

NOTICE OF FINAL RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

PREAMBLE

<u>1. Article, Part, or Section Affected</u>	<u>Rulemaking Action</u>
R4-30-247	Amend
<u>2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):</u>	
Authorizing statute: A.R.S. §§ 32-106(A)(1),(9), 32-106(F) and 32-111(D)(7)	
Implementing statute: A.R.S. §§ 32-101(B)(23) and 32-122.02	
<u>3. The effective date of the rule:</u>	
a. <u>If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. §41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):</u>	Not applicable.
b. <u>If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):</u>	Not applicable.

In order to provide adequate notice to the public, including the Board's regulated community, the newly amended rules will become effective sixty (60) days after they are filed with the Secretary of State's office.

4. 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. 1148, May 18, 2012.

Notice of Proposed Rulemaking: 18 A.A.R. 1944, August 17, 2012.

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

Name: Melissa Cornelius, Deputy Director

Address: 1110 W. Washington St., Suite 240, Phoenix, AZ 85007

Telephone: (602) 364-4933

Fax: (602) 364-4931

E-mail: Melissa.cornelius@azbtr.gov

Web site: www.azbtr.gov

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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

During the 2010 Second Regular Legislative Session, amendments were made to A.R.S. § 32-101(B)(23), adding “Swimming pools and Spas” to the definition of what constitutes a home inspection in Arizona. The Board must modify its existing rule relating to home inspection to incorporate the legislative changes, in order to protect the public health, safety and welfare.

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

None

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

Not applicable

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

The Board expects that updating A.A.C. R4-30-247 will benefit all parties involved in its regulatory processes. This proposed rulemaking will incorporate legislatively authorized inspections of Swimming Pools and Spas into the Board's rule defining what constitutes a home inspection in Arizona.

The proposed rule change will not impose any additional costs for small home inspection businesses in Arizona. It proposes to exempt those home inspectors who have been certified prior to February 28, 2012 from any additional or testing requirements related to swimming pools and spas. The proposed rule change does not require home inspectors to include inspections of swimming pools and spas in their inspection reports. But, it will require those who choose to conduct these inspections to comply with the Board's adopted Standards of Practice in order to protect the public's health, safety and welfare.

The proposed rulemaking is not expected to have a significant impact on the following sectors of the economy: 1) the competitiveness of professionals in Arizona compared to their counterparts from other states; 2) the prices of goods and services in the state; 3) state revenues. Any additional administrative costs to state agencies, such as to the Board, the Secretary of State's Office, and the Governor's Regulatory Review Council, are not expected to be significant.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking: The Board changed the language used in subsection (B) to reflect the Board's original intent of incorporating the "Standards of Professional Practice for the Inspection of Swimming Pools & Spas for Arizona Home Inspectors" by changing the date listed to the version of the adopted standards rather than the date the standards were adopted by the Board in conformity with A.R.S. § 41-1028(B) (requiring the incorporated material to be fully identified by date). In addition, the Board added the location at which a person may obtain a copy of the standards from the organization originally issuing the incorporated matter, in conformity with the requirements of A.R.S. § 41-1028(D).

During the 2010 Second Regular Legislative Session, amendments were made to A.R.S. § 32-101(B)(23), adding "Swimming pools and Spas" to the definition of what constitutes a home inspection in Arizona. The Board must modify its existing rule relating to home inspection to incorporate the legislative changes, in order to protect the public health, safety and welfare. The Board also increased the required training hours from 80 to 84 to take into account training related to swimming pools and spas.

The Board also modified the language of subsection (F) from exempting registrants certified prior to February 28, 2012 from "any additional education or testing requirements" to more accurately reflect the Board's original intent of only exempting such registrants from "additional education or testing requirements relating to pools and spas." The Board also made minor clerical and grammatical corrections to this Notice of Final Rulemaking at the suggestion of GRRC staff.

- 11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:** BTR received no comments about the rulemaking and issued no responses.
- 12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:** Not applicable

 - a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:** 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
- 13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

The Board incorporated without any later amendments or editions “The Standards of Professional Practice for the Inspection of Swimming Pools and Spas for Arizona Home Inspectors,” adopted on March 11, 2011 and published by the Arizona Chapter of the American Society of Home Inspectors. Copies of the Standards are available at the Board’s Office.

14. Whether the rule was previously made, amended or repealed as an emergency rule.

If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages: Not applicable

15. The full text of the rules follows:

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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

ARTICLE 2. REGISTRATION PROVISIONS

R4-30-247. Home Inspector Certification

- A. An applicant for certification as a home inspector shall submit an original and one copy of a completed application package that contains the following:
1. Evidence of successful completion, within two years before the date of application, of the National Home Inspector Examination as administered by the Examination Board of Professional Home Inspectors;
 2. The information in subsections (B)(1) through (10);
 3. A completed fingerprint card;
 4. Applicable fees;
 5. Evidence of successful completion of ~~80~~ 84 hours of classroom training or an equivalent course conducted by an educational facility that is licensed by the applicable post-secondary education regulatory agency in the home state of the facility, or accredited by the Accrediting Commission of the Distance Education and Training Council, or by an accrediting agency approved by the United States Department of Education. The course of study shall encompass all of following major content areas:
 - a. Structural Components,
 - b. Exterior,
 - c. Roofing,

- d. Plumbing,
 - e. Heating,
 - f. Cooling,
 - g. Electrical,
 - h. Insulation and Ventilation,
 - i. Interiors,
 - j. Fireplaces and Solid Fuel-Burning Devices, ~~and~~
 - k. ~~Professional Practice; and Swimming Pools & Spas, and~~
 - l. Professional Practice;
6. An applicant who has lawfully conducted home inspections as part of a business shall provide evidence of successful completion of 100 home inspections that meet the standards referenced in R4-30-301.01 on a form provided by the Board. An applicant under this subsection shall meet all other requirements for certification in this Section, ~~and~~; and;
7. To complete a home inspector in-training program, an applicant who otherwise qualifies for certification as a home inspector except for meeting the qualification in subsection (A)(6), shall present evidence of completion of 30 parallel inspections. The 30 parallel inspections and home inspection report shall meet the standards in R4-30-301.01 and be retained by the applicant for at least two years from the date of application. The applicant shall conduct these inspections on separate residential

dwelling units and shall list them on a log provided by the Board. The log shall include, with respect to each inspection, the address of the property, the date of the inspection, and the name and certification number of the supervising home inspector. The Board may hold the applicant's package for a period of one year based solely on the need for time to permit the applicant to complete the required parallel inspections. All time-frames promulgated under A.R.S. Title 41, Chapter 6, Article 7.1 are suspended during this period.

B. A certified home inspector is not required to inspect a pool and/or spa as part of a home inspection. If a certified home inspector conducts a pool and/or spa inspection, it shall be conducted in accordance with the “Standards of Professional Practice for the Inspection of Swimming Pools & Spas for Arizona Home Inspectors,” (“Standards”) adopted and published by Arizona Chapter of the American Society of Home Inspectors on March 11, 2011, and incorporated by reference, without any later amendments or editions, by the Board on February 28, 2012. Copies of the Standards are available at the Board’s office and at the Arizona Chapter of the American Society of Home Inspectors’ website, www.azashi.org.

B. C. The application package shall contain the following:

1. Name, residence address, mailing address if different from residence address, and telephone number;
2. Date of birth and ~~social security~~ Social Security number of the applicant;
3. Citizenship or legal residence;

4. A detailed explanatory statement regarding:
 - a. Any disciplinary action, including suspension and revocation, taken by any state or jurisdiction on any professional or occupational registration, license, or certification held by the applicant in any state or jurisdiction;
 - b. Refusal of any professional or occupational registration, license, or certification by any state or jurisdiction;
 - c. Any pending disciplinary action in any state or jurisdiction on any professional or occupational registration, license, or certification held by the applicant;
 - d. Any alias or other name used by the applicant;
 - e. Any conviction for a felony or misdemeanor, other than a minor traffic violation.
5. Documentation of absolute discharge from sentence at least five years before the date of application if an applicant has been convicted of one or more felonies;
6. State or jurisdiction in which any professional or occupational registration, license or certification is held; type of registration, license, or certification; number; year granted, and how registration, license, or certification was granted (that is, by examination, education, experience, or reciprocity);
7. The current status of any application for any type of professional or occupational registration, license, or certification pending in another state or jurisdiction;
8. A release authorizing the Board to investigate the applicant's education, experience, and moral character and reput;

9. Certification that the information provided to the Board is accurate, true, and complete;
10. Copy of one report that meets the standards in R4-30-301.01; and
11. Sworn statement or statements by the supervising certified home inspector or inspectors that the parallel inspections conducted by the applicant meet the standards in R4-30-301.01.

C. D. The Board staff shall review all applications and, if necessary, refer completed applications to the Home Inspector Rules and Standards Committee for evaluation. If the application is complete and in the proper form, the Board staff or committee is satisfied that all statements on the application are true, and the applicant is eligible in all other aspects to be certified as a home inspector, the Board staff or committee shall recommend that the Board certify the applicant. If the evidence is not clear and convincing of qualification for certification, the matter shall be reviewed by the committee and the committee may request additional information regarding any issue upon which the applicant has not established qualification by clear and convincing evidence.

D.E. A certified home inspector shall notify the Board in writing within five business days of any loss of, or change in, financial assurance. The Board shall suspend the certificate holder's certification immediately and prohibit further home inspections until current proof of financial assurance is provided to the Board. The Board shall revoke a certificate if the certificate holder fails to provide proof of financial assurance within 90 days of loss of financial assurance or lapse of policy. All certified home inspectors shall provide proof of financial assurance at the time of each annual certification renewal. The Board shall not

renew a home inspector certification unless the financial assurance is in full force and effect.

F. A registrant who has been certified by the Board to conduct home inspections prior to February 28, 2012 will be exempt from any additional education or testing requirements relating to pools and spas.

NOTICE OF FINAL RULEMAKING CERTIFICATE

1. **Agency name:** Board of Technical Registration
2. **Chapter heading:** Board of Technical Registration
3. **Code citation for the Chapter:** 4 A.A.C. 2
4. **The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, in numerical order:**

R4-30-247

Amend

5.

Signature of Agency Chief Executive Officer in ink **Date signed**

Ronald W. Dalrymple,

Executive Director

Printed or typed name of signer

Title of signer

6. **The rules contained in this package are true and correct as proposed.**
7. **No changes have been made to this rule since the Council approved it.**

AGENCY RECEIPT
NOTICE OF FINAL RULEMAKING

1. **Agency name:** Board of Technical Registration
2. **The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, listed in alphabetical and numerical order:**

<u>Article, Part, or Section Affected</u>	<u>Rulemaking Action</u>
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R4-30-247	Amend
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