

DEPARTMENT OF FIRE, BUILDING AND LIFE SAFETY

STATE FIRE CODE

Five-year-review Report: A.A.C. Title 4, Chapter 36, Articles 2 and 3

March 2016

Five-year-review Report

A.A.C. Title 4. Professions and Occupations

Chapter 36. Department of Fire, Building and Life Safety

INTRODUCTION

Under A.R.S. § 41-2146(C), the State Fire Safety Committee (Committee) is required to adopt, by rule, a State Fire Code. The Committee is also required to adopt a schedule of fees for a permit, plan submission, plan review, or re-inspection related to fire protection. The Office of the State Fire Marshal (Office), which is within the Department of Fire, Building and Life Safety, is charged with maintaining and enforcing the State Fire Code by providing fire training, fire investigations, and public life safety education.

The Committee adopted the 2012 International Fire Code as the state's fire code in a rulemaking that went into effect on January 2, 2016. It adopted the schedule of fees required under A.R.S. § 41-2146(D) in a rulemaking that became effective on August 30, 2008.

Statute that generally authorizes the agency to make rules: A.R.S. § 41-2146(C) and (D)

1. Specific statute authorizing the rule:

R4-36-201. A.R.S. § 41-2146(C)

R4-36-202. A.R.S. § 41-2146(D)

R4-36-301. A.R.S. § 41-2146(C)

R4-36-302. A.R.S. § 41-2146(C)

R4-36-303. A.R.S. §§ 41-0173, 41-2146(C), 41-2161, and 41-2163(C)

R4-36-304. A.R.S. §§ 41-2146(C), 41-2163, and 41-2196

R4-36-305. A.R.S. § 41-2146(C)

R4-36-306. A.R.S. § 41-2146(C)

R4-36-307. A.R.S. § 41-2146(C)

R4-36-308. A.R.S. § 41-2146(C)

R4-36-309. A.R.S. § 41-2146(C)

R4-36-310. A.R.S. § 41-2146(C)

2. Objective of the rule including the purpose for the existence of the rule:

R4-36-201. Incorporation by Reference of the International Fire Code: The objective of the rule is to establish a State Fire Code by incorporating by reference a widely accepted standard fire code. This protects public health and safety by ensuring there is a minimum statewide standard regarding best practices in fire safety.

R4-36-202. Fees: The objective of the rule is to establish a schedule of fees charged by the Office for a construction or operational permit, plan submission, plan review, and re-inspection. This ensures the Office has funds with which to perform the functions necessary to protect public health and safety.

R4-36-301. Definitions: The objective of this rule is to modify definitions in the material incorporated by reference to be consistent with Arizona law. This protects public health and safety by ensuring those responsible for enforcing the State Fire Code understand each other.

R4-36-302. Appendices: The objective of this rule is to identify the appendices of the incorporated material that are part of the State Fire Code. This protects public health and safety by clearly identifying portions of the incorporated materials that are to be enforced in Arizona.

R4-36-303. Permits: The objective of this rule is to establish the time-frame within which the State Fire Marshal will act on an application for a permit and to modify the incorporated material regarding permits. This enables an applicant for a permit to anticipate when the approval process will be completed.

R4-36-304. Inspections and Enforcement: The objective of this rule is to modify the incorporated material regarding inspections and enforcement and cross-reference to A.R.S. § 41-2196, which deals with the State Fire Marshal's enforcement authority. This encourages

compliance with the State Fire Code by providing notice to those who must comply with the Code of the manner in which the Code will be enforced.

R4-36-305. General Precautions Against Fire: The objective of this rule is to modify the incorporated material regarding general precautions against fire. This protects public health and safety by making modifications consistent with Arizona law and needs.

R4-36-306. Emergency Planning and Preparedness: The objective of this rule is to modify the incorporated material regarding emergency planning and preparedness. This protects public health and safety by making modifications consistent with Arizona law and needs.

R4-36-307. Fire Service Features: The objective of this rule is to modify the incorporated material regarding fire service features. This protects public health and safety by making modifications consistent with Arizona law and needs.

R4-36-308. Building Services and Systems: The objective of this rule is to modify the incorporated material regarding building services and systems. This protects public health and safety by making modifications consistent with Arizona law and needs.

R4-36-309. Fire Protection Systems: The objective of this rule is to modify the incorporated material regarding fire protection systems. This protects public health and safety by making modifications consistent with Arizona law and needs.

R4-36-310. Explosives and Fireworks: The objective of this rule is to modify the incorporated material regarding explosives and fireworks. This protects public health and safety by making modifications consistent with Arizona law and needs.

3. Effectiveness of the rule in achieving the objective including a summary of any available data supporting the conclusion:

The Committee concluded all the rules, except R4-36-202, are effective in achieving their objectives. Except for R4-36-202 and R4-36-306, the rules were updated in a rulemaking approved by Council on November 3, 2015. The new State Fire Code went into effect on

January 2, 2016. The new State Fire Code, which has support throughout the regulated community, is effective in protecting public health and safety.

The fee schedule in R4-36-202 is out of date. The fees, which have not been increased in more than seven years, do not cover the cost of services provided.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency:

The rules are consistent with state statutes and other rules. The rules are not more stringent than federal law. There are numerous federal laws relating to some of the same subject matter as the State Fire Code. For example, there are federal laws dealing with hazardous materials, protection of certain categories of individuals, consumer protections, and environmental protection. However, the International Code Council, which developed the International Fire Code, has ensured that the code is consistent with federal law.

5. Agency enforcement policy including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement:

As a result of the provisions in A.R.S. §§ 41-2162(A)(2), 41-2163(A)(2), and 41-2166(A), the Office of the State Fire Marshal exercises jurisdiction over fire code matters for less than 15 percent of the state's population. However, even if the Office of the State Fire Marshal does not exercise jurisdiction over an area, the State Fire Code is important because it establishes minimum requirements for the area. The only places for which the State Fire Code does not establish minimum requirements are federal properties and Native American nations. In the areas for which it has jurisdiction, the Office of the State Fire Marshal enforces the State Fire Code by issuing required operational and construction permits and conducting inspections.

6. Clarity, conciseness, and understandability of the rule:

The rules are clear, concise, and understandable.

7. Summary of written criticisms of the rule received by the agency with the past five years, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and, written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute or beyond the authority of the agency to enact, and the result of the litigation of administrative proceedings:
The Committee received no written criticisms of the rules during the last five years, including analyses regarding whether the rules are based on valid scientific or reliable principles or methods.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule:

2008 rulemaking

The EIS from the 2008 rulemaking is available. The only rules not amended since 2008 are R4-36-202 and R4-36-306. Under A.R.S. § 41-2146(D), the State Fire Safety Committee is required to adopt a schedule of fees for a permit, plan submission, plan review, or re-inspection. Individuals regulated by A.R.S. Title 41, Chapter 16, Article 3, are required to pay the fees established. The goal of establishing the fee schedule was to have the plan review and permit activities of the Office of the State Fire Marshal, which if funded by the state's general fund, performed on a cost-recovery basis. The actual economic impact from the fee schedule differs from that predicted in the 2008 EIS. During the last year, the State Fire Marshal reviewed plans and issued 1,215 permits. This is 32 percent fewer than reported in the 2008 EIS. In 2008, the State Fire Marshal anticipated the fee schedule would generate \$683,590 annually. However, in the last year, the State Fire Marshal collected \$401,517 in fees, 41 percent less than anticipated. The deviation from the anticipated economic impact of the fee schedule results from the major economic downturn that occurred in 2008 and 2009. The economic downturn was particularly difficult for those involved in construction. As a

result of the reduced number of permits issued and fees collected, the State Fire Marshal has not achieved the goal of performing the permit issuance activities on a cost-recovery basis.

The economic impact of R4-36-306 is minimal. The State Fire Marshal's 2008 amendment of Section 401.1 involved adding the words "...local authorized..." to the description of emergency response responders.

2015 rulemaking

The EIS prepared with the 2015 rulemaking is available. The Office of the State Fire Marshal believes the 2015 update of the State Fire Code has had the minimal economic impact anticipated with the rulemaking was done. This is due, in large part, because most jurisdictions in Arizona had already adopted a fire code more stringent than that adopted by the State Fire Marshal.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states:

No analysis has been submitted.

10. How the agency completed the course of action indicated in the agency's previous 5YRR:

Yes. The Department completed the course of action indicated in the Department's 2010 5YRR in the Notice of Final Rulemaking approved by the Council on November 3, 2015.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The State Fire Code is designed to reduce hazards to life, property, and public welfare arising from fire, explosions, or dangerous conditions in new and existing buildings, structures, and premises and to provide safety to fire fighters and emergency responders. The Code establishes minimum requirements that are consistent with nationally recognized good

practice. The Department has determined that the burden of complying with the State Fire Code is necessary to achieve the underlying objective of public safety.

The fee schedule is applicable to entities engaged in construction of state or county buildings, including schools. These entities are required by statute to submit plans to the Office of the State Fire Marshal for approval, to obtain a permit, and to have their work inspected. The fee schedule is designed simply to recover the costs incurred by the Office in providing the required plan review, permit, and inspection. The fees are a cost of doing business that probably is passed to the consumer.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law:

Although there are numerous federal laws relating to some of the same subject matter as the State Fire Code, the International Code Council, which developed the International Fire Code, has ensured that the code is consistent with federal law. There are no federal laws directly applicable to simply incorporating these materials by reference.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

The permits required under R4-36-303 are general permits that comply with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule or to make a new rule. If no issues are identified for a rule in the report, the agency may indicate that no action is necessary for the rule:

Because the fees specified in R4-36-202 do not cover the cost of the services provided, the Department intends to seek an exemption from the rulemaking moratorium and update fee schedule. The Department intends to complete this rulemaking by June 30, 2017.