

## NOTICE OF FINAL RULEMAKING

### TITLE 2. ADMINISTRATION

### CHAPTER 19. OFFICE OF ADMINISTRATIVE HEARINGS

#### PREAMBLE

1. **Articles, Parts or Sections Affected:**  
R2-19-122
- Rulemaking Action:**  
Amend
2. **Citations to the agency's statutory rulemaking authority to include the authorization statute (general) and the implementing statute (specific):**  
Authorizing Statute: A.R.S. § 41-1092.01(C)(4)  
Implementing Statute: A.R.S. §§ 41-1092, 41-1092.07(E), 41-1092.11; A.R.S. § §12-904, 12-909
3. **The effective date of the rule:**  
  
Effective date will 60 days after filing the Notice of Final Rulemaking with the Secretary of State.
4. **Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**  
Notice of Rulemaking Docket Opening: Volume 20, Issue 10 A.A.R. (page 613)  
Notice of Proposed Rulemaking: Volume 20, Issue 10 A.A.R. (page 565)
5. **The agency's contact person who can answer questions about the rulemaking:**  
Name: Cliff J. Vanell  
Address: 1400 W. Washington, Suite 101, Phoenix, AZ 85007  
Telephone: (602) 542-9853  
Fax: (602) 542-9859  
E-mail: cliff.vanell@azoah.com  
Website: [www.azoah.com](http://www.azoah.com)

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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

Prior to July 1, 2013, A.R.S. § 12-904(A) provided for judicial review of an administrative decision by the filing of a complaint with the Superior Court. A.R.S. § 12-904(B) provides that a party file a notice of the action with the Office of Administrative Hearings, and that the Office thereupon transmit the record. In furtherance of A.R.S. § 12-904(A) and (B), R2-19-122 directed parties to file a copy of the complaint filed with the Superior Court with the Office within 10 days of the filing of the complaint. Effective July 1, 2013, A.R.S. § 12-904 substituted "notice of appeal" for "complaint." The Office proposes to amend R2-19-122A to substitute "notice of appeal" for "complaint" to conform to the statutory change. The Office also proposes to distinguish an appeal resulting from an administrative hearing held before the Office from that of an agency, board or commission acting as an administrative law judge.

Additionally, the Office proposes to amend R2-19-122B to distinguish a transcript of an appeal resulting from an administrative hearing held before the Office from that of an agency, board or commission acting as an administrative law judge.

**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:**

n/a

**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:**

n/a

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

The economic impact of the amended rule will not differ significantly from that projected in the economic impact statement submitted in December 1998, when the rule was submitted.

**10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**

No changes

11. **An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

No comments were received.

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:**

There are no matters prescribed by state applicable to the agency or to any specific rule or class of rules.

Regarding the Council review:

**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 does not require a permit;

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

No federal law is applicable to 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:**

No person has 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.

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

n/a

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:**

n/a

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

**TITLE 2. ADMINISTRATION**

**CHAPTER 19. OFFICE OF ADMINISTRATIVE HEARINGS**

**ARTICLE 1. PREHEARING AND HEARING PROCEDURES**

**Section**

**R2-19-122**

**Notice of Judicial Appeal; Transmitting the Transcript**

## TITLE 2. ADMINISTRATION

### CHAPTER 19. OFFICE OF ADMINISTRATIVE HEARINGS

#### ARTICLE 1. PREHEARING AND HEARING PROCEDURES

R2-19-122

#### Notice of Judicial Appeal; Transmitting the Transcript

A. **Notification to the Office.** Within 10 days of filing a ~~complaint for judicial review of a final administrative decision based on or resulting from a recommended decision of an administrative law judge~~ notice of appeal of an agency action resulting from an administrative hearing before the Office, the party shall file a copy of the ~~complaint notice of appeal~~ with the Office. The Office shall then transmit the record to the Superior Court.

B. **Transcript.** A party requesting a transcript of an administrative hearing before the Office shall arrange for transcription at the party's expense. The Office shall make a copy of its audio taped record available to the transcriber. The party arranging for transcription shall deliver the transcript, certified by the transcriber under oath to be a true and accurate transcription of the audio taped record, to the Office, together with one unbound copy.

# **ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT**

## **TITLE 2. ADMINISTRATION**

### **CHAPTER 19. OFFICE OF ADMINISTRATIVE HEARINGS**

#### **1. Identification of the rulemaking:**

##### **a. The conduct and its frequency of occurrence that the rule is designed to change:**

###### **R2-19-122(A)**

The rule is being amended to conform to a change in statutory language so that parties will have clear direction, now completely lacking, as to how to comply with the statutory requirement to inform the Office of an appeal of an agency action resulting from an administrative hearing that has been filed at the Superior Court.

###### **R2-19-122(B)**

The rule is being amended by inserting specific language to clarify that the transcription a party may request from the Office at the party's expense is a transcription of an administrative hearing that was held before the Office.

A.R.S. § 41-1092.07(E) requires that the administrative law judge secure either a court reporter or an electronic means of producing a clear and accurate record of the proceeding at the Office's expense. All the hearings are digitally audio recorded. A party may download the audio recording in non-confidential hearing from the OAH portal located on the Office website at their convenience. In confidential cases, a party may request that the Office burn a CD of the audio record.

In FY 2013 there were 7,596 cases filed with the Office and 21 administrative hearings appealed to the Superior Court. A.R.S. § 12-904(B)(4) provides that the transcript of the proceeding be part of the administrative record if requested by a party and the transcript is prepared at the party's expense.

This rule is being amended to make explicit what is implicit; that the transcript being referred to is the transcript of the administrative hearing held before the Office.

B. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

There exists an inconsistency that is likely to confuse the parties as to which document to file to notify the Office of an appeal because the current rule requires the filing of a document that no longer exists (complaint), and the rule does not address the document that is required to be filed (notice of appeal) under the amended statute.

c. The estimated change in frequency of the targeted conduct expected from the rule change:

The rule will improve compliance with the requirement that the Office be informed of an appeal of an administrative hearing so that the record is transmitted to Superior Court in a timely manner by referring the parties to the correct document that is to be filed with the Office. Having the language of the rule conform to the statute eliminates confusion the parties may have as to what document needs to be filed with the Office when an agency action resulting from an administrative hearing has been appealed, which ultimately expedites and streamlines the process.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

The amended rule will not negatively impact the convenience of any person, business, or political subsidiary, nor will there be any increase of their direct cost. The amended rule will clarify the statute as to what need be filed at the Office upon filing an appeal with the Superior Court, save the Court cost associated with issuing orders to clarify procedures, and adds convenience to parties as they experience less frustration with the procedure.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

- a. Name: Cliff J. Vanell
- b. Address: 1400 W. Washington, Suite 101, Phoenix, AZ 85007
- c. Telephone number: (602) 542-9853
- d. Fax number: (602) 542-9859
- e. E-mail address: [cliff.vanell@azoah.com](mailto:cliff.vanell@azoah.com)

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

Parties who file an appeal in Superior Court are statutorily required to inform the Office so that the record of the administrative hearing is transmitted to Superior Court in a timely manner. Failure to do so results in delay, inefficiencies, and increased cost to the Superior Court that must issue orders to the parties to inform the Office under penalty of dismissal of the appeal. Parties waste time and resources in any ensuing delay. Although there are no additional costs associated with the rulemaking, both the parties and the Superior Court will directly benefit from better direction to the parties.



5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking; number of new full-time employees at the implementing agency are required to implement and enforce the proposed rule:

There are no costs to state agencies directly affected by the rulemaking and no new full-time employees at the implementing agency are required to implement and enforce the proposed rule.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

There are no projected costs to any political subdivision, but a benefit to the Superior Court which will have less need to issue orders to parties to comply with their statutory requirement to inform the Office of their appeals so that the record of the administrative hearing may be transmitted in a timely manner.

- c. Costs and benefits to businesses directly affected by the rulemaking:

The proposed rulemaking affects businesses in a positive manner by potentially decreasing delay in the appellate process.

6. Impact on private and public employment:

The proposed rulemaking will not have an impact on private or public employment.

7. Impact on small businesses:

- a. Identification of the small business subject to the rulemaking:

N/A

- b. Administrative and other costs required for compliance with the rulemaking:

N/A

- c. Description of methods that may be used to reduce the impact on small businesses:

- i. Establish less costly or less stringent compliance or reporting requirements:

N/A

- ii. Establish less costly schedules or less stringent deadlines for compliance:

N/A

iii. Consolidate or simplify compliance or reporting requirements:

Clear language, conformed to the small business party's statutory requirement to inform the Office of its appeal so that the record of the administrative hearing is transmitted to Superior Court in a timely manner, will simplify and enhance the small business party's compliance.

iv. Establish separate performance standards:

N/A

v. Exempt small businesses from any or all requirements:

N/A

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

Clear language, conformed to the private person's and consumer's statutory requirement to inform the Office of its appeal so that the record of the administrative hearing is transmitted to Superior Court in a timely manner, will simplify and enhance the private person's and consumer's compliance.

9. Probable effects on state revenues:

State revenues would not be affected by the rulemaking.

10. Less intrusive or less costly alternative methods considered:

The result of not updating the rule would be the costs associated with the Court and the Office trying to resolve confusion by having to issue orders or direct inquiries.

a. Monetizing of the costs and benefits for each option:

N/A

b. Rationale for not using non-selected alternatives:

N/A

# Exemption from Moratorium

Executive Order 2012-03 2(b), 3 and 4

## Office of Administrative Hearings

1400 West Washington, Suite 101 - Phoenix, Arizona 85007  
Telephone (602)-542-9826 FAX (602)-542-9827

Janice K. Brewer  
Governor

Cliff J. Vanell  
Director

April 10, 2013

Steven Killian  
Policy Advisor, Business & Regulatory Affairs  
Office of the Governor  
1700 W. Washington St.  
Phoenix, Arizona 85007

Dear Mr. Killian,

Pursuant to Executive Order 2012-03 2(b), 3, and 4, I request exemption from the moratorium on rulemaking in order to amend a procedural rule to conform to a statutory change. Failure to conform language may result in unnecessary confusion, thereby creating an unnecessary regulatory burden.

Currently, A.R.S. § 12-904(A) provides for judicial review of an administrative decision by the filing of a complaint with the Superior Court. A.R.S. § 12-904(B) provides that a party file a notice of the action with OAH, and that OAH thereupon transmit the hearing record to the court. In furtherance of A.R.S. § 12-904(A) and (B), OAH promulgated A.A.C. R2-19-122 that directs parties to file a copy of the complaint filed with the Superior Court with OAH within 10 days of the filing of the complaint. However, effective July 1, 2013, A.R.S. § 12-904 substitutes "notice of appeal" for "complaint." As a result, R2-19-122 will require the filing of a non-existent document, and by the same token, not direct a party to make the appropriate filing that would alert OAH to transmit the hearing record to the Superior Court. This confusion may result in delay and added costs to both the court and the parties to the appeal.

OAH proposes to amend A.A.C. R2-19-122 to substitute "notice of appeal" for "complaint" to conform with the statutory change and provide a clear direction to parties seeking review of an administrative decision.

Sincerely,

  
Cliff J. Vanell  
Director



**Mission Statement:** We will contribute to the quality of life in the State of Arizona by fairly and impartially hearing the contested matters of our fellow citizens arising out of State regulation.

**Jeffery A. Sanchez**

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**From:** Cliff Vanell  
**Sent:** Friday, June 07, 2013 2:11 PM  
**To:** Jeffery A. Sanchez  
**Subject:** FW: Exemption from Moratorium on Rulemaking  
**Attachments:** April 10, 2013 letter to Killian re rule change.pdf

I received a call from Mr. Killian. We are not covered by the moratorium. If there is a problem with the SOS, we c

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**From:** Cliff Vanell  
**Sent:** Friday, June 07, 2013 10:18 AM  
**To:** 'skillian@az.gov'  
**Subject:** Exemption from Moratorium on Rulemaking

Dear Mr. Killian,

I am just following up on OAH's request for leave to amend one of its procedural rules to conform to a statutory change that will be effective July 1, 2013. See attached. Please let me know if you need any further information.

Sincerely,

Cliff J. Vanell  
Director  
Office of Administrative Hearings

5/13/2014

# Appendix

## Authorizing and Implementing Statutes

- A. A.R.S § 41-1092
- B. A.R.S § 41-1092.01
- C. A.R.S § 41-1092.07
- D. A.R.S § 41-1092.11
- E. A.R.S § 12-904
- F. A.R.S § 12-909

A.

41-1092. Definitions

In this article, unless the context otherwise requires:

1. "Administrative law judge" means an individual or an agency head, board or commission that sits as an administrative law judge, that conducts administrative hearings in a contested case or an appealable agency action and that makes decisions regarding the contested case or appealable agency action.

2. "Administrative law judge decision" means the findings of fact, conclusions of law and recommendations or decisions issued by an administrative law judge.

3. "Appealable agency action" means an action that determines the legal rights, duties or privileges of a party and that is not a contested case. Appealable agency actions do not include interim orders by self-supporting regulatory boards, rules, orders, standards or statements of policy of general application issued by an administrative agency to implement, interpret or make specific the legislation enforced or administered by it or clarifications of interpretation, nor does it mean or include rules concerning the internal management of the agency that do not affect private rights or interests. For the purposes of this paragraph, administrative hearing does not include a public hearing held for the purpose of receiving public comment on a proposed agency action.

4. "Director" means the director of the office of administrative hearings.

5. "Final administrative decision" means a decision by an agency that is subject to judicial review pursuant to title 12, chapter 7, article 6.

6. "Office" means the office of administrative hearings.

7. "Self-supporting regulatory board" means any one of the following:

(a) The Arizona state board of accountancy.

(b) The state board of appraisal.

(c) The board of barbers.

(d) The board of behavioral health examiners.

(e) The Arizona state boxing and mixed martial arts commission.

(f) The state board of chiropractic examiners.

(g) The board of cosmetology.

(h) The state board of dental examiners.

(i) The state board of funeral directors and embalmers.

(j) The Arizona game and fish commission.

(k) The board of homeopathic and integrated medicine examiners.

(l) The Arizona medical board.

(m) The naturopathic physicians medical board.

(n) The state board of nursing.

(o) The board of examiners of nursing care institution administrators and adult care home managers.

(p) The board of occupational therapy examiners.

(q) The state board of dispensing opticians.

(r) The state board of optometry.

(s) The Arizona board of osteopathic examiners in medicine and surgery.

- (t) The Arizona peace officer standards and training board.
- (u) The Arizona state board of pharmacy.
- (v) The board of physical therapy.
- (w) The state board of podiatry examiners.
- (x) The state board for private postsecondary education.
- (y) The state board of psychologist examiners.
- (z) The board of respiratory care examiners.
- (aa) The office of pest management.
- (bb) The state board of technical registration.
- (cc) The Arizona state veterinary medical examining board.
- (dd) The acupuncture board of examiners.
- (ee) The Arizona regulatory board of physician assistants.
- (ff) The board of athletic training.
- (gg) The board of massage therapy.



B.

41-1092.01. Office of administrative hearings; director; powers and duties; fund

A. An office of administrative hearings is established.

B. The governor shall appoint the director pursuant to section 38-211. At a minimum, the director shall have the experience necessary for appointment as an administrative law judge. The director also shall possess supervisory, management and administrative skills, as well as knowledge and experience relating to administrative law.

C. The director shall:

1. Serve as the chief administrative law judge of the office.
2. Make and execute the contracts and other instruments that are necessary to perform the director's duties.
3. Subject to chapter 4, article 4 of this title, hire employees, including full-time administrative law judges, and contract for special services, including temporary administrative law judges, that are necessary to carry out this article. An administrative law judge employed or contracted by the office shall have graduated from an accredited college of law or shall have at least two years of administrative or managerial experience in the subject matter or agency section the administrative law judge is assigned to in the office.
4. Make rules that are necessary to carry out this article, including rules governing ex parte communications in contested cases.
5. Submit a report to the governor, speaker of the house of representatives and president of the senate by November 1 of each year describing the activities and accomplishments of the office. The director's annual report shall include a summary of the extent and effect of agencies' utilization of administrative law judges, court reporters and other personnel in proceedings under this article and recommendations for changes or improvements in the administrative procedure act or any agency's practice or policy with respect to the administrative procedure act.
6. Secure, compile and maintain all decisions, opinions or reports of administrative law judges issued pursuant to this article and the reference materials and supporting information that may be appropriate.
7. Develop, implement and maintain a program for the continuing training and education of administrative law judges and agencies in regard to their responsibilities under this article. The program shall require that an administrative law judge receive training in the technical and subject matter areas of the sections to which the administrative law judge is assigned.
8. Develop, implement and maintain a program of evaluation to aid the director in the evaluation of administrative law judges appointed pursuant to this article that includes comments received from the public.
9. Annually report the following to the governor, the president of the senate and the speaker of the house of representatives by December 1 for the prior fiscal year:
  - (a) The number of administrative law judge decisions rejected or modified by agency heads.

(b) By category, the number and disposition of motions filed pursuant to section 41-1092.07, subsection A to disqualify office administrative law judges for bias, prejudice, personal interest or lack of expertise.

(c) By agency, the number and type of violations of section 41-1009.

10. Schedule hearings pursuant to section 41-1092.05 upon the request of an agency or the filing of a notice of appeal pursuant to section 41-1092.03.

D. The director shall not require legal representation to appear before an administrative law judge.

E. Except as provided in subsection F of this section, all state agencies supported by state general fund sources, unless exempted by this article, and the registrar of contractors shall use the services and personnel of the office to conduct administrative hearings. All other agencies shall contract for services and personnel of the office to conduct administrative hearings.

F. An agency head, board or commission that directly conducts an administrative hearing as an administrative law judge is not required to use the services and personnel of the office for that hearing.

G. Each state agency, and each political subdivision contracting for office services pursuant to subsection I of this section, shall make its facilities available, as necessary, for use by the office in conducting proceedings pursuant to this article.

H. The office shall employ full-time administrative law judges to conduct hearings required by this article or other laws as follows:

1. The director shall assign administrative law judges from the office to an agency, on either a temporary or a permanent basis, at supervisory or other levels, to preside over contested cases and appealable agency actions in accordance with the special expertise of the administrative law judge in the subject matter of the agency.

2. The director shall establish the subject matter and agency sections within the office that are necessary to carry out this article. Each subject matter and agency section shall provide training in the technical and subject matter areas of the section as prescribed in subsection C, paragraph 7 of this section.

I. If the office cannot furnish an office administrative law judge promptly in response to an agency request, the director may contract with qualified individuals to serve as temporary administrative law judges. These temporary administrative law judges are not employees of this state.

J. The office may provide administrative law judges on a contract basis to any governmental entity to conduct any hearing not covered by this article. The director may enter into contracts with political subdivisions of this state, and these political subdivisions may contract with the director for the purpose of providing administrative law judges and reporters for administrative proceedings or informal dispute resolution. The contract may define the scope of the administrative law judge's duties. Those duties may include the preparation of findings, conclusions, decisions or recommended decisions or a recommendation for action by the political subdivision. For these services, the director shall request payment for services directly from the political subdivision for which the services are performed, and the director may accept payment on either an advance or reimbursable basis.

K. The office shall apply monies received pursuant to subsections E and J of this section to offset its actual costs for providing personnel and services.

C.

41-1092.07. Hearings

A. A party to a contested case or appealable agency action may file a nonperemptory motion with the director to disqualify an office administrative law judge from conducting a hearing for bias, prejudice, personal interest or lack of technical expertise necessary for a hearing.

B. The parties to a contested case or appealable agency action have the right to be represented by counsel or to proceed without counsel, to submit evidence and to cross-examine witnesses.

C. The administrative law judge may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served and, on application to the superior court, enforced in the manner provided by law for the service and enforcement of subpoenas in civil matters. The administrative law judge may administer oaths and affirmations to witnesses.

D. All parties shall have the opportunity to respond and present evidence and argument on all relevant issues. All relevant evidence is admissible, but the administrative law judge may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. The administrative law judge shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence to make the cross-examination and presentation effective for ascertaining the truth, avoiding needless consumption of time and protecting witnesses from harassment or undue embarrassment.

E. All hearings shall be recorded. The administrative law judge shall secure either a court reporter or an electronic means of producing a clear and accurate record of the proceeding at the agency's expense. Any party that requests a transcript of the proceeding shall pay the costs of the transcript to the court reporter or other transcriber.

F. Unless otherwise provided by law, the following apply:

1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings is grounds for reversing any administrative decision or order if the evidence supporting the decision or order is substantial, reliable and probative.

2. Copies of documentary evidence may be received in the discretion of the administrative law judge. On request, parties shall be given an opportunity to compare the copy with the original.

3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The agency's

experience, technical competence and specialized knowledge may be used in the evaluation of the evidence.

4. On application of a party or the agency and for use as evidence, the administrative law judge may permit a deposition to be taken, in the manner and on the terms designated by the administrative law judge, of a witness who cannot be subpoenaed or who is unable to attend the hearing.

Subpoenas for the production of documents may be ordered by the administrative law judge if the party seeking the discovery demonstrates that the party has reasonable need of the materials being sought. All provisions of law compelling a person under subpoena to testify are applicable. Fees for attendance as a witness shall be the same as for a witness in court, unless otherwise provided by law or agency rule. Notwithstanding section 12-2212, subpoenas, depositions or other discovery shall not be permitted except as provided by this paragraph or subsection C of this section.

5. Informal disposition may be made by stipulation, agreed settlement, consent order or default.

6. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

7. A final administrative decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

G. Except as otherwise provided by law:

1. At a hearing on an agency's denial of a license or permit or a denial of an application or request for modification of a license or permit, the applicant has the burden of persuasion.

2. At a hearing on an agency action to suspend, revoke, terminate or modify on its own initiative material conditions of a license or permit, the agency has the burden of persuasion.

3. At a hearing on an agency's imposition of fees or penalties or any agency compliance order, the agency has the burden of persuasion.

4. At a hearing held pursuant to title 41, chapter 23 or 24, the appellant or claimant has the burden of persuasion.

H. Subsection G of this section does not affect the law governing burden of persuasion in an agency denial of, or refusal to issue, a license renewal.

D.

41-1092.11. Licenses; renewal; revocation; suspension; annulment; withdrawal

A. If a licensee makes timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

B. Revocation, suspension, annulment or withdrawal of any license is not lawful unless, before the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this article. If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the agency may order summary suspension of a license pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

E.

12-904. Commencement of action; transmission of record

A. An action to review a final administrative decision shall be commenced by filing a notice of appeal within thirty-five days from the date when a copy of the decision sought to be reviewed is served upon the party affected. The method of service of the decision shall be as provided by law governing procedure before the administrative agency, or by a rule of the agency made pursuant to law, but if no method is provided a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party affected at the party's last known residence or place of business.

Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address. The notice of appeal shall identify the final administrative decision sought to be reviewed and include a statement of the issues presented for review. The statement of an issue presented for review is deemed to include every subsidiary issue fairly comprised in the statement.

B. Within ten days after filing a notice of appeal pursuant to this article, the party seeking judicial review shall file a notice of the action with the office of administrative hearings or the agency that conducted the hearing, and the office of administrative hearings or the agency that conducted the hearing shall transmit the record to the superior court. The record shall consist of the following:

1. The original agency action from which review is sought.
2. Any motions, memoranda or other documents submitted by the parties to the appeal.
3. Any exhibits admitted as evidence at the administrative hearing.
4. The decision by the administrative law judge and any revisions or modifications to the decision.
5. A copy of the transcript of the administrative hearing, if the party seeking judicial review desires a transcript to be included in the record and provides for preparation of the transcript at the party's own expense. Any other party may have a transcript included in the record by filing a notice with the office of administrative hearings or the agency that conducted the hearing within ten days after receiving notice of the notice of appeal and providing for preparation of the transcript at the party's own expense.

F.

12-909. Pleadings and record on review

A. The notice of appeal shall contain a statement of the findings and decision or part of the findings and decision sought to be reviewed.

B. Notwithstanding section 12-904, subsection B, by order of the court or by stipulation of all parties to the action, the record may be shortened or supplemented.

C. If the cause is remanded to the administrative agency and a review thereafter is sought of the administrative decision, the original and supplemental record, or so much thereof as is determined by court order or stipulation of all the parties, shall constitute the record on review.