NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the Register first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the Register after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 21. BOARD OF OPTOMETRY

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R4-21-101	Amend
R4-21-201	Amend
R4-21-203	Amend
R4-21-204	Amend
R4-21-205	Amend
R4-21-206	Amend
R4-21-207	Amend
R4-21-208	Amend
R4-21-210	New Section
Table 1	Amend
R4-21-304	Amend

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

Authorizing statutes: A.R.S. §§ 12-2297, 32-1704, and 41-1073

Implementing statutes: A.R.S. §§ 12-2297, 32-1706, 32-1722, 32-1724, 32-1726, 32-1728, and 41-1075

3. The effective date of the rules:

September 13, 2000

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

Notice of Rulemaking Docket Opening: 5 A.A.R. 4267, November 5, 1999

Notice of Rulemaking Docket Opening: 6 A.A.R. 2305, June 23, 2000

Notice of Proposed Rulemaking: 6 A.A.R. 2216, June 23, 2000

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

Name: Dr. Jan McVey, President

Address: State Board of Optometry
1400 West Washington, Room 230
Phoenix, Arizona 85007

Telephone: (602) 542-8155

Fax: (602) 542-3093

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

This rulemaking complies with 1999 Arizona Session Laws, Ch. 282, and A.R.S. § 32-1728 to establish a program for oral pharmaceutical use, including certification, continuing education, and course of study and completion requirements.

Articles 1 and 2 are revised for clarity and understanding, consolidation of like-information, and to update the structure and grammar to meet the requirements of the Governor's Regulatory Review Council and the Style Manual of the Office of the Secretary of State.

R4-21-101. Definitions. The term for "certificate of special qualification" has been added and includes all segments of the field of optometry. The statute definitions for "pharmaceutical" and "pharmaceutical agent" are included and further defined to make clear that the terms include 3 separate categories: topical pharmaceutical agents, oral pharmaceutical agents, and anti-anaphylactic agents. The term "topical pharmaceutical agent" has been deleted, but is redefined under "pharmaceutical" and "pharmaceutical agent." The term "TPA certificate holder" is no longer used within the rules and has been deleted.

R4-21-201. Licensure. This Section provides the applicant with the requirements necessary to apply for licensure.

The dates in subsection (B)(3) have been revised to comply with the effective date of SB 1084.

R4-21-203. Time-frames for Licensure, Renewal of License, Certificates of Special Qualification, and Course of Study Approval. This Section establishes the length of time to which the Board is required to issue a license.

The title of this Section has been changed to conform with new terminology, and the word "topical" has been removed from the phrase, "pharmaceutical agent" in subsection (E)(5).

R4-21-204. License Renewal. This Section provides the applicant with the information necessary to renew a license, and establishes the number of hours for specific courses needed for license renewal. The statutory requirement specifying that the applicant must submit renewal information to the Board before August 31 of the renewal year has been added to the rule and clarification made of the specific 'information' required.

R4-21-205. Course of Study Approval. This Section specifies how an accredited educational institution obtains approval for a course of study.

The Board requested that the Pacific University College of Optometry, the Southern California College of Optometry, and the Northeastern State University College of Optometry (Oklahoma), each propose a course of study for oral pharmaceuticals. The Board then forwarded the proposals to the Associate Dean of Curriculum, Theodore Tong, at the University of Arizona College of Pharmacy, for review. From the 2 proposals received, the Board obtained comprehensive content with regards to pharmacodynamics and pharmacotherapeutic principles – particularly with examining issues of drug-drug interactions, adverse drug reactions, and side effects. Each segment of the course contains adequate learning sessions that are specific and appropriate to develop prescribing abilities.

The course of study requirements in subsection (A) has been revised to include a minimum of 12 hours in pharmacologic principles, and specific requirements have been established for administering and passing a course of study.

R4-21-206. Pharmaceutical Agent Certificate of Special Qualification. This Section provides an optometrist with clear instructions for obtaining a Pharmaceutical Agent Certificate of Special Qualification. The Board is following the recommendation of the Pacific University College of Optometry to require that an optometrist obtain CPR certification to qualify for this special qualification. If injectables are administered to counteract an anaphylactic reaction, standard CPR procedures may be necessary until emergency services arrive. Therefore, it is necessary for an applicant to possess CPR Certification.

The Board also requires that any documentation deemed confidential by the National Board or an issuing education institution be submitted directly to the Board by that entity.

The 15-day time-frame to file a written request to appeal a decision by the Board has been changed to comply with standard hearing guidelines.

R4-21-207. Submission of Fee; Issuance and Display of License; Surrender of License. This Section establishes when license fees must be paid to the Board, sets the requirements for licensure display, and requires the surrender of a license if ordered by the Board.

The Board reviews the examinations taken for licensure at the August Board meeting following the July examination. The Board notifies all applicants who pass the examination that the license issuance fee must be submitted before a license will be issued. Currently subsection (A) allows the applicant 60 days to submit the license issuance fee and another 60 days after receiving the fee for the Board to issue the license. These time-frames are not included in Table 1 and extend the overall time-frame. The 60 days allowed for fee submittal has been changed to 20 days, as shown by Table 1. This time-frame should be adequate for fee submission, particularly because the application information has been submitted and the examination taken.

Currently, the Board issues licenses at its next Board meeting (September), therefore, the time-frame allowing the Board an additional 60 days following receipt of payment is unnecessary.

R4-21-208. Continuing Education. This Section provides the criteria used by the Board to determine whether an education course or program will be approved. Currently subsection (B) allows pre-approved courses by specific educational institutions. The Board wishes to review all courses submitted for continuing education, therefore, subsection (B) no longer applies.

The information dealing with license renewal is more appropriate in the license renewal Section and has been moved to R4-21-204.

R4-21-210. Equipment and Supplies. This Section meets the requirements of A.R.S. § 32-1706(E) by requiring a licensee to maintain in the licensee's office medically necessary supportive equipment and supplies that are used in connection with the treatment of an anaphylactic reaction including oxygen equipment, airway maintenance equipment, or other necessary equipment consistent with the prevailing standard of care as specified by the Board.

Table 1. This Table establishes the time-frames used by the Board when issuing licenses and other approvals.

The "type of license" category has been updated to comply with this rulemaking and the Initial Licensure by Examination or Reciprocity time-frame has been separated into 2 time-frames to allow for different administrative review periods required by R4-21-201 and A.R.S. § 32-1722.

The overall time-frame column has been moved to end of the Table for clarity and understanding.

R4-21-304. Vision Examination Standards; Records. This Section contains the incorporations by reference and affirms that the standards of care established by the American Optometric Association are practice guidelines which must be followed by Arizona optometrists.

The Section also establishes the information and length of time that records must be maintained by an optometrist. This Section is amended to comply with the 1999 legislative change to A.R.S. § 12-2297, which requires that records be maintained for 10 years.

7. 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

8. 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

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

A. *Estimated Costs and Benefits to the Board of Optometry.*

No financial costs are realized by the implementation of this rulemaking. Other than adding a course of study in pharmaceutical agents and providing an optometrist a Pharmaceutical Agent Certificate of Special Qualification, the Department does not anticipate there will be any additional administrative functions.

During the past five years, the following licenses have been issued:

LICENSES/APPROVALS	1995	1996	1997	1998	1999
Optometrist					
New	28	18	42	30	42
Renewal	540	0	550	0	550
Reciprocity	1	0	8	3	4
Courses	1	3	1	0	0

In addition to the number of licenses 5- listed in the chart above, 6 reciprocity licenses were issued in fiscal year 2000.

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. (Optometrists, Physician Providers, Educational Institutions)*

The Board's promulgation of this rulemaking provides current optometrists the opportunity to dispense, prescribe, and administer topical and oral pharmaceutical agents. Currently licensed optometrists may take a 12-hour course of pharmacological principles and apply to the Board for a Pharmaceutical Agent Certificate of Special Qualification.

Educational institutions will include this 12-hour curriculum as part of the 120-hour required course of study for optometry certificate of special qualification after August 6, 2000.

Updating certificates of special qualification to dispense, prescribe, and administer topical and oral pharmaceutical agents will allow optometrists to practice at the highest level of care and may ultimately benefit the patient through a more effective delivery of medication in certain circumstances.

An optometrist who obtains a Pharmaceutical Agent Certificate of Special Qualification will incur fees for taking appropriate courses and purchasing equipment to qualify to dispense, prescribe, and administer topical and oral pharmaceuticals, but the benefits should far outweigh the costs by allowing the optometrist to provide better quality healthcare to patients.

This rulemaking may negatively affect physician providers who currently receive referral for tertiary services. There is no way to forecast, however, the actual effect this rulemaking will have on these providers.

Participating educational institutions will benefit through increased revenues if they update their special courses of study in pharmaceutical agents.

A.R.S. § 32-1706(E) requires the Board to maintain tin the licensee's office medically necessary supportive equipment and supplies that are used in connection with the treatment of an anaphylactic reaction including oxygen equipment, airway maintenance equipment, or other necessary equipment consistent with the prevailing standard of care. The Board believes that the cost for equipment required by R4-21-209 will be minimal.

Time-frames for initial licensure by reciprocity have been added to Table 1. Verifying that all required information is submitted for an initial licensure by reciprocity applicant takes longer than the allotted 30-days provided for an initial licensure by examination applicant. The process is longer because the Board must not only review the statutes from the reciprocity state to verify that reciprocity exists, but the Board may request additional information from the reciprocity state. The Board requires an initial licensure by examination applicant A.R.S. § 32-1722(A) to submit the application 30-days before the date on which the applicant will be taking the examination for licensure. The Board, however, requires an initial licensure by reciprocity applicant to submit the application 60-days before the date on which the applicant will be taking the examination for licensure. Thus, the 60-day administrative review time-frame.

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.*

Currently an optometrist may diagnose a patient and prescribe a topical ocular medication. If a patient needs an ingested medication, the patient must use an additional provider to prescribe appropriate oral pharmaceutical agents, which the patient must then take to a pharmacy to be filled. This rulemaking allows an optometrist to initiate a total treatment plan to dispense, prescribe, and administer appropriate pharmaceutical agents, thereby providing the patient with one-stop quality healthcare.

F. *Estimated Costs and Benefits to State Revenues.*

This rulemaking will have no impact on state revenues.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Although "oral fluroscein" is an example of an oral medication used to diagnose a disease of the eye, it is not authorized by A.R.S. § 1706(B). The term "diagnose" has been removed from R4-21-101(11)(b).

R4-21-210. has been changed to reflect the that optometrist must keep a supply of "oral" diphenhydramine (Benedryl) in the treatment room.

R4-21-304. Optometrists are required to use Clinical Practice Guidelines for patient care. These guidelines are developed through a formal process and combine the best available current scientific evidence and research with expert clinical opinion to recommend appropriate steps in the diagnosis, management, and treatment of patients with various eye and vision conditions.

Regardless of whether or not this current standard of care is incorporated by reference, optometrists currently use these guidelines in their practice.

The incorporations by reference in R4-21-304(A)(3), (A)(8), (A)(9) and (A)(10) have been updated and the following additional incorporations by reference have been added: "Care of the Patient with Low Vision," June 11, 1997; "Care of the Patient with Myopia," August 9, 1997; "Care of the Patient with Hyperopia," August 9, 1997; "Care of the Patient with Presbyopia," March 20, 1998; and "Care of the Patient with Accommodative and Vergence Dysfunction," March 20, 1998.

Grammatical and clarification changes were made at the request of G.R.R.C. staff. No substantive changes were made.

11. A summary of the principal comments and the agency response to them:

The State Board of Pharmacy; the National Association of Optometrists and Opticians; the Arizona Medical Association; the Arizona Pharmacy Association, and the Southern California College of Optometry, commented on the proposed rulemaking.

Comment: A commenter is concerned whether those people who are presently certified to use diagnostic and/or therapeutic pharmaceutical agents and are unwilling or unable to qualify for the all encompassing Pharmaceutical Agents Certificate of Special Qualification would be denied the ability to continue an integral part of their practice. The commenter suggested that 3 separate levels of certification be specified. (1) Licensees who wish to use topical diagnostic pharmaceutical agents; (2) Licensees who wish to use topical diagnostic and therapeutic pharmaceutical agents; and (3) Licensees who wish to use topical pharmaceutical agents and oral pharmaceuticals. The commenter said that, at the very least, the rules must specify that licensees may continue to renew their topical diagnostic and/or topical therapeutic pharmaceutical licenses without qualifying to use oral pharmaceuticals.

Response: This rulemaking does not require current license holders to upgrade their certificates. R4-21-204, License Renewal, clearly explains that the license holder merely submit the renewal fee and the specific renewal information listed and the license would be renewed. It makes no mention of "upgrading" a certificate.

Only if a licensee wishes to obtain a Pharmaceutical Agent Certificate of Special Qualification, is R4-21-206 followed. The Board does not feel it is necessary to state the specific licenses that may be renewed when clearly there are no exceptions and all licenses may be renewed. No change has been made.

Comment: The commenter said that SB 1084 required an optometrist to identify himself either on a prescription or orally, as to whether he had topical privileges or oral privileges.

Response: Early in the rulewriting process, the Board contacted the State Board of Pharmacy to review a proposed uniform prescription form. Adjustments were made as suggested by the Executive Director and a uniform prescription form was designed. Its exclusion was an oversight. The uniform prescription form has been added to R4-21-209(B).

R4-21-101.

Comment: A commenter requested the Board to change the definition of "pharmaceutical or "pharmaceutical agent" to "prescription-only or nonprescription drug" because those terms are already defined in the Board of Pharmacy statute A.R.S. § 32-1901(46).

Response: The definition for "pharmaceutical or pharmaceutical agent" is a defined term in A.R.S. § 32-1701(5), which governs this Chapter. No change has been made.

Comment: A commenter suggested that the phrase "Schedule III controlled substance" was redundant with the information in subsection (11)(b), therefore it should be eliminated.

Response: When analyzing the definition for "pharmaceutical or pharmaceutical agent," the Board realized that the terms "TPA," "oral pharmaceutical," and "anti-anaphylactic agent" needed further clarification. This statutory definition does not specifically mention oral pharmaceuticals. Subsections (11)(A), (11)(B), and (11)(C) are a further clarification of the definition. One that should make no mistake about the exact nature of what is meant. The term "pharmaceutical or pharmaceutical agent" is defined in A.R.S. § 32-1701(5), and that defined portion cannot be changed.

Comment: A commenter suggested that "as authorized by A.R.S. 1706ABCE" be inserted between "adnexa" and "and" in the statute defined term "pharmaceutical or pharmaceutical agent."

Response: The definition for "pharmaceutical or pharmaceutical agent" is a defined term in A.R.S. § 32-1701(5), which governs this Chapter. No change has been made.

Comment: A commenter states that "there are no oral medications to diagnose diseases of the eye," therefore the word diagnosis should be eliminated.

Response: Although "oral fluroscein" is an example of an oral medication used to diagnose a disease of the eye, it is not authorized by A.R.S. § 1706(B). The Board agrees with the commented and has removed the term "diagnose" from R4-21-101(11)(b).

R4-21-205(A).

Comment: A commenter suggested that the title of this Section be changed to make clear that the Section refers to a Pharmaceutical Agent Certificate of Special Qualification.

Response: With the effectiveness of this rulemaking, accredited educational institutions will begin to include the courses outlined under R4-21-205 within their 120-hours of required coursework. Except for the CPR certification, all new graduates will qualify for the licensure requirements under R4-21-201. Renaming this Section, Pharmaceutical Agent Certificate of Special Qualification, would be an inaccurate title because the Section deals with required coursework, not the issuance of the certificate. No change has been made.

Comment: The commenter stated that it is unclear whether this Section applies to all licensed optometrists and future graduates.

Response: Although all new licensees will qualify for the Pharmaceutical Agent Certificate, and current TPA certificate holders may take additional courses of study to qualify for the Pharmaceutical Agent Certificate, this Section deals with accredited educational institutions obtaining approval to offer a course of study. It does not place requirements on the applicant.

Comment: A commenter questioned how much of the 120-hours is devoted to pharmacotherapy and if the differential diagnosis of eye disease is included in the 120 hours, then the 120-hours would not be sufficient.

Response: The 120 hours of required coursework totally integrates the topic of diadactic pharmacology and clinical training, with the diagnosis and treatment of all eye disease. This integrated approach is equivalent to contemporary education received by current graduates from accredited schools and colleges of optometry.

Comment: A commenter was concerned that accepting 120 hours of training from an accredited program seems risky without some independent validation of the adequacy of the material. The commenter said that some institutions are limited to topical agents and don't teach pharmacotherapeutic of oral agents. The commenter questioned how the Board will assure that oral medications have been adequately covered in the 120 hours.

Response: R4-21-205 establishes the requirements that the accredited educational institution must comply with to obtain approval under this Section. To be accredited by the American Optometric Association Council on optometric education, an institution must teach in the specific areas required. The Board will be able to ascertain this in the certification of the scope and content required for the application.

Comment: A commenter questioned whether the Board Optometry had the qualifications to determine if a course of study meets the criteria.

Response: A.R.S. § 32-1728(C) requires that the Board consult with accredited Optometric institutions and the college of pharmacy at the University of Arizona to design a course that meets the contemporary educational requirements for pharmaceutical use that is commensurate to doctoral candidates in the United States. The Board relied on the expertise of university professionals to make the determination whether the course of study meets statutory requirements.

Comment: A commenter questioned if the law implied a continued use of the University of Arizona College of Pharmacy as a consultant in the approval process.

Response: A.R.S. § 32-1728(C) requires the Board to "consult" with the University of Arizona College of Pharmacy to review content for an oral pharmaceutical course of study.

R4-21-205(4)(a)(iv).

Comment: The commenter stated that "the law didn't allow optometrists to treat any systemic diseases, it only authorized them to use specific oral agents in the treatment of diseases of the eye and adnexa plus treat anaphylaxis if it occurs in the office setting."

Response: This Section establishes that the education must include the diagnosis and treatment of systemic diseases because of the relationship between the eye and body and the physiological effects that diseases of the whole body can have on the eye. For example, the new legislation allows optometrists to use oral pharmaceuticals to diagnose and treat acne rosacea, which is a systemic disease with ocular manifestations; and, A.R.S. § 1706(B)(2) provides for the use of antihistamines which are used to treat the ocular manifestations of allergies. No change has been made.

R4-21-205(4)(b).

Comment: The commenter stated that "there are significant and dangerous shortcomings in the content of this [subsection] that need to be corrected and may require an increase in the minimum number of hours above the proposed 12 hours." After reviewing the limited information, the commenter doesn't feel that 12 hours is a sufficient amount of time to provide optometrists with the competency and skills necessary to prescribe the oral medications.

The commenter is concerned with patient care issues and in regards to the curriculum. The commenter is concerned with the limited information provided to Dr. Theodore Tong, Associate Dean and Professor, Professor of Pharmacy Practice Pharmacology and Toxicology, Public Health Associate Dean for Academic Affairs Director, and Arizona Poison Information Center.

Response: A.R.S. 32-1728(C) requires that the Board contact Colleges of Optometry to ask for their recommendation for a course of study. The Board received a response from the Pacific University College of Optometry, which convened a committee composed of the Dean, the Associate Dean of Academic Programs, Director of Continuing Education, Associate Dean for Clinical Programs, and a doctor of Pharmacy who is also an Optometrist. This group reviewed the 120-hour course of study required for certification, and the new legislation requiring this rulemaking. The group recommended, and the Board concurred, that the didactic pharmacology and clinical training specified in R4-21-205(A)(4)(b) is included in the 120-hour course outline.

Further consultation was sought from University of Arizona Associate Dean for Academic Affairs and Student Affairs at the College of Pharmacy. Dr. Theodore Tong declared the content to be "sufficiently comprehensive with regards to pharmacodynamics, pharmacotheraputic principals, particularly with examining issues of drug related interactions, adverse drug reactions, and side effects."

The Board received an e-mail from the commenter that stated that after he receives and reviews the 120-hour curriculum, he will generate 2 letters, 1 which will withdraw the association's comments regarding curriculum and the other that unequivocally states Dr. Tong's approval.

Comment: A commenter said that he had studied the course proposals and the Arizona law and has come to the conclusion that anyone who completes all the requirements will have the equivalent pharmacological education that contemporary college of optometry graduates possess at the time of their graduation.

It is the commenter's opinion that the public is protected by the 12-hour course. The reason for this is that it's built on the back of prior courses.

The commenter said that students at Southern California College of Optometry are currently trained to do more than diagnose and prescribe the medications required in SB 1084. They also prescribe other categories or medications, including cortical steroids and oral antiviral, that are precluded in A.R.S. § 32-1706(D).

R4-21-210(3).

Comment: A commenter stated that the actual form of diphenhydramine needs to be clarified. Since injectable diphenhydramine wasn't included in the legislation, it is assumed that this means the oral form., or if it is intended for use in adults only then capsules could be specified.

Response: The Board agrees with the commenter that the actual form of diphenhydramine needs to be clarified. The rule has been changed to reflect that oral diphenhydramine is required in the treatment room.

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

None

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

R4-21-304(A) Care of the Patient with Diabetes Mellitus, September 1998, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881

Care of the Adult Patient with Cataract, March 20, 1999, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881

Care of the Patient with Open Angle Glaucoma, May 28, 1999, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881

Care of the Patient with Ocular Surface Disease, June 5, 1999, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881

Care of the Patient with Low Vision, June 11, 1997, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881

Care of the Patient with Myopia, August 9, 1997, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881

Care of the Patient with Hyperopia, August 9, 1997, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881

Care of the Patient with Presbyopia, March 20, 1998, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881

Care of the Patient with Accommodative and Vergence Dysfunction, March 20, 1998, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881

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

No

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 21. BOARD OF OPTOMETRY

ARTICLE 1. GENERAL PROVISIONS

Section

R4-21-101. Definitions

ARTICLE 2. LICENSING PROVISIONS

Sections
R4-21-201. Licensure
R4-21-203. Time-frames for Licensure, Renewal of License, ~~TPA Certification~~ Certificates of Special Qualification, and Approval of Course of Study
R4-21-204. ~~Renewal of~~ License Renewal
R4-21-205. ~~Board-approved~~ Courses~~s~~ of Study Approval
R4-21-206. ~~Issuance of TPA Certificate to Optometry School Graduates Prior to July 17, 1993~~ Pharmaceutical Agent Certificate of Special Qualification
R4-21-207. Submission of Fee; Issuance and Display of License; Surrender of License
R4-21-208. Continuing Education ~~Requirements; Program Criteria and Procedures~~
R4-21-210. Equipment and Services
Table 1. Time-frames

ARTICLE 3. REGULATORY PROVISIONS

Section
R4-21-304. Vision Examination Standards; Records.

ARTICLE 1. GENERAL PROVISIONS

R4-21-101. Definitions

~~In this Chapter, unless otherwise specified, the following terms mean:~~ In addition to the definitions established in A.R.S. § 32-1701, the following terms apply to this Chapter:

1. "Accredited" means that an educational institution is officially approved by the New England Association of Schools and Colleges, Middle States Association of Colleges and Secondary Schools, North Central Association of Colleges and Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, Western Association of Schools and Colleges, or the American Optometric Association Council on Optometric Education to offer courses in optometry.
2. "Application" means forms, ~~designated as applications and all~~ documents, and additional information the Board requires to be submitted ~~with an application~~ by an individual who requests licensure.
3. "*Board*" *means the* ~~Arizona State Board of Optometry~~ state board of optometry. A.R.S. § 32-1701(1)
4. "Certificate of special qualification" means a document that allows the holder to practice in a specific area of optometry specified in A.R.S. § 32-1728.

~~4.~~5. "Incompetence" means:
   a. Lack of professional skill or fidelity in performing the practice of optometry~~;~~,
   b. Treatment in a manner contrary to accepted optometric practices~~;~~, or
   c. Lack of physical or mental fitness to discharge professional duties.

~~5.~~6. "Licensure by examination" means an applicant ~~has met~~ meets the examination requirements of A.R.S. § 32-1724.
~~6.~~7. "Licensure by reciprocity" means an applicant ~~has satisfied~~ satisfies all of the requirements of A.R.S. § 32-1723.
~~7.~~8. "Low vision rehabilitation" means evaluation, diagnosis, management, and treatment of a limited vision, including the prescribing of corrective spectacles, contact lenses, prisms, or filters; or the employment of any means for the adaptation of lenses.
~~8.~~9. "National Board" means the National Board of Examiners in Optometry.
~~9.~~10. "National Board Exam" means the optometry examination administered by the National Board. ~~The Board may approve portions of the National Board exam for purposes of licensure.~~
11. "Pharmaceutical" or "pharmaceutical agent" means a prescription or nonprescription substance, or a schedule III controlled substance used for examination, diagnosis or treatment of conditions of the human eye and its adnexa. A.R.S. § 32-1701(5). Pharmaceutical and pharmaceutical agent include the following categories:
   a. "TPA" (topical pharmaceutical agent) means an externally applied medicine used to diagnose, treat, and manage disease of the eye and its adnexa;
   b. "Oral pharmaceutical" means an ingested medicine used to treat and manage disease of the eye and its adnexa; and
   c. "Anti-anaphylactic agent" means an intramuscular dose of epinephrine used for the emergency treatment of allergic reactions and delivered by a self-injecting syringe.

~~10. Topical pharmaceutical agent or TPA means an externally-applied medication used to diagnose, treat, and manage disease of the eye and its adnexa.~~
~~11. TPA certificate holder means an optometrist who has met the requirements of A.R.S. §§ 32-1722(A)(3) and 32-1728.~~

12. "Vision therapy" means an individualized treatment program prescribed to improve or rehabilitate conditions such as strabismus or amblyopia by helping individuals learn, relearn, or reinforce specific vision skills, including eye movement control, focusing control, eye coordination, and the teamwork of the 2 eyes. It may include prescribing of corrective spectacles, contact lenses, prisms or filters, or the employment of any means for the adaptation of lenses.

ARTICLE 2. LICENSING PROVISIONS

R4-21-201. Licensure

A. ~~An applicant~~ A person applying for licensure ~~by examination~~ shall submit ~~to the Board all of~~ the following information ~~on a form provided by the Board~~ on a licensure application form provided by the Board not later than 30 days ~~prior to~~ before the date of ~~the licensing~~ an examination:

1. The applicant's full name and social security number;
2. The applicant's place and date of birth;
3. The applicant's current ~~residence~~ mailing address;
4. The applicant's residence addresses for the past 10 years;
5. The applicant's educational background;
6. The applicant's previous optometric experience;
7. The applicant's previous optical experience;
8. The applicant's work experience or occupation for the past 10 years;
9. A list of the applicant's previous state board examinations;
10. A list of the states in which the applicant is or has been licensed and, if a license is no longer valid, the reasons why;
11. Whether the applicant has ever been denied the right to take an examination for optometric licensure by any state;
12. Whether the applicant has ever been refused an optometric license or renewal in any state;
13. Whether the applicant has ever had a license or certificate of registration to practice optometry suspended or revoked by any optometric licensing agency, board, or equivalent;
14. Whether any disciplinary action has ever been instituted against the applicant by any optometric licensing agency or equivalent~~, including any to determine whether the applicant's license to practice optometry should be suspended or revoked~~;
15. Whether the applicant has ever been ~~arrested for~~ convicted of, pled guilty or no contest to, or ~~been convicted of a felony or misdemeanor offense~~ entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country;
16. Whether the applicant has been addicted to narcotic substances or habitually abused alcohol within the last 10 years;
17. Whether the applicant is presently addicted to narcotic substances or habitually abuses alcohol;
18. If the answer to any of the questions in subsections (A)(11) through (A)(17) is affirmative, a complete explanation of the details, including dates;
19. The ~~signed endorsements of~~ character reference letter from 3 professional or business persons, unrelated to the applicant, who have known the applicant for at least the past 3 years;
20. A sworn statement under oath by the applicant verifying the truthfulness of the information provided by the applicant; and
21. A 2" by 3" photograph taken within the past 6 months of the applicant showing head and shoulders ~~and measuring 2" by 3"~~.

B. In addition to the requirements of subsection (A), an applicant for licensure ~~by examination~~ shall submit or arrange to have submitted:

1. A completed fingerprint card accompanied by a separate nonrefundable fee in the form of a cashier's check, certified check, or money order in an amount determined by and payable to the Arizona Department of Public Safety for the procurement of background information~~.~~;
2. The $150 filing fee ~~pursuant to~~ authorized by A.R.S. § 32-1727~~.~~;
3. Evidence of the successful completion of an approved course of study prescribed by A.R.S. § 32-1722(A)(3). ~~that includes the following~~ Acceptable evidence includes:
   a. An official transcript showing that the applicant has passed the course or courses, if the applicant graduated from a school of optometry on or after ~~April 6, 1993~~ August 6, 1999, or
   b. A certificate of completion issued by the sponsoring institution specifying the subject matter and hours completed, if the applicant graduated from a school of optometry ~~prior to April 6, 1993~~ before August 6, 1999.
4. An official transcript received directly from the accredited institution from which the applicant graduated with a degree in optometry. The transcript need not be filed with the application, but shall be ~~filed with~~ received by the Board at least 10 days ~~prior to~~ before the applicant's examination date.

C. An applicant for licensure by reciprocity shall submit to the Board all of the information required by subsections (A) and (B) not later than 60 days ~~prior to~~ before the date of the licensing examination together with the following additional materials:

1. A State Certification form provided by the Board, completed by the agency responsible for licensing optometrists in the state from which the applicant is seeking reciprocity, that provides the following information:
   a. Confirmation that the state accords similar reciprocity privileges to optometrists licensed in Arizona;
   b. Confirmation that the applicant has been engaged in the practice of optometry in or under the authority of that state for at least 4 of the 5 years preceding the date of the application;
   c. Explanation of the basis for and result of any disciplinary action taken against the applicant within the preceding 10 years, including censure, probation, suspension, or revocation of the applicant's license;
   d. Description of any pending investigations or complaints regarding the applicant;
   e. Statement that the applicant is in good standing to practice optometry in that state; ~~and~~
   f. Statement whether the applicant is known to have been licensed to practice optometry in any other state and, if so, the name of that state; and
   g. A certified copy of applicant's license from the board of registration in the profession of optometry in the state where the applicant was licensed.
2. The applicant's sworn and notarized statement on a form provided by the Board that affirms that the applicant satisfies each of the requirements of A.R.S. § 32-1723(A)(3), (A)(4), and (A)(6).

D. The Board shall permit ~~only those~~ an applicant~~s who~~ to take an examination only if the applicant completes an application and files transcripts ~~prior to~~ before the deadlines ~~to take an examination~~.

R4-21-203. Time-frames for Licensure, Renewal of License, ~~TPA Certification~~ Certificates of Special Qualification, and ~~Approval of~~ Course of Study Approval

A. For each type of license, renewal of license, certificate, or approval issued by the Board, the overall time-frame described in A.R.S. § 41-1072(2) is listed in Table 1.

B. For each type of license, renewal of license, certificate, or approval issued by the Board, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is listed in Table 1 and begins on the date the Board receives an application.
1. If the application is not administratively complete, the Board shall send a deficiency notice to an applicant.
   a. The deficiency notice shall state each deficiency and the information needed to complete the application and documents.
   b. Within the time provided in Table 1 for response to the deficiency notice, beginning on the mailing date of the deficiency notice, the applicant shall submit the missing information specified in the deficiency notice to the Board. The time-frame for the Board to finish the administrative completeness review is suspended from the date the Board mails the deficiency notice to the applicant until the date the Board receives the missing information.
2. If the application is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
3. If ~~the application does not contain all of the components required by statute or this Chapter~~ the applicant fails to respond timely and completely to the deficiency notice, the Board shall send a written notice to the applicant informing the applicant that the Board considers the application withdrawn. ~~Fees~~ Under A.R.S. § 32-1727(b), fees are nonrefundable ~~in accordance with A.R.S. § 32-1727(B)~~ except as provided in A.R.S. § 41-1077(A).

C. For each type of license, renewal of license, certificate, or approval issued by the Board, the substantive review time-frame described in A.R.S. § 41-1072(3) is listed in Table 1 and begins on the date ~~as~~ prescribed in subsection (D), depending on the manner in which the Board transmits the written notice of administrative completeness to the applicant.
1. During the substantive review time-frame, the Board may make 1 comprehensive written request for additional information. Within the time provided in Table 1 for response to a comprehensive written request for additional information, the applicant shall submit to the Board the requested additional information. The time-frame for the Board to finish the substantive review is suspended from the date calculated as prescribed in subsection (D), until the Board receives the requested additional information.
2. ~~Under A.R.S. § 32-1722(C), the Board may notice a hearing to obtain information on the character of any applicant for licensing or any aspect of the application. As part of a request for more information, the time-frame to finish the substantive review is suspended from the date the Board notices the hearing until the hearing is completed.~~ If the Board determines that a hearing under A.R.S. § 32-1722(C) is needed to obtain information on the character of an applicant, the Board shall include a notice of the hearing in its comprehensive written request for additional information.
3. The Board shall issue a written notice of denial of license, renewal of license, certificate, or approval if the Board determines that the applicant does not meet all of the substantive criteria required by statute or this Chapter.
4. The Board shall issue a written notice informing the applicant that the Board considers the application withdrawn if the applicant does not submit the requested additional information within the time-frame in Table 1 unless the applicant requests formal denial in writing within 20 days of the written notice. ~~Fees~~ Under A.R.S. § 32-1727(B), fees are nonrefundable ~~in accordance with A.R.S. § 32-1727(B)~~ except as provided in A.R.S. § 41-1077(A).

5. If the applicant meets all of the substantive criteria required by statute and this Chapter for licensure, renewal of license, certificate, or approval, the Board shall ~~issue the license, renewal of license, certificate, or approval to the applicant. The Board shall issue a topical pharmaceutical agent certificate with a license to practice optometry.~~ notify the applicant that the qualifications for licensure have been met and the license shall be issued as specified in R4-21-207 after receipt of the license issuance fee.

D. In computing any period of time prescribed in this Section, the Board shall not include the day of the act, event or default after which the designated period of time begins to run ~~shall not be included~~. The last day of the period ~~shall be~~ is included unless it is Saturday, Sunday, or a state holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or a state holiday. The computation ~~shall~~ includes intermediate Saturdays, Sundays, and holidays. The time period ~~shall commence~~ begins on the date of personal service, date shown as received on a certified mail receipt, or postmark date.

R4-21-204. ~~Renewal of~~ License Renewal

A. ~~An applicant for~~ A license renewal applicant shall, before August 31 of the biennial license renewal year, submit ~~all of~~ the renewal fee and the following information to the Board on a renewal form provided by the Board ~~a form provided by the Board prior to August 31 of the year the license expires~~:

1. ~~Changes~~ Any change in the applicant's mailing address~~,~~;
2. ~~List~~ A list of all practice addresses and phone numbers~~,~~;
3. ~~Information regarding completion of the required continuing education~~ A list of continuing education courses and proof of attendance at 32 hours of Board-approved courses and programs in continuing education~~,~~;
4. ~~State~~ The state where the applicant currently practices and the date when the practice commenced~~,~~;
5. Whether the applicant is retired from the practice of optometry~~,~~;
6. ~~Whether the applicant declines renewal of license,~~
7.6. Whether the applicant has been ~~arrested or~~ convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country, and if so, an explanation ~~any misdemeanor or felony during the renewal period,~~; and
8.7. ~~Sworn~~ A statement ~~under oath signed by the applicant~~ verifying the truthfulness of the information provided. ~~by the applicant, and~~
9. ~~Renewal fee.~~

B. All certificates held by an applicant remain in effect upon license renewal.

~~B.~~C. A license is void ~~under A.R.S. § 32-1726(A)~~ if an applicant does not submit a renewal application and renewal fee before August 31 of the year the license expires.

R4-21-205. ~~Board-approved~~ Courses ~~of Study~~ Approval

A. ~~An institution that provides a course of study in didactic education, pharmacology, and clinical training in the examination, diagnosis, and treatment of conditions of the human eye and its adnexa may be designated a college of optometry for purposes of A.R.S. § 32-1722(A)(3) if it is accredited by the American Optometric Association Council on Optometric Education~~. Any accredited educational institution may apply to the Board for approval of a course of study covering didactic education, pharmacology, and clinical training in the examination, diagnosis, and treatment of conditions of the human eye and its adnexa, and prescribing, dispensing, and administering pharmaceutical agents. The institution's authorized representative shall provide the following information on the application:

~~B.~~ ~~A college of optometry shall apply to the Board for approval for a course of study as prescribed by A.R.S. § 32-1722(A)(3). The initial application for approval shall include the following information:~~

1. ~~Applicant's~~ The name and address of the accredited educational institution;
2. Certification that the course of study is equivalent in scope and content to courses provided to ~~new~~ current graduates of the ~~college~~ accredited educational institution;
3. ~~Number~~ The names and qualifications of proposed faculty and staff; ~~and~~
4. ~~Course~~ A 120 hour course outline that ~~shall include~~ includes:
   a. Didactic pharmacology and clinical training in the diagnosis and treatment of:
      ~~a.~~i. ~~Diagnosis and treatment of anterior~~ Anterior segment disease~~,~~;
      ~~b.~~ii. ~~Diagnosis and treatment of posterior~~ Posterior segment disease~~,~~;
      ~~c.~~iii. ~~Diagnosis and treatment of glaucoma,~~ Glaucoma; and
      ~~d.~~iv. ~~Diagnosis and treatment of systemic~~ Systemic diseases and emergencies~~, and~~ with all pharmaceutical agents and the specific agents listed in A.R.S. § 32-1706(A), (B), (C), and (E).
   b. A minimum of 12 hours of pharmacologic principles in the side effects, adverse reactions, drug interactions, use of systemic antibiotics, analgesics, antipyretics, antihistamines, over-the-counter medications, and medications and procedures to counter the affect of adverse reactions.
5. ~~Evidence of accreditation by the American Optometric Association Council on Optometric Education.~~

~~C.~~**B.** ~~A college of optometry~~ An accredited educational institution that offers ~~a~~ an approved course of study ~~for purposes of A.R.S. § 32-1722(A)(3)~~ shall grant a certificate of completion or its equivalent for the course of study when a student ~~passes~~ obtains a score of at least 75% on a closed book, proctored, written examination ~~administered by the faculty. The written examination shall not be a take-home test~~ covering prescribing, dispensing, and administering pharmaceutical agents, and is commensurate with courses of study taken by current doctoral candidates in colleges of optometry.

R4-21-206. ~~Issuance of TPA Certificate to Optometry School Graduates Prior to July 17, 1993~~ Pharmaceutical Agent Certificate of Special Qualification

~~A.~~ ~~An optometrist who graduated from an accredited school of optometry prior to July 17, 1993, who wishes to administer, dispense, and prescribe topical pharmaceutical agents shall submit a written request to the Board and shall cause to be submitted to the Board evidence that:~~

~~1. The optometrist has satisfactorily completed the Board-approved course of study required by A.R.S. § 32-1722(A)(3), by causing the issuing institution to submit:~~

~~a. An official transcript showing that the optometrist has passed the course; and~~

~~b. A certificate of completion specifying the subject matter and hours completed.~~

~~2. The course of study meets the criteria listed in R4-21-205; and~~

~~3. The optometrist has successfully passed the National Board's treatment and management of ocular disease examination or other National Board examination approved by the Board after July 17, 1993.~~

~~B.~~ ~~An optometrist described in this Section, who is planning to enroll in a course of study in clinical pharmacology for the purposes of A.R.S. §§ 32-1722 or 32-1723 shall submit to the Board for review and approval, prior to enrollment, an outline of the course or courses, name of the sponsoring institution, names and qualifications of faculty or instructors, and evidence that the course of study meets the criteria for an approvable course of study in R4-21-205. A request for approval of a course shall be submitted to the Board not less than 60 days prior to the date the course is offered. The time-frames for the granting of a course approval are listed in R4-21-203.~~

~~C.~~ ~~The Board shall issue a TPA certificate to an optometrist who meets the requirements of this Section that evidences that the optometrist is authorized to administer, dispense, and prescribe all topical pharmaceutical agents for the purpose of examining the eye and adnexa, and the diagnosis, treatment, and management of eye conditions.~~

A. An optometrist who is licensed on September 13, 2000 may apply for a pharmaceutical agent certificate of special qualification to prescribe, dispense, and administer pharmaceutical agents.

1. If the optometrist does not hold a TPA certificate of special qualification issued before August 6, 1999, the optometrist shall:
   a. Take a course of study that meets the requirements of R4-21-205(A);
   b. Provide the Board with a copy of current CPR certification; and
   c. Request the National Board or the issuing educational institution to send the Board documentation showing the optometrist passed the National Board's Treatment and Management of Ocular Disease examination or other examination approved by the Board after July 17, 1993.
2. If the optometrist holds a TPA certificate of special qualification issued before August 6, 1999, the optometrist shall:
   a. Request that the issuing educational institution send the Board a certificate of completion showing the optometrist passed a Board-approved course meeting the criteria specified in R4-21-205(A)(4)(b), and
   b. Provide the Board with a copy of current CPR certification.
3. If the optometrist graduated after August 6, 1999 and is licensed by the Board, the optometrist shall provide the Board with a copy of current CPR certification.

~~D.~~**B.** An optometrist who is denied certification ~~in accordance with this Section or whose course of study is not approved~~ by the Board may appeal the decision by filing a written request with the Board within ~~15~~ 30 days following receipt of the notice ~~from the Board~~ of denial ~~of certification~~ or disapproval. The hearing shall be conducted ~~in accordance with~~ under A.R.S. Title 41, Chapter 6, Article ~~6~~ 10.

R4-21-207. Submission of Fee; Issuance and Display of License; Surrender of License

A. An applicant shall submit the license issuance fee established in R4-21-103 to the Board ~~the license issuance fee under A.R.S. § 32-1727~~ within ~~60~~ 20 days following notification by the Board that ~~an~~ the applicant has met the qualifications for licensure. The Board shall issue a license at the next Board meeting ~~within 60 days~~ following receipt of payment.

B. License display. An optometrist shall conspicuously display:

1. ~~an~~ An optometry license or a Board-issued duplicate at all places where the optometrist is registered to practice optometry~~.~~, and ~~In addition, each optometrist authorized to use diagnostic pharmaceutical agents or to administer, dispense, and prescribe all topical pharmaceutical agents shall similarly display the~~
2. The appropriate Board-issued pharmaceutical agent certificate ~~or a Board-issued duplicate~~ at each location.

C. An optometrist shall surrender to the Board all licenses, certificates, and duplicates upon disciplinary order of the Board.

R4-21-208. Continuing Education ~~Requirements; Program Criteria and Procedures~~

~~**A.** An optometrist applying for biennial license renewal shall include with the application a list of courses and a notarized affirmation by the licensee of attendance at 32 clock hours of Board-approved courses and programs in continuing education. An optometrist who makes a materially false statement in the affirmation shall be subject to disciplinary action, including suspension or revocation of license~~.

~~**B.** Continuing education courses approved by the Board for renewal of a license to practice optometry are:~~

~~1. Educational courses offered at the American Optometric Association Convention or offered at any American Optometric Association affiliate state association convention;~~

~~2. Seminars held by committees of the American Optometric Association or organized regional Optometric Extension Program Foundation seminars for educational purposes;~~

~~3. Postgraduate courses offered by accredited schools or colleges of optometry;~~

~~4. Postgraduate correspondence courses offered by an accredited college of optometry, provided that no more than 6 hours of continuing education credits are claimed in a single licensing renewal period; and~~

~~5. Other continuing education courses or programs that are based upon the following:~~

~~a. The program shall have optometric application and shall be available to all optometrists and students of optometry. All program instructors shall have expertise in the field in which they instruct.~~

~~i. Learning objectives shall be reasonably and clearly stated;~~

~~ii. Teaching methods shall be clearly stated and appropriate;~~

~~iii. Attendance shall be open to all optometrists and students of optometry; and~~

~~iv. Documentation of attendance shall be provided to those attending.~~

~~b. An optometrist applying for license renewal shall submit to the Board for approval 45 days prior to the date the course is offered a description of the program content, instructors, and their qualifications, the sponsor of the program, if any, the conditions of availability, and the time and place offered.~~

A. All continuing education courses or programs approved by the Board are based on the following:

1. The education has optometric application,
2. The education is available to all optometrists and students of optometry,
3. The instructor has expertise in the field in which the instructor is teaching,
4. The learning objectives are reasonably and clearly stated,
5. The teaching methods are appropriate and clearly stated, and
6. Documentation of attendance is provided to those attending.

B. An optometrist may apply to the Board for approval of continuing education, not otherwise authorized, by submitting to the Board 45 days before the date the course or program is offered, a description of the program content, instructors and their qualifications, sponsor of the program, if any, conditions of availability, and time and place offered.

C. ~~The Board shall limit continuing education credit for correspondence courses, including computer, on-line education courses, to no more than 6 hours~~. Correspondence courses may include written, computer, and on-line education courses, but not more than 6 hours of correspondence courses may be used for license renewal.

D. ~~The Board shall limit continuing education credit for practice management or administration to no more than 4 hours.~~ Not more than 4 hours of practice management and administration continuing education may be used for license renewal.

~~**D.**~~**E.** An optometrist shall not carry-over hours accumulated in any 1 biennial license period to a subsequent license period.

~~**E.** An optometrist shall submit evidence of continuing education hours with the optometrist's biennial license renewal.~~

R4-21-210. Equipment and Supplies

A. An optometrist shall maintain the following equipment and supplies in the treatment room to counteract an anaphylactic reaction:

1. A telephone with access to an emergency medical number,
2. Auto-injectors of epinephrine, and
3. Oral diphenhydramine hydrochloride (Benadryl).

B. Except for a licensed Diagnostic Pharmaceutical Agent, an optometrist shall maintain the following uniform prescription form.

TPA # Doctor's Name License #
PA # Doctor's Address DEA #
City, State, Zip Code (Optional)
Telephone Number
Fax Number

Name Date:
Address:
Rx:

Disp:
Sig:
Refill Times

Dispense as Written Substitution Permissible

Table 1. Time-frames (in calendar days)

Type of License	Administrative Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Request for Additional Information	Overall Time-frame
Initial Licensure by Examination ~~or Reciprocity R4-21-201~~ 32-1722	30	20	60	20	90
Initial Licensure By Reciprocity R4-21-201	60	20	60	20	120
Renewal of License R4-21-204	60	20	30	20	90
Board Approved Course of Study R4-21-205	90	20	90	20	180
~~Issuance of TPA Certification~~ Certificates of Special Qualification R4-21-206	60	20	60	20	120
Continuing Education Program Approval R4-21-208	60	20	60	20	120
Registration of nonresident dispenser of replacement soft contact lenses A.R.S. § 32-1773	60	20	60	20	120

R4-21-304. Vision Examination Standards; Records

A. An optometrist shall conduct eye examinations in accordance with the standards of care established by the following American Optometric Association practice guidelines which are incorporated by this reference and on file with the Secretary of State. The materials incorporated contain no later editions or amendments:

1. Comprehensive Adult Eye and Vision Examination, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
2. Pediatric Eye and Vision Examination, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
3. Care of the Patient with Diabetes Mellitus, ~~1994~~ September 1998, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
4. Care of the Patient with Amblyopia, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
5. Care of the Patient with Primary Angle Closure Glaucoma, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
6. Care of the Patient with Age-Related Macular Degeneration, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St.Louis, MO 63141-7881;
7. Care of the Patient with Anterior Uveitis, 1994, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
8. Care of the Adult Patient with Cataract, ~~1995~~ March 20, 1999, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
9. Care of the Patient with Open Angle Glaucoma, ~~1995~~ May 28, 1999, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
10. Care of the Patient with Ocular Surface Disease, ~~1995~~ June 5, 1999, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
11. Care of the Patient with Conjunctivitis, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
12. Care of the Patient with Strabismus: Esotropia and Exotropia, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881; and
13. Care of the Patient with Retinal Detachment and Related Peripheral Vitreoretinal Disease, 1995, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881.
14. Care of the Patient with Low Vision, June 11, 1997, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
15. Care of the Patient with Myopia, August 9, 1997, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
16. Care of the Patient with Hyperopia, August 9, 1997, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
17. Care of the Patient with Presbyopia, March 20, 1998, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;
18. Care of the Patient with Accommodative and Vergence Dysfunction, March 20, 1998, American Optometric Association, 243 N. Lindbergh Blvd., St. Louis, MO 63141-7881;

B. An optometrist shall establish and maintain a complete and legible record of each examination including all findings. The Board shall consider an illegible record to be an incomplete examination. An optometrist shall ensure that a patient record reflects the name of the person who makes each entry and is maintained for at least ~~5~~ 10 years after the last contact with a patient. The patient record shall include:

1. Complete case history;
2. Visual acuity of each eye: entering, and best corrected;
3. Ocular health examination;
4. Assessment of intraocular and extraocular muscle function;
5. Objective or subjective refraction of the eyes;
6. Diagnosis, treatment, and disposition;
7. The type and dosage of each use of a pharmaceutical agent used;
8. Any final prescription given; and
9. Any corrective procedure program prescribed.

C. An optometrist who discontinues practice for any reason shall arrange for patient records to be available to a patient for ~~5~~ 10 years and shall notify the Board of the permanent location of patient records from that practice ~~prior to~~ before discontinuing practice. An optometrist who acquires or succeeds to a practice or patient records of an optometrist who has discontinued practice shall maintain the records or make arrangements for the records to be available to a patient for ~~5~~ 10 years after the practice was discontinued.

D. An optometrist shall, upon written request of a patient, transmit a copy of the patient's requested records to any designated person. The optometrist may charge a fee to cover clerical and mailing costs. The optometrist shall maintain a record of the transfer for ~~5~~ 10 years from the date of the transfer.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

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

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R9-26-101	Amend
Article 2	Amend
R9-26-201	Amend
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
R9-26-205	Renumber
R9-26-206	Renumber
R9-26-207	Renumber
Article 3	Amend
R9-26-301	Renumber
R9-26-301	Amend
R9-26-302	Repeal
R9-26-302	Renumber
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(B)

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

3. The effective date of the rules:

September 15, 2000

4. 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

Notice of Proposed Rulemaking: 6 A.A.R. 2169, June 16, 2000

5. 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 & Hard of Hearing
1400 West 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

6. 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 Title 9, Chapter 26, Articles 1, 2, 3, and 4, updating program procedures and using current rulewriting techniques to make the rules more clear, concise, and understandable.

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," "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 distribution 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.

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

7. 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

8. 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

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

A. *Estimated Costs and Benefits to the Arizona Commission for the Deaf & 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:

YEAR	AMOUNT
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:

Year	Devices
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.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

The term "Council" has been changed to "Commission" throughout the rule package to conform to the new agency name.

The responsibilities of the "outreach" center was originally proposed to include both publicity (outreach) and equipment distribution. The contracts for this combination have not been successful. Therefore, the "outreach" (publicity) section has been removed from the center's activities and the term "outreach center" has been changed to "distribution center."

R9-26-202(C)(3) has been changed to clarify that any recipient who has previously had 2 replacements due to damaged equipment will not qualify for additional device replacements.

Grammatical and clarification changes were made at the request of G.R.R.C. staff. No substantive changes were made.

11. A summary of the principal comments and the agency response to them:

The following comments were received from Ingrid McBride, Communication Access Solutions, LLC, Mesa, Arizona.

Comment: Ms. McBride commented that the proposed rules substantially expand eligibility for state-funded devices by including persons with any degree of hearing loss (and any degree of speech impairment), whereas A.R.S. § 36-1946(A) authorizes distribution of these devices only to those that are deaf, severely hearing impaired, or severely speech impaired. The rules further state that a person with minimal hearing loss (hard of hearing) is eligible for a device. By eliminating the criteria for a severe degree of speech impairment, even persons with minor speech impediments become eligible for a free state-provided device, even if their speech can be understood over standard over-the-counter telephones.

Response: The statute looks at telephone accessibility when it comes to "severe hearing impairment and severe speech impairment." Ms. McBride's perspective as an Audiologist is limited to audiometric measurement. However, the statute itself does not focus on the measurement of what constitutes severely hearing impaired or severely speech impaired. According to the statute, severely hearing impaired or severely speech impaired is interpreted as persons who have hearing impairment or speech impairment that prevent them from communicating effectively on a regular phone. As mentioned in this rulemaking, it is reasonable to measure that the minimum severe hearing impairment that requires an amplified phone to communicate effectively on the telephone is greater than 40 dB PTA-2, but less than 85 db, PTA-2, in the better ear. There are no current tools to measure the severity of speech impairment. The rules functionally classify and define severe hearing and speech impairments as impairment requiring assistive telecommunication devices to communicate on telephone.

Comment: Ms. McBride said that there is no evidence showing the necessity to expand the distribution program to include amplified telephones instead of only TTY/TDD text telephone devices, nor is there legislative support for the expansion. The expansion of the distribution program to include amplified telephones and hard of hearing individuals was never mentioned in the Sunset review and subsequent legislative hearings. The agency's desire to change the name of the program to "Communication Equipment Distribution Program" in an attempt to provide unspecified equipment expansion was not passed by the legislature, thus it was not the intent of the legislature to include telephone amplification devices or to include hard of hearing individuals.

Response: According to A.R.S. § 36-1947, "the council shall establish and administer a statewide program to purchase, repair and distribute telecommunication devices to residents of this state who are deaf or severely hearing or speech impaired and establish a dual party relay system making all phases of public telephone service available to persons who are deaf or severely hearing or speech impaired." The law recognizes all deaf, severely hearing impaired, and speech impaired who are in need of assistive telecommunication devices to communicate effectively on telephone. "Amplified phones" are identified as a group of assistive telecommunication devices and teletype/text phone is another category. As a matter of clarity, the law allows the Commission to expand telecommunication devices through its rule writing through Commission rule revision.

Comment: Ms. McBride commented that the proposed economic impact statement falsely states that there is "no reducible impact on small businesses." She states that local small businesses will be negatively impacted by this rulemaking, including private audiology offices that sell telecommunication devices for hard of hearing and deaf individuals. She further says that this rulemaking will potentially cause her business to lose over 50% in revenue. Ms. McBride says that because all telephone line users in the state are required to pay into the telecommunications excise tax fund, businesses that sell telephones will be required to provide financial support to a program competing with and depleting these businesses. She contends that they will be ethically required to refer away their own potential customers to the proposed distribution program.

Response: Ms. McBride's position regarding negative impact on small businesses contains 2 contradictions:

1. Data compiled through the National Health Survey (Series 10, Data from the National Health Survey No. 1888) by the U.S. Department of Health and Human Services; Public Health Service: Centers for Disease Control and Prevention; and the National Center for Health Statistics, clearly indicate that "persons with hearing loss are proportionally over-represented in families with an income of under $10,000 and under represented in families with income of $50,000 and over." Further data collected from the survey show a direct correlation between hearing loss and unemployment. Clearly, people with hearing loss are significantly less likely to afford telecommunication assistive devices than other segments of the general population. In addition, most insurance carriers do not cover the costs of assistive listening devices, including hearing aids and telecommunication devices for the deaf and the hard of hearing. Demographic data compiled by the National Academy on Aging indicates hearing loss is highly associated with aging and that older people, often on fixed incomes are much less likely than the general population to afford hearing aids and amplified phones.

2. The State Procurement Office (SPO) has a vendor listing of incorporated small businesses that sell assistive telecommunication devices for the hard of hearing. This vendor listing gives these businesses the opportunity to enter competitive bids for each itemized device. As an example, Vendor A may be awarded the contract for 2 devices and Vendor B may be awarded for 4 other devices. The Commission, through assistance of SPO, provides fair competition to small businesses through competitive bids.

Comment: Ms. McBride comments that no evidence has been provided in the economic impact statement regarding the enormous costs involved in this extensive expansion. The majority of the funding that supports this program is derived from the Telecommunications Excise Tax, which is a monthly tax levied on each telephone customer in the state. The revenue from this tax is approximately $5,000,000 annually, and the vast majority of the funds are used to administer the TTY relay service. A portion of the funds is used to support the TTY distribution program as a subsidiary of the TTY relay service. Distribution of amplified telephones and inclusion of hard of hearing people in the program have nothing to do with the use of the TTY relay service and will drive the costs for this portion of the program beyond that which the fund is capable of supporting.

Based on figures from the National Center for Health Statistics, 1991, and Gallaudet Center for Assessment and Demographic Studies, 1994, Ms McBride says that, to date, the TTY distribution program has been eligible only to 1% of the hearing impaired population. Inclusion of all degrees of hearing loss could result in the distribution of free state-provided telephones to over 10% of the general population in Arizona. Therefore, expansion of the program would increase eligibility from 4800 deaf people to over 480,000 people. With an increase in program eligibility, the annual administrative costs could potentially skyrocket to $15,000,000 (based on $31.25 per current eligible deaf person). This would be in addition to the cost of the increase in the number of telecommunication devices needed to accommodate over 480,000 people.

Current TTY device costs are estimated in the Sunset report to be $249 per unit. ($1,195,200 current estimated equipment costs.) Estimated equipment costs with expansion is $29,707,200.

Using the same TTY costs and distributing those to 4800 deaf people and using a conservative estimate of $60 as the average cost to the agency for an amplified telephone device and distributing those to the remaining eligible hard of hearing people (475,200) at a cost of $28,512,000.

Response: Ms. McBride's statistics (provided by the National Center for Health Statistics and Gallaudet Center for Assessment and Demographic Studies), are correct as "raw data" for the matter at hand. As an audiologist, Ms. McBride is fully aware that the vast majority of people with hearing loss refuse to wear hearing aids or use assistive telecommunication equipment. In addition, the demographics do not show statistics from telecommunication distribution programs in each state. The Commission conducted a demographic study of various states that provide telecommunication distribution programs and found that the Minnesota model is parallel to the Arizona model.

Minnesota distributed 16,062 amplified devices to the hard of hearing since March 1996. The Commission foresees that Arizona will also distribute 16,000 amplified devices within 10 years after the implementation of these rules. The FY 2001 Budget provides $400,000 for purchase of telecommunication devices. In contrast with Ms. McBride's concern. The Commission believes that the costs involved in purchasing and distributing amplified telephone devices will be minimal.

In addition, studies have indicated that prolonged denial begins when individuals first recognizes their hearing loss. According to Dr. Samuel Trychin, a nationally recognized psychologist and author regarding the psychology of hard of hearing, people who are hard of hearing do not as a general rule self-identify. Most will live with a hearing loss for years in complete denial before using any type of hearing assistance, if ever. For this reason, individuals who experience hearing loss will not quickly "raise their hand" for an amplified telephone. In addition, it has been the Commission's experience that by the time a hard of hearing person receives services from the Commission, their hearing loss has become too severe to experience effective communication on a daily basis. Esther Kelly of the Deaf Action Center in Dallas, Texas, professed that it requires approximately 5 years for the hard of hearing to feel compelled to experiment and use various assistive telecommunications devices. Unlike Ms. McBride's concern of "overnight" distribution of 475,200 amplified telephones, keeping the community informed of the availability of telecommunication devices for the hard of hearing requires a lengthy process of public education and awareness.

Comment: The expansion may result in even greater equipment tracking and inventory management problems than have already been criticized within the recent Sunset Review (August 1999).

Of the over 7000 TTYs distributed since 1986, 880 (12%) of the devices have either been physically lost or lost track of, which results, according to the auditors, in a loss of $220,000. With expansion to a variety of amplified telephone and TTY devices, inventory management will become a much greater burden at a greater cost. Under the current program, the agency is required to maintain inventory only for the 2 TTY models that they distribute, and are required to track these across only the approximately 5000 eligible individuals. According to the recently issued RFP for provision of telecommunication equipment to the agency for the distribution program, the agency (or their contractor) will be required to maintain inventory for 23 different devices.

The agency indicates that it has been working on a bar-code system for inventory management, but offers no evidence that such a system is proving to be successful.

Response: In compliance with the Auditor General's recommendation, the Commission is currently working with the SPO to develop a Request for Proposal (RFP) leading to a service contract that would effectively out-source our entire Telecommunications Equipment Distribution Program (TEDP). Additional recommendations made by the Auditor General, including performance measures and vendor liability, will be addressed by any subsequent contract resulting from the RFP. Conceding the Auditor General's findings regarding the Commission's relative inexperience with inventory management, the Commission, other than contract management and quality assurance monitoring, will no longer directly manage TEDP. This program will be completely outsourced.

Comment: The agency has not provided any evidence justifying the need for expansion to hard of hearing individuals and to amplified telephone devices. The vast majority of hard of hearing individuals are likely financially able to purchase their own telephone amplification devices. These devices range in retail price from $40 to $200 (similar cost as over-the-counter standard telephones), and the $40 devices are compatible with virtually all telephones. The need to purchase TDD/TTY equipment could be a potential financial hardship for some individuals who have to reply on text telephoning. Those devices range in retail price from $250 to over $600. The need for the state to provide free TTY devices may be more readily justifiable. Currently the state provides 2 different TTY devices that retail for about $250 and $500.

State and federal funds that support the Rehabilitative Services Administration enable provision of amplified telephone devices and TTYs to deaf and hard of hearing individuals that qualify for Vocational Rehabilitation and Independent Living services. Therefore, there are currently alternative avenues for economically needy individuals to obtain telephone amplification equipment at no charge. In many states, the telecommunication devices are distributed to financially eligible residents *only* through the state's Vocational Rehabilitation program or Independent Living Program. With no income eligibility requirements, proof of Arizona residency, or the documentation that the applicant even has telephone service, equipment will undoubtedly be distributed to unqualified individuals.

Response: As stated earlier, income loss is correlated with hearing loss. To justify the need for expansion to amplified telephone devices, the Commission has received telephone calls from families and friends of the hard of hearing requesting amplified telephones, and recipients of telecommunication devices mistakenly think that they will get an amplified phone. Actually, the median income of deaf, hard of hearing, deafblind, and speech impaired individuals is 2 times lower than the national average. It leads them not to afford assistive telecommunication devices. In addition, most insurance carriers don't cover the purchase of assistive listening devices, including amplified telephone.

According to the Rehabilitation Reauthorization Act of 1998, the eligibility criteria for Vocational Rehabilitation (VR) and Independent Living (IL) services is based on the priorities of the significant disability or disabilities of each client they serve. Unfortunately, the hard of hearing will "fall into the crack" in the priority of disabilities. Chances are that they may not be eligible for VR and IL services. In addition, VR and IL services are severely underfunded in Arizona with the amount of clients that they serve. Hence, VR and IL services continuously experience limited funding in purchasing of assistive technology for clients with disabilities. As the end result, more VR and IL services refer their deaf and hard of hearing clients to the Commission to apply for a telecommunication device loaner.

Comment: Ms. McBride commented that the proposed rules make no mention of income eligibility requirements, proof of Arizona residency, or proof of telephone service by the applicant. Without these guidelines significant costs will be borne by the state. Without eligibility requirements, the proposed rules create an entitlement program based upon a disability alone.

Many telecommunication distribution programs offered by other states revealed that many states make telecommunication devices available only to residents who have financial need. For example, New Mexico requires proof of taxable household income of $50,000 or less to be eligible for the distribution program. Virginia requires verification of residency, verification of a disability, and the level of the individual's financial participation is determined by a sliding scale.

Response: To impose income requirements or fees to obtain telecommunication devices requires additional legislation. More specifically, income eligibility requirements cannot be written in the rules. A.R.S. § 36-1947 authorizes the Commission to "adopt administrative procedures, rules, criteria and forms to establish and administer the telecommunication device program under this Section." The following eligibility requirements mentioned in the rules will be the benchmark for telecommunication device issuance:

1. The name, social security number, address, and telephone number of the applicant;
2. The mailing address of the applicant if different from the above;
3. The signature of the applicant or the applicant's legal guardian;
4. The applicant's mode of communication;
5. The type of equipment requested; and
6. Verification of hearing or speech impairment by 1 of the following people: A person practicing medicine, an audiologist, a speech pathologist, a hearing aid dispenser, or a vocational rehabilitation counselor.

Comment: Currently, most audiology and hearing aid dispensing offices offer free services to individuals to verify they meet criteria for a TTY. This is relatively easy to do and has no appreciable economic impact on the consumer nor on the professional's practice since the eligible population is small and any testing required to verify the degree of hearing loss is minimal due to the severity of the impairment. However, when the criteria includes essentially any degree of hearing loss, the hearing professional will be required to complete more time-consuming hearing testing to verify eligibility, resulting in the need to charge a fee to the individual for this service.

The testing fee to determine eligibility could actually exceed the individual's cost for a telephone amplification device if they were to purchase 1 themselves. In addition, the minimal hearing loss criteria and the potential to obtain a free voice phone opens the door for normal hearing individual to pretend that they have a hearing impairment just to obtain a free telephone from the state.

If distribution of free voice telephones becomes available, any individual that uses voice phones (99% of the population) could attempt to qualify for the program.

Response: Fees imposed by audiologists and hearing aid dispensers for verification of hearing impairment is beyond Commission's jurisdiction, whether or not it has an appreciable economic impact on consumers and professionals. It is important to note that audiologists and hearing aid dispensers have legitimate accountability in complying with the definition of "hard of hearing" as mentioned in the rules when verifying those who actually are hard of hearing. That is, 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. The rules define the eligibility of audiologists and hearing aid dispensers in verifying that the applicant is deaf or hard of hearing, consequently, their professional accountability is to detect those with actual hearing loss from those who just pretend that they have a hearing loss.

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

None

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

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

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

No

15. 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. ~~ELIGIBILITY AND REGISTRATION~~ APPLICATION, DISTRIBUTION, AND CONDITIONS FOR USE

Sections
R9-26-201. ~~Eligibility requirements~~ 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

ARTICLE 3. ~~DISTRIBUTION PROCESS~~ ADMINISTRATIVE PROCEDURES

Sections
~~R9-26-206.~~ R9-26-301. ~~Hearing by the Council~~ Hearings
~~R9-26-205.~~ R9-26-302. ~~Review by the Director~~ Informal Settlement Conference
~~R9-26-302. Training~~
~~R9-26-303. Replacement devices~~
~~R9-26-207.~~ R9-26-303. Rehearing or ~~review of decision~~ Review of Decision

ARTICLE 4. RELAY SERVICES

Sections
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~~ Commission" 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 (4)(a) and (4)(b).

5. "Device" means 1 of the following:
   a. "Amplified telephone" is a telecommunication device, used by individuals with mild to profound hearing loss or speech impairment, that eliminates most noise background, has a volume control that clarifies inbound hearing or outbound speech, and includes a standard telephone with hearing aid compatible handsets.
   b. "Augmented speech device" is a telecommunication device used by a person with a speech impairment.
   f. "Modem" is an electronic device installed into a personal computer that is baud and baudot compatible.
   d. "Signal device" is an electric 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 electric 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~~ Commission to distribute and repair ~~TDDs and signal~~ devices.

8. "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.~~9. ~~"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. "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 a telecommunication relay center to transmit a conversation between a deaf, hard of hearing, deafblind, or speech-impaired person and another person who uses a standard telephone.

12. "Speech impaired" means a disability that prevents a person from articulating speech audibly or clearly.

~~11. "Speech/language pathologist" means a person who has a Master's degree or equivalency in Speech/Language 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, deaf-blind, 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 Commission to provide telecommunication services telephones through a 3rd party to a deaf, hard of hearing, deafblind, or speech-impaired person and to any other person who uses a standard telephone.

~~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~~ Application Procedure

A. ~~An applicant is eligible only if he is deaf, deaf-blind, 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.~~ Any person who is deaf, hard of hearing, deafblind, or speech impaired may apply for a device by providing the distribution center with the following information on an application form obtained from the Commission or distribution center:

1. The name, social security number, address, and telephone number of the applicant;
2. The mailing address of the applicant, if different from 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 1 of the following people:
   a. A person practicing medicine in Arizona,
   b. An audiologist,
   c. A speech pathologist, registered by the Arizona Department of Health Services,
   d. A hearing aid dispenser, or
   e. A vocational rehabilitation counselor.

~~**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.~~

B. After the hearing or speech impairment is verified and the application form deemed complete, the distribution center shall notify the applicant in writing of:

1. The date and time of a training session for the device, if an original application; and
2. The location where a device may be picked up.

C. Denial of application:

1. The Commission shall deny an application if:
   a. The information required in subsection (A) is not provided; or
   b. The applicant has previously been issued a device; and
      i. The device has been abused, misused, or has unauthorized repairs;
      ii. The device is stolen and the applicant fails to provide a police report of the stolen device; or
      iii. The applicant has lost the 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.

~~**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~~ A distribution center shall:

1. ~~Upon notice from the Director, distribute TDDs or signal devices~~ Issue a device to any person who is ~~persons determined to be~~ eligible under R9-26-201 and who resides within ~~fifty (50) miles of~~ the distribution center~~'s area of coverage.~~,
2. ~~Require all recipients or a legal guardian to sign~~ Obtain from the applicant a signed Conditions of Acceptance form provided by the Commission ~~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.~~ Maintain all application forms and Condition of Acceptance forms.

4. ~~Inform~~ Notify the Director ~~of those applicants who failed~~ if an 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 a device to and train any applicant whose mobility prevents the applicant from coming to the distribution 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 center nor the Director shall ~~provide~~:

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

C. Repair.

1. A distribution center shall accept all devices needing repair.
2. If a device has been abused, misused, or has had unauthorized repair, a distribution center shall not provide a replacement device until the recipient pays for the repair in advance.
3. A distribution center shall deny a recipient a device replacement if the recipient has had 2 previous replacements that were damaged.

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

E. Training.

1. A distribution center shall provide training to all recipients or the recipient's legal guardians.
2. A device shall not be issued until an applicant or the applicant's legal guardian:
   a. Demonstrates an ability to send and receive messages, and
   b. 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 the recipient's legal guardian shall return a ~~TDD and signal~~ device to the ~~Director or appropriate~~ closest distribution 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~~ A recipient is liable for any damage to or loss of a device issued under ~~R9-26-301~~ R9-26-202.

D. If a recipient moves to a location in Arizona other than the address specified on the Conditions of Acceptance form, the recipient or the recipient's legal guardian shall notify the Commission 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:~~
~~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~~ A person shall not 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~~ shall 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.

ARTICLE 3. ~~DISTRIBUTION PROCESS~~ ADMINISTRATIVE PROCEDURES

~~R9-26-206.~~ R9-26-301. ~~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 under A.R.S. § 41-1092.03 with the Commission. ~~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.

~~R9-26-205.~~ R9-26-302. ~~Review by the Director~~ Informal Settlement Conference

A. An applicant or recipient whose request for an original or replacement ~~TDD has been~~ device is denied and who has filed an appeal under A.R.S. § 41-1092.03, 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. The 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.~~

~~R9-26-303. 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;~~

~~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 case who is aggrieved by a decision rendered in the case may, within 30 days after the date of the Commission's 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 request for rehearing or 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 written request 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 that deprives the requesting party 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 that 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.~~

A telecommunication relay center 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~~ A telecommunication relay center shall protect the privacy of ~~persons~~ any person to whom relay services are provided.

B. A relay operator ~~and~~ shall ~~require all operators to~~ maintain the confidentiality of all telephone messages.

~~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, 1999 Edition. This information is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Arizona Commission for the Deaf and Hard of Hearing and the Office of the Secretary of State.

1. ~~Relay Centers~~ A telecommunication relay center 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 the extent necessary to fulfill the purpose of ~~their~~ the call.
3. ~~Relay operators~~ A 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~~ a relay service~~s~~ may file ~~complaints~~ a complaint about the relay service ~~to the Telephone Relay Center~~ with the telecommunication relay center or with the ~~Council~~ Commission. 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 FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - MOTOR VEHICLE DIVISION

PREAMBLE

1. Sections Affected **Rulemaking Action**

R17-4-250	Repeal
R17-4-251	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. § 28-366

Implementing statutes: For R17-4-250, originally A.R.S. § 28-310, now A.R.S. § 28-2355 after statutory rewrite of 1997

For R17-4-251, A.R.S. §§ 28-2003 and 28-2402

3. The effective date of the rules:

September 13, 2000

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

Notice of Rulemaking Docket Opening: (R17-4-250): 5 A.A.R. 3281, September 24, 1999

Notice of Rulemaking Docket Opening: (R17-4-251): 6 A.A.R. 1918, May 26, 2000

Notice of Proposed Rulemaking: (R17-4-250): 6 A.A.R. 1796, May 19, 2000

Notice of Proposed Rulemaking: (R17-4-251): 6 A.A.R. 2369, June 30, 2000

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

Name: George R. Pavia, Administrative Rules Unit Supervisor

Address: Arizona Department of Transportation
Motor Vehicle Division, MD 507M
3737 North Seventh Street, Suite 160
Phoenix, Arizona 85014

Telephone: (602) 712-8446

Cellular: (602) 403-3341

Fax: (602) 241-1624

E-Mail: gpavia@dot.state.az.us

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

This rulemaking arises from a 5-year rule review (F-98-0401) approved by the Governor's Regulatory Review Counsel on May 5, 1998. The 5-year review report recommended repeal of R17-4-250 and R17-4-251 since the rules essentially expired in 1974. Since both rules are no longer enforced and R17-4-251 is now even in conflict with current statutory authority, repeal of these 2 obsolete rules is an expedient course of action.

7. A reference to any study that the agency relied on its evaluation 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

8. 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

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

Motor Vehicle Division is claiming exemption under the provisions of A.R.S. § 41-1055(D)(3). The only foreseen economic impact of repealing R17-4-250 and R17-4-251 is clerical costs involved in formal rulemaking. Repeal of these obsolete rules accordingly decreases agency monitoring, reporting, and enforcing burdens required of effective administrative rules.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

There were no changes made between the proposed and final rules.

11. A summary of the principal comments and the agency response to them:

The Division received no comments in this rulemaking.

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

None

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

None

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION

ARTICLE 2. TITLES & REGISTRATION

Sections

R17-4-250. ~~1974 Reflectorized Stickers on 1973 License Plates~~ Repealed

R17-4-251. ~~Annual renewal of horseless carriage license plate or a classic car license plate - $5.00 January 1, 1974~~ Repealed

ARTICLE 2. TITLES & REGISTRATION

R17-4-250. ~~1974 Reflectorized Stickers on 1973 License Plates~~ Repealed

~~Number plates issued as evidence of registration of passenger vehicles, trucks, and trailers, for the year ending December 31, 1974, shall be identical with the number plates issued for 1973, but each plate shall have displayed thereon a reflectorized sticker to be furnished by the Motor Vehicle Division bearing the year numeral 1974 and a serial number, which number shall be recorded on the registration card by the registering officer. When a properly issued sticker has been affixed to the 1973 number plate in the upper right hand corner, such plate shall constitute a 1974 license plate. The display of a 1974 sticker on a number plate other than the plate to which originally assigned by the registering officer shall be considered to alter the number plate and make the person responsible subject to the appropriate penalty provided for in A.R.S. § 28-326. None of the foregoing shall apply to dealer plates, transporter plates, motorcycle plates, or thirty-day plates.~~

R17-4-251. ~~Annual renewal of horseless carriage license plate or a classic car license plate - $5.00 January 1, 1974~~ Repealed

~~A.~~ ~~The existing fees have been determined from the statutorily established fee for issuance and renewal of special plates for amateur radio operators, and~~

~~B.~~ ~~The Arizona Legislature has generally increased motor vehicle fees and specifically increased the fees for special plates for amateur radio operators,~~

~~C.~~ ~~The fee for the issuance or annual renewal of a Horseless Carriage license plate or a classic car license plate shall be $5.00, effective January 1, 1974.~~

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - MOTOR VEHICLE DIVISION

PREAMBLE

1. Sections Affected **Rulemaking Action**

R17-4-436 Amend

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

Authorizing statutes: A.R.S. §§ 28-366 and 28-5204

Implementing statutes: A.R.S. §§ 28-5204 and 28-5235

3. The effective date of the rules:

September 13, 2000

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

Notice of Rulemaking Docket Opening: 6 A.A.R. 1580, April 28, 2000

Notice of Proposed Rulemaking: 6 A.A.R. 1798, May 19, 2000

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

Name: George R. Pavia, Department Rules Supervisor

Address: Arizona Department of Transportation
Administrative Rules Unit, Mail Drop 507M
3737 North Seventh Street, Suite 160
Phoenix, Arizona 85014-5017

Telephone: (602) 712-8446

Fax: (602) 241-1624

E-Mail: gpavia@dot.state.az.us

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

R17-4-436 complies with legislative mandate given in A.R.S. § 28-5204 to regulate transport of hazardous materials on this state's public highways. This rulemaking updates incorporation of federal regulations to reflect the 1999 edition of 49 CFR. One new provision is added with the incorporation of 1999 49 CFR 107 to permit enforcement audits of hazardous materials transporters. Non-substantive language changes are also made to align the rule with current Arizona rulemaking standards. Updated statutory citations are included to reflect the 1997 rewrite of A.R.S. Title 28.

7. A reference to any study that the agency relied on its evaluation 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

8. 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

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

The primary cost bearers of this rule's provisions are the Arizona Department of Public Safety (DPS) in the public arena and business entities engaged in transporting hazardous materials in the private sector. DPS incurs substantial costs of $20,000 annually for program administration as well as a not readily quantifiable portion of 47 officer salaries averaging $40,000 each for hazardous materials transportation program enforcement. Business entities bear minimal to moderate costs (under $10,000) in possible federal registration fees, inspection fees, insurance, and equipment maintenance in order to remain in compliance to rule provisions. Costs of non-compliance to the business entity could be moderate to substantial monetary sanctions ($5,000 to $25,000) with possible loss of registration and driver license as prescribed under A.R.S. § 28-5238. Minimal administrative costs are borne by independent consultant trainers who educate law enforcement and business entities on rule compliance-provisions.

Benefits of the rule bring federal Motor Carrier Safety Assistance Program (MCSAP) grant funds of approximately $1.8 million to state law enforcement of motor carrier safety and Hazmat programs. MCSAP funds are distributed chiefly to DPS but may also be sub-allocated to county and municipal enforcement agencies upon application to underwrite local enforcement costs. Hazardous material transport businesses benefit from rule compliance in decreased insurance premium costs, an increased margin of transportation safety, and subsequent better service to their customers resulting from expedited enforcement processing. Independent trainers in Hazmat compliance benefit through course fees which can amount to as much as $400 per class offering.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Non-substantial changes of stylistic and syntactical format nature were incorporated at the request of the Governor's Regulatory Review Council staff.

11. A summary of the principal comments and the agency response to them:

None

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

None

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

49 CFR Parts 107, 171, 172, 173, 177, 178, and 180, published on October 1, 1999. The incorporations appear in subsection (A) with applications, exceptions, and necessary amendments throughout the balance of the rule.

14. Was this rule previously adopted as an emergency rule?

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION

ARTICLE 4. MOTOR CARRIERS

Section
R17-4-436. Hazardous Materials Transportation

ARTICLE 4. MOTOR CARRIERS

R17-4-436. Hazardous Materials Transportation

A. ~~Adoption~~ Incorporation of federal regulations.

1. The Motor Vehicle Division ~~adopts and approves as its own~~ incorporates the following portions of the Federal Hazardous Materials Regulations~~, incorporated herein~~ by reference. Materials incorporated by reference are ~~and~~ on file in the ~~Office of the~~ Secretary of ~~State~~ State's Office. The incorporated Hazardous Materials Regulations ~~hereby incorporated~~ are published in 49 CFR (Transportation), Subtitle B (Other Regulations Relating to Transportation), Chapter I (Research and Special Programs Administration, Department of Transportation), Subchapter C (Hazardous Materials Regulations), Parts:
   a. 107 Hazardous materials program procedures;
   ~~a~~b. 171 General information, regulations, and definitions;
   ~~b~~c. 172 Hazardous materials table, special provisions, hazardous materials communications, emergency response information, and training requirements;
   ~~c~~d. 173 Shippers - general requirements for shipments and packagings;
   ~~d~~e. 177 Carriage by public highway;
   ~~e~~f. 178 Specifications for packagings; and
   ~~f~~g. 180 Continuing qualification and maintenance of packagings.
2. These parts are ~~adopted~~ incorporated as ~~amended, revised, and~~ printed in the October 1, ~~1993~~ 1999, edition, and those sections of the October 1, 1990~~,~~ edition authorized for use under the transitional provisions of Section 171.14 of the October 1, ~~1993~~ 1999~~,~~ edition.

B. Application and exceptions.

1. Application.
   a. The regulations ~~adopted~~ incorporated in subsection (A) ~~of this Section shall~~ apply as amended by subsection (C) ~~of this Section~~ to motor carriers, shippers, and manufacturers as defined in A.R.S. ~~Title 28, Chapter 19, Article 1~~ § 28-5201.

b. The regulations ~~adopted~~ incorporated in subsection (A) ~~of this Section shall~~ also apply to all vehicles owned or operated by the state, a political subdivision, or a public authority of the state, ~~which are~~ used to transport hazardous materials, including hazardous substances and hazardous wastes.

2. Exceptions. Authorized emergency vehicles, as defined in A.R.S. § 28-101, are excepted from the provisions of this rule.

C. Amendments. The following ~~Sections~~ sections of the Federal Hazardous Materials Regulations, ~~adopted~~ incorporated under subsection (A) ~~of this Section,~~ are amended as ~~indicated below~~ follows:

1. Part 171. General information, regulations, and definitions.
   a. Section 171.1 Purpose and scope.
   Paragraph (a) shall read:
   "The transportation of hazardous materials by and their offering to: (1) interstate, intrastate and foreign motor carriers; and (2) vehicles owned or operated by the state, a political subdivision or a public authority of the state, ~~which are~~ used to transport hazardous materials."
   b. Section 171.8 Definitions and abbreviations. Section 171.8 is amended by revising the definitions for ~~"Carrier", "Hazmat employer", and "Person",~~ "Carrier," "Hazmat employer," and "Person," and adding a definition for "Highway" as follows:
   "'Carrier' means a person engaged in the transportation of passengers or property by highway as a common, contract, or private carrier and also includes the state, political subdivisions, and public authorities of the state engaged in the transportation of hazardous materials."
   "'Hazmat employer' means a person who uses ~~one~~ 1 or more of its employees in connection with: transporting hazardous materials; causing hazardous materials to be transported or shipped; or representing, marking, certifying, selling, offering, reconditioning, testing, repairing, or modifying containers, drums, or packagings as qualified for use in the transportation of hazardous materials. This term includes motor carriers, shippers, and manufacturers ~~as~~ defined in A.R.S. § 28-~~2401~~ 5201 ~~as well as~~ and includes the state, political subdivisions, and public authorities of the state."
   "'Highway' means a public highway ~~as~~ defined in A.R.S. § 28-~~2401~~ 5201."
   "'Person' has the same meaning ~~as prescribed~~ defined in A.R.S. § 28-~~2401~~ 5201."
2. Part 172. Hazardous materials table, special provisions, hazardous materials communications, emergency response information, and training requirements.
   Section 172.3 Applicability.
   Paragraph (a)(2) is amended to read:
   "Each motor carrier ~~who~~ that transports hazardous materials~~:~~, and each state agency, political subdivision, and public authority of the state that transports, by highway, hazardous materials."
3. Part 177. Carriage by public highway.
   a. Section 177.800 Purpose and scope of this ~~Part~~ part and responsibility for compliance and training.
   Paragraph (a) is amended as follows: The phrase "by private, common, or contract carriers by motor vehicle" is amended to read, "by motor carriers operating in Arizona, and state agencies, political subdivisions, and public authorities of the state that transport, by highway, hazardous materials."
   b. Section 177.802 Inspection. Section 177.802 is amended to read: "Records, equipment, packagings, and containers under the control of a motor carrier or other persons subject to this ~~Part~~ part, ~~insofar as they affect~~ affecting safety in transportation of hazardous materials by motor vehicle, must be made available for examination and inspection by ~~a~~ an ~~duly~~ authorized representative of the Department as prescribed in A.R.S. §§ 28-~~2402~~ 5204 and 28-~~2412~~ 5231."