If established, the board of appeals shall be appointed by and hold office at the pleasure of the governing body. The fire code official shall be an ex officio member of the board of ~~appeal~~appeals with no vote on any matter before the board. The board of appeals shall adopt rules of procedure for conducting its business. The board of appeals shall provide a written copy of the findings and decision in an appeal to the appellant and fire code official.
- ~~B.~~ ~~Section 109.4 is modified to read: Violation penalties. If a person violates a provision of this code or fails to comply with any of the requirements of the code, the State Fire Marshal shall proceed in accordance with A.R.S. § 41-2196.~~
- ~~C.~~ ~~Section 111.2 is modified to read: Issuance. The State Fire Marshal shall issue a stop work order, referred to in statute as a cease and desist order, in accordance with A.R.S. § 41-2196.~~
- ~~D.~~ ~~Section 111.4 is modified to read: Failure to Comply. Any person who shall continue any work having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, is subject to the provisions of A.R.S. § 41-2196.~~

R4-36-305. General Precautions Against Fire Repealed

- A. ~~Section 307.2 is modified to read: Permit required. When required by the fire code official, a permit shall be obtained in accordance with Section 105.6 before kindling a fire for recognized silvicultural or range or wildlife management practices, prevention or control of disease or pests, or a bonfire. Application for the required permit shall only be made by and a permit issued to the owner of the land upon which the fire is to be kindled.~~
- B. ~~Section 311.1.1 is modified to read: Abandoned premises. Buildings, structures, and premises for which an owner cannot be identified or located by dispatch of a certificate of mailing to the last known or registered address, which persistently or repeatedly become unprotected or unsecured, which have been occupied by unauthorized persons or for illegal purposes, or which present a danger of structural collapse or fire spread to adjacent properties shall be considered abandoned, declared unsafe, and abated in accordance with state law.~~

R4-36-306. Emergency Planning and Preparedness Repealed

~~Section 401.1 is modified to read: Scope. Reporting of emergencies, coordination with the local authorized emergency response providers, emergency plans, and procedures for managing or responding to emergencies shall comply with the provisions of this Section.~~

R4-36-307. Fire Service Features Repealed

- A. ~~Section 501.2 is modified to read: Permits. A permit shall be required as set forth in Sections 105.6 and 105.7 as modified by this Article.~~
- B. ~~Section 508.1.1 is modified to read: Location and access. The location and accessibility of the fire command center shall be approved by a local authorized emergency response provider.~~

R4-36-308. ~~Building Services and Systems~~ Repealed

~~A. Section 606.2 is modified to read: Refrigerants. The use and purity of new, recovered, and reclaimed refrigerants shall be in accordance with state law.~~

~~B. Section 606.14 is modified to read: Notification of refrigerant discharges. The fire department shall be notified immediately when a discharge becomes reportable under state, federal, or local regulations in accordance with Section 5003.3.1.~~

~~C. Sections 5003.3.1 and 5003.3.1.4 replace “fire code official” with “fire department.”~~

R4-36-309. ~~Fire Protection Systems~~ Repealed

~~Section 901.1 is modified to read: Scope. The provisions of this Chapter shall specify where fire protection systems are required and shall apply to the design, installation, inspection, operation, testing, and maintenance of all fire protection systems. Absent specific statutory authority to the contrary, these provisions provide the minimum protective standards relating to fire protection systems.~~