

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. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

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 adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION

PERSONNEL ADMINISTRATION

PREAMBLE

1. Sections Affected

	<u>Rulemaking Action</u>
R2-5-403	Amend
R2-5-405	Amend
R2-5-407	Amend
R2-5-410	Amend
R2-5-411	Amend
R2-5-412	Renumber
R2-5-412	New Section
R2-5-413	Renumber
R2-5-413	Amend
R2-5-414	Renumber
R2-5-414	Amend
R2-5-415	Renumber
R2-5-415	Amend
R2-5-416	Renumber
R2-5-416	Amend
R2-5-417	Renumber
R2-5-417	Amend
R2-5-418	Renumber
R2-5-418	Amend
R2-5-419	Renumber
R2-5-419	Amend
R2-5-420	Renumber
R2-5-420	Amend
R2-5-421	Renumber
R2-5-421	Amend
R2-5-422	Renumber
R2-5-422	Amend

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 41-763(2)(6)

Implementing statute: A.R.S. § 41-783(17)

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3. A list of all previous notices appearing in the Register addressing the proposed rule:

None (See the Notice of Rulemaking docket Openign in this issue, p. 2184.)

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Gordon Carrigan, Human Resources Generalist

Address: 1831 W. Jefferson, Room 104
Phoenix, AZ 85007

Telephone: (602) 542-4784

Fax: (602) 542-2796

5. An explanation of the rule, including the agency's reasons for initiating the rule:

R2-5-403 is being amended to include an expansion of the donated annual leave benefit passed by the Legislature. R2-5-407, military leave, is being amended to conform to the method in use for other types of leave when calculating accrual and use of leave time, to provide consistency in application, and to ensure that eligible employees receive the benefit equitably. R2-5-410 is being amended to convert 3 days and 5 days to hours to provide clarity and consistency in application. A new Section concerning Family Medical Leave Act (FMLA) leave, to be inserted as R2-5-412, is necessary to establish consistent state practices that conform to the law, and related amendments are necessary for R2-5-405 and R2-5-411. Because of the new Section, R2-5-412, it is necessary to renumber R2-5-412 through R2-5-421 as R2-5-413 through R2-5-422. In addition, life insurance maximums are being changed in R2-5-416 (to be R2-5-417) to reflect current practice, and revisions to the procedures in R2-5-421 (to be R2-5-422) are being made to expand recognition leave to make it more useful to agencies. Clarifications and housekeeping revisions are being made to all Sections along with the specific changes. The changes are consistent with the work of the Personnel Rules Review Committee (PRRC).

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule 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:

There will be no small business or consumer impact. There will be some impact on the expenditure of state funds. R2-5-403 involves the interagency transfer of annual leave time, and any extra costs would be administrative and minimal. Payroll expenditure would be reduced for the giving agency and increased for the receiving agency. R2-5-412 is procedural with no costs involved. R2-5-417 allows for the increase of supplemental and dependent life insurance at the employee's cost. R2-5-422 could result in increased costs, because the rule allows for increases in the maximum number of recognition leave hours that can be awarded. There are 18 agencies with 300 or more employees; under 300 employees, the effect is negligible. At 300 employees, the increase is 16 hours; at 1,000 employees the increase is 112 hours; and at 9,750 employees the increase is 1,176 hours. The cost increase would range from \$225 for 16 hours to \$1,578 for 112 hours to \$17,134 for 1,176 hours. The award of recognition leave is at the discretion of each agency head. The other proposed rules changes will not involve cost considerations.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Claudia Smith, Communications Unit Manager

Address: 1831 W. Jefferson, Room 128
Phoenix, AZ 85007

Telephoner: (602) 542-4894

Fax: (602) 542-2796

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

A public proceeding for oral comments on the rules has been scheduled for Wednesday, July 19, 2000 in the Grand Canyon Room in the basement of the Capitol, 1700 W. Washington, Phoenix, AZ 85007 at 3:30 p.m. and 5:30 p.m.

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Anyone wishing to provide comments prior to the meeting may submit written comments between 8:00 a.m. and 5:00 p.m., Monday through Friday, up until 5:00 p.m. July 18, 2000, at 1831 W. Jefferson, Room 104, Phoenix, AZ 85007.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

Family Medical Leave Act, at R2-5-412

Internal Revenue Code, at R2-5-421

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION

PERSONNEL ADMINISTRATION

ARTICLE 4. BENEFITS

Section

R2-5-403. Annual Leave

R2-5-405. Industrial ~~Disability~~ Leave

R2-5-407. Military ~~leave~~ Leave

R2-5-410. Bereavement Leave

R2-5-411. Parental Leave

~~R2-5-412.~~ Leave for Serious Health Conditions

~~R2-5-412~~ ~~R2-5-413.~~ Medical ~~leave~~ Leave without ~~Without~~ pay Pay

~~R2-5-413~~ ~~R2-5-414.~~ Leave Without Pay

~~R2-5-414~~ ~~R2-5-415.~~ Insurance ~~programs~~ Plans

~~R2-5-415~~ ~~R2-5-416.~~ Health Benefit Plan

~~R2-5-416~~ ~~R2-5-417.~~ Life and Short Term Disability Income Insurance ~~Plan~~ Plans

~~R2-5-417~~ ~~R2-5-418.~~ Retiree Health Benefit Plan

~~R2-5-418~~ ~~R2-5-419.~~ Health Benefit Plan for ~~former~~ Former elected Officials Officials

~~R2-5-419~~ ~~R2-5-420.~~ Life ~~insurance~~ Insurance plan Plan for ~~former~~ Former elected Officials Officials

~~R2-5-420~~ ~~R2-5-421.~~ Flexible or ~~cafeteria~~ Cafeteria employee Employee benefit Benefit plan Plan

~~R2-5-421~~ ~~R2-5-422.~~ Recognition ~~leave~~ Leave

ARTICLE 4. BENEFITS

R2-5-403. Annual Leave

A. Definition. "Annual leave" ~~includes all periods~~ means a period of approved absence with pay ~~which are~~ that is not chargeable to another category of leave.

B. Accrual.

1. All ~~state service~~ employees except seasonal, temporary, emergency, clerical pool, and permanent part-time employees shall accrue annual leave in accordance with the following schedule:

<i>Credited Service</i>	<i>Hours Per Month</i>	<i>Hours Bi-weekly</i>
Fewer than 3 years	8	3.70
3 years but fewer than 7 years	10	4.62
7 years but fewer than 15 years	12	5.54
15 years or more	14	6.47

2. Part-time employees who:

- a. ~~work~~ Work 1/4 time, 1/2 time, or 3/4 time ~~will~~ shall accrue a proportional amount of annual leave; or
- b. ~~Part-time employees who work~~ Work a percentage of full-time other than 1/4 time, 1/2 time, or 3/4 time ~~will~~ shall accrue annual leave at the next lower rate.

3. Seasonal, temporary, emergency, clerical pool employees, and part-time employees who work less than 1/4 time, ~~do~~ shall not accrue annual leave.

4. Eligible employees accrue ~~the appropriate number of hours of annual leave on a pay period or monthly basis, as determined by the agency head. Accrued annual leave is credited on the last day of the each bi-weekly pay period or month in which earned,~~ provided the employee has been in a pay status for at least 1/2 of the employee's working days in that pay period ~~or month~~.

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5. Service in a ~~positions~~ position ~~which that~~ became covered in accordance with A.R.S. Title 41, Chapter 4, (formerly A.R.S. Title 38, Chapter 6), shall be considered credited service in determining accrual rate change dates.
 6. The effective date for change in the accrual rate is the 1st day of the pay period or month immediately following the attainment of the required credited service.
- C. Credited service shall count:
1. ~~The date of the beginning of credited service is~~ From the 1st day of the 1st complete pay period worked;
 2. Any period of service as an employee of a state budget unit prior to a break in service ~~shall not be counted unless the break in service was~~ of less than 2 years duration ~~and that~~ was not the result of disciplinary action;
 3. Any period of leave without pay ~~in excess of 240 hours or less~~ shall not be counted as credited service;
 4. Approved Family Medical Leave Act (FMLA) leave;
 - ~~5. Military leave taken pursuant to A.R.S. §§ 26-168, 26-171, or 38-610 shall be counted as credited service; and~~
 - ~~6. Active military service of an employee who is restored to state service pursuant to A.R.S. § 38-298 is not a break in service and shall be counted as credited service.~~
- D. Accumulation.
1. ~~An employee shall forfeit Annual annual~~ annual leave accumulated in excess of 240 hours as of the last day of the last pay period starting in any calendar year ~~shall be forfeited~~, unless the Director authorizes an exception in an individual case. The application for exception submitted to the Director shall contain a plan to use the excess hours during the following calendar year, pay the employee for the excess hours, or a combination of both.
 2. An employee who ~~is credited with~~ accrues additional annual leave for working on a state holiday may exceed the 240-hour limitation by up to 24 hours.
 3. ~~An employee may retain Annual annual~~ annual leave accumulated as a result of service ~~which that~~ became covered in accordance with A.R.S. Title 41, Chapter 4, (formerly A.R.S. Title 38, Chapter 6), ~~may be retained by the employee with-~~ out regard to the accumulation limit contained in subsection (D)(1).
- E. Contribution of annual leave.
1. Definitions.
 - a. "Immediate family" means the recipient employee's parent, spouse, and child, whether natural, adopted, foster or step.
 - b. "Family" means the donating employee's natural child, adopted child, foster child, step-child, natural parent, step-parent, adoptive parent, grandparent, grandchild, brother, sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law.
 - ~~bc.~~ "Extended" means a period of 3 or more weeks of illness or injury ~~which that~~ is verified by a licensed health care practitioner.
 2. Eligibility. Annual leave may be contributed by 1 employee to another employee in the same agency or a family member employed in another agency. In order to be eligible to receive donated annual leave, the receiving employee shall submit a request and meet ~~provided~~ both of the following conditions ~~are satisfied~~:
 - a. The recipient of the donated leave has a seriously incapacitating and extended illness or injury, or a member of the immediate family of the recipient of the donated leave or the family member of the donating employee has a seriously incapacitating and extended illness or injury of 3 or more weeks up to a maximum of 6 consecutive months of transferred leave per occurrence, unless the employee has applied for Long Term Disability (LTD) by the end of the 5th month of illness or injury until an LTD determination has been made; and
 - b. The recipient of leave for a qualifying illness or injury has exhausted all leave except for sick leave granted in accordance with R2-5-404(A)(4). If the employee is the recipient of donated annual leave for illness or injury of the recipient's immediate family, the recipient 1st must exhaust 40 hours of sick leave, if available for this purpose pursuant to R2-5-404(A)(4), and all annual leave.
 3. Unused Leave. If the leave recipient separates from state service, recovers prior to using all donated leave, or the need for the leave is otherwise abated, the agency shall return unused leave ~~shall be returned~~ to leave contributors on a pro rata basis.
 4. Donated Leave Computation. An agency shall adjust proportionately ~~The the~~ dollar amount of donated leave ~~shall be adjusted proportionately~~ in relation to the salary of the employee donating the leave and the salary of the employee receiving the donated leave. To determine the proportionate adjusted dollar value of the leave, divide the dollar amount of the annual leave donated, based upon the annual leave contributor's salary, by the annual leave recipient's hourly rate. The resulting calculation is the number of hours donated to the leave recipient.
- F. Use of annual leave. An employee may take Annual annual leave ~~may be taken~~ at any time approved by the agency head. An agency shall not advance Annual annual leave ~~shall not be advanced~~ to an employee.
- G. Movement to another agency. An employee who moves to another state service agency shall transfer all accumulated and unused annual leave to the employee's annual leave account in the new agency.
- H. Separation. An agency shall pay an employee who separates from state service ~~shall be paid~~ for all unused and unforfeited annual leave at the employee's current rate of pay.

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R2-5-405. Industrial Disability Leave

A. Use of leave.

1. An agency head shall place an employee who sustains a job-related disability that is compensable under the Workers' Compensation Law, Title 23, Chapter 6, A.R.S. ~~shall be placed~~ on sick leave.
2. ~~After all sick leave is exhausted, if~~ If an employee exhausts all sick leave and does not request annual or compensatory leave, or has exhausted annual or compensatory leave, an agency head shall place the employee ~~shall be placed~~ on leave without pay.
3. If an employee is on leave pursuant to the State of Arizona's Worker's Compensation laws and that leave qualifies for Family Medical Leave Act (FMLA) leave, an agency shall count it as FMLA leave. Industrial leave and FMLA leave shall take place concurrently.

B. Payments.

1. An employee shall use leave in an amount necessary to receive total payments (leave payments plus Workers' Compensation payments) not to exceed the gross salary of the employee.
2. ~~If the an~~ an employee receives a retroactive Workers' Compensation payment for ~~the initial five day~~ any period of industrial ~~disability illness or injury~~, and for that period has received leave payments, the employee shall reimburse the agency for ~~five days of~~ Workers' Compensation payments above 100% of the employee's base pay prior to the illness or injury, and the agency shall restore the equivalent value of leave ~~shall be restored~~ to the employee's appropriate leave account.

C. Light duty. In the event of a disability that would impair performance on the former job, the agency head shall make every effort to place the employee in a suitable position, ~~as reasonably determined by the agency head.~~

D. Restriction. An agency head shall not grant Sick sick leave with pay or leave without pay ~~shall not be granted~~ to an employee who fails to accept compensation available pursuant to the industrial injury and disease provisions of A.R.S. §§ 23-901 to 23-1091.

E. Health Benefit Plan participation.

1. An employee who is on leave without pay due to an industrial ~~disability illness or injury~~ may continue to participate in the Health Benefit Plan for a maximum of ~~six~~ 6 months from the date of illness or injury by paying the employee contribution.
2. At the end of ~~this the six~~ the six 6-month period, an employee who remains on leave without pay due to industrial ~~disability illness or injury~~ may continue to participate in the Health Benefit Plan by paying both the state and employee contributions, until the employee returns to work or is determined to be eligible for Medicare coverage or Long Term Disability, whichever occurs first.

F. Life Insurance Plan participation. An employee who is on leave without pay ~~may~~ shall continue to participate in the Basic Life and Accidental Death and Dismemberment Insurance Plan without cost for 6 months after the month of illness or injury. During this time the employee may continue any supplemental life and dependent life coverages that were in effect at the start of the leave by paying the applicable premium. ~~by paying the state premium. An employee who elects to continue to participate in the Basic Plan may also continue any Supplemental coverage which is in force at the beginning of the leave without pay by continuing to pay the premium.~~

~~**G.** Disability Income Insurance Plan participation. An employee who is on leave without pay may continue to participate in the Disability Income Insurance Plan by paying the premium.~~

~~**HG.** Termination. The insurance coverage of an individual on leave without pay who allows payment of the premiums or contributions to become delinquent shall terminate at 11:59 p.m. on the last day of the period covered by the last premium or contribution paid.~~

~~**HH.** Accrual of leave. An employee shall continue to accrue full leave credits as long as the employee is using ~~two~~ 2 or more hours of leave each day.~~

R2-5-407. Military leave Leave

An employee who requests absence with pay on military leave pursuant to A.R.S. § 26-168, 26-171, or 38-610 shall submit a copy of the orders for duty with the request for military leave. An employee may be absent with pay for up to 240 regularly scheduled work hours in any two consecutive years for military purposes.

R2-5-410. Bereavement Leave

An employee may be absent with pay for up to ~~three 24 consecutive working days~~ work hours of that employee due to the death or funeral of a spouse, natural child, adopted child, foster child, stepchild, natural parent, stepparent, adoptive parent, one who functioned "in loco parentis", grandparent, grandchild, brother, sister, brother-in-law, sister-in-law, mother-in-law, father-in-law, son-in-law, or daughter-in-law. An agency head may extend ~~The the~~ bereavement leave ~~may be extended for two working days~~ 16 work hours if the employee travels out-of-state for the funeral.

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R2-5-411. Parental Leave

“Parental leave“ is means any combination of annual leave, sick leave, compensatory leave, or leave without pay taken by an employee due to pregnancy, childbirth, miscarriage, or abortion or for adoption of children. An agency head shall approve a request for parental leave of an employee subject to the following conditions:

1. An employee may take Sick sick leave may be taken only for periods of disability.
2. The parental Parental leave following for the childbirth, miscarriage, abortion or adoption shall not exceed 12 weeks, unless the agency head approves such a request for a longer duration.
3. The An agency shall not require an employee is not required to exhaust all annual leave, sick leave, or compensatory leave prior to taking leave without pay.
4. The An employee shall specify the number of hours of annual leave, sick leave, compensatory leave, and leave without pay to be used when requesting parental leave.
5. If leave under this section qualifies for FMLA leave, an agency shall count it as FMLA leave.
56. An employee returning to work from leave without pay taken as part of a parental leave shall return to the position occupied at the start of the parental leave. If this position no longer exists, the agency shall conduct a reduction in force shall be conducted.

R2-5-412. Leave for Serious Health Conditions

A. General. If an employee’s condition qualifies as a serious health condition under FMLA, the employee may take up to 12 weeks of leave in the following order:

1. An employee shall use all accrued sick leave;
2. An employee shall then use all accrued annual leave;
3. If an employee exhausts all accrued sick and annual leave, an agency head shall grant medical leave without pay pursuant to R2-5-413; and
4. The provisions of the FMLA, not the provisions of R2-5-413(B), shall govern return to work from leave without pay granted to complete an FMLA qualified leave. The FMLA Rules and Regulations, 29 CFR 825, published in the Federal Register January 6, 1995, are on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

B. Family Leave. If an employee’s leave qualifies for FMLA leave to care for a family member with a serious health condition:

1. An employee may use any sick leave not used under R2-5-404(A)(4);
2. An employee then shall use all accrued annual leave;
3. If an employee exhausts all accrued sick and annual leave, an agency head shall grant leave without pay pursuant to R2-5-414; and
4. The provisions of the FMLA, not the provisions of R2-5-414(D), shall govern return to work from leave without pay granted to complete an FMLA qualified leave.

C. Compensatory time. An employee may choose to use accrued compensatory time for an FMLA qualified leave.

D. Leave Without Pay. An agency head shall apply leave without pay granted for an FMLA qualified leave simultaneously as leave for the purpose of determining maximum leave available pursuant to R2-5-413 and R2-5-414.

E. Counting FMLA leave. For the purpose of determining the maximum leave available under FMLA, an agency head shall include all leave time granted that qualifies as FMLA leave.

F. Health benefit plan participation. An employee shall be eligible to participate in the health benefit plan pursuant to R2-5-416.

G. Life insurance plan participation. An employee who is on FMLA leave without pay:

1. Shall continue to participate in the Basic Life and Accidental Death and Dismemberment Insurance Plan; and
2. May continue to participate in the supplemental life and dependent life insurance coverage by paying the full premium.

H. Conflict. If there is a conflict between the provisions of these rules and the FMLA, the provisions of the FMLA shall govern.

~~R2-5-412~~ R2-5-413. Medical leave Leave without Without pay Pay

A. Upon application, An agency head shall place a permanent status employee shall be granted on medical leave without pay, provided all the following conditions are satisfied if:

1. The An employee is unable to work due to a non-job-related, seriously incapacitating and extended illness or injury; and;
2. A physician selected by an employee documents The the seriousness and extensiveness of the incapacitating illness or injury are documented by a physician selected by the employee, subject to confirmation by an agency-selected physician, at the expense of the agency, whose opinion shall be used to determine whether a medical leave without pay should be granted; and;
3. The An employee has exhausted all leave balances, including any leave donated to the employee; and

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4. The leave ~~is to be terminated~~ shall terminate upon the employee's return to work or the employee is absent for 180 days, whichever occurs first 1st.

B. An agency head shall determine ~~The the~~ status of an employee who returns to work from medical leave without pay shall ~~be determined~~ in the same manner as an employee who returns to work from leave without pay as specified in R2-5-413 414(D)(2).

~~R2-5-413~~ R2-5-414. Leave Without Pay

A. Approval. An agency head shall approve ~~All~~ all leave without pay ~~must be approved~~ in advance and in writing ~~by the agency head~~. An agency head shall approve leave without pay requested as a part of a parental leave.

B. Use of leave. Except for parental leave, FMLA leave, military leave, or leave granted to forestall a reduction in force, or leave granted to accept an uncovered position, an agency head shall not grant leave without pay in excess of 80 consecutive hours ~~shall not be granted~~ until all accrued annual leave, ~~compensatory leave~~, and, if the leave without pay is for medical reasons, sick leave ~~is~~ are exhausted.

C. Documentation of leave. All requests for leave without pay in excess of 80 consecutive hours shall ~~be documented by stating~~ include the beginning date of the leave without pay, the reasons for the request, the anticipated date of the return to work, and ~~contain~~ the signature or signatures of the appropriate level or levels of authority approving the request.

D. Return to work.

1. An employee who returns to work after a period of leave without pay of 80 consecutive hours or less shall return to the same position occupied at the start of the leave without pay.

2. Except as provided in subsection (D)(4), an employee who returns to work after a period of leave without pay in excess of 80 consecutive hours shall be entitled to return to a position in the class held at the start of the leave without pay, if such a position is available and funded, and provided the leave is terminated in one of the following ways:

a. Expiration of its term and the employee's return to work;

b. The rescission of the leave without pay by the agency head prior to its scheduled expiration, due to an unforeseen ~~and unexpected pressing necessity~~ need resulting that results in an insufficient number of employees available to provide service for which:

i. The agency head shall provide written notice of such rescission to the employee's last known address at least 15 days prior to the date the employee is ~~required~~ directed to return to work; or

ii. If circumstances beyond the agency's control do not permit at least a 15-day notice, the agency shall provide notice as soon as it is aware of the need for the employee to return to work; or

c. The curtailment of the leave without pay prior to its scheduled expiration date, upon request of the employee and with approval of the agency head.

3. An agency head may consider the ~~Failure failure~~ or inability of an employee to return to work ~~may be considered as~~ a resignation, ~~or result in a~~ separation without prejudice, or ~~be~~ cause for dismissal.

a. If a funded position is available, and the employee does not return to work on the first 1st working day following the expiration of the approved leave without pay or any extensions, an agency head may determine that the employee ~~may be either considered to have~~ has resigned and shall be separated without prejudice or dismissed for cause, depending upon the circumstances ~~as determined by the agency head, or~~.

b. If no funded position is available to accommodate an employee's return to work on the first 1st working day following the expiration of the approved leave without pay or any extensions, an agency head may separate the employee ~~may be separated~~ without prejudice.

4. An employee returning to work from leave without pay granted for military service, industrial ~~disability~~ illness or injury for up to 6 months, to forestall a reduction in force, as part of a parental or FMLA leave, or to accept an uncovered position, shall return to the position occupied at the start of the leave without pay. If this position or a position in the same class is not available and funded, an agency head shall conduct a reduction in force ~~shall be conducted~~.

E. Health benefit plan participation.

1. An employee who is on leave without pay for a health-related reason ~~which that~~ is not an industrial ~~disability~~ illness or injury may continue to participate in the health benefit plan by paying both the state and employee contribution. This authority to continue participation in the health benefit plan shall terminate on the earliest of:

a. Receipt of long term disability benefits for which there is eligibility to continue coverage under R2-5-418(A)(3);

b. ~~when the employee is determined to be eligible~~ A determination of eligibility for Medicare coverage; or

c. ~~when 30 months have elapsed since after~~ the incapacity began, ~~whichever occurs first~~.

2. An employee who is on leave without pay for other than a health-related reason may continue to participate in the health benefit plan for a maximum of 6 months by paying both the state and employee contributions.

F. Life insurance plan participation. An employee who is on leave without pay may continue to participate in the basic life ~~and accidental death and dismemberment~~ insurance plan by paying the state premium. An employee who elects to continue to participate in the basic plan may also continue any supplemental or dependent life coverage ~~which that~~ is in force at the beginning of the leave without pay by continuing to pay the premium. The authority to continue in the life insurance plan shall terminate in accordance with the time limits specified in subsection (E).

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~~G.~~ Disability income insurance plan participation. An employee who is on leave without pay for a health-related reason may continue to participate in the disability income insurance plan by paying the premium.

~~HG.~~ Termination. The insurance coverage of an individual on leave without pay who allows payment of the premiums or contributions to become delinquent shall terminate at 11:59 p.m. on the last day of the period covered by the last premium or contribution paid.

~~IH.~~ Disposition of accrued leave.

1. ~~The affected agencies and the~~ An employee who is to be granted leave without pay to accept an uncovered position in another state service agency and the agency heads shall agree on whether the employee's accrued annual and compensatory leave shall be paid off or transferred in whole or in part. Sick leave shall be transferred. The same procedure shall apply upon the return of the employee to covered service.
2. The disposition of all current and future accrued leave of an employee who is to be granted leave without pay to accept a position in a non-state service agency or in another governmental jurisdiction shall be covered in the inter-governmental agreement concluded between the Director and such agency or jurisdiction.

~~R2-5-414~~ **R2-5-415. Insurance programs Plans**

A. Designation of qualifying health care plans. The Director ~~designates~~ shall designate as qualifying health care plans the following types of plans:

1. ~~Indemnity Health Insurance Plans.~~ Medical Insurance.
2. ~~Hospital and Medical Service Plans.~~ Dental Insurance.
3. ~~Closed Panel Medical Plans.~~ Vision Insurance.
4. ~~The Arizona Health Care Cost Containment System.~~

B. Designation of other qualifying insurance plans. The Director ~~designates~~ shall designate as other qualifying insurance plans the following types of plans:

1. Life Insurance ~~Plans.~~
2. Short Term Disability Income Insurance ~~Plans.~~

~~C.~~ Standards. All qualifying plans shall be financially responsible and provide adequate and satisfactory medical services, if applicable.

~~DC.~~ Complaints. An employee who wishes to submit a complaint about any employee insurance program shall contact the employee's Agency Insurance Liaison or a representative of the Department Benefits Section. Retired employees shall contact ~~the Group Insurance Liaison, Personnel Division, Department of Administration~~ a representative of the Department Human Resources Benefits Section.

~~R2-5-415~~ **R2-5-416. Health Benefit Plan**

A. Eligibility.

1. All state employees, except those listed in subsection (A)(2), and their eligible dependents may participate in the Health Benefit Plan, provided they comply with the contractual requirements of the selected health care plan. An eligible employee may enroll in a health care plan at any time within the first 30 days of employment or during an open enrollment period specified by the Director. An eligible employee may submit an application for enrollment ~~at any other time, but participation in the Health Benefit Plan shall not become effective until the first day of the month following the completion of a 90-day waiting period from the date of the application.~~ within 31 days of a family status event.
2. The following categories of employees are not eligible to participate in the Health Benefit Plan:
 - a. ~~Employees~~ An employee who ~~work works~~ less than 20 hours per week;
 - b. ~~Employees~~ An employee in ~~seasonal, a temporary, or emergency, or clerical pool positions.~~ position;
 - c. ~~A Patients patient or inmates inmate~~ employed in ~~a state institutions.~~ institution;
 - d. ~~Non~~ A non-state employee ~~officers officer and~~ or enlisted personnel of the National Guard of Arizona;
 - e. ~~Employees~~ An employee in ~~a positions~~ position established for rehabilitation purposes;
 - f. ~~Employees~~ An employee of any state college or university:
 - i. Who ~~work works~~ less than 20 hours per week; ~~or~~
 - ii. Who ~~are~~ is engaged to work for less than 6 months; or
 - iii. For whom contributions are not made to a state retirement plan. This disqualification does not apply to a non-immigrant alien ~~employees~~ employee, ~~to employees~~ an employee participating in a medical residency training program, or ~~to a~~ Cooperative Extension ~~employees~~ employee on federal appointment.

B. Eligibility exception. ~~Employees~~ An employee who ~~are~~ is on leave without pay may continue to participate in the Health Benefit Plan under the conditions set forth in:

1. R2-5-405 for employees on leave without pay due to industrial ~~disability; or illness or injury;~~
2. R2-5-413 for employees on medical leave without pay; or
23. ~~R2-5-413~~ 414 for employees on leave without pay for any other reason.

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- C. Dependent eligibility. Dependents eligible to participate in the Health Benefit Plan include ~~the~~ an employee's spouse and each qualifying child.
- D. Enrollment of dependents. An eligible employee may enroll eligible dependents at the time of the employee's original enrollment, within 31 days of a family status event, or at open enrollment.
1. ~~An eligible employee may enroll:~~
 - a. ~~Any eligible dependent within the first 30 days of the employee's employment.~~
 - b. ~~A spouse within 30 days after the employee's marriage.~~
 - c. ~~A child within 30 days after the child's birth.~~
 - d. ~~Any eligible dependent during an open enrollment period specified by the Director.~~
 2. ~~An eligible employee may submit an application for enrollment of any eligible dependent at any other time, but participation in the Health Benefit Plan shall not become effective for such dependents until the first day of the month following the completion of a 90-day waiting period from the date of the application.~~

~~R2-5-416~~ R2-5-417. Life and Short Term Disability Income Insurance ~~Plan~~ Plans

- A. Eligibility.
1. All state employees, except those listed in subsection (A)(2), may participate in the Life and Short Term Disability Income Insurance ~~Plan~~ Plans.
 2. The following categories of employees are not eligible to participate in the Life and Short Term Disability Income Insurance ~~Plan~~ Plans:
 - a. ~~Employees~~ An employee who ~~work works~~ less than 20 hours per week;
 - b. ~~Employees~~ An employee in a ~~seasonal~~; temporary, or emergency, or clerical pool positions. ~~position;~~
 - c. ~~Patients~~ A patient or ~~inmates~~ inmate employed in a ~~state institutions;~~ institution;
 - d. ~~Non~~ A non-state employee ~~officers~~ officer and or enlisted personnel of the National Guard of Arizona;
 - e. ~~Employees~~ An employee in positions a position established for rehabilitation purposes;
 - f. ~~Employees~~ An employee of any state college or university:
 - i. Who ~~work works~~ less than 20 hours per week; ~~or~~
 - ii. Who ~~are~~ is engaged in work for less than 6 months; or
 - iii. For whom contributions are not made to a state retirement plan. This disqualification does not apply to ~~employees~~ an employee participating in a medical residency training program, or ~~to a~~ a Cooperative Extension ~~employees~~ employee on federal appointment.
- B. Supplemental insurance coverage. In addition to the basic life and ~~accidental death and dismemberment~~ insurance provided at no cost to the employee, an eligible employee may elect to purchase additional group life and ~~group accidental death and dismemberment~~ insurance in an amount not to exceed 3 times the employee's annual salary, rounded down to the nearest \$5,000, or ~~\$150,000~~ \$200,000, whichever is less.
- C. Dependent coverage. An eligible employee may elect to purchase group life insurance for eligible dependents in an amount not to exceed ~~\$2,000~~ \$6,000 for the spouse and \$5,000 for each dependent child. Dependents eligible to participate in the life insurance plan include the employee's spouse and each qualifying child.
- D. Long Term Disability coverage.
1. The monthly benefit paid under the disability portion of ~~the~~ a plan provided pursuant to A.R.S. § 38-651 shall ~~may~~ be reduced by ~~any payment~~ payments the employee receives or is eligible ~~for~~ to receive in the same month as: determined by the terms and conditions of the plan.
 - a. ~~Disability or regular retirement benefits from Social Security.~~
 - b. ~~Regular retirement benefits from any state retirement plan.~~
 2. The monthly benefit paid under the disability portion of the plan shall be reduced by ~~any payment~~ the employee receives in the same month as:
 - a. ~~Worker's Compensation benefits.~~
 - b. ~~Early retirement benefits from Social Security.~~
 - e. ~~Disability or early retirement benefits from any state retirement plan.~~

~~R2-5-417~~ R2-5-418. Retiree Health Benefit Plan

- A. Eligibility. ~~All~~ A state employees employee and all employees of political subdivisions of the state and other instrumentalities of the state who ~~are~~ is eligible to participate in the Retiree Health Benefit Plan if the employee is either:
1. Retired ~~or disabled~~ or members of the Arizona State Retirement System, the Arizona State Retirement Plan, the Public Safety Personnel Retirement System, the Elected Officials' Retirement Plan, or the Corrections Officer Retirement Plan and their eligible dependents, and under a state sponsored retirement plan and continues enrollment in the Retiree Health Benefit Plan;
 2. ~~Who are not eligible to obtain health and accident insurance through their former plan employers, are eligible to participate in a Retiree Health Benefit Plan designated by the Department of Administration. Newly retired under a state~~

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sponsored retirement plan and within 30 days of the date of retirement chooses enrollment in the Health Benefit Plan;
or;

3. On long term disability under a state sponsored plan.

- B.** ~~Dependent eligibility. For purposes of subsection (A), eligible dependents include the A~~ retired employee's spouse and each qualifying child are eligible to participate in the Retiree Health Benefit Plan.
- C.** ~~Extended coverage. If a retired state employee is retired, is on long term disability, or is eligible for normal retirement and has elected to continue to work dies while the surviving spouse's health insurance is in force, the surviving spouse is eligible for extended coverage by paying the group rate premium and any administrative expense charged by the State Retirement System coverage for spouse and each qualifying child is in effect, coverage may continue by payment of the premium and applicable administrative expenses.~~

R2-5-418 419. Health Benefit Plan for former ~~Former~~ Elected officials Officials

- A.** Definition. "Former elected official" means an elected official as defined in A.R.S. § 38-801(3) who is no longer in office.
- B.** Eligibility. ~~All A~~ former elected officials official of this state ~~and any county of this state, and their eligible dependents,~~ are is eligible to participate in the Retiree Health Benefit Plan provided the former elected official:
1. Has at least ~~five~~ 5 years of credited service in the Elected Officials' Retirement Plan; ~~and;~~
 2. Was covered under a Group Health or Group Health and Accident Plan at the time of leaving office; ~~and;~~
 3. Served as an elected official on or after January 1, 1983; ~~and~~
 4. Applied for enrollment within 31 days of leaving office or retiring.
- C.** ~~Dependent eligibility. Eligible dependents include the A~~ former elected official's spouse and each qualifying child are eligible to participate in the Retiree Health Benefit Plan.
- D.** Eligibility of surviving spouse.
1. Former elected official. Upon the death of a former elected official, the surviving spouse is eligible for coverage under the Retiree Health Benefit Plan by paying the ~~group rate~~ premium and any administrative expense ~~charged,~~ provided that:
 - a. ~~the The~~ deceased former elected official met the qualifications for eligibility listed in subsection (B) ~~above,~~ and ~~provided~~
 - b. ~~the The~~ surviving spouse ~~makes application~~ applies for coverage within ~~30~~ 31 days of the death of the former elected official.
 2. Incumbent elected officials. Upon the death of an elected official who is currently serving in office, the surviving spouse is eligible for coverage under the Retiree Health Benefit Plan by paying the ~~group rate~~ premium and any administrative expense ~~charged,~~ provided that:
 - a. ~~the The~~ deceased elected official met the qualifications for eligibility listed in subsection (B) ~~above,~~ or would have met the qualifications upon the completion of the term of office in which the deceased elected official was serving at the time of death; and ~~provided~~
 - b. ~~the The~~ surviving spouse ~~makes application~~ applies for coverage within ~~30~~ 31 days of the death of the elected official.
- E.** Termination of coverage. The insurance coverage of a former elected official or the surviving spouse of a former elected official who allows payment of the premium to become delinquent shall terminate at 11:59 p.m. on the last day of the period covered by the last premium paid.

R2-5-419 420. Life ~~insurance~~ Insurance plan Plan for former ~~Former~~ Elected officials Officials

- A.** Definitions. The following words and phrases used in this Section have the defined meanings unless otherwise clearly indicated by the context.
1. "Eligible dependent" means the former elected official's spouse and each qualifying child.
 2. "Former elected official" means an elected official ~~who formerly occupied an office or position as specified defined~~ in A.R.S. § ~~41-1904~~ 38-801(3) who is no longer in office.
- B.** Eligibility. ~~All A~~ former elected officials official of this state, ~~and their eligible dependents~~ spouse and each qualifying child are eligible to participate in the life insurance plan, provided that the former elected official:
1. Has at least 5 years of credited service, as referenced in A.R.S. § 38-801 et seq., in the elected officials' retirement plan; and
 2. Served as an elected official on or after January 1, 1983.
- C.** Eligibility of surviving spouse.
1. ~~Former elected official.~~ Upon the death of a former elected official, the spouse is entitled to coverage under the life insurance plan, provided that:
 - a. The deceased former elected official met the qualifications for eligibility listed in subsection (A); ~~and~~
 - b. The surviving spouse is receiving a monthly survivor's retirement check from the ~~Public Safety~~ Elected Officials' Retirement System Plan; ~~and;~~

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- c. The surviving spouse makes application for the life insurance benefit within ~~30~~ 31 days of the death of the former elected official; and
 - d. The surviving spouse pays the ~~group rate~~ premium for the life insurance benefit based upon the spouse's age ~~at the time of application~~ for the life insurance benefit and pays for any administrative expenses.
2. ~~Incumbent elected official.~~ Upon the death of an incumbent elected official ~~in office~~, the surviving spouse is eligible to participate in the life insurance plan for former elected officials in accordance with the terms of the insurance contract covering the former elected official at the time of death, provided that:
- a. The deceased elected official met the qualifications for eligibility listed in subsection (A) or would have met the qualifications upon the completion of the term of office in which the deceased elected official was serving at the time of death; ~~and~~,
 - b. The surviving spouse is receiving a monthly survivor's retirement check from the Public Safety Elected Officials' Retirement System Plan; and
 - c. The surviving spouse ~~makes application~~ applies for the life insurance benefit within ~~30~~ 31 days of the death of the incumbent elected official.
- D. Termination of coverage. The insurance coverage of either a former elected official or the surviving spouse of a former or incumbent elected official who allows payment of the premium to become delinquent shall terminate at 11:59 p.m. on the last day of the period covered by the last premium paid.

R2-5-420 421. Flexible or cafeteria Cafeteria employee Employee benefit Benefit plan Plan

- A. Eligibility. ~~All A~~ state ~~employees~~ employee who ~~are~~ is eligible to participate in the state's employee insurance programs, other than the short term disability program, ~~are~~ is enrolled in the flexible or cafeteria employee benefit plan, in accordance with 26 U.S.C. 125, Internal Revenue Code of 1986, incorporated by reference herein and on file in the Office of the Secretary of State and A.R.S. § 38-651.05.
- ~~B.~~ Short term disability insurance. ~~An election to pre tax short term disability premiums shall be made by signature on an authorization form, prior to pre-taxing the premiums.~~
- ~~CB.~~ Pre-taxing of plan premiums. The method of the subtraction of premiums for health and supplemental life insurance from gross salary prior to the deduction of federal and state income taxes and social security taxes, resulting in the pre-taxing of premiums for the health and supplemental life insurance plans, shall not ~~be changed~~ change or ~~cancelled~~ cancel until the end of the plan year, except for a change in family status event ~~or a change of the spouse's employment~~.
- ~~DC.~~ Corresponding change in premiums. A change in family status event ~~or a change of the spouse's employment, which that~~ results in the modification of the pre-taxing of premiums, shall also result in a corresponding change in the premium amount being deducted.
- ~~ED.~~ Automatic disenrollment. A participant is automatically disenrolled from this plan if the participant loses status as an eligible employee.
- ~~FE.~~ Plan Administrator. The Arizona Department of Administration is responsible for the administration of the plan, including determining the type of plan, the structure, and the components of the plan ~~and the components thereof~~.
- ~~GF.~~ Responsibilities for plan operation. The plan administrator shall have sole authority to amend or terminate, in whole or in part, this plan at any time. The plan administrator shall have sole responsibility for effecting the salary reductions.
- ~~HG.~~ Scope of authority. The plan administrator shall have sole responsibility for the administration of this plan, including, but not limited to, the following:
- 1. To construe and interpret the plan, decide all questions of eligibility and determine the amount, manner and time of payment of any benefits ~~hereunder~~; and
 - 2. To prescribe procedures to be followed by eligible employees who desire to enroll in the plan.

R2-5-421 422. Recognition leave Leave

- A. Definition. "Recognition leave" means a period of paid leave granted by an agency head as an acknowledgment of exemplary employee service or extraordinary contributions to accomplishing the agency's goals.
- B. Granting leave. Recognition leave may be granted by an agency head in accordance with the provisions of this rule and the following schedule:

Number of Permanent Positions Assigned to Agency	Maximum Number of Hours Awarded Per Year
1-100	16 hrs
101-200	24 hrs
201-500	32 hrs
501-1500	48 hrs
1501-2999	96 hrs
3000-5999	192 hrs
6000-7999	288 hrs
8000 or more	384 hrs

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Amount of leave. An agency may award 8 hours of recognition leave per year per 50 permanent positions assigned to the agency. An agency shall add recognition leave awarded to an employee's annual leave balance.

- C.** Procedure. An agency head shall develop and implement an employee recognition program and process. An agency head shall submit a proposed recognition leave program and process, and any subsequent changes to the Director. A process shall include as a minimum:
1. Criteria for consideration;
 2. Nominating procedures;
 3. Categories of recognition utilized by the agency; and
 4. Recommendation procedure, with final approval by the agency head.
- CD.** Use of recognition leave. Recognition leave shall be taken during the calendar year granted.
1. If the recognition leave is not used during this original eligibility period, a single nonrenewable extension period of 60 calendar days may be granted by the agency head.
 2. If the recognition leave is not taken during the original eligibility period or the extension, it shall be forfeited. An employee shall use recognition leave within 1 year of receiving the leave.
- DE.** Movement to another agency. An employee who moves to another state service agency shall transfer any unused recognition leave to the employee's recognition leave account in the new agency subject to the requirements of subsection (C).
- EF.** Separation. An employee who separates from state service shall be paid for all unused recognition leave at the employee's current rate of pay.
- F.** Approval. Each agency shall submit its proposed recognition leave process and any subsequent changes to the Director for approval. The process shall include as a minimum:
1. Criteria for consideration for recognition leave;
 2. Nominating procedures;
 3. Categories of recognition utilized by the agency; and
 4. Recommendation procedure, with final approval by the agency head.

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

**CHAPTER 15. ARIZONA DEPARTMENT OF ADMINISTRATION
GENERAL MANAGEMENT SERVICES DIVISION**

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|------------------------------------|---------------------------------|
| Chapter | Amend |
| R2-15-201 | Amend |
| R2-15-202 | New Section |
| R2-15-203 | Amend |
| R2-15-204 | Repeal |
| R2-15-205 | Amend |
| R2-15-206 | Amend |
| R2-15-207 | Amend |
| R2-15-209 | Repeal |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
- Authorizing statute: A.R.S. § 41-803(B)
- Implementing statutes: A.R.S. §§ 41-803, 38-538, 38-538(02), 28-2351, 28-2416
- 3. A list of all previous notices appearing in the Register addressing the rule:**
- Notice of Rulemaking Docket Opening: 6 A.A.R. 712, February 18, 2000
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|--|--|
| Name: Bill Hernandez, General Manager | Name: Randy Frost, Fleet Administrator |
| Address: ADOA-MSD-Special Services Section
1700 West Washington, Room 250
Phoenix, Arizona 85007 | Address: ADOA-MSD-Fleet Management
1501 West Madison Street
Phoenix, Arizona 85007 |

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Telephone:(602) 542-5675, ext. 357

Telephone:(602) 542-0601

Fax: (602) 542-2010

Fax: (602) 542-3125

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The purpose of this rulemaking is to respond to issues raised in the 5-year review process. Additionally, the rulemaking will update the rules and bring them into conformance with current rulewriting standards, legislative changes, and current practice.

SPECIFIC SECTION BY SECTION EXPLANATION OF THIS PROPOSAL

R2-15-201. Definitions. This Section updates the terms used within Article 2 and improves the clarity, conciseness, and understandability of the rules. Terms such as "A.D.O.T.", "minimum mileage surcharge," "taxi trip ticket," "trip ticket," "document holder", and "monthly report" are no longer used in Article 2 and have been deleted. The term "D.O.A." has been replaced with "ADOA" to clarify that this program's parent agency is the Arizona Department of Administration. "Fleet Management" no longer repairs vehicles at the ADOA fleet facility; the definition of this term has been modified to reflect this change. Defining the terms "approved fueling facility" and "maintenance provider" clarifies the difference between these entities and the Fleet Management facility, and clarifies their relationship with ADOA Fleet Management.

R2-15-202. General Provisions. This Section establishes who may operate a Fleet Management vehicle and provides the criteria for vehicle use.

R2-15-203. Operator Responsibilities. This Section establishes the responsibilities associated with operating Fleet Management vehicles.

R2-15-205. Request Procedures. This Section establishes the criteria for fleet management vehicle use and vehicle purchases.

R2-15-206. Special Equipment. This Section sets the criteria for special equipment installation, such as 2-way radios.

R2-15-207. Billing Rates. This Section clarifies fleet management's billing methods and rates.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule 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:

This rulemaking establishes clear procedures for requesting, operating, and purchasing a Fleet Management vehicle.

A. *Estimated Costs and Benefits to ADOA Fleet Management Office.* R2-15-203(E) requires any operator who receives a traffic citation to provide Fleet Management with verification that the fine has been paid or traffic school has been attended. This requirement will assure Fleet Management that its operators are complying with the law. Fleet Management does not anticipate any additional administrative functions will result from this rulemaking, nor will revenues increase or decrease.

B. *Estimated Costs and Benefits to Political Subdivisions.* Political subdivisions of this State are not directly affected by the implementation and enforcement of this rulemaking.

C. *Businesses Directly Affected By the Rulemaking.* (State agencies and the maintenance provider.) State agencies should have a clearer understanding of the requirements for the use or purchase of Fleet Management vehicles. The additional requirements of prohibiting an operator who receives a traffic citation from operating a Fleet Management vehicle, and prohibiting smoking in Fleet Management vehicles should benefit all agencies. The vehicles will not be damaged from ash burns and a vehicle's smell will not be offensive to other operators.

D. *Estimated Costs and Benefits to Private and Public Employment.* Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.

E. *Estimated Costs and Benefits to Consumers and the Public.*

Consumers and the public are not directly affected by the implementation and enforcement of this rulemaking.

F. *Estimated Costs and Benefits to State Revenues.* This rulemaking will have no impact on state revenues.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Bill Hernandez, General Manager

Name: Randy Frost, Fleet Administrator

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Address:ADOA-MSD-Special Services Section Address:ADOA-MSD-Fleet Management
1700 West Washington, Room 250 1501 West Madison Street
Phoenix, Arizona 85007 Phoenix, Arizona 85007

Telephone:(602) 542-5675, ext. 357 Telephone:(602) 542-0601

Fax: (602) 542-2010 Fax: (602) 542-3125

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

Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement will be accepted through July 17, 2000, by Bill Hernandez, 1700 West Washington, Room 250, Phoenix, Arizona 85007, (602) 542-5675, ext. 357. All comments must be received by 4:00 p.m., July 17, 2000 to be considered.

An oral proceeding is not scheduled but may be requested by submitting a request in writing to Bill Hernandez, 1700 West Washington, Room 250, Phoenix, Arizona 85007, (602) 542-5675, ext. 357. The request must be received by 4:00 p.m., July 17, 2000 to be considered.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 15. ARIZONA DEPARTMENT OF ADMINISTRATION

GENERAL MANAGEMENT SERVICES DIVISION

ARTICLE 2. FLEET MANAGEMENT

Section

R2-15-201.	<u>General Definitions</u>
R2-15-202.	<u>Repealed Vehicles, Operators, and Uses</u>
R2-15-203.	<u>Operator's responsibilities</u> <u>Operator Responsibilities</u>
R2-15-204.	<u>Categories of dispatch</u> <u>Repealed</u>
R2-15-205.	<u>Vehicle request procedures</u> <u>Request Procedures</u>
R2-15-206.	<u>Special authorizations</u> <u>Equipment</u>
R2-15-207.	<u>Billing procedures</u> <u>Rates</u>
R2-15-209.	<u>Acquisition of rental, leased, or purchased vehicles</u> <u>Repealed</u>

ARTICLE 2. FLEET MANAGEMENT

R2-15-201. General Definitions

~~Definitions. In this Article unless the context otherwise requires:~~ The following terms apply to this Article:

~~“Accident Reporting Packet reporting packet” means the packet automobile loss report form and witness information cards in the glove compartment of each Fleet Management vehicle. which contains a state of Arizona, Department of Administration, Risk Management Division~~

2. ~~A.D.O.T. means Arizona Department of Transportation.~~ “ADOA” means the Arizona Department of Administration
“Approved fueling facility” means a location managed by ADOA or the Arizona Department of Transportation to dispense fuel to Fleet Management vehicles.

3. ~~“Capitol Area area” means that area which is within a ten-mile~~ 10-mile radius of the state capitol complex.

4. ~~D.O.A. means Department of Administration.~~

5. ~~D.O.A. Fleet Management Vehicle” means any state vehicle which is owned and managed by the D.O.A. General Services Division, Fleet Management Office.~~

“Director” means the Director of the Arizona Department of Administration.

~~“Domicile to Duty Travel Domicile-to-duty travel” means that travel which is done between a vehicle an operator’s residence and worksite, as prescribed under A.R.S. § 38-622.~~

“Extended Dispatch dispatch vehicle” means a Fleet Management vehicle which that is dispatched full-time to a any using agency on a full-time basis that has continuing requirements for official state business travel.

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“Fleet administrator” means ~~D.O.A.~~ the person designated by the Director to administer the Fleet Management Office Director Fleet Management program.

“Fleet Management” means the section of the ADOA that administers all state- owned vehicles, except those specified in A.R.S. § 41-803(E).

9. “Fleet Management Repair Facility” means the Fleet Management Office, Repair Shop, Gas Station, and Car Wash facility located at 1522 West Jackson Street, Phoenix, Arizona 85007. “Fleet Management facility” means the dispatch center, alternative fuel depot, and car wash facility located at 1501 W. Madison, Phoenix, Arizona 85007.

“Fleet Management vehicle” means any state vehicle owned and managed by Fleet Management.

“Maintenance provider” means a person contracting with Fleet Management to provide vehicle maintenance.

10. “Minimum Mileage Surcharge” means the difference between the mileage charges for actual miles utilized per month and the mileage charges for 1,000 miles per month.

11. “Monthly report” means trip tickets that are issued for extended dispatch vehicles.

12. “Operator” means a vehicle a driver of a Fleet Management vehicle.

13. “Recall” means a call for the return to D.O.A. Fleet Management of a vehicle that is on extended dispatch because of failure to comply with this Article. “Recall” means a demand to return an extended dispatch vehicle because of failure to comply with this Article.

14. “Taxi” means a general purpose passenger vehicle on a temporary, 30 calendar days or less, dispatch assignment short-term dispatch assignment.

15. “Taxi Trip Ticket” means a form supplied with a taxi vehicle to be completed and turned in to the dispatch office at the completion of each trip.

16. “Trip Ticket” means the form supplied by Fleet Management Office with each vehicle for the purpose of recording mileage and purchases.

“Using Agency agency” means any state agency to which a Fleet Management vehicle is dispatched.

17. “Vehicle Document Holder” means the folder or clipboard issued with each D.O.A. Fleet Management vehicle which holds the Trip Ticket, the vehicle credit card, and the vehicle operator’s instructions.

“Vehicle Rotations rotation” means the periodic reassignment of vehicles dispatched to using agencies in order to equalize utilization use.

R2-15-202. Repealed Vehicles, Operators, and Uses

A. Any state employee holding a valid Arizona driver’s license may be an operator if authorized by the employee’s agency.

B. An operator shall use a Fleet Management vehicle only for state government activities as prescribed under A.R.S. § 38-538(02)(03). Prohibited uses include the following:

1. Domicile-to-duty transportation of a state employee, unless specifically authorized by the employee’s agency director;
2. Personal convenience; or
3. Transportation of family members or friends, or any person not essential to accomplishing the purpose for which the vehicle is dispatched.

C. Fleet Management shall ensure that a Fleet Management vehicle:

1. Bears a current state license plate in accordance with A.R.S. §§ 28-2351 and 28-2416;
2. Bear designations in accordance with A.R.S. § 38-538;
3. Is registered with the Arizona Department of Transportation Motor Vehicle Division; and
4. Complies with state emissions laws.

R2-15-203. Operator’s responsibilities Operator Responsibilities

A. Gasoline Fueling facilities

1. A.D.O.T. fueling facilities shall be used whenever possible if a vehicle needs refueling while away from the metropolitan Phoenix area. A copy of the A.D.O.T. fuel receipt must be returned to the Fleet Management Office with the appropriate trip ticket. An operator assigned an alternative fuel vehicle shall use alternative fuel whenever available.
2. Credit cards shall be issued with each vehicle to enable the vehicle operator to obtain fuel and service at authorized service stations. Credit cards shall be used for the purchase of items for D.O.A. Fleet Management vehicles only. Purchases or repairs over \$50.00 shall require authorization from the Fleet Service Manager. The credit cards shall not be used within the Capitol area during D.O.A. Fleet Management facility operating hours unless absolutely essential. All purchases made with the credit card shall be substantiated by a copy of the service station receipt. For taxi vehicle users, the Taxi Trip Ticket, the credit card and all fuel receipts shall be turned in to a Fleet Management dispatcher upon completion of the trip. Accumulated receipts from vehicles on extended dispatch shall be turned in to the Fleet Management Office on the first working day of each calendar month along with the monthly report.
2. If an approved fueling facility is not available, an operator shall use any fueling facility that accepts the Fleet Management-issued credit card.
3. An operator shall use fuel from regular unleaded self-service pumps.

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4. Except in the case of emergency, operators within the capitol area shall use the ADOA Fleet Management facility to refuel Fleet Management vehicles.
- B. Purchases and repairs.**
1. An operator shall use the Fleet Management-issued credit card only on purchases and repairs for Fleet Management vehicles.
 2. An operator shall obtain authorization from the maintenance provider before making a purchase or repair for a Fleet Management vehicle that costs more than \$50.00.
- ~~**B. Self-service. Self service fuel pumps shall be used.**~~
- ~~**C. Emergencies.**~~
- ~~In the event of a vehicle breakdown, the vehicle operator shall call one of the emergency telephone numbers listed in the vehicle document holder. The vehicle shall be locked if it is necessary to leave it unattended. If it is necessary to signal for assistance on a roadway, the hood of the vehicle shall be raised and the hazard flasher system turned on.~~
- D. Accident Reporting reporting**
1. ~~A operator~~ The operator shall report all Fleet Management vehicle accidents to the police and shall make a written report shall be made on all motor vehicle accidents, regardless of the amount of damage, to Fleet Management within 24 hours after the accident using the automobile loss report form contained in the Accident Report in Packet in the vehicle glove compartment. accident reporting packet. If the operator is incapacitated, the operator's supervisor shall make the report.
 2. ~~The operator and the operator's supervisor shall sign the automobile loss report, signed by the vehicle operator and his or her supervisor, shall be and give it to the D.O.A. Fleet Service Manager Fleet Management within three working days 24 hours after the accident.~~
 3. ~~In the event~~ If another driver is involved, the operator shall request that the other driver fill out the witness information courtesy card(s) located in the Accident Reporting Packet accident reporting packet. Names The name and the telephone number of any witnesses witness shall also be obtained.
 4. ~~A The operator shall submit the police report regarding the accident shall also be submitted to the Fleet Management Office Fleet Management within ten 10 calendar days of after the accident by the vehicle operator.~~
- E. Traffic Citations citations**
1. ~~State vehicle operators shall be An Operator is personally responsible for the prompt payment of any fines for a any moving and or non-moving traffic citation, other than for mechanical failure, received while driving a state vehicle Fleet Management vehicle. Under no circumstances shall the citation be paid with the state funds.~~
 2. ~~Citations received for mechanical failures shall be personally taken to the Fleet Management Office along with the vehicle. If a citation is received for mechanical failure, the operator shall, as soon as possible, deliver the vehicle, with the citation, to Fleet Management for repair.~~
 3. Any operator who receives a traffic citation while driving a Fleet Management vehicle and fails to resolve the matter within 90 calendar days of the citation shall lose the privilege of operating a Fleet Management vehicle. The operator's privilege shall be reinstated when the operator provides Fleet Management with verification that the operator paid the fine, successfully contested the traffic citation, or attended traffic school and possesses a valid driver's license.
- F. Vehicle Operation operation**
1. ~~Seat belts shall be worn by the driver and all passengers while the vehicle is in motion.~~
The operator and all passengers shall wear seat belts while the vehicle is in motion.
 2. ~~An Vehicle operators shall be is responsible for the safe and careful operation of D.O.A. Fleet Management a Fleet Management vehicle and for observing all directives issued by the Governor for the conservation of fuel.~~
- G. Care of Vehicles vehicles**
- ~~Employees operating D.O.A. Fleet Management vehicles~~ An operator shall ensure that:
1. ~~That the A Fleet Management vehicle is properly warmed as prescribed in the vehicle operation manual before operation;~~
 2. ~~That vehicles are A Fleet Management vehicle is kept clean and free of litter;~~
 3. ~~That all Any defect and or malfunction are is promptly reported to the Fleet Service Manager. Fleet Management. If the Fleet administrator determines that the operator is negligent and fails to safeguard the Fleet Management vehicle, the cost of any resulting damage shall be billed to the using agency;~~
 4. ~~That vehicle The vehicle maintenance schedules is are adhered to followed. Fleet Management vehicles not brought in for scheduled service are subject to recall; and~~
 5. Smoking does not occur in a Fleet Management vehicle.
 - a. If Fleet Management determines that smoking occurred in a Fleet Management vehicle, the operator's agency shall be billed for the cleaning expense.
 - b. A subsequent incident of smoking in a Fleet Management vehicle shall result in the operator losing the privilege to operate a Fleet Management vehicle.

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- ~~H.~~ Return of Taxi Vehicles to D.O.A. Fleet Management Taxi return. Taxi vehicles shall be returned An operator shall return a taxi to ~~D.O.A. Fleet Management~~ on the return date specified ~~on the Trip Ticket~~, unless an extension of the return date is approved by the Fleet administrator.
- ~~I.~~ Compliance with Preventive Maintenance Schedule for Extended Dispatch Vehicles. Preventive maintenance shall be scheduled by D.O.A. Fleet Management at 4,000-mile or 4-month intervals, whichever occurs first. A notice shall be mailed notifying the agency of the date the vehicle is scheduled for maintenance. Operators shall comply with the schedule, and, if unable to do so, shall call the Fleet Management Repair Facility to request a schedule change. Vehicles not brought in for scheduled service are subject to recall. Loaner vehicles are available for use while vehicles are in the Fleet Management Repair Facility. Reservations for loaner vehicles may be made up to five working days in advance.
- ~~J.~~ Pickup of Vehicles Released from Maintenance. Immediately upon a vehicle's release from maintenance, the using agency shall be notified by the Dispatcher that the vehicle is ready for pickup. The date and time of notification shall be recorded on the downtime notice and billing credit shall cease at that point.
- ~~K-H.~~ Loaning vehicles to other state employees. An The driver operator to whom the a Fleet Management vehicle is dispatched shall be ultimately is responsible for the proper utilization use of the vehicle. Should it become necessary to allow another Before allowing another state employee to drive the vehicle, the individual dispatched the vehicle shall assume the responsibility for assuring that the person to whom the vehicle is loaned the operator to whom the vehicle is dispatched shall verify that the other state employee is a properly licensed driver and is instructed in the proper utilization use of D.O.A. Fleet Management Fleet Management vehicles as outlined in this Article.
- ~~L.~~ Operator Negligence. The driver to whom the vehicle is dispatched shall ensure that every reasonable action is taken to safeguard the vehicle's mechanical condition by closely observing the vehicle's built-in warning lights and gauges. Failure to safeguard the vehicle could result in disciplinary action if it is determined by the Fleet Management Administrator that the driver was negligent. Actual dollar damage shall be billed back to the using agency.

R2-15-204. Categories of dispatch Repealed

Vehicles shall be assigned or dispatched in one of the following two categories:

1. Taxi Dispatch. The taxi fleet shall consist of general purpose passenger and cargo vehicles based in the Fleet Management Facility which shall be made available for short notice dispatch to all agencies as needed.
2. Extended Dispatch. This category is for user agencies which have continuing requirements for official state business travel. Vehicles in this category are subject to rotation in order to equalize their utilization. Vehicles which consistently fail to achieve a minimum of 1,000 miles per calendar month may be withdrawn after consultation with agency management and the agency may use taxi vehicles to satisfy ground transportation needs.

R2-15-205. Vehicle request procedures Request Procedures

A. Using agencies are assigned either taxis or extended dispatch vehicles.

1. Taxi Vehicles Taxis

- a. Fleet Management shall fill reservations Reservations for a taxi vehicles shall be filled on a first-come, first-serve basis. Vehicles shall be reserved by telephone or in person no earlier that five working days in advance.
- b. Vehicles which have been reserved Fleet Management shall hold a reserved taxi shall be held for one 1 hour beyond the stipulated time of dispatch. If, by that time, the requestor requesting agency has does not pick pick up the vehicle taxi, the request shall be canceled and the vehicle taxi shall be dispatched to the next requestor.
- c. If the a requesting agency for which the vehicle was reserved fails to pick it up a taxi, Fleet Management shall bill the agency shall be billed for one day's charges unless the subsequent requestor paid for the day 1 day's use.

B. 2. Extended Dispatch Vehicles

- a. Requests for dispatch of a vehicle in this category must An extended dispatch vehicle request shall be fully justified and approved by the head of the requesting agency or the agency head's designee, and forwarded to the Fleet administrator.
- b. If the vehicle extended dispatch vehicle request cannot be satisfied with existing resources, the requesting agency shall may request appropriated funds for purchase of a vehicle in the next budget cycle, coordinating the request with the Fleet administrator and the Executive Budget Office, D.O.A. Office of Strategic Planning and Budgeting.
- c. When the If funds are appropriated available, the requesting agency shall purchase the vehicle through the Fleet Management Office Fleet Management and assign the Resoucee vehicle to the Fleet Management Fleet Management maintenance and replacement program.
- d. The requesting agency shall transfer the appropriate funding to Fleet Management before the vehicle is ordered.

R2-15-206. Special authorizations Equipment

A. Domicile to Duty Travel

1. Two or more of the following criteria must exist before domicile to duty use of a state vehicle may be authorized:
 - a. The employee's home is also the duty station.
 - b. The employee reports directly to worksite from home rather than to the duty station.

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- e. Employee's duties regularly require the use of a vehicle for official state business before 7:00 a.m. and after 5:00 p.m., Monday through Friday or on weekends or holidays.
 - 2. ~~Employees who are authorized by their agency head to use a state vehicle for domicile to duty travel fall under the purview of a taxable fringe benefit which must be reported to the D.O.A. General Accounting Office.~~
 - 3. ~~User agencies shall keep records on domicile to duty travel for a minimum of three years.~~
 - B. Specially Installed Equipment and Vehicle Modifications.** An agency requesting ~~Requests for~~ specially installed equipment such as ~~two-way 2-way~~ radios, sirens, cages, or tanks shall be submitted in writing to the Fleet administrator. The using agency ~~shall be responsible~~ shall pay for the ~~procurement and~~ installation of such equipment and for ~~any special modifications required~~ all restoration expenses caused by any special modifications.
- R2-15-207. Billing procedures Rates**
- A. Billing Method:** Charges for extended dispatch vehicles ~~dispatched to using agencies shall be~~ are determined by a ~~dual rate methodology method. This method shall consist that consists~~ of a cost-per-day month charge, ~~and~~ a cost-per-mile charge, ~~and a charge for fuel use calculated according to actual operating expenses for each vehicle type.~~ The daily charge for extended dispatch vehicles shall be levied for each calendar day they are assigned, regardless of days that the vehicle is used. Billing credit shall be issued for those days that a vehicle is in for repairs or maintenance. A minimum mileage surcharge shall be levied on all extended dispatch vehicles which fail to achieve at least 1,000 miles per calendar month.
 - B. Charges for taxi vehicles** are determined by a rate methodology that consists of a cost-per-day charge and a charge for fuel use.
 - C. Billing Rates.** Fleet Management rates ~~shall may~~ vary from fiscal year to fiscal year depending upon the size of the fleet and the cost of new vehicles, ~~petroleum products and~~ maintenance, repair, overhead, and insurance. ~~Billing rates shall be published each fiscal year in the D.O.A. Executive Budget Office appropriated budget guidelines so that using agencies may include these costs in their budget requirements.~~

R2-15-209. Acquisition of rental, leased, or purchased vehicles Repealed

All requests for rental, leased, or purchased of non-DOA vehicles shall be coordinated with the Fleet Administrator to determine whether the requests can be met with available State resources prior to submitting the requests to D.O.A., Finance Division, State Purchasing Office.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 26. ~~COUNCIL FOR THE HEARING IMPAIRED~~
ARIZONA COMMISSION FOR THE DEAF AND HARD OF HEARING**

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
Chapter	Amend
R9-26-101	Amend
Article 2	Amend
R9-26-201	Repealed
R9-26-201	New Section
R9-26-202	Repeal
R9-26-202	Renumber
R9-26-202	Amend
R9-26-203	Repeal
R9-26-203	Renumber
R9-26-203	Amend
R9-26-204	Repeal
R9-26-204	Renumber
R9-26-204	Amend
Article 3	Amend
R9-26-301	Renumber
R9-26-301	Amend
R9-26-302	Repeal
R9-26-302	Renumber

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R9-26-302	Amend
R9-26-303	Repeal
R9-26-303	Renumber
R9-26-303	Amend
R9-26-401	Amend
R9-26-402	Amend
R9-26-403	Repeal

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 36-1947

Implementing statutes: A.R.S. §§ 36-1947, 42-5252(A)(4)

3. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 6 A.A.R. 715, February 18, 2000

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Sherri L. Collins, Director
Address: Arizona Commission for the Deaf and Hard of Hearing
1400 W. Washington, Room 126
Phoenix, Arizona 85007
Telephone: (602) 542-542-3323 Voice/TTY
Fax: (602) 542-3380
E-mail: Collins_Sherri@pop.state.az.us

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The Arizona Commission for the Deaf and Hard of Hearing (name changed in the 2000 legislative session) is updating 9 A.A.C. 26, Articles 1, 2, 3, and 4, updating program procedures and current rulewriting for clear, concise, and understandable requirements.

ARTICLE 1. GENERAL

R9-26-101. Definitions. This Section lists terms used within the rules governing the deaf and hard of hearing program, pursuant to A.R.S. Title 9, Chapter 26, and will simplify interpretation of responsibility and clarity of purpose. The definitions for "applicant," "distribution center," "hearing aid dispenser," "out of area," "severely hearing impaired," "severely speech impaired," "signal device," "telecommunication device for the deaf," and "telephone relay service" are no longer used in the rules and have been deleted from this Section. The definitions for "deaf" and "hearing aid dispenser" have been changed to conform to A.R.S. §§ 36-1941(F)(1) and 36-1901(8). Other terms have been added or amended to meet the changes in the program.

ARTICLE 2. APPLICATION, DISTRIBUTION, AND CONDITIONS FOR USE

R9-26-201. Application Procedure. This Section lists the specific information required by the applicant, discloses that the applicant will be informed of the training session and where to pick up a device, and lists the reasons for an application denial.

R9-26-202. Distribution, Repair, and Training. This Section provides the applicant with specific information about what to expect from the outreach center, and it establishes the guidelines for repairing devices and training.

R9-26-203. Ownership and Liability. This Section explains the owner's liability and requires that the Commission be notified if a recipient moves out-of-state.

R9-26-204. Restrictions. This Section explains that no device may be taken out-of-state unless granted permission by the Director.

ARTICLE 3. ADMINISTRATIVE PROCEDURES

This Article has been revised to provide the only the information necessary to complement the Uniform Administrative Appeals Procedures.

ARTICLE 4. RELAY SERVICES

R9-26-401. Telecommunication Relay Centers. This Section establishes the responsibilities of telecommunication relay centers.

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R9-26-402. Confidentiality. This Section sets the requirements for maintaining confidentiality.

6. A reference to any study that the agency relies on in its evaluation of or justification for the rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material.

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule 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:

A. *Estimated Costs and Benefits to the Arizona Commission for the Deaf and Hard of Hearing.* This rulemaking clarifies the requirements of the deaf and hard of hearing program. This statewide program covers the purchase, repair, and distribution of telecommunication devices to residents of this state who are deaf or severely hearing or speech impaired, and the dual party relay system for public telephone service. The program is administered by the Commission using the telecommunication services excise tax levied under A.R.S. § 42-5252(A)(4). This excise tax is .8% of the gross income of exchange providers. The income for the last 5 years is as follows:

<u>YEAR</u>	<u>AMOUNT</u>
1999	\$5,158,288
1998	\$4,880,214
1997	\$4,293,353
1996	\$5,355,896
1995	\$4,505,384

A 1999 auditor report indicated that the Commission had a poor inventory management system. The inventory management system provided no way to retrieve information containing the number of devices that were repaired. As a result of that report, the Commission is implementing a bar code system to track its devices. This customized software is currently being verified for accuracy.

Current records show the following distribution in the last 5 years:

<u>YEAR</u>	<u>DEVICES</u>
1995	270
1996	280
1997	290
1998	311
1999	347

B. *Estimated Costs and Benefits to Political Subdivisions.* Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.

C. *Businesses Directly Affected By the Rulemaking.* This rulemaking provides an applicant with a clear understanding of the requirements of the program. The program could provide the user with more independence, employment opportunity, housing access, and access to other areas previous unavailable. This rulemaking has no reducible impact on small businesses or consumers.

D. *Estimated Costs and Benefits to Private and Public Employment.* Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.

E. *Estimated Costs and Benefits to Consumers and the Public.* Consumers and the public are not directly affected by the implementation and enforcement of this rulemaking.

F. *Estimated Costs and Benefits to State Revenues.* This rulemaking will have no impact on state revenues.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Sherri L. Collins, Director

Address: Arizona Commission for the Deaf and Hard of Hearing
1400 W. Washington, Room 126
Phoenix, Arizona 85007

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Telephone: (602) 542-542-3323 Voice/TTY
Fax: (602) 542-3380
E-mail: Collins_Sherri@pop.state.az.us

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

Date: July 17, 2000
Time: 10:00 a.m.
Location: State Office Building
1400 West Washington, Room B-2
Phoenix, Arizona 85007
Nature: Oral Proceeding

Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement must be received by 5:00 p.m., July 18, 2000. Persons with a disability may request a reasonable accommodation, other than a sign language interpreter, by contacting the Department's coordinator, Sherri Collins, Director, at (602) 542-3323 (TTY or Voice). Requests should be made as early as possible to allow time to arrange the accommodation.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules

None

12. Incorporations by reference and their location in the rules:

R9-26-402. 47 CFR 64.604 Mandatory Minimum Standards (10-01-00 Edition)

13. Was this rule previously adopted as an emergency rule:

No

14. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 26. ~~COUNCIL FOR THE HEARING IMPAIRED~~
ARIZONA COMMISSION FOR THE DEAF AND HARD OF HEARING**

ARTICLE 1. GENERAL

Section
R9-26-101. Definitions

ARTICLE 2. APPLICATION, DISTRIBUTION, AND CONDITIONS FOR USE PROCESS

Section
~~R9-26-201. Eligibility requirements~~
~~R9-26-201. Application Procedure~~
~~R9-26-202. Approval of an application~~
~~R9-26-301. R9-26-202. Original distribution~~ Distribution, Repair, and Training
~~R9-26-203. Denial of eligibility~~
~~R9-26-304. R9-26-203. Ownership and liability~~ Liability
~~R9-26-204. Notice~~
~~R9-26-305. R9-26-204. Out-of-state use~~ Restrictions
R9-26-205. Renumbered
R9-26-206. Renumbered
R9-26-207. Renumbered

ARTICLE 3. ~~DISTRIBUTION PROCESS~~ ADMINISTRATIVE PROCEDURES

Section
~~R9-26-205. R9-26-301. Review by the Director~~ Informal Settlement Conference
~~R9-26-302. Training~~
~~R9-26-206. R9-26-302. Hearing by the Council~~ Hearings

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R9-26-303. Replacement devices
~~R9-26-207. R9-26-303. Rehearing or review of decision~~ Review of Decision

ARTICLE 4. RELAY SERVICES

R9-26-401. ~~Telephone relay centers~~ Telecommunication Relay Centers
R9-26-402. ~~Confidentiality and privacy requirements~~
R9-26-403. ~~Criminal activity~~ Repealed

ARTICLE 1. GENERAL

R9-26-101. Definitions

~~The following definitions shall apply in this Chapter, unless the context otherwise requires: In addition to the definitions listed in A.R.S. § 36-1941, the following terms apply to this Chapter:~~

- ~~1. "Applicant" means a person who applies for a Telecommunication Device for the Deaf (hereinafter "TDD") or signal device.~~
- ~~2.1. "Audiologist" means a person who has a Master's or Doctoral degree in audiology and a Certificate of Clinical Competence in audiology from the American Speech/Language/Hearing Association is licensed under A.R.S. § 36-1940 by the Arizona Department of Health Services.~~
- ~~3.2. "Council" means the Arizona Council for the Hearing Impaired~~ Arizona Commission for the Deaf and Hard of Hearing.
- ~~4. 3. "Deaf" means a hearing loss that requires use of a TDD to communicate effectively on the telephone. "Deaf" means those persons who cannot generally understand speech sounds with or without a hearing aid when in optimal listening conditions. (A.R.S. § 36-1941(F)(1))~~
- ~~5.4. "Deaf-blind Deafblind" means a hearing loss and a visual impairment that require use of a TDD to communicate effectively on the telephone person who is either deaf or hard of hearing and:~~
 - ~~a. Has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or~~
 - ~~b. A field defect where the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees, or~~
 - ~~c. A progressive visual loss having a prognosis leading to 1 or both of the conditions stated in subsections (6)(a) and (6)(b).~~
- ~~5. "Device" means one of the following:~~
 - ~~a. Amplified telephone is a telecommunication device used by individuals with mild to profound hearing loss or speech impairment and includes a standard telephone, hearing aid compatible handsets. The amplified telephone eliminates most noise background and has a volume control that clarifies inbound hearing or outbound speech;~~
 - ~~b. Augmented speech device is a telecommunication device used by a person with a speech impairment;~~
 - ~~c. Modem is an electronic device installed into a personal computer that is baud/baudot compatible;~~
 - ~~d. Signal device is an electrical or electronic device that alerts a deaf, hard of hearing, deafblind or speech-impaired person of an incoming telephone call.~~
 - ~~e. Teletype (TTY) is an electrical or electronic device used with a telephone that contains a keyboard, acoustic coupler, display or Braille screen to transmit and receive messages with or without a modem;~~
 - ~~f. Voice carry-over is a telecommunication device that enables a deaf or hard of hearing person to talk on a standard telephone while the conversation of the hearing person is typed by a relay operator.~~
- ~~6. "Director" means the Executive Secretary~~ Director of the Arizona Council for the Hearing Impaired Arizona Commission for the Deaf and Hard of Hearing.
- ~~7. "Distribution center" means a facility authorized by the Council to distribute TDDs and signal devices.~~
- ~~7. "Hard of hearing" means those persons who have a degree of hearing loss greater than 40 dB PTA-2, but less than 85 dB, PTA-2, in the better ear. (A.R.S. § 36-1941(F)(2))~~
- ~~8. "Hearing aid dispenser" means a person who is licensed by the Arizona Department of Health Services to fit and dispense hearing aids and who is certified in Hearing Instruments Sciences by the National Board for Certification in Hearing Instruments Sciences. "Hearing aid dispenser" means any person who engages in the practice of fitting and dispensing hearing aids. (A.R.S. § 36-1901(8))~~
- ~~9. "Outreach center" means a facility authorized by the Council to distribute devices and handle repair.~~
- ~~9. "Out of area" means any location more than (50) fifty miles from a Distribution Center.~~
- ~~10. "Recipient" means a person who receives a TDD or a signal device.~~
- ~~11. "Relay operator" means a person hired by the telecommunication relay center to transmit the conversation between a deaf, hard of hearing, deafblind, or speech-impaired person and another person who uses a standard telephone.~~
- ~~12. "Speech impaired" means any person who has a medical defined disability that prevents that person from articulating speech audibly or clearly.~~

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- 11.13. “Speech/language Speech pathologist” means a person who has a Master’s degree or its equivalency in Speech/ Language Pathology speech pathology and a Certificate of Clinical Competence issued by the American Speech Language Hearing Association.
12. “Severely hearing impaired” means a hearing loss that requires use of a TDD to communicate effectively on the telephone.
13. “Severely speech impaired” means a speech impediment that renders speech on an ordinary telephone unintelligible.
14. “Signal device” means a mechanical device that alerts a deaf, deafblind, or severely hearing impaired person of an incoming telephone call.
15. “Telecommunication device for the deaf” means an electrical device for use with a telephone that utilizes a key board, acoustic coupler, display screen or braille display to transmit and receive messages.
16. 14. Telephone relay center” means a facility authorized by the Council to provide telephone relay service. “Telecommunication relay center” means a facility authorized by the Council to provide telecommunication services to a deaf, hard of hearing, deafblind, or speech-impaired person, and to any other person who uses a standard telephone through a 3rd party.
17. “Telephone relay service” means the provision of voice and teletype communication between users of TDDs and other parties.
15. “Vocational rehabilitation counselor” means a Department of Economic Security employee who has a Master’s degree in rehabilitation counseling from a university accredited by the National Council on Rehabilitation Education and who is certified by the Commission on Rehabilitation Counseling.

ARTICLE 2. ELIGIBILITY AND REGISTRATION APPLICATION, DISTRIBUTION, AND
CONDITIONS FOR USE

R9-26-201. Eligibility requirements

- A.** An applicant is eligible only if he is deaf, deafblind, severely hearing impaired or severely speech impaired. Such impairment must be established by certification on an application form by a person who is permitted to practice medicine in the state of Arizona, an audiologist, speech pathologist or hearing aid dispenser.
- B.** The Director may require additional documentation to determine if the applicant meets the foregoing eligibility requirements.
- C.** During the training session as required by R9-26-302, applicant must demonstrate an ability to send and receive messages with a TDD.

R9-26-201. Application Procedure

- A.** Any person who is deaf, hard of hearing, deafblind, or speech impaired may apply for a device by providing the following information on an application obtained from the Council or outreach center:
1. The name, social security number, address, and telephone number of the applicant;
 2. The mailing address of the applicant, if different than subsection (A)(1);
 3. The signature of the applicant or the applicant’s legal guardian;
 4. The applicant’s current mode of communication;
 5. The type of equipment requested;
 6. Verification of the hearing or speech impairment by one of the following people:
 - a. A person practicing medicine in Arizona;
 - b. An audiologist;
 - c. A speech pathologist;
 - d. A hearing aid dispenser; or
 - e. A vocational rehabilitation counselor.
- B.** After the hearing or speech impairment is verified and the application deemed complete, the outreach center shall notify an applicant in writing of:
1. The date and time of the training session, if an original application; and
 2. The location where a device may be picked up.
- C.** Denied application:
1. The application shall be denied if:
 - a. The information required in subsection (A) has not been provided;
 - b. The applicant has previously been issued a device;
 - c. A previously issued device has been abused, misused, or has had unauthorized repairs;
 - d. The applicant fails to provide a police report of a stolen device; or
 - e. The applicant has lost a previously issued device.
 2. The Director shall send the applicant a notice by certified mail, with return receipt, specifying the reason for the denial and of the applicant’s right to a fair hearing.

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R9-26-202. Approval of an application

If an applicant is determined to be eligible, the Director shall approve the application except as stated in R9-26-203.

~~R9-26-301. R9-26-202. Original distribution~~ Distribution, Repair, and Training

A. ~~Distribution centers~~ An outreach center shall:

1. ~~Upon notice from the Director, distribute TDDs or signal devices~~ Distribute a device to any person persons determined to be eligible under R9-26-201 and who resides within fifty (50) miles of the distribution an outreach center.
2. ~~Require all recipients or a legal guardian to sign~~ Obtain a signed Conditions of Acceptance form provided by the Council (incorporated herein by reference and on file in the Office of the Secretary of State); from the recipient,
3. ~~Forward completed application forms and Conditions of Acceptance forms to the Director.~~ Files and maintains all application and Condition of Acceptance forms.
4. ~~Inform~~ Notify the Director ~~of those applicants who failed~~ if any applicant fails to report for training ~~and receipt of devices; or to pick up a device.~~
5. Notify the Director if an application is denied and the reason for the denial.
6. Maintain an accurate inventory of all devices distributed to applicants.
7. Distribute all devices and train any applicant who lives outside a 50-mile radius of an outreach center, and
8. Train and distribute a device to any applicant whose mobility prevents the applicant from coming to the outreach center.

B. ~~The Director shall implement a program to facilitate distribution of TDDs and provide training as required for Out of Area locales.~~

~~C.B.~~ Neither the distribution outreach center nor the Director shall provide:

1. ~~replacement~~ Replacement paper for ~~TDDs, a device;~~
2. ~~the payment~~ Payment of the recipient's monthly telephone bill;
3. ~~purchase~~ Purchase or lease costs of ~~the~~ recipient's telephone; or
4. ~~the cost~~ Cost of replacement light bulbs for ~~a signal devices~~ device.

C. Repair.

1. Outreach centers shall accept all devices needing repair.
2. If a device has been abused, misused, or has had unauthorized repair, the outreach center will not provide a replacement device until the recipient pays for the repair in advance.
3. An outreach center will deny a recipient device replacement if the recipient has had 2 previous replacements.

D. If a recipient has a device that is 5 years or older, the recipient or legal guardian shall return the device to the closest outreach center for replacement.

E. Training.

1. Each outreach center shall provide training to all recipients or legal guardians.
2. Each applicant or applicant's legal guardian shall demonstrate an ability to send and receive messages.
3. No applicant shall be issued a device until the applicant or applicant's legal guardian completes the required training.

R9-26-203. Denial of eligibility

A. Original application. The Director shall deny an original application for a TDD if:

1. Applicant does not meet the eligibility requirements of R9-26-201; or
2. Applicant has already been issued a TDD.

B. Replacement request. The Director shall deny a replacement request for a TDD or signal device if:

1. A device issued has been subjected to abuse, misuse, or unauthorized repair by a recipient; or
2. The recipient fails to provide a police report of a stolen device; or
3. The recipient has lost the device.

~~R9-26-304. R9-26-203. Ownership and liability~~ Liability

A. All TDDs and signal devices are the property of the state of Arizona.

B. A recipient or legal guardian shall return a TDD and signal device to ~~the Director or appropriate distribution~~ the closest outreach center when the recipient:

1. ~~no~~ No longer intends to reside in Arizona;
2. ~~does~~ Does not need the ~~devices~~ device; or
3. ~~has~~ Has been notified by the Director to return the ~~devices~~ device.

C. ~~Recipients are~~ Each recipient is liable for any damage to or loss of a device issued under ~~R9-26-304~~ R9-26-202.

D. If a recipient moves to another location in Arizona, other than the address specified on the Conditions of Acceptance form, the recipient shall notify the Council of the new address with 10 calendar days.

R9-26-204. Notice

A. Approved applications

1. ~~When an original application has been approved, the Director shall inform the applicant in writing of:-~~

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- a. ~~The location of the Distribution Center or Out of Area address where applicant may receive a TDD.~~
- b. ~~The date and time of the training session as required by R9-26-302.~~
- 2. ~~When the request for a replacement TDD or signal device has been approved, the Director or the Distribution Center shall inform the recipient of the procedure for obtaining a replacement device.~~
- B.** ~~Denied applications. If an original application or replacement request is denied, the Director shall inform the applicant in writing of the reasons for the denial and of any applicable procedures for appeal. All denial notices shall be sent Certified Mail with Return Receipt.~~

R9-26-305. R9-26-204. Out-of-state use Restrictions

- A.** ~~No person shall remove a TDD or signal device from the state of Arizona for a period longer than ninety (90) days without the written permission of from the Director.~~
- B.** ~~The Director may grant permission to remove a TDD or signal device from the state of Arizona for more than ninety (90) days if the Director determines it is in the best interest of the recipient.~~

R9-26-205. Renumbered

R9-26-206. Renumbered

R9-26-207. Renumbered

ARTICLE 3. DISTRIBUTION PROCESS ADMINISTRATIVE PROCEDURES

R9-26-205. R9-26-301. Review by the Director Informal Settlement Conference

- A.** ~~An applicant or recipient whose request for an original or replacement TDD device has been denied may request in writing that the Director review the decision hold an informal settlement conference.~~
- B.** ~~The request for review shall be in writing, and shall specify the basis for review, and must shall be received by the Director within thirty (30) days of the receipt of the notice of denial.~~
- C.** ~~Within ten (10) days of receiving the request for review, the Director shall inform the applicant or recipient in writing of the disposition of the request.~~
- B.** ~~An informal settlement conference shall be held within 15 days after receiving the request and shall follow the procedures under A.R.S. § 41-1092.06.~~

R9-26-302. Training

- A.** ~~The distribution centers shall provide training to all recipients or legal guardians in accordance with guidelines established by the Council.~~
- B.** ~~No applicant shall be issued a device until the applicant completes required training.~~

R9-26-206. R9-26-302. Hearing by the Council Hearings

- A.** ~~Within ~~ten (10)~~ 30 days of a notice of denial from the Director, the applicant or recipient may request in writing a hearing by the Council file a notice of appeal with the Council. The request shall specify the reasons for challenging the Director's decision. The notice shall identify the party, the party's address, the agency, the action being appealed, and shall contain a concise statement of the reasons for the hearing.~~
- B.** ~~The Council shall hold a hearing within ninety (90) days of receipt of the request. The hearing shall be conducted by the Office of Administrative Hearings as prescribed in 41 A.R.S. § 6, Article 10.~~

R9-26-303. Replacement devices

~~Distribution centers shall issue devices to persons determined by the Director to be eligible under R9-26-201, accept devices that need repair, and deliver devices returned by recipients to repair centers designated by the Council.~~

R9-26-207. R9-26-303. Rehearing or review of decision Review of Decision

- A.** ~~Except as provided in subsection (G), any party in a contested case before the Council who is aggrieved by a decision rendered in such case may file with the Council, not later than ten (10) days after service of the Council's decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at his last known residence or place of business.~~
- B.** ~~A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Council. A response may be filed by any other party within ten (10) days after service of such motion or amended motion. The Council may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.~~
- C.** ~~A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:~~
 - 1. ~~Irregularity in the administrative proceedings of the agency or its hearing officer or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;~~
 - 2. ~~Misconduct of the Council or its hearing officer or the prevailing party;~~

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3. ~~Accident or surprise which could not have been prevented by ordinary prudence;~~
 4. ~~Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;~~
 5. ~~Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;~~
 6. ~~That the decision is not justified by the evidence or is contrary to law.~~
- ~~D.~~** ~~The Council may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the seasons set forth in subsection (C). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.~~
- ~~E.~~** ~~Not later than ten (10) days after a decision is rendered, the Council may on its own initiative order a rehearing or review of its decision for any reason for which it might have granted a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Council may grant a motion for rehearing for a reason not stated in the motion. In either case the order granting rehearing shall specify the grounds therefor.~~
- ~~F.~~** ~~When a motion for rehearing is based upon affidavits, they shall be served with the motion. Within ten (10) days of such service, an opposing party may serve opposing affidavits. This period may be extended by the Council for good cause shown or by written stipulation of the parties for an additional period not to exceed twenty (20) days. Reply affidavits may be permitted.~~
- ~~G.~~** ~~If in a particular decision the Council makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health and safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Council's final decisions.~~
- A.** Any party to a hearing who is aggrieved by a decision rendered in the case may, within 30 days after the date of the decision, file with the Director a written request for a rehearing or review of the decision. The request shall specify the particular grounds for the rehearing or review. The requesting party shall serve copies upon all other parties. A rehearing or request for review under this Section may be amended at any time before it is ruled upon by the Director.
- B.** The opposing party may file a response to the request for a rehearing or review within 15 days after the motion is received.
- C.** A rehearing or review of the decision may be granted for any of the following causes which materially affect the requesting party's rights:
1. Irregularity in the proceedings or any abuse of discretion whereby the requesting party was deprived of a fair hearing;
 2. Misconduct of the hearing officer or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence which could not, with reasonable diligence, have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring during the proceedings;
 7. That the decision is the result of passion or prejudice; or
 8. That the decision is not supported by the evidence or is contrary to law.
- D.** Upon examination of a request for rehearing or review and any response, the Director may affirm or modify the decision.
- E.** Within 15 days after a decision is rendered, the Director may, on the Director's own initiative, order a rehearing or review of a decision for any reason for which a rehearing on motion of a party might have been granted. The order granting the rehearing shall specify the grounds for the review of the decision.

ARTICLE 4. RELAY SERVICES

R9-26-401. ~~Telephone relay centers~~ Telecommunication Relay Centers

- ~~A.~~** ~~Telephone Relay Centers shall provide telephone relay services seven (7) days a week, twenty-four (24) hours a day, including holidays.~~
- ~~B.~~** ~~Telephone Relay Center shall hire operators who shall be salaried employees and not volunteers.~~
- ~~C.~~** ~~Telephone Relay Centers shall require all operators to relay all messages accurately, except as otherwise specifically provided in R9-26-403. Telecommunication relay centers shall:~~
1. Operate 7 days a week, 24 hours a day, including holidays; and
 2. Hire relay operators who are salaried employees and not volunteers.

R9-26-402. ~~Confidentiality and privacy requirements~~

- ~~A.~~** ~~Except as otherwise specifically provided in R9-26-403, Telephone Relay Centers Telecommunication relay centers shall protect the privacy of ~~persons~~ any person to whom relay services are provided.~~
- B.** Relay operators ~~and shall require all operators to~~ maintain the confidentiality of all telephone messages.

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~~B.C.~~ The confidentiality and privacy of persons to whom any person using a relay services are provided will be service is protected by means of the following: under the Mandatory Minimum Standards of 47 CFR 64.604. This information is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.

1. ~~Relay Centers~~ Telecommunication relay centers shall not maintain any form of permanent copies of messages relayed by their operators a relay operator or allow the content of a telephone ~~messages~~ message to be communicated to, or accessible to, a non-staff ~~members~~ member.
2. ~~Persons~~ Any person using the a relay services ~~service~~ shall ~~is~~ not be required to provide any identifying information until the party ~~they are~~ the person is calling is on the line, and shall only be required to identify themselves to the extent necessary. The person's identity shall then be revealed to fulfill the purpose of ~~their~~ the call.
3. ~~Relay operators~~ No relay operator shall ~~not~~ leave ~~messages~~ a message with ~~third a 3rd parties~~ party unless instructed to do so by the person making the call.
4. ~~Persons~~ Any person using the relay services may file ~~complaints~~ a complaint about the relay service to the Telephone Relay Center with the telecommunication relay center or with the Council. All complaints ~~will~~ shall be reviewed by the Director.

R9-26-403. ~~Criminal activity~~ Repealed

- ~~A.~~ Relay operators shall not knowingly transmit telephone messages that are made in furtherance of any criminal activity as defined by Arizona or federal law.
- ~~B.~~ The confidentiality and privacy requirements of R9-26-402 do not apply to telephone conversations made in furtherance of any criminal activity as defined by Arizona or federal law.

NOTICE OF PROPOSED RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 2. ARIZONA RACING COMMISSION

ARTICLE 6. ~~RESERVED~~ STATE BOXING ADMINISTRATION

PREAMBLE

1. Sections Affected

Article 6
R19-2-601
R19-2-602
R19-2-603
R19-2-604
R19-2-604
R19-2-604
R19-2-605
R19-2-605
R19-2-605
R19-2-606
R19-2-606
R19-2-606
R19-2-607
R19-2-608
R19-2-609
R19-2-610

Rulemaking Action

Amend
Amend
Amend
Amend
Repeal
Re-number
Amend
Repeal
Re-number
Amend
Repeal
Re-number
Amend
Repeal
Re-number
Re-number
Re-number

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 5-104(R)

Implementing statutes: A.R.S. §§ 5-104(R), 5-104.02

3. A list of all previous notices appearing in the Register addressing the rule:

Notice of Rulemaking Docket Opening: 5 A.A.R. 1125, April 16, 1999

Notice of Recodification: 5 A.A.R. 1175, April 23, 1999

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4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Rita Fresquez, Deputy Director
Address: Department of Racing
3877 N. 7th Street, Suite 201
Phoenix, Arizona 85014
Telephone: (602) 277-1704
Fax: (602) 277-1165

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The 1998 5-year review of Title 4, Chapter 3, State Boxing Commission, acknowledged that the rules needed to be updated for clarity and conciseness. Under a 1993 exemption, the Department adopted rules dealing with the collection and accounting of revenues for the State Boxing Commission. These rules were placed within the State Boxing Commission's Article 4. Although this placement did not create confusion with either the Commission or the stakeholders, the Department recodified the appropriate rules into a separate Article within the Racing Department's rule-making Code.

This rulemaking updates Article 6 for clarity and understanding, consolidates like information, and follows the structure and grammar requirements of the Governor's Regulatory Review Council and the Style Manual of the Office of the Secretary of State.

R19-2-601. Definitions. The terms "ticket agent" and "ticket vendor" have been defined to distinguish between someone who sells tickets and someone who prints tickets. This Section makes the distinction between and defines the two different types of bonds (event bond and annual bond).

R19-2-602. Notice to the Department. This Section clarifies the responsibilities of the State Boxing Commission to the Department.

R19-2-603. Ticket Manifest, Collection, Accounting. This Section clarifies what is required of the promoter when dealing with a ticket manifest. The Section consolidates the information from R19-2-604, Reduced Price Tickets; R19-2-605, Complimentary Tickets; R19-2-606, Accounting for Tickets; and R19-2-607, Payment of Fees by specifying the procedure required if tickets are sold through a computerized system; stating that tickets may be sold only through a ticket vendor; specifying how reduced price tickets and complimentary tickets must be handled; and the describing procedure used to account for all tickets sold.

R19-2-604. Annual Bonds, Event Bonds, Claims. This Section clarifies that there are two separate bonds mentioned in R4-3-406(C), Payment of Contestants, which may be required of the promoter and explains the different conditions of each bond. The Section also specifies the course of action taken by the Department if the promoter fails to pay the gross receipts required by the State Boxing Commission.

R19-2-605. License Fees. This Section clarifies that the Commission must forward the license fees to the Department and lists specific information required for each license.

R19-2-606. Fines. This Section explains the responsibilities of the Commission for notifying the Department when fines are issued.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule 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:

A. *Estimated Costs and Benefits to the Department of Racing.* The Department will incur minimal costs to promulgate this rulemaking. No benefits are apparent other than to provide clarity and understanding to the requirements of the Article.

B. *Estimated Costs and Benefits to Political Subdivisions.* Political subdivisions of this state are not directly affected by the implementation and enforcement of this rulemaking.

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C. *Businesses Directly Affected By the Rulemaking.* (State Boxing Commission, Promoter) A.R.S. § 5-104(R) gives the Department of Racing responsibility for the collection and accounting of revenues for the state boxing commission including, but not limited to, licensing fees required by section 5-230, the levy of the tax on gross receipts imposed by section 5-204.02 and cash deposited pursuant to section 5-220. All revenues collected pursuant to this subsection, from whatever source, shall be reported and deposited pursuant to section 5-104.02, subsection C. The director shall adopt rules as necessary to accomplish the purposes of this subsection and Chapter 2, Article 2 of this title. The Department's administrative rules were originally adopted under an exemption from A.R.S. Title 41, Chapter 6 as specified in Laws 1992, Ch. 337, § 12. These rules, regulating the State Boxing Commission, were promulgated within the State Boxing Commission's Administrative Code. The April 23, 1999 recodification of these rules provided the Department with clear authority to promulgate rules regulating the State Boxing Commission as outlined above. The State Boxing Commission will not be economically impacted by this rulemaking, nor does this rulemaking change the way a promoter does business.

D. *Estimated Costs and Benefits to Private and Public Employment.* Private and public employment are not directly affected by the implementation and enforcement of this rulemaking.

E. *Estimated Costs and Benefits to Consumers and the Public.* Consumers and the public are not directly affected by the implementation and enforcement of this rulemaking.

F. *Estimated Costs and Benefits to State Revenues.* This rulemaking will have no impact on state revenues.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Rita Fresquez, Deputy Director
Address: Department of Racing
3877 N. 7th Street, Suite 201
Phoenix, Arizona 85014
Telephone: (602) 277-1704
Fax: (602) 277-1165

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

Date: July 20, 2000
Time: 11:30 a.m.
Location: Department of Racing
3877 N. 7th Street, Suite 201
Phoenix, Arizona 85014
Nature: Oral Proceeding

Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement must be received by 5:00 p.m., July 20, 2000. Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Department's coordinator, Rita Fresquez, Deputy Director, at (602) 277-1704 (voice) or 1-800-367-3839 (TDD Relay). Requests should be made as early as possible to allow time to arrange the accommodation.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. Was this rule previously adopted as an emergency rule:

No

14. The full text of the rules follows:

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 2. ARIZONA RACING COMMISSION

ARTICLE 6. ~~RESERVED~~ STATE BOXING ADMINISTRATION

Section

- R19-2-601. Definitions
- R19-2-602. Notice to the Department
- R19-2-603. Ticket Manifest, Collection, Accounting
- ~~R19-2-604. Reduced Price Tickets~~
- ~~R19-2-608. R19-2-604. Promoters; Licenses; bond; Proof of Financial Responsibility Annual Bonds, Event Bonds, Claims~~
- ~~R19-2-605. Complimentary Tickets~~
- ~~R19-2-609. R19-2-605. License Fees~~
- ~~R19-2-606. Accounting for Tickets~~
- ~~R19-2-610. R19-2-606. Fines~~
- R19-2-607. Payment of Fees Repealed
- R19-2-608. Renumbered
- R19-2-609. Renumbered
- R19-2-610. Renumbered

ARTICLE 6. ~~RESERVED~~ STATE BOXING ADMINISTRATION

R19-2-601. Definitions

~~In these rules, unless the context otherwise requires:~~ The following terms apply to this Article:

- ~~1. "Annual bond" means the cash or surety bond required to be deposited with the Department by the promoter as a pre-requisite for a promoter's license.~~
- ~~1. "Boxing" includes kick boxing.~~
2. "Commission" means the Arizona State Boxing Commission.
- ~~3. "Contest" means any boxing contest, match or exhibition.~~
- ~~4.3. "Department" means the Arizona Department of Racing.~~
- ~~5. "Director" means the Director of the Arizona Department of Racing.~~
4. "Event bond" means the cash or surety bond which the Commission may require a promoter to deposit with the Department before each contest.
5. "Gross receipts" means the face value of all tickets sold for an event.
6. "Ticket agent" means a person authorized by the promoter to print tickets.
7. "Ticket vendor" means a person authorized by the promoter to sell tickets.

R19-2-602. Notice to the Department

- A. ~~Upon Commission approval of the date of a contest requested by a promoter, the Commission shall notify the Department within 24 hours in writing. The Commission shall also notify the Department immediately should there be any change in the scheduled contest. The Commission shall notify the Department in writing no more than two business days after approving the date of a contest. The Commission shall also notify the Department immediately when any change in the scheduled event occurs.~~
- B. ~~Copies of all contracts including, but not limited to, promoters and contestants, associates, television networks, broadcasting stations, and motion picture companies, shall be filed by the promoter with the Department no later than weigh-in. The Commission shall provide copies of all contracts to the Department, if requested.~~
- C. ~~Each contract filed with the department pursuant to this Section is confidential and not public record.~~

R19-2-603. Ticket Manifest, Collection, Accounting

A. General requirements.

1. Manifest.

- a. ~~The promoter shall provide to the Department a notarized manifest from the printer of the tickets no later than weigh-in. The promoter shall provide the Department with a notarized ticket manifest from each ticket agent no later than weigh-in.~~

B.

- b. The manifest shall list the total number of tickets printed and number of tickets in each price category.
 - c. If tickets are sold through a computerized system that does not lend itself to a manifest, the promoter shall provide the Department with a notarized statement from the ticket agent describing the total number of tickets available in each price category.
2. The Commission may require a promoter to provide tickets to the Commission or the Department, or both, for certification before any ticket is sold.
 3. The face value shall be clearly indicated on each ticket and ticket stub.
 4. Tickets shall be distributed only through ticket vendors specified by the promoter.
 5. The Commission shall notify the Department of all ticket agents and vendors.

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- B.** Reduced price tickets. Tickets sold for less than the printed price shall be plainly over stamped with the actual price charged on the printed face of the ticket and on the stub.
- C.** Complimentary tickets.
1. The total number of complimentary tickets, excluding press tickets and Commission seating shall not exceed 2% of total tickets available or 75 whichever is greater.
 2. An issue of complimentary tickets in excess of the greater value of 2% or 75 shall be considered cash tickets.
 3. Complimentary tickets and ticket stubs shall be punched or stamped "complimentary."
- D.** Ticket accounting and fee payment. Representatives of the promoter and Department shall meet within 10 business days of the event to account for all tickets sold and pay the required fees. If required by the Department, the promoter shall provide an accounting by each ticket vendor.
1. The promoter shall provide the Department with the following information on a notarized Department audit statement form:
 - a. The number of tickets sold and unsold in each price category;
 - b. The amount of the gross receipts from the face value of tickets sold;
 - c. The gross receipts from the sale, lease or other exploitation of broadcasting, television, or motion picture rights of a boxing contest less the amount paid for contestants' purses; and
 - d. The signature of the promoter.
 2. The Department shall consider as sold any tickets indicated on a manifest not physically presented to the Department by the promoter as unsold.
 3. The promoter shall pay the Department 4% of the total gross receipts after the deduction of city, state, and federal taxes, of the match or exhibition.

~~R19-2-604.~~ ~~Reduced Price Tickets~~

~~Tickets sold for less than the printed price shall be plainly over stamped with the actual price charged on the printed face of the ticket, including the stub that is retained by the ticket holder.~~

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~~R19-2-608. R19-2-604. Promoters; Licenses; bond; Proof of Financial Responsibility~~ Annual Bonds, Event Bonds, Claims

- A.** ~~The Director may direct the Commission to require the promoter to deposit with the Department a cash bond or surety bond in an amount set by the Department as a guarantee for the fulfillment of the promoter's contract obligations, the payment of licenses, salaries for officials, and taxes on gross receipts and reimbursement to ticket purchasers if the contest is not held as advertised.~~
- B.** ~~The bond will be returned to the promoter after the department has received written verification from the Commission that the promoter has complied with the requirements. Failure to comply shall result in forfeiture of bonds.~~
- A.** Annual bond.
1. The Commission shall deposit the annual bond with the Department no later than weigh-in for the first event promoted.
 2. Upon receipt of written notice from the Commission that the promoter's obligations for all events during the calendar year have been satisfied, the Department shall return the annual bond to the promoter.
- B.** Event bond.
1. The Commission shall notify the Department in writing of the amount of an event bond, if any, and deposit the bond with the Department no later than the weigh-in for the event. The Department shall retain the event bond until notice is received from the Commission that the promoter has satisfied all obligations concerning the bond guarantee.
 2. Upon receipt of written notice from the Commission that the promoter's obligations for a contest have been satisfied, the Department shall return the bond to the promoter.
 3. If an event is not held and after claims are paid, if any, the Commission shall notify the Department no later than 35 calendar days after the scheduled event when to release the promoter's event bond.
- C.** Department claim. The Department shall notify:
1. The promoter by registered or certified mail, return receipt requested, that:
 - a. The unpaid gross receipts shall be paid within 10 days from receipt of the notice; and
 - b. If the payment is not received within the 10-day deadline, forfeiture proceedings against the bond may be initiated.
 2. The Commission if a promoter fails to pay the required gross receipts.
- D.** The Department shall not release any bond for which a claim is pending.

~~R19-2-605. Complimentary Tickets~~

- A.** ~~The total number of complimentary tickets, excluding press tickets, may not exceed 75.~~
- B.** ~~An issue of complimentary tickets in excess of 75 shall be considered cash tickets.~~
- C.** ~~Complimentary tickets shall be stamped "complimentary" or punched.~~

~~R19-2-609. R19-2-605. License Fees~~

- A.** ~~License applications received at the weigh-in prior to a scheduled contest shall be accepted by a Commission representative and the fees submitted to a Department representative.~~
- B.** ~~A. License fees for annual licenses mailed in to the Commission shall be promptly forwarded to the Department with documentation listing the type of license issued, the name of the licensee, date of birth, license number, and the date and amount of payment received. The Commission shall forward the license fees to the Department within 5 business days with the following information:~~
1. ~~The type of license issued;~~
 2. ~~The name and date of birth of the licensee;~~
 3. ~~The license number; and~~
 4. ~~The date and amount of payment received.~~
- C.** ~~B. The Commission shall retain a current list of the licenses issued with and the additional applicable licensing information on an on-going basis and make the information readily available to the Department.~~

~~R19-2-606. Accounting for Tickets~~

~~Representatives of the promoters, ticket agent, and Department shall meet within three working days to account for all tickets sold for the contest.~~

~~R19-2-610. R19-2-606. Fines~~

- A.** ~~Notification of The Commission shall notify the Department in writing when a licensee is being issued a fine shall be sent to the Department.~~
- B.** ~~The fine shall be paid directly to the Department by the licensee within ten days of official notification. The Commission shall immediately forward the fine payment to the Department.~~
- B.** ~~The Department will notify the Commission of payment in writing. If the licensee fails to pay the fine, the Department will send written notification to the Commission.~~

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R19-2-607. Payment of Fees Repealed

- A.** Any person who promotes a boxing contest in this state shall, within ten days after the contest, pay to the Department 4% of the gross receipts, after the deduction of city, state and federal taxes, of such match or exhibition.
1. “Adjusted gross price” means the price charged for the sale, lease or other exploitation of broadcasting, television or motion picture rights of a boxing contest less the amount paid for contestants’ purses, but without any deductions for commissions, brokerage fees, distribution fees, advertising, or other expenses.
 2. “Gross receipts” means all receipts from all sources, including the face value of tickets sold without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses, and the adjusted gross price charged for the sale, lease or other exploitation of broadcasting, television, or motion picture rights of a boxing contest.
- B.** Any person who promotes a boxing contest in this state shall, within ten days after the contest, furnish to the Department a verified written statement showing:
1. The number of tickets sold and issued or sold or issued for the contest.
 2. The amount of:
 - a. Gross receipts from admission fees; and
 - b. Gross receipts derived from the sale, lease or other exploitation of broadcasting, television, or motion picture rights of a boxing contest less the amount paid for contestants’ purses.

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